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**Emergency Management  
Statutes Review**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON JUSTICE POLICY

## COMITÉ PERMANENT DE LA JUSTICE

Thursday 26 August 2004

Jeudi 26 août 2004

*The committee met at 1007 in room 151.*

### EMERGENCY MANAGEMENT STATUTES REVIEW

**The Acting Chair (Mr Mike Colle):** I bring the standing committee on justice policy to order. We have this morning three deputations, and also this afternoon, if you noticed, we've got a full agenda. We've also succeeded in getting the California office of homeland security to join us by teleconference at 2:30.

By the way, the committee has the subcommittee report, which we'll discuss after, so you'll have a chance to look at it at recess—just before the recess, just to make comments on it. So you're going to have a chance to look at it, because some members have not seen the written subcommittee report.

### REGISTERED NURSES ASSOCIATION OF ONTARIO

**The Acting Chair:** The first deputation is Doris Grinspun, the executive director of the Registered Nurses Association of Ontario. Ms Grinspun, as you know, the committee is charged with reviewing all Ontario statutes that relate to emergency management, emergency measures, with the purpose of coming up with a report and with draft legislation dealing with some of the recommendations the committee has been entertaining from various groups and associations.

You have about a half-hour, and you can leave some time for questions or comments from members of the panel, if you'd like. You can begin now.

**Ms Doris Grinspun:** Good morning. My name is Doris Grinspun, and I am the executive director of RNAO, the Registered Nurses Association of Ontario. We are very pleased to participate in the standing committee on justice policy's review of emergency management statutes and Ontario's preparedness to respond to another crisis like SARS.

There is no doubt that emergency preparedness is an utmost priority for Ontarians. Last year, the SARS outbreak underscored the fact that Ontario's health care system lacks the capacity to anticipate and respond to new threats, and has insufficient surge capacity to respond not only to big crises, but even short-term crises.

However, as others have already underscored, shoring up our health care system is more than a matter of

reacting to new threats. Ontarians need and deserve an integrated health system with a clear accountability and decision-making structure, as well as adequate resources to allow health care professionals to respond to health emergencies in a timely and coordinated fashion.

Establishing an appropriate legislative framework is but one step, in our view, to ensuring Ontario is prepared for the future. It is within this context that we would like to provide RNAO's perspective on three key themes: challenges experienced by nurses during SARS; improvements to emergency preparedness since SARS; and legislative issues. Let me start with challenges experienced by nurses during SARS, and we will do that briefly, as we produced a very large report that you have with you, which we submitted a year ago to Justice Campbell, and then recently the big version of it.

SARS was an experience that the nursing profession will never forget. We heard and experienced the chaos of communications during the first phase of SARS, and we heard repeatedly about nurses' concerns not being heeded during the second phase of SARS.

Nurses in all roles consistently shared with us their frustration over staffing shortages. RNAO has been flagging this danger for many years. It is one that cannot be resolved during an emergency situation and that will only exacerbate—in fact, show its ugliest face—during a crisis. Overwhelmingly, nurses stated that we were ill-prepared to tackle SARS.

The over-reliance on part-time, casual and agency nursing was a barrier for staffing and for sustaining staff morale. Needless to say, it was also a barrier for communication. The significance of multiple employment took on a new dimension for nurses when they were justifiably directed to work only for one employer to contain the spread of SARS. Indeed, one of the most striking features of Ontario nurses' current reality—indeed, the reality of registered nurses across this nation—is the high number of nurses who are working part-time or casual.

In recent years, more than half of working nurses have not had full-time employment. This is a most unusual circumstance—and I might say a new one, actually, in Ontario, as it's just a decade old—for any profession, and serves as a stark contrast to other jurisdictions like the United States, where 71.6% of nurses work full-time. Not surprisingly, that's why our nurses continue to be moving in that direction.

The SARS outbreak, however, did not create, nor did it reveal, the current reality of excessive reliance on part-time and casual nursing employment in Ontario. It simply underscored the danger of ill-conceived policy decisions that led to 43.2% of Ontario's registered nurses working part-time or casual, a danger that RNAO, as I said, has been flagging to the government and employers since 1998.

There is no doubt that Ontario has recognized past mistakes. We are pleased that the current government has made this a full-time priority—the issue of moving to 70% full-time employment for RNs. We are even more pleased that they are backing their election promise with concrete actions that will bring about a resolution. Yes, we acknowledge the several announcements that we had on this issue in the last while.

But I need to remind the committee that, until we have at least 70% of registered nurses working full-time in Ontario, we will continue to be at serious risk, not only during crises and emergency situations, but on an ongoing basis for patient safety and quality of care in regular times, in normal times.

Nurses also pointed to major health and safety concerns exacerbated by limited occupational health and infection control resources. During the outbreak, nurses expressed serious concerns regarding access to, and effectiveness of, protective gear, especially, I would say, during the first phase of the outbreak, and mostly because of confusion and not having a totally coordinated approach at the beginning of it.

Similarly, occupational health and safety departments were quickly overwhelmed by the sudden increase in work-related illnesses among staff. The need for counselling, information and ongoing case management grew exponentially. In addition, new assessment and monitoring tools as well as new policies were needed. It was impossible for the occupational health and safety staff to meet this demand, and yet this was a time when staff needed their services the most.

In one organization, for example, there was one occupational health and safety nurse for more than 1,000 staff. Additional resources were sought, but there was no supply of trained personnel available. I know that we are making progress. It is in the recent report released by the minister, and we are pleased about that. We need to see that, though, in action, and we need to see that in place in workplaces as soon as possible.

System-wide, we heard about problems in coordinating decision-making and directives between and within sectors. The result was considerable confusion. As all sectors contended with SARS, other programs, and the patients and residents who rely on these programs, were neglected. I'm not only referring to other programs within the hospital sector; I'm also referring to programs in the public health sector. Nurses described how the restrictions imposed during SARS significantly affected the quality of care they were able to provide. We must prevent this type of occurrence in the future.

Secondly, improvements to emergency preparedness since SARS: In June 2003, the association called for a

full public inquiry into the SARS outbreak. While we stand by our call, we were pleased that Justice Campbell was appointed to head the commission to investigate the introduction and spread of SARS in Ontario. We are confident Justice Campbell will address nurses' concerns regarding the effectiveness and timeliness of the health care system's ability to respond to SARS.

Justice Campbell's interim report identified the many failings of the Ontario health care system to prepare for a health emergency. We expect his upcoming report and his final report will contain important legislative recommendations. I believe there is a report coming out in the fall.

In the aftermath of the SARS outbreak, the RNAO, in collaboration with the Registered Practical Nurses Association of Ontario and with support from the Ministry of Health and Long-Term Care, developed the Voluntarily Immediately Available Nurse nursing registry, known today as VIANurse. VIANurse is an electronic registry, maintained confidentially on the RNAO's Web site, of RNs and RPNs who have indicated their voluntary availability to be deployed from one Ontario facility to another in the event of an emergency—an emergency as designated by the Ministry of Health and Long-Term Care.

This initiative will help nurses respond even more swiftly to an emergency situation, and those who are volunteering for this program demonstrate once again that nurses are willing to do what it takes to help the people of Ontario and keep them safe. Yes, if we need to do it all over again, we will do it all over again. The emergency registry service not only helps patients but also assists nurses who are often required to work exceptionally long hours due to staffing shortages in an emergency. The intent of the registry is to help alleviate some of the burden on nurses at affected health care facilities and, of course, alleviate system pressures. The system is fully operational as we speak.

During SARS, we heard about problems in coordinating decision-making between sectors. For instance, public health was not adequately integrated with hospitals to manage SARS, and there were conflicting directives from the Ministry of Health and public health. Operation Health Protection, introduced by the Ministry of Health and Long-Term Care in June, is evidence of this government's commitment to rebuild and revitalize our beleaguered public health system. Public health has long been the orphan of our health care system. SARS was a wake-up call that we must answer, and we must answer it quickly. Ontarians need and deserve an integrated public health system.

#### 1020

Legislative issues: In your review of legislation and legal lessons learned, we urge you to keep in mind communications needs during health crises. First and foremost, any legislative change must begin by clearly designating one person responsible for decision-making and issuing directives. In health emergencies, in our view, that responsibility should belong fully to Ontario's

chief medical officer of health. I am aware that there are differing opinions, including from Dr Sheela Basrur and Justice Campbell, but we actually back Justice Campbell on this one. We believe that we need one person to be fully in control and that person should be the chief medical officer of health.

The establishment and maintenance of an effective communication network linking government, health providers, professional organizations, unions, higher education institutions and the public remains key to a successful emergency preparedness plan. This channel for communication would ensure timely, efficient and well-coordinated information distribution within all levels of the health care system, from government to point-of-care professionals and vice versa. Communication requirements, including participation from registered nurses, should be enshrined in policies and procedures of health care organizations as well as in legislation or regulation.

Nurses' experience during SARS was, at times, if not often, one of exclusion. As a result, you may be aware that very early on the RNAO set up the SARS nursing advisory committee, SNAC. Later on, that became a reference group to government and today it has been formalized into ENAC, the emergency nursing advisory committee. This committee continues to meet on a monthly basis. In fact, we're now in the process of finalizing, from a nursing perspective, covering all sectors of nursing, both health sectors and education sectors, policies and procedures for nursing. Allison Stuart is aware of this, and this of course will be forwarded to her for her review and, hopefully, integration into the system plan.

In a key recommendation to Justice Campbell's commission to investigate the introduction and spread of SARS in Ontario, RNAO called for the immediate introduction of whistle-blower legislation to ensure nurses and other health care workers can express concerns without fear of reprisals from employers. You cannot legislate respect for a profession—absolutely not—but you can put in regulations that will affect health care organizations and encourage them, ensuring that health care professionals, in good times and especially in emergency times, can speak their minds, obviously with the protection of patient privacy, on system issues when they think the system is failing.

The RNAO first requested whistle-blower protection in 1998. I met personally with Premier Harris at the time. In a document to him, when we discussed the many challenges of nursing, one of the challenges was the issue of speaking up in good times and bad times on protecting the public and nursing care. Health professionals must be afforded the ability and protection to speak out on behalf of patient and public safety. In fact, if we don't do that, if we don't do this type of legislation, we are taking away a very important safety valve of the system. Our experience with SARS crystallized the need for this protection. Some nurses felt compelled to speak out despite the risks to their livelihood in doing so. We cannot know, how-

ever, what crucial information about the outbreak was lost from those nurses and other health care professionals who were afraid to speak out—and I know they were, because I got numerous phone calls both at work and at home. Let me tell you, they were not only from nurses; they were also from other health care professionals, many of whom never spoke up. I also know because many requested that we attend their visits to Justice Campbell with them. That's how afraid they were of speaking up on what they knew.

We urge the committee to keep in mind the need for this protection in its review of legislation and regulations.

Thank you for inviting the RNAO to present to the standing committee on justice policy's review of emergency management statutes. I will be happy to answer any questions you may have.

**The Acting Chair:** We'll start with Mr Dunlop.

**Mr Garfield Dunlop (Simcoe North):** I have no question.

**The Acting Chair:** Mr Kormos.

**Mr Peter Kormos (Niagara Centre):** Thank you kindly, Chair.

**The Acting Chair:** The next presenter is at 10:30, so you have about 15 minutes divided between the two caucuses left.

**Mr Kormos:** Ms Grinspun, thank you very much for coming. What's remarkable, what's so very interesting, is that at these committee hearings—which, mind you, have been difficult because the government wanted to hold them during the summer months when many people are not available—you, on behalf of the RNAO, subject to a correction from another member of the committee, are the first representative of a union or association of workers.

There has been talk—I'm not saying this is the conclusion of the committee—about overriding collective bargaining agreements. There has been talk about including private sector resources in doing an audit of our emergency response preparedness—not that that's wrong, but obviously with the inference one might draw from privatizing emergency response, which I find a very frightening proposition.

I appreciate your being here, because we haven't sent out invitations, that I'm aware of, to the Police Association of Ontario, for instance.

**The Acting Chair:** We have.

**Mr Kormos:** We haven't had them here. The Ontario Professional Firefighters' Association—have they been invited, Chair?

**The Acting Chair:** They've been invited also.

**Mr Kormos:** Were they able to come in the time frame?

**The Acting Chair:** They have not responded yet.

**Mr Kormos:** It's the middle of August. SEIU, the Service Employees International Union, who represent a whole lot of health care workers and ambulance personnel?

**The Acting Chair:** They've been invited.

**Mr Kormos:** And what has their response been? Are they available?

**The Acting Chair:** They're not interested, just unable to attend or whatever.

**Mr Kormos:** OPSEU?

**The Acting Chair:** They've been invited.

**Mr Kormos:** And?

**The Acting Chair:** No response.

**Mr Kormos:** CUPE?

**The Acting Chair:** You can go through the whole list. But remember, we said that members are also more than welcome to invite groups or associations. So far, we have gotten one of the most amazing cross-sections of people and organizations, representing cities like Ottawa and Peterborough—Dr Low, Dr Young, EMS Toronto, the Ontario Paramedic Association, every conceivable ministry. Anyway, they're all invited to come.

**Mr Kormos:** You see, I'm concerned. It's the middle of August. That's why I'm curious about the reasons they haven't responded positively.

**Ms Grinspun:** May I ask what the question to me is?

**Mr Kormos:** This was my expression of gratitude to you. Because it's helpful to have someone like you and your counterparts here.

**Ms Grinspun:** Let me comment on a couple of things that you mentioned. I can only speak about the last eight years working with government—eight and a half since April 1, 1996, when I became executive director of the RNAO. I am very pleased that I was asked to come, and I made sure that I put this as a top priority. I think the relationship of any government with any of us is a two-way street. I need to tell you that I was not always invited in the past. At least I am invited now, so that's progress. And we made sure that one of us would be here. Thank you for letting me know all of those that you invited, because I will encourage them to attend. We cannot be complaining after being invited and not attending.

1030

On your comment on overriding collective agreements, I have been reading some of the presentations of other individuals, including the one of the OHA. On the issue of bringing people from other provinces or countries, I want to comment on that because it's important, I think, and also on the issue of refusal of work. The OHA said we need to put something in legislation to probably prevent that.

Let me comment on the first only in relationship to nursing, because we were confronted with that. We actually had people who wanted to come from other provinces to help and we felt very awkward about that because we knew of the many nurses who wanted to help but didn't have full-time work; hence, they couldn't help. The right solution is to be well prepared ahead of the emergency. So let's move as fast as we can to the 70% full-time employment for RNs and we will not have the problem, at least in nursing, as much in human resources.

The other point is that you cannot really mandate people to work. Yes, you can put the legislation, all right, but people can call and say, "I am sick"—one way or

another. Very few people in my experience in nursing refuse to work, and I'm aware of those. I would suggest 95% or 98% of the nurses, if not higher than that, were there every day despite the difficulties, putting their lives and their families' lives at risk many times, and patients first. When some refused, they were afraid of the protection. So, again, let's be prepared for how we protect not only our nurses but doctors and others, and we will have fewer and fewer refusals. That will be my answer to some of the comments of some other colleagues who presented to you.

**Mr Kormos:** Thank you kindly.

**Ms Laurel C. Broten (Etobicoke-Lakeshore):** Thank you very much. It's very nice to see you today, and on behalf of all of us I want to again say thank you to the nurses of the province, through you, for everything that they have done.

Certainly, we have had a chance before to speak about the issues of SARS, and I want to, in the few moments that I have, ask you directly about the question of directives. When we had the other folks who were able to attend before the committee and talk about health-related issues, we heard a lot of concerns about whether directives were truly directives or whether they were voluntary directives. From the front line and the people you represent, I wonder if you can speak to that issue specifically.

**Ms Grinspun:** Yes. Actually, let me give you a very concrete example. First of all, there were way too many directives, too frequently, confusing the one who was interpreting the directives. So even if they were directives, different people were interpreting in different ways. There was a very specific issue in terms of the mask testing that we actually discussed even in the committee, because everybody was doing a slightly different thing because they were understanding the directives in a different way. Then we brought the question, "Is this really a directive or is it a guideline?" I think there was some level of confusion.

**Ms Broten:** On the front lines as a result of the directives.

**Ms Grinspun:** Yes, on the front lines, and I will say not so much only on the front lines but even in those organizations that were interpreting the directives for the people in the front lines. It also appears, from what we hear, that there was a lack of sufficient input from the front lines to ensure that the directives were actually operational, that people on the ground could follow through with all those directives. While we understand that in a situation of emergency you cannot have extensive consultation, somehow we need to get that voiced, and we have it now, in the nursing case, through the committee. We actually have not only the committee; we have also a subcommittee that deals specifically, every time we ask for consultation, on directives.

**Ms Broten:** Just one last comment, Chair. I want to speak to the issue raised by Mr Kormos. I would invite you to encourage the groups that we have invited. Obviously, these committee hearings have taken place

during the summer, but we have reached far and wide to invite groups to come before the committee. In many instances, I think some of those groups have had poor experiences with past governments and perhaps feel a bit gun-shy about coming before us or think that we aren't really here to listen.

I can tell you from this side of the table, we want to hear the various views from the front line. We have invited those groups to come. Mr Kormos has had every opportunity to put people on the list. He sits on the subcommittee. As of yesterday, we were continuing to put people on the list. We still will be having some hearings in October and we do encourage people on the front lines to come and talk about the issues. So I think the issue was perhaps blown out of proportion, but any assistance you can provide us, we would very much appreciate.

**Ms Grinspun:** We will make sure to do that.

**The Acting Chair:** Mrs Sandals.

**Mrs Liz Sandals (Guelph-Wellington):** One of the issues that has been raised by a number of people is the sense of directives being confusing, conflicting, a sense of unease about who is in control, and you've highlighted this in your report, as have many others. You've made a very specific recommendation. A lot of people have said, "Tell us who is in charge"; you've actually made a specific recommendation about who should be in charge. I'm wondering if you could give us a little bit of a sense of why you chose the chief medical officer of health. I'm not being argumentative. I would just like to know what your rationale was for that particular choice.

**Ms Grinspun:** It is imperative in the case of a health emergency that there be a health professional who has expertise, and to me, that person is the chief medical officer of health. I also support very much that that person should be more arm's length, and I know that MPPs—now that will be the case more than it was in the past.

We cannot in an emergency situation politicize in any way or shape what is happening. It costs people's lives. Let me leave it at that.

**Mr David Zimmer (Willowdale):** I had the benefit last spring to be at an awards ceremony out at North York General Hospital, where one of your nurse members, who was a nurse at North York General Hospital, received a national award. I just wanted to remind members of this committee that it was that nurse, through her own initiative, who put the connecting dots together on the SARS outbreak and brought it to the attention of the medical doctors. I wondered if you might just take a minute and outline the work that that particular nurse did.

**Ms Grinspun:** Absolutely. You're referring to our colleague in Scarborough Hospital now?

**Mr Zimmer:** Yes.

**Ms Grinspun:** Yes, she identified that. Well, it is reported, right? When she came from a weekend, she identified that the family of that individual—that she had been travelling, and she put the dots together and she

alerted. At the same time, though, we have colleagues who also alerted that maybe we had SARS back at the door, and their view is that their concerns were not seriously acted upon.

So that's why I'm saying we cannot rely on the goodwill of people to speak up, or their expertise only. Whether we like it or not, the reality is there are power structures in the system. People know that some actually have lost their work for speaking up, so we need to put within legislation regs that encourage, that send the message that if people are not listened to within their organizations, they can still speak up, they will speak up, and their jobs will be protected.

We had a wide range of experiences during SARS, and although that one is fantastically encouraging in the first outbreak, in the second we had a totally different, serious experience.

1040

**The Acting Chair:** OK. The very last question, Jim Brownell.

**Mr Jim Brownell (Stormont-Dundas-Charlottenburgh):** Yes. Just one little question on VIANurse, the program that was set up after SARS. The success—how is that taking off?

**Ms Grinspun:** That program is very good. In fact, my colleague Irmajean Bajnok is the person who is leading that project. It's fully operational. We already did a simulation and, again, that's something I would recommend strongly for the entire program of emergency preparedness. I bring that from my experience of working during war in another country.

The best way to know—and I said this the other day to Allison Stuart—if we are ready is to actually go through the motions. So VIANurse has simulations twice a year and involves not only the VIA nurses, which is about 400 at this point, and more are coming all the time, but also the organizations that need to enable those nurses to move to another organization.

**The Acting Chair:** Thank you for being here. I just want to say how some of us have been directly involved in exactly what you've been talking about.

You mentioned the lack of transparency or the fear of reprisal, etc. That shouldn't happen in a time of an emergency. In fact, I had a constituent of mine who was a nurse contact me during the SARS outbreak saying, essentially, that there were things very wrong at a local hospital. She was also upset by the part-time nurses coming in, and they were taking all the risks, etc.

Luckily, I was actually helped by the press. I brought her concerns to a member of the Queen's Park press gallery, and the next day there was a front-page story in one of the local papers. In fact, that reporter was nominated for a national newspaper award.

It shouldn't have to be that way in an emergency and, hopefully, this committee could deal with that so that in the time of an emergency, a nurse or another front-line person shouldn't have to be afraid to come forward with important information in terms of something gone wrong in the system. In this case, they had to do it in a very

indirect way, which doesn't help serve the public interest here. So I hope that somehow we can eliminate that type of distrust or fear in times of emergency, when you have to deliver those services and be very frank and forthright.

**Ms Grinspun:** Mr Colle, while it is true that much of the success of the health care system during a time of emergency or in normal times relies on the expertise, the good will and the strength of relationships of health care professionals among themselves and the professionals and others in decision-making outside the organizations, like government, we cannot rely on that?

We need to create a system and structures and legislation and regulations, if need be, that will enable nurses and others not to feel afraid of speaking up; hence, the reason we have been asking, since 1998, for whistleblower protection. It exists already in many jurisdictions of the US; there is no reason why we shouldn't have it. Hopefully people don't need to use it, but it will signal to health care organizations that you cannot muzzle up any health care professional.

If you remember, after the story came out we immediately called for a full public inquiry. In fact, we knew and we were warning about this issue too. We had Justice Campbell appointed only after we came to Queen's Park with nurses wearing masks that said, "Muzzled, silenced, ignored." That's how bad it was, that we needed to push. People said to me, "My gosh, now this one is really over the top, bringing nurses who put on masks saying that." It appeared on all the pages of the newspaper, I believe, on June 9 or something like that.

But it shouldn't be that way, right? We need to be prepared as cohesive teams before, but also we need to have signals in regulations that say to nurses, also in normal times, "You can speak up when you think there are system problems."

The same happened not during a so-called emergency in the mid-1990s. We reached about 53% of nurses working part-time/casual, more than half of the nursing workforce, in 1998 and nurses were afraid of speaking up that that was a disaster for patient safety, because they would lose their jobs. And yes, many of them lost their jobs just because of speaking up. That's when we requested that then-Premier Harris please put in whistleblower protection, and we are still waiting.

**The Acting Chair:** And there's another group waiting here to present. Again, thank you very much for being here and making a very valuable contribution to this committee's deliberations.

#### CHICKEN FARMERS OF ONTARIO

**The Acting Chair:** The next presenter is William Bearss, who is the general manager of Chicken Farmers of Ontario. With him are Chris Vanderkooy, director of operations and service delivery, and Maureen Latocki, vice-president of Hill and Knowlton. Please identify yourselves as you address the committee. You've got approximately a half-hour, and if you could perhaps leave some time for questions and comments, it would be appreciated.

**Mr William Bearss:** Thank you very much, Mr Chairman and honourable members. We are mindful of the time and we note with interest that there's a party of considerable stature following us, so hopefully we wouldn't intercede on his valuable time as well.

My name is William Bearss. I am general manager of Chicken Farmers of Ontario. I'm accompanied today by Chris Vanderkooy, who is director of operations and service delivery for our organization. While we had indicated that a colleague from Hill and Knowlton, which is an agency with whom we've had some ability to work over the last couple of years, will not be joining us, we're quite comfortable in representing our interests as we speak.

Thank you very much for the invitation to be here today. I will make the bulk of the presentation but Chris will certainly offer up some supplemental comments, either through the course of it or during the question-and-answer period, that might assist this committee in its work.

I think by virtue of being invited here today as Chicken Farmers of Ontario, it's reflective of perhaps some of the work we've done in building strong relationships with government agencies and the political realm over the last number of years. More specifically, in the area of agriculture and food we have established, as you might well expect, a pretty strong relationship, given that we operate under a regulated marketing system that is subject to the Farm Products Marketing Act.

As a result of the role of agriculture expanding into the larger public realm, we certainly have expanded that relationship as a result of various incidents into relationships with the Ministry of Health and Long-Term Care, largely emerging, as you well know, as a result of the avian influenza connection last fall in Asia and, closer to home, the BC AI situation that emerged back in February and with which we continue to deal at this moment. As a result of that, obviously the human health emergency preparedness issue has broadened out beyond the level of a direct threat to human health. And as a result of that, we have also established good working relationships with the emergency management office in the Ministry of Community Safety. More specifically, as a result of some interaction with Dr Young and Neil McKerrell from that office, I believe that's in part a reason why we were offered the opportunity to speak here today.

We're quite pleased to offer this standing committee an opportunity to share our experience and expertise in emergency preparedness. I guess in that regard, it's that diversification into non-human health areas that has come to the fore, largely as a result of the avian influenza situation. It's important that we recognize that emergency preparedness does extend beyond those bounds and includes agriculture and a number of other sectors.

#### 1050

We'd like to take a few minutes to tell you about ourselves and some of the things we're doing in the area of emergency preparedness. We do have an information package that includes some supplemental information



about us that we will leave with you that describes some of the work we're doing. You can review that at your leisure on your own time. It also includes some facts and figures about Chicken Farmers of Ontario. We've included contact information as well, so if there are individuals or if the committee itself is interested in following up with us, we're quite prepared to provide whatever feedback we're able.

Chicken Farmers of Ontario is a marketing board that represents the collective interests of about 1,100 chicken farmers in Ontario. We're the ones who produce the Loblaws and A&P chicken, the Swiss Chalet and KFC chicken. The farmers who have chickens that lay eggs are represented by another marketing board called the Ontario Egg Producers. We are two distinct bodies, and the two types of chickens and the nature of the production processes are obviously considerably different, although we do share some pretty common elements with them and other livestock sectors in terms of some of the things we do, both individually and collectively.

Our organization, along with similar boards for eggs, turkey, hatching egg and dairy producing farmers, operates under a regulated marketing system where supplies are managed through production quotas to provide appropriate volumes of product to meet the needs of the marketplace. As I said, we operate under the Ontario Farm Products Marketing Act. Producer interests are represented through a nine-member board of directors, and that body is the one to which myself and Chris and our 30 staff are reportable.

We grow about 30 million chickens every two months, about every eight weeks. The year is broken up into six and a half eight-week cycles. Those 30 million chickens come out of our barns, the barns are cleaned up and repopulated and we go through that cycle six and a half times a year, to the tune of about half a billion dollars in farm gate sales annually. That's strictly on the farm side. In addition to that, of course, the industry infrastructure and downstream stakeholders have a considerable economic impact on the fortunes of Ontario, not only in agriculture but beyond that by virtue of processors, further processors, retailers, and the food and beverage or restaurant industry. So the industry generally has a significant role and economic contribution that it makes to the Ontario scene.

More specifically to the interests of this committee in the area of emergency preparedness, CFO is and has been a lead player, both individually and collectively and in efforts with other stakeholders as well, in emergency preparedness. In that regard, I believe you've had at least two other presentations this week. One was by Deborah Whale, chair of the Poultry Industry Council, and another by Gordon Coukell, chair of Dairy Farmers of Ontario. Those are both groups with which we are very closely aligned and with whom we have very strong mutual interests and key areas of issues to address.

In addition to that, Ms Whale told you about a broadly based industry coalition of about 12 or 13 commodity groups who have been working together as a consortium

to engender public and government support for a variety of areas of concern. I think she identified those in some fairly comprehensive terms in the presentation she left with you. I would only emphasize that there are two or three areas in which we want to reaffirm and endorse that support specifically. Of course, one is the establishment or upgrading of the laboratory facilities to a level 3 capacity. That is absolutely critical to the disease surveillance process, and further exploration of that will certainly serve as testimony to it.

In the period since Ms Whale spoke, though, I think it's important for us to share with you that indeed some reference was made to the cost of establishing from ground zero a level 3 lab. Suffice it to say that in Ontario we would not be looking at that kind of a financial commitment, and indeed the cost of upgrading the existing level 2 lab at Guelph would certainly be far less than some of the numbers that I understand were bandied about, and that while they were, I understand, in the \$50 million to \$60 million range, we're talking about single-digit numbers. So in that regard I think there is some room for being more keenly interested in that initiative.

A second area that we believe is critical to the success of emergency preparedness, certainly in that scene, is to engage and delegate powers to the provincial veterinarian to have the authority to take decisions in emergency situations. That was addressed fairly thoroughly.

The third area is to focus on the development of bringing Ontario up to speed and harmonized with the other nine provinces by having an animal health act. I will come back to that in a minute, because in our discussions with Dr Young and others there may be ways to achieve the objectives of such an act in another fashion.

The final area is to ensure that the funding support exists from government for the development and enhancement of a coordinated and harmonized emergency and crisis management strategy and programs implemented by producer organizations so that you don't have all of these different bodies racing around the country with their own little programs and policies and strategies; to have some harmonization and cohesion, particularly in the areas of GIS, database sharing, biosecurity initiatives, and crisis simulation exercises, so that this notion of a global threat or a more broadly based threat can be addressed in a collective fashion.

While we have engaged in those collective initiatives and encouraged active government support for those that were presented to you on our behalf as well as others by Ms Whale and Mr Coukell, we wanted to share with you some of the things that we've been doing specifically, initiatives that CFO, Chicken Farmers of Ontario, have taken on a more autonomous basis. We think that as a result of having that leadership role and taking those initiatives, we have provided industry and the public with a level of comfort that we have the capacity to respond reasonably effectively to an emergency situation even as we speak. We think that level of preparedness has been achieved with the assistance of government, both financially and through program leadership over the last

number of years. I did want to share a couple of thoughts in that regard.

First of all, about four years or so ago, the Chicken Farmers of Ontario took a major leadership role in implementing a CFIA-approved, HACCP-based, on-farm food safety program. By the end of this year, every chicken farmer in Ontario will be required to provide a full documentation that the provisions of that rather rigorous program have been implemented on their farm, and that includes a 112-point audit checklist that is third-party audited on those farm operations to demonstrate their capacity to fulfill the commitments of that program. In that regard, we were fortunate to participate in the provincial government's healthy futures program, which has assisted us in funding some of the technology associated with rollout of that program and the other implementation costs that allowed us to deliver that to our 1,100 farmers, to the benefit of all Ontarians.

On the government leadership side, CFO was supported by the Ministry of Agriculture and Food, specifically Lou D'Onofrio. I'm sure that's a name that will surface in a number of your presentations from an agriculture perspective as the captain of the team, if you will, in building and implementing emergency management and crisis communication plans.

#### 1100

As many of you know, that was an Ontario government initiative that was triggered by the ice storm back a number of years ago, where emergency preparedness was again demonstrated to be needing some attention. We worked closely with OMAF to develop the plan according to prescribed guidelines. Your committee is probably already familiar with the nature of the program in terms of its aim and its scope and the fact that it encompasses all hazards, that it defines the role of a situation response team and it identifies graduated levels of emergency that would trigger that plan. We'd be quite prepared to share with you more detail during the question-and-answer period. But suffice to say, that model has been adopted and we certainly have taken a leadership role there and believe that's a key element in our demonstrated capacity to be prepared for emergencies.

In our case, that plan would in fact be triggered by, as an example, a poultry disease outbreak. It could be triggered by a food safety threat or an environmental emergency, either weather related or otherwise, or in fact any other apparent situation that would require a heightened level of management intervention to (a) protect humans and (b) avert economic infrastructure disaster.

So those are the kinds of things the plan is designed to achieve. We not only have developed that plan, we've been actively involved in routinely testing it under crisis simulations and, as an example, we have participated in the Bruce nuclear simulation exercise and have learned considerably from our participation there. Somewhat less voluntarily, for some of you who may not be aware—I'm sure Mr Kormos would be—in Niagara some weeks ago, there was a false alarm that prompted us to think that there might be an outbreak of avian influenza that may

indeed have had a human connection. Fortunately, on investigation, it was proved to be a false alarm and not avian influenza, nor were the birds related to the condition—

**The Acting Chair:** Dr Young apprised us of that.

**Mr Bearss:** But we involuntarily tested the readiness of our system over that 48-hour period and it gave us some learnings on that as well.

In addition, we are going to be a full participant in a three-day simulation exercise that will take place October 27 to 29, along with industry colleagues, CFIA and the government.

You might ask what lessons we have learned out of all this development of plans and exercises, and I think that would be the key message we want to share with you in that regard, that not only as a result of development and testing of these plans, we have in addition learned some things already and will learn more from the outbreak of avian influenza in BC.

I think three key success factors, among many others, have emerged. The first is the critical importance of early identification and immediate implementation of a plan, to have a plan on the shelf ready to implement and have the antenna up to identify when the situation arises. For us, the most frequent trigger is likely to be a disease outbreak and, as you know, like any disease outbreak, they occur the same in animals as humans. It's identifying that first case, not the 50th case, that allows you to act quickly and effectively.

The second is that the immediate assumption is that the problem has the potential to be a disaster and, no matter how minimal or small it may seem, the initial assessment needs to be that this can explode into an unmanageable situation and, as additional information and ability to assess emerges, then that level of preparedness and readiness can be subsided and reduced as the threat subsides.

Thirdly, and very importantly—and it will emerge in some post-mortem sessions that have already been scheduled for assessing the BC situation—is the importance of timely and accurate communication. I think our last speaker shared some of their frustrations with you as to the degree to which people who are on the ground, face to face, at the grassroots level—I guess we use that in ag terms; I'm not sure what the equivalent is in a hospital scenario. The fact is that people need to know what's going on and they need to know it accurately to dispel rumour, hearsay and speculation about outcomes. That communication system is absolutely critical to success.

As I said, through a one-day post-mortem session on August 31, the Ontario industry will be hosting some people from BC and elsewhere to talk for a day about the learning—

**The Acting Chair:** We have a committee member who will attend that event in Kitchener.

**Mr Bearss:** Good. Excellent.

**The Acting Chair:** MPP Wilkinson from Perth-Middlesex will be there.

**Mr Bearss:** Good. Then again there is another one in Abbotsford, at which our group will be represented,

along with some others, which will be a similar exercise right in Abbotsford where the disease outbreak took place.

My final comments would be to summarize where CFO supports—while I said earlier that CFO supports the introduction of an Ontario animal health act, if, as a result of its deliberations, this committee were to determine that it would be more effective to integrate the interests or key elements of such an act into an omnibus act, then certainly we could be supportive of that.

But the fears we would have to take that route would be, first of all, the fear of assimilation; that is, the interests of agriculture would be overwhelmed and not really be reflected in the success of that act as a result of not being given sufficient attention.

Secondly, it would be that as a result of the integration, with a lot of emphasis on human health threats, non-human threats wouldn't be treated with the same level of urgency and priority that a specific act might do. So there would certainly need to be provision for that in any kind of an omnibus act.

Third, I think we very much would endorse, as a key element of that act, this three-party team that would include the emergency management coordinator, and in this case obviously Dr Young, in a team environment with the medical officer of health and the chief provincial veterinarian, such that the interests of all would be integrated and embraced in any emergency situation where they would be involved.

Finally, I think Ms Whale recited 10 key priorities, which are certainly ones we would endorse. Again, she positioned them, I believe, in the context of an animal health act but, frankly, if an omnibus act achieved those ends, they would certainly be supportable. It isn't the vehicle, it's the journey and the destination that are critical to us. We would want to ensure that they would be embodied in such an act and, finally, that the act have the kind of teeth—we always refer to teeth in legislation; I guess I don't have to tell you folks that what gives legislation teeth is typically dollars—that there be the financial support behind an act to ensure it does achieve the objectives it has and be there to serve the objectives.

With those remarks, I thank you for the opportunity to participate in this public policy process. It's a first for us and we're quite delighted to be a part of it. We would invite you, through the contacts in that information package, to feel free to be in touch with us. As I say, there is a bit of information about the quality of our products. We did a bit of promo there, but I think more importantly for this committee, there are a couple of pieces there that identify how we are addressing emergency preparedness. In addition, our annual report gives you some sense of who our organization is and what we do. So with those thoughts, Mr Chairman, thank you.

1110

**The Acting Chair:** We have time for a couple of quick questions.

**Mr Kormos:** Very quickly, the obvious questions: (1) Do we in the province of Ontario have the resources

to adequately respond to a significant outbreak of avian flu and (2) do we have the resources to respond to the outbreak of yet a new infectious disease among poultry?

**Mr Bearss:** The jury is still out. Our first reaction from our perspective is, we have a lot higher level of comfort today than we had six months ago and, more importantly, five years ago. In our testing of the capacity of our organization to address and be a key player in the identification and delivery of emergency initiatives, we are comfortable that we're very close to capability.

However, what you need to understand is that the emergency crisis communication plans and the work that our organizations will do in the context of your question is that we provide the information. We're the ones that will identify where farms are, we're the ones that will identify the potential sources of disease. But in terms of delivering actual initiatives, we are a partner with government on that. It will be others who will fund the costs of disposal, remediation work, post-event cleanup and/or remuneration and the costs associated with that.

**Mr Chris Vanderkooy:** Mr Chairman, if I may briefly, I think we're the 10 things on Deborah Whale's list, short of us being able to say without a doubt we're ready. Our industry has a huge capacity to respond. We would be fully reliant on people like Dr Young. The lab needs to be upgraded; there's no doubt in our minds about that. Like Bill said, whether we get an animal health act or whether the authorities go through Dr Young, that is what we need for me to be able to say to you, the next time you ask that question, "Yes."

**Mrs Sandals:** I think you probably told me where to look to get the answer I want. If we are charged with looking at reviewing the legislation, what legislative fixes we need, then we need to look at what Ms Whale had already said around 10 suggestions. We're charged with the legislative fix, and you've already identified there where the legislative holes are.

**Mr Bearss:** That is correct, yes.

**The Acting Chair:** Thank you very much. We did get quite a primer in animal health 101 from Deborah Whale, so we are somewhat cognizant of a very critical area that's been ignored. So we are very pleased that you came and supported a lot of those same things that Deborah Whale presented to us.

**Mr Bearss:** And on that point, Mr Chairman, I thank you again for the opportunity. I think that perhaps in fairness to the government and the people on this committee and others who have worked very hard over the last number of years to raise the level of preparedness, we wanted to be sure that positive message was also shared. With all due respect to Ms Whale, it was a very highly critical position that her paper takes and it highlights a significant number of areas where there are shortcomings. Our approach is more to decide that those are areas where we need to work together to improve, as opposed to simply pointing at the flaws.

**The Acting Chair:** Thank you. As you said, what's important is the destination, not the vehicle.

**Mr Bearss:** Exactly.

**The Acting Chair:** Thank you for being here. I guess with the low-carb fad, you guys are doing pretty good these days.

**Mr Bearss:** Yes.

**The Acting Chair:** And Krispy Kreme is down.

#### DAVID COLLENETTE

**The Acting Chair:** The next presenter is the Honourable David Collette, Privy Councillor; distinguished fellow, Glendon College, York University; former Minister of National Defence, former Minister of Transport, and former member of provincial Parliament for Don Valley East.

**Hon David Collette:** Not provincial Parliament.

**The Acting Chair:** Excuse me.

**Mr Kormos:** The difference is substantial.

**The Acting Chair:** It's the same riding now, you see. It's hard to remember who's in charge in the ridings now. Anyway, thank you very much, Mr Collette, for being here. We very much appreciate you making time in your schedule to help this committee in its deliberations. You can begin. You've got about 15 minutes.

**Hon Mr Collette:** Well, thank you, Mr Chairman. In my haste to be here this morning, I broke my glasses. So I may stumble, but you have the written text. Your eyes may be better than mine.

I welcome the opportunity to speak to you on a very serious issue facing government today; that is, how to respond effectively and in a timely fashion to emergency situations. You've heard from a number of witnesses about the need to have a strong statutory foundation to deal with the unforeseen, and I'd like, in the next few minutes, to give you the benefit of my experience in that regard.

As Minister of National Defence from 1993 to 1996, I oversaw the federal government's response to the Saguenay floods, and as Minister of Transport from 1997 to 2003, it fell to me and my colleagues on September 11, 2001 to deal with the closing of American airspace and the coordination of some 33,000 people who were abruptly landed at Canadian airports. As vice-chairman of the cabinet committee on public safety, I was subsequently involved in the government-wide response to the terrorist attacks, and I was the sponsor of three bills to deal with the problem. By virtue of this responsibility, I was also a member of the special cabinet committees dealing with SARS and BSE.

The federal government response in the case of natural disasters such as the Saguenay floods in 1996, the Manitoba floods and the ice storm, both in 1997, and the request in 1999 to assist with a severe snowstorm in Toronto was straightforward from a statutory and operational point of view. The Canadian Forces, through the National Defence Act, is the operational instrument, and the Disaster Financial Assistance Arrangements Act is the financial instrument of response by the federal government to natural disasters.

Usually, military assistance to provincial governments is routine, and ongoing liaison mechanisms in Ottawa

and the provinces are used for command and control. However, in situations where provincial authorities are unable to maintain order, the National Defence Act authorizes a provincial government, through the Attorney General, to request, in writing, assistance from the chief of defence staff.

The CDS has a legal obligation to respond as he sees fit and in a timely manner after consultation with the Minister of National Defence. This is commonly known as aid to the civil power and was used on 110 occasions before the Second World War and on four occasions since, the most notable of which were the FLQ crisis in 1970 and the standoff at Oka in 1990. Use of the military in these examples, where the CDS or his subordinates report directly to the provincial Attorney General, has an interesting origin, which I could explain later if you wish.

At the National Defence headquarters in Ottawa, there is a 24/7 operations centre with backup power generation which monitors all overseas military operations. This centre easily switches to domestic emergency situations such as disasters and aid to the civil power.

Financial assistance under the DFAA is usually committed by the federal government during or after a natural disaster and is paid later. It's not uncommon for the two levels of government to haggle for years over bills and payments. In fact, I don't think that the bills have been settled from the ice storm between Québec and the federal government.

The terrorist attacks of 2001, SARS and the power blackout last year did not fall under the category of natural disasters. Therefore, they had to be handled within the context of emergency provisions of existing federal and provincial statutes. Your committee's mandate follows the assertion that more specific ministerial powers are required to deal with emergencies. I'd like to share my experience with executive orders during the terrorist attacks and then make some general observations on machinery-of-government issues required in times of emergency.

When the first plane hit the World Trade Center on September 11, 2001, I was winding up a speech to 2,000 airport executives from around the world at a conference in Montreal. I immediately sensed the disaster had all the earmarks of a terrorist attack and decided to be driven back to Ottawa, instead of flying to Toronto. Once in the car, I was on the phone to my deputy in Ottawa, who informed me of the order by US transportation secretary Norman Minetta for all flights to land at the nearest airport and for American airspace to be closed to all incoming flights. This precipitated a chain of events that Canada had to deal with, including whether we follow the same procedure in Canadian airspace and how to handle the problem of 500 flights en route to North America over the Atlantic Ocean, airspace in the eastern half controlled by the UK and in the western half by Canada.

It should be noted that Transport Canada, like DND, has a 24/7 operations centre with power backup to respond to any transportation emergency within Canada,

within Canadian-controlled airspace and within the 200-mile nautical limit on Canadian coasts and the Great Lakes.

#### 1120

Using powers under the Aeronautics Act, my deputy and I agreed that I would authorize a number of measures, including: the grounding of all flights by any aircraft which had not yet taken off; permission for all flights in the air to proceed to their final destination, unlike the American action; an assessment by NAV Canada, in conjunction with its British counterpart, of the geographical position, fuel load and ability to return to Europe of all flights in Atlantic airspace; orders to those flights that could turn back to do so; direction to those who could not return to Europe to land at designated airports in Atlantic Canada, rather than landing them at Montreal and Toronto where the potential security risk was higher, and I should say that we had already started to receive intelligence reports that terrorists possibly were on board other planes over the Atlantic; and finally, measures for the safety and security of the planes and their passengers once they had landed. Time was of the essence. Every minute and a half, we had aircraft entering Canadian airspace over which Canada had authority.

Such is the culture and discipline of worldwide aviation and respect for Canada that no airline captain, no airport manager, no foreign government and no officials within the federal government or its agencies argued with my ministerial orders. Did we have the unfettered statutory authority to act? We believed we did, and those affected obviously felt the same way. Were the fundamental rights of passengers on board those planes when they landed compromised by our refusal to allow them to exit for many hours until we had the appropriate customs and security officials in place? We believed they were not, although some critics disagree. There are some who would debate the precise ministerial authority used, and subsequent amendments to the Aeronautics Act deal with these concerns.

However, there was one simple truth that was self-evident: There had been four hijacked aircraft, thousands had been killed and injured and the integrity of world aviation security had been compromised. We had little time to worry about the finer points of the law or fundamental rights. There was a catastrophe and we had to act as best we could. There was no time to seek approval from the Prime Minister, cabinet or the Privy Council Office. Indeed, one of the embarrassments we had was the fact that the Prime Minister appeared to be the only member of cabinet in Ottawa that morning. A legal decision of cabinet where four people attended in person or by teleconference was impossible for many hours. As I mentioned, I took those key decisions en route to Ottawa on Highway 417. There was no time to consult, but consultation was unnecessary because we believed we had the statutory powers to issue emergency orders.

Soon after, it became clear that there were wide gaps in ministerial authority required to deal with an emergency such as terrorist attacks in many key departments.

It's interesting to note that all of the orders I issued on 9/11 did not have to be confirmed by cabinet or require legislative oversight. I believe this to be fundamentally wrong, and the debate in Parliament on the anti-terrorist bill, ultimately Bill C-17, focused on the need for GIC approval and examination by Parliament.

The Prime Minister set up a committee of cabinet to recommend legislative and regulatory changes. Line ministries such as Foreign Affairs, Defence, Transport, Customs, Immigration, Health, Justice, Solicitor General and Natural Resources constituted the committee membership. A number of special pieces of legislation flowed from the committee, and one of the bills which I sponsored has endured three iterations and is still not law, three years after the events of 9/11. I find this unacceptable.

One of the more controversial changes which, I believe, is germane to the work of this committee is the need to provide new powers so that the minister responsible can issue interim orders in situations where immediate action is required. In our case at the federal level, in two statutes, the Aeronautics Act and the Canadian Environmental Protection Act, existing authority for ministers was extended. With the exception of these two acts, interim order provisions in Bill C-17, which has yet to be passed, follow a similar pattern. That is:

The minister may make an interim order on a matter that would otherwise be required to be made in a regulation or otherwise by Governor in Council.

An interim order may be made if the minister believes that immediate action is required to deal with a significant risk, direct or indirect, to human life, health, safety, security or the environment, depending on statute.

An interim order must be published in the Canada Gazette within 23 days.

An interim order ceases to have effect after 14 days, unless it has been variously confirmed by the Governor in Council, repealed or has lapsed, or been replaced by an identical regulation. Even if approved by the GIC, the maximum time an order may be in effect is one year.

A copy of each interim order must be tabled in each House of Parliament within 15 days after it has been made or tabled with the clerks if the Houses are not sitting.

A person who contravenes an interim order that has not yet been published in the Canada Gazette cannot be convicted of an offence unless the person has been notified of the order, or unless reasonable steps have been taken to inform those likely to be affected by it.

It's important that an interim order should only be put into effect if, time permitting, it could be implemented as a regulation. That is, the parent act must have the authority, granted by Parliament or the Legislature, to make a regulation out of the interim order. This is the reason Bill C-17 called for GIC approval within 14 days, tabling within 15 days, publication within 23 days and conversion to regulation within one year. In other words, the minister issuing the order must seek quick approval from cabinet, be required to quickly submit to legislative

scrutiny and therefore provide for public debate. In this way, the people are assured there is no abuse of authority by the executive because of the emergency.

I'd like to conclude by making a couple of observations. First, the government must be able to keep operating, whatever the emergency. That goes, I guess, without saying. All departments must have operational centres, no matter how small, with backup electrical power. There was significant criticism during last year's power blackout that the Prime Minister's office issued a handwritten press release using candlelight, when DND and Transport Canada had operations centres fully functioning with their own generators and government departments were operating with power on the Quebec side of the nation's capital. On 9/11, a line department, Transport Canada, effectively coordinated the response across the federal government for many hours as the systems and procedures at the centre were lacking or did not exist. Since 2001, the federal government has gone a long way to improve its ability to deal with an emergency. But on 9/11, we were lucky that we had an ops centre operating around the clock. That was the focus for government operations.

Second, government should think through carefully how it manages emergencies. In order to deal with terrorist threats, as you know, the US has reorganized the government by creating the Department of Homeland Security. I noticed that you're going to hear from someone from the California office this afternoon. That person reports to Governor Tom Ridge, one member of the US cabinet.

As I stated earlier, Canada initially created a public safety committee of cabinet, leaving operational responsibility with line ministers. The present federal government has partially reorganized the security file by creating a Minister for Public Safety, but some line departments such as Transport Canada retain their previous authority. I question whether government reorganization rather than better coordination is the best solution.

I would recommend that the Ontario government not reorganize its security functions by creating a special department, if that is under consideration. In all such cases, the reorganization results in a larger and more unwieldy entity, where bureaucratic infighting and delay occur and where all the pressure is put on one minister and his or her officials. This is what happened in the case of Mr Ridge, and I know all of his senior people there; we worked with them for years. Certainly, this is the case right now in Ottawa, where there's a massive reorganization going on.

A cabinet committee chaired by a senior minister would be, in my view, the most appropriate, and that minister, not an appointed official, should be the face of the government to the public in an emergency. I believe the public wants to see those elected make and explain difficult decisions. That is public accountability.

Thank you. You may have more precise questions.

**The Acting Chair:** Thank you very much, Mr Collenette. The first question is from MPP Broten.

**Ms Broten:** Thank you very much. I want to pick up on the issue that you raised in the last statement with respect to the face of an elected official. Throughout these hearings, we've heard differing views on that. Some representatives have suggested that it should not be an elected official but should be someone of a commissioner status, whether in health or safety. I wonder if you could expand a little bit more with respect to the view of why it should be someone who is elected, as opposed to a commissioner such as Dr Young, who would be a public face during the course of an emergency.

**Hon Mr Collenette:** Yes, I know it's obvious that Dr Young had been the public face of the Ontario government during a number of problems—SARS, the blackout, and there may have been others. I suppose I'm biased, even though I'm no longer an elected politician. I feel that the buck stops with the politicians, the people at the top. I think that people want to be reassured by those who are elected. That's why Mr Bush made his public statement after he initially left Washington because a nuclear emergency was declared. But once he landed at a US air force base, he made a public statement.

That's why we urged the Prime Minister, notwithstanding the fact that most of the cabinet wasn't in town—I said to him, "You've got to get out there and say something, because people want to hear you. They don't want a deputy minister. They don't want the head of the RCMP or the chief of the defence staff."

Similarly, I think there was criticism initially last year that the Premier was not involved with statements in the blackout. Certainly, I noticed at the beginning of the SARS issue that it was Dr Young and Dr Basrur, I believe, city of Toronto, who were making the statements. They're fine public servants. I have no criticism of them or of what they've done, but it was only after the fact that the health minister at the time, Mr Clement, started to become the public face. I think that was much more reassuring for the general public. So I think it's very important that you can have all of the officials, the best officials—and I had terrific officials at Transport; my deputy and associate deputy were outstanding, and all of the people there. But the people who actually made the decisions on 9/11—it was me, and therefore I was the one who had to go out and explain it after the fact, after the Prime Minister had made an initial statement.

1130

**Ms Broten:** Just picking up on that from your presentation, the explanation after the fact, it appears that in many respects you didn't have to explain it after the fact to cabinet or the House of Commons. We had an opportunity to speak to Quebec yesterday, which has restructured their legislation. That was something they pointed out as being imperative, to be called to account for your decisions before your own cabinet, initially, and in fact before the Legislative Assembly at some point, and at some point fairly near to the occurrence, not months later.

**Hon Mr Collenette:** In our case, I still can't believe that I was never asked to be fully accountable at cabinet.

I may have made a couple of statements. The regulations that I issued, which affected thousands of people, and the basic rights of many Canadian citizens who were on those planes, were never challenged. With hindsight, and as I've said in my statement, I think that is fundamentally wrong. We did it, and we did it properly. If we had screwed up—pardon my language—then I think it would have been a different situation. We would have really been roasted.

It just showed how the federal government hadn't really thought through the kind of response that you have in this new type of emergency, unlike the examples I gave earlier, where the military is involved, it's pretty much set and they have a good command and control system.

**Ms Broten:** Thank you. I'm sure many of my colleagues have questions, so I'll pass it on.

**The Acting Chair:** OK. Mr Zimmer?

**Mr Zimmer:** On page 2 of your submission, third paragraph: "Financial assistance ... committed by the federal government during or after a ... disaster and is paid later. It is not uncommon for the two levels of government to haggle for years over bills and payments." We've heard a lot on this issue from the various stakeholders—the transportation industry, agricultural, health care providers, hospitals—that they react in an emergency in good faith. They're trying to deal with the emergency. Post-emergency, they're the meat in the sandwich—how they're going to get compensated or how the expenses are going to get sorted out.

Have you got any thoughts on what we might put in the legislation to alleviate or take the sting out of this sort of who's-going-to-pay-later argument, for years between levels of government and these citizen stakeholders, who are often the meat in the sandwich?

**Hon Mr Collette:** Mr Zimmer, it's very difficult to answer the question. It's highly subjective. I know during SARS the hospitals around town were incurring expenses around the clock and they claimed they didn't have the money. I remember discussions at the federal level. There was a requirement for cash, but there was a feeling around the table that we couldn't commit funds without some idea of where they were going to end up. We couldn't issue a blank cheque. But really, if you think about it, if those hospitals had worried about whether or not they could meet their budgets, we probably wouldn't have been able to deal with that crisis, which many in Ottawa, unfortunately, felt was a local Toronto crisis. But actually it was a national crisis and it affected our GDP last year. It affected everything across the country: tourism, the airline industry, the transportation industry, the hospitality industry and all manner of other industries.

I don't know how to answer the question except to say that maybe your committee and other committees, a joint committee of the federal and provincial governments, should look into this so that we don't have the situation—the ice storm, as I understand it. I may be a little out of date. I've been out of cabinet since December, but

I understand there are still bills that were presented by the Quebec government that have yet to be agreed to by Ottawa.

From Ottawa's point of view there is always the feeling, "Well, the province may be trying to put one over on us," sneak something through that didn't really occur, much in the way that if a tree comes down on your fence in your backyard, you say, "Oh, Jeez, wouldn't it be good to get the insurance company to pay for the rest of the fence because I was needing it to be replaced anyway." I shouldn't accuse people of ill faith, but there is always a feeling that somehow you need absolute justification of the expenditures before you pay them. You have to be responsible and make sure that you don't just write blank cheques.

**Mr Zimmer:** Our sense from some of the witnesses was that there was a hesitancy to respond or to take necessary steps in a crisis pending some understanding of who is going to pay what at the end of the day. There was a concern that that impeded a prompt response to the crisis. Any thoughts on what sort of mechanism might be contemplated in the legislation so that those kinds of questions can get answered very quickly, or faster than they have been in past crises?

**Hon Mr Collette:** I think you have to have the flexibility so that the government can really be pretty open on how much it commits and for what expenditures. I think on SARS there was a claim by the Ontario government of close to \$1 billion in additional expenditures. There was a feeling in Ottawa around the cabinet table that this was not an accurate figure and there was a lot of haggling back and forth. I have to say that the ministers from Toronto felt that that figure was pretty accurate, but there was reluctance. A lot of it I think had to do with perhaps the working relationship between the governments of that time, the fact that the Ontario government was close to an election. There was a bit of skepticism, which was frustrating for those of us who were ministers from Toronto. I forget how it was resolved but I don't believe the Ontario government was compensated to the extent that it felt it should have been.

There was a big debate in Ottawa as to whether or not SARS constituted a legitimate disaster under the DFAA. The conclusion was by some that it wasn't. Those of us from Toronto said, "Sure, it is. This is a disaster but it's not an act of God in the sense of a storm or a flood."

**Mr Zimmer:** Just to bring a practical matter home, we heard, for instance, from some in the construction industry that in a crisis they're often reluctant to release equipment and workers into an emergency situation because in the past, at the end of the day, they don't know whom to look to for payment. As you say in your submission, this thing drags on for years and the citizen is often the meat in the sandwich.

**Mrs Sandals:** I'd like to go back to the question of who is in charge, because we've heard a consistent plea from witnesses that we need to sort out who is in charge, that there needs to be some clear direction as to the people on the ground about who is actually managing the emergency.

First off, a question and then I'd like to draw a distinction. Presumably during 9/11, during the first few minutes, as you say, there were airplanes in the air and somebody had to decide who they were going to land. Presumably as the crisis unfolded, other ministries that had different issues around security and other movement across borders, that sort of thing, would have had other valid concerns. As you got a little bit further away from the initial crisis, how did you manage who was in charge, because now you have more ministries that have an involvement?

**Hon Mr Collenette:** Ultimately, by later in the day, the Prime Minister's office and the PCO were fully in charge. But for the first number of hours everyone really looked to Transport Canada because, number one, we control access to those communities where there was not staff to process all those people. We had to fly people in. Even though we had grounded everything, I had to give a number of exemptions. I was under a hell of a lot of pressure from people to be exempt for all manner of spurious reasons. We used some of our own government aircraft to get ministers back to Ottawa and to get officials on the ground. Once those officials were on the ground—customs, the RCMP because there were not enough police, other intelligence people—then they could start processing

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My deputy, by that time, was liaising with individual deputies, so she was coordinating the effort, although she didn't really have the normal authority to do that. It just fell to us; it had to do with aviation. But it was also that the borders were closed. It was a brief closure, but it was very much a slowdown. Then the other ministries that dealt with border control got involved, such as customs and the police, and then you dealt with the provincial government people, who certainly play a big part in the operation of public safety at the borders.

The first thing we had to react to was the fact that at, I think, 9:36—I forget the precise time—Mr Minetta issued the order and one of the officials from the FAA contacted his counterpart at Transport Canada and said, "This has been done. You'd better get it up the line." Our deputy was informed right away, and as soon as she was informed, she talked to our chief legal officer and other officials—by that time I was in the car—and said, "Our recommendation is that we do the same, but you have to issue the order." I said, "Does it have to be a written order?" I think she skated around that and said, "Well, you can't do a written order at this moment."

**Mrs Sandals:** Don't make me answer that question. You don't want the answer.

**Hon Mr Collenette:** "We'll worry about that when you get back to Ottawa." It took a couple of hours to get back to Ottawa. So we made all those decisions, and once we made the decisions, she went to her chief aviation security person, who then called NAV Canada and issued a verbal order—it was all backed up in writing later in the day.

I don't think most people understand the magnitude of what was done. There were 500 flights in the air. These

were basically all wide-bodied intercontinental jets with a minimum of 200 people on board. So there were about 100,000 people over the ocean. Within a matter of minutes, NAV Canada was able to contact the British Civil Aviation Authority and, when the planes were in our space, the planes directly, basically ascertain whether they had the fuel load to go back or had to land. A lot of it depended on the age of the equipment, the fuel efficiency of the plane and how loaded the plane was with freight and passengers. But that had to be done within minutes, when you had a plane going into your airspace.

The way it was done was quite miraculous. If you see the North Atlantic, you'd see all these dots turning back and the other ones diverting off their flight path. All of that was done by our issuing the orders down the line. The other departments really got involved once the planes were down. We control everything to do with the airports, but then people want to get off planes. But when people get off planes, that's somebody else's responsibility: customs, immigration, security. There weren't enough people in Gander. There are 8,000 people in Gander, and we landed 4,000 to 5,000 people there within two hours, half the population. So people were kept on board for hours and hours. I forget the longest time. It might have even been 24 hours, which was pretty rough on those people. The other departments had to scramble. Everybody started to get involved, and gradually, by the end of the day, control went to the Privy Council Office.

**Mrs Sandals:** It would perhaps, then, be fair to say that in the initial crisis you had to take control and, as things proceeded, although there wasn't necessarily some sort of legislative scheme about how you shared authority, you naturally worked out what was necessary—a certain amount of flexibility in the circumstance. What I'd like to—

**Hon Mr Collenette:** I would just say that one of the problems we found out was that the federal government really didn't have the command and control centre to deal with something like this at the central level. You had line departments like defence and transport, and in disasters it worked well with National Defence. Then you had what we used to call the office of emergency preparedness—it then become OCEP and now it's called something else under Anne McClellan—which I guess is akin to what Dr Young does here. But they didn't seem to have the mandate to deal with something like 9/11. There was nobody else around, so you can't worry about who is in charge. You just have to say—

**Mrs Sandals:** You do it.

**Hon Mr Collenette:** We just did it.

**Mrs Sandals:** If I could go back quickly to the other issue of, should the politician be in charge or should the non-politician be in charge? We've heard very strongly from some of the front-line responders that they would feel more comfortable with a non-politician in charge—the chief medical officer of health, the commissioner of emergency management, as the case may be. you've put forward the other case, that the public wants to see the



face of a politician. Is there a distinction here between communications with the general public and technical directives to front-line responders in the perception of who should be in charge? Would you like to comment on that? We're getting quite conflicting views as to who should be in charge.

**Hon Mr Collette:** In ongoing management, obviously you have public officials, whether they're in a separate place, like where Dr Young's people are, or within line departments. You can't have the politician—I did not make all those decisions throughout the day, once the key decisions were made, but there are decisions that are political in nature. No public servant really has the authority or would want to take the authority to close the airspace over a country like Canada. We are the world's third-biggest aeronautical player in terms of controlling the north Atlantic with the Brits, including all the overflights of Canada by US and other airlines going to the Soviet Union and the Far East. We are a huge player. No public servant wants to, or should, take that decision, because of the disruption and the cost. A politician has to take it. Under the statute, the Aeronautics Act, that was the ministerial power.

My comment at the end was more in terms of the public face: Who speaks, who actually tells you what's going on? It's fine to have technical briefings, but I think the public wants to know the policy reasons. You can't leave politicians out of the loop. Politicians can't have a free ride when times are tough.

**The Acting Chair:** MPP Arthurs and then MPP Kormos.

**Mr Wayne Arthurs (Pickering-Ajax-Uxbridge):** Mr Collette, if you don't mind, I'm going to quote one sentence from your submission. Just prior to doing that, I was impressed by it, because I'm optimistic as we go through our process, and if it results in modification to legislation or new legislation, or even in the absence of that, then it draws attention to emergency preparedness and emergency planning, and then our processes can do much of what you have identified in this one sentence:

“Such is the culture and discipline of worldwide aviation and respect for Canada, that no airline captain, no airport manager, no foreign government and no officials within the federal government or its agencies argued with my ministerial orders.”

To me, that says a lot. It says a lot about the preparedness and planning that aviation has to do, about what Canada does in that context and about the respect within the federal government's agencies for the aviation business as such. I'm optimistic that at the end of the day we can create a culture and a discipline in emergency planning that I don't think exists in Ontario at this point. I'm optimistic that Emergency Measures Ontario can play a very strong lead role in that. I say that because we have this dual responsibility for emergency planning—provincial and municipal. I don't see any great integration of that occurring. I don't see the provincial face on the municipal emergency planning, preparation and implementation.

I'm wondering if you would be able to comment further on that culture of discipline you experienced in that instance and how that impacted on your ability and your officials' ability to actually put in play what had to happen on 9/11 from Transport Canada and the government of Canada.

**1150**

**Hon Mr Collette:** I think it's a bit of a unique situation. Canada, along with the United States, through the FAA and through the British Civil Aviation Authority, are the world leaders in aviation regulation and standards. We not only are a leader in terms of air traffic control systems, but also we have the world's third largest aircraft manufacturer, Bombardier, and we certify the planes that have to fly worldwide. So our standards are immensely high and are respected around the world.

The FAA and Transport Canada work together on a day-to-day basis, on a seamless basis. In the weeks and months after, we had to revise all of our security regulations within two weeks; usually it takes two years to do one set of regulations, but we did it in concert with the FAA. We didn't always agree with them, and sometimes they let us do things the way we wanted to do it and they agreed, and we called it equivalency. The two organizations work so well together that if Transport Canada says something—issues an order, for example, about a Bombardier plane or whatever—then it's respected around the world. The same with the US and the same with Britain.

Anybody who's a captain of a plane knows who's in charge. They're in charge of the plane, but they're not in charge of the airspace. They have to follow rules, they have to follow orders.

In the case of disasters, usually the military has never been questioned. We're lucky. We have the Transport Canada examples on 9/11 and world aviation standards, but also the Canadian Armed Forces is highly respected and no one really questions their command and control systems in terms of a disaster. The RCMP, similarly, has a very high reputation. So these organizations take years to develop that kind of trust. I'm sure there are similar examples at the provincial level here in Ontario.

**Mr Arthurs:** Mr Chairman, it gives me a sense that some of our work has to be establishing discipline within the emergency measures operations of the province, the decision-making that has to go on, the authority to act in a fashion. It'll take an extended period of time. It has to be reinforced such that we can actually be able to respond to a disaster situation such that we will have full co-operation without the interjurisdictional debate, which can occur after the fact, if it needs to occur. But there'll be no debate during that process. My sense from your comments is that's what happened federally, certainly during 9/11 and, I expect, during other situations that are referenced in your brief as well.

**Mr Kormos:** You talk about, by illustration, Gander airport landing 4,000 people, having to move immigration and customs officers, security personnel. How much of the response to September 11 in Canada was done on the fly?

**Hon Mr Collenette:** It was all done on the fly. I think that's the essence of my report and one of the concerns we had, and that's why the Prime Minister set up the committee of cabinet to deal with all the other issues we had and demands on the system.

**Mr Kormos:** See, I find that peculiar. I appreciate some of it has to be done on the fly, because you can't anticipate every possible occurrence. I grew up in the 1950s. There are communities in this province that still have air raid sirens. I grew up at a time when we were developing incredibly complex disaster response plans over the fear of nuclear war.

**Hon Mr Collenette:** We're the same age. I remember that.

**Mr Kormos:** There you go. It seems to me that if this was happening at that point in the 1950s and well into the 1960s, notwithstanding the plans might have gotten dusty and tattered and yellowed sitting on the shelf, was there no consideration of Gander, which is, again, a small airport, but very critical; it's an important airport, its location. Was there no remnant of decade- or two-decade- or three-decade-old planning that was capable of being utilized or that was put into effect to help make your job easier, and that of other people in your position?

**Hon Mr Collenette:** We had to decide within a matter of one or two minutes what to do with those planes. When you have—ultimately, it was 229 aircraft; I think about 10 were from the west coast—Atlanta, Vancouver—but the other 219 were in the air. Where are they going to go? We had intelligence reports coming at us—and I'm still not convinced that there weren't others on board that got away—that there could be terrorists on board those planes. So are we going to let those planes come to Montreal or Toronto, into the heartland of North America? If we had said, "OK. Come to Toronto. We'll land them all in Toronto," and one of those planes had crashed into the CN Tower or the TD Centre or any of the big buildings—that was something that went through our minds. You have to understand that I hadn't even seen the planes go into the World Trade Centre, because I was in the car. But I could hear the reports.

So the question is, could we take the chance? To answer your question, we just had to get the planes down, and fast. It didn't matter where, as long as they had the technical capability. Gander has a 10,000-foot runway because it's an old military base. So we got them down. Then, you're right, we had to deal with the problems.

I have to tell you that the provincial governments, in particular Newfoundland and Nova Scotia, were absolutely outstanding. They never questioned us. They cooperated with us. They went beyond what they would normally be expected to do, and they made commitments. They were absolutely phenomenal.

**Mr Kormos:** I don't think anybody has any quarrel with the decisions that were made. I take note of the sentence, not on page 3 but on page 4, where you say, "We had little time to worry about the finer points of the law or fundamental rights." I suppose you could have rewritten that 20 more times and perhaps not gotten it

quite right, because I'm not suggesting, and I don't think you want to suggest, that you were oblivious to fundamental rights. But you say something there that, when we had the OPP commissioner here, when we had the RCMP, when we had Metro police, they very much wanted to say, but I don't think they felt politically capable of saying it, because that's the real world.

**Hon Mr Collenette:** I'm not in politics now, so I can be free with my thoughts.

**Mr Kormos:** I know. The other interesting thing is, I read your references to National Defence, the utilization of the army and the two situations: "domestic emergency situations such as natural disasters or aid to the civil power." How does the mayor of Toronto get the army to come in and drive snowplows? How does it fit into this?

**The Acting Chair:** Don't go there. Let's not go there.

**Hon Mr Collenette:** I'll tell you what happened.

**Mr Kormos:** Please. I want to know. How does it fit into this model? I want to talk to you about this model of how we enlist the assistance of the army or especially the reserves. How does the mayor of Toronto get the army to come in and drive snowplows?

**Hon Mr Collenette:** I'll be very frank, now that I'm out of politics. Mr Lastman called me, as the regional minister for the Toronto area, in addition to being with Transport Canada. He knew I was in defence before. He said, "David, we need the army in here." I was in Ottawa at the time. I didn't realize how bad it was or appreciate how bad it was.

**Mr Kormos:** What was your response?

**Hon Mr Collenette:** I just said, "Mel, there's a procedure you've got to follow. First of all, it has to go through National Defence. But before you get to National Defence, you have to get the Attorney General of Ontario to make the request." I think it was Mr Runciman at the time who agreed that the emergency was of sufficient nature that he should pass on the request to the chief of defence staff. A lot of people questioned that. I have to tell you that, sitting in a Liberal caucus where many, many people come from other regions of Canada which are used to winter, it was tough politically.

**Mr Kormos:** Like Barrie.

**Hon Mr Collenette:** Exactly. In fact, one of them came up to me a week or so later, because all the snow melted and we had flooding, and said, "Does Mel want the navy?"

The point is that the mayor of a town, the mayor of a city, in a disaster, has the right to call upon the province to call upon the chief of defence staff. Take, for example, Peterborough a few weeks ago, when you had the floods. It's quite possible that the mayor could have said to the Attorney General, "We need the armed forces in here to deal with this." The Attorney General then would have called the CDS and the CDS was legally obliged to respond.

This goes back to something, just as a bit of history—I think it was around 1855, before Canada was formed as a country. The united Canadas had a Militia Act, and each area had its own militia. When the Fathers of Confeder-

ation were putting together the British North America Act, they realized they didn't want to have provincial militias. The provinces agreed, as a trade-off, not to have provincial militias but that they would get automatic call on the national army, unlike in the US, where you do have, in effect, state militias—they're called the National Guard—which are under the authority, I believe, of the state Governor, and the federal government can federalize them at a certain period of time.

**1200**

So it's kind of unique to Canada. That's why, in the case of Mr Lastman, he could ask the Attorney General, but the Attorney General really, at the time, was the one who had to make the judgment as to whether or not he felt the situation was that bad that it required the army's assistance.

**Mr Kormos:** Thank you—and, Chair, we'll talk about this later in terms of material legislative research might get for us—because I'm reading your comments and it talks about, "The CDS has a legal obligation to respond as he sees fit ... after consultation with the Minister of National Defence." Surely—and this is the chief of defence staff—the first response was, "Is this guy nuts?" or words similar.

**Hon Mr Collenette:** I have no comment. I would not want to anticipate thoughts of other people.

**Mr Kormos:** Fair enough.

Ms Broten showed me a Senate report. Now, mind you, it was the Senate, un-elected people, who had written a report on security, on emergency management that dismissed—it's true; if I'm wrong, you're going to say so, Ms Broten—dismissed our army as being an effective partner in emergency management because they're not trained to do the job, as I recall the report.

That is contradicted by comments made by, for instance, a person here on behalf of the Ontario Association of Chiefs of Police who's also a Toronto police officer. He was also a reservist. We are in the process of trying to get somebody from the reserve to come here.

You seem to be suggesting that our army is quite capable of assisting provinces and municipalities when they're in conditions of disaster.

**Hon Mr Collenette:** Absolutely. But the key point is—take the ice storm, for example. The chief of defence staff of the army didn't run the relief effort. It was run by the Attorney General in Quebec and the Attorney General in Ontario. They were in charge. In other words, the provinces actually called the shots. They would go to the military and say, "Can you do this? Will you do this? Will you do that?"

So the command and control then comes down through the CDS. Actually, it's the deputy chief of defence staff who does operational matters. But the actual priorities as to where the army would go and what it would do are determined by the province under the National Defence Act; it's not determined by the military itself. The military then becomes an agent, as in the case of Toronto with the snowstorm that you talked about. The military followed the directives of the province, to

whom I then said, "Well, follow what the city wants to do."

So the Canadian Armed Forces are incredibly professional and, despite all the cuts of the past number of years, are still outstanding and can do this work. We've seen it with the floods in the two provinces I've mentioned and the ice storm. With Oka, that was a different kind of disturbance.

**Mr Kormos:** My understanding is that the ratio of reserve to regular army in Canada is a contradiction of what it is in many other similar countries in that, if we were to apply those other models, our reserve numbers are way, way below theirs. Some of us are of the view that a stronger reserve would constitute a stronger on-the-ground, in-that-region resource available for disaster relief. What do you say to that?

**Hon Mr Collenette:** I completely agree, and that was something I really pushed when I was Minister of Defence, but I had a lot of resistance from the regs who were getting cut with the deficit measures. So you had tensions there. Mr Eggleton, who followed me, ultimately had some success in increasing the number of reserves. But I think the reserves should probably be double the regular force, precisely for the reasons you state, and there's a lot of other reasons that we could give to have those people available to work.

But, you know, the military has been cut beyond recognition. Hopefully, the new government is going to restore enough money so that it can discharge all of its responsibilities.

**Mr Kormos:** Are we to assume that you're suggesting that expanding the reserves would be money well spent?

**Hon Mr Collenette:** No question.

**The Acting Chair:** Our time is up.

**Mr Kormos:** Did I have as much time as the Liberals?

**The Acting Chair:** I think you had more.

**Mr Kormos:** I don't think so. I was counting the questions they had.

**The Acting Chair:** Always asking for more.

**Mr Kormos:** Yes.

**The Acting Chair:** Anyway, thank you very much for an absolutely fascinating insight into the workings of government through historic emergencies. I think your relaying of these experiences to this committee has been extremely helpful. I hope your information and your place in these historical events are not lost. This committee appreciates that kind of input, and that's why I think your being here today really helps us in terms of trying to find out how to manage these emergencies and the real decision-making processes. So it's been invaluable for you to be here as a former Minister of Defence through those critical periods. On behalf of the committee, I would like to thank you for making time to be here today, Mr Collenette.

**Hon Mr Collenette:** Thank you very much, Mr Chairman. Could I just state that it would be useful if the committee looks at a copy of a documentary done by the CBC News with Peter Mansbridge on behind the scenes on 9/11. It's been broadcast a few times but not every-

body has seen it. You'll see how things unfolded from a decision-making point of view and I think it would be helpful.

**The Acting Chair:** Possibly we can get a videotape copy of that, if possible, Mr Clerk. Thank you again, Mr Collette.

#### SUBCOMMITTEE REPORT

**The Acting Chair:** The committee now has to deal with the subcommittee report, which I hope you've had time to look at. I need someone to move its adoption and then we'll have discussion.

**Mrs Sandals:** If I move it, do you need me here? I've got another meeting.

**The Acting Chair:** No, you can leave.

**Mrs Sandals:** OK, I move it. Can I record my vote before I leave?

**The Acting Chair:** No. Anyway, you have moved its adoption. Debate?

**Mr Kormos:** The clerk gave me a copy of this this morning and I'm satisfied that it accurately reflects what the subcommittee had contemplated, but I just want to raise some red flags, or flags of any colour, with you at this point.

Once again, we heard from the Registered Nurses Association of Ontario. They made reference to the Campbell report on SARS, which they conclude or believe is going to contain recommendations around legislation with respect to that aspect of response to disaster.

In subcommittee and in committee, we have discussed on numerous occasions, for instance, the 1981 McMurtry report white paper, which seems to conclude that the common law powers are preferable to statutory powers. I'm sure other members of the committee have been as interested as I am in finding out whether or not now Mr Justice McMurtry still holds those views.

The committee hearings have been held, obviously, during the month of August with relatively short notice; perhaps no more and no less so than other committee hearings. This is a difficult month to get people out here. I'm going to repeat my concern—and I'm not faulting anybody. For Pete's sake, don't get all excited there. I'm not faulting anybody, but I'm really concerned. We heard from RNAO today but, for instance, we haven't heard from ONA, we haven't heard from the Police Association of Ontario, we haven't heard from the Ontario Professional Fire Fighters Association, we haven't heard from OPSEU, we haven't heard from CUPE, we haven't heard from SEIU, the Service Employees International Union, which has a lot of people working in the health sector.

It seems to me, especially when the committee has heard discussion around overriding collective bargaining agreements—and I'm not saying that's a position the committee has taken, but certainly that has been part of the discussion. Especially in view of the fact that the committee has been talking about what I call privatiz-

ation of emergency response services by incorporating the private sector resources into the broader audit of emergency response resources in the province, it seems to me that it's critical that we hear from these people.

**1210**

Now, if at the end of the day these people, or any one of them, say, "We have no interest whatsoever in appearing in front of your committee," well, I suppose for me then it's too bad, so sad. But my suspicion is that it's problems around scheduling. Again, I understand there are going to be efforts to have Mr Justice McMurtry appear before the committee. I think it's pretty important that we hear from somebody, based on the conclusions that were drawn 23 years ago about the common law powers versus statutory powers. We're going to hear from Dr Young again this afternoon and that's a good thing.

But I'm worried about this committee putting the proverbial cart before the horse. We're talking about considering directions on the preparation of the committee's draft report, draft legislation, September 7 and 8 and October 4, but then saying that the committee is still going to meet and hear from submitters after the House resumes on October 12. That is just a peculiar sort of thing.

My position is that maybe we ought to wait and hear what Mr Justice Campbell has to say about SARS with his legislative recommendations. We were surprised. We got bushwhacked, if you will, by the Ministry of the Attorney General, which revealed that they had draft legislation. This committee has been sitting for three weeks, and all of a sudden we see the legislation that had been prepared at the request—

**Mr Zimmer:** Just a second. On a point of order, Mr Chair: I take exception to describing the Attorney General as having bushwhacked this committee with the legislation. We sat through Mr John Twohig's testimony on that point. That legislation was prepared as an exercise by the civil service in anticipation—

**Mr Kormos:** Is that a point of order, Mr Zimmer? Probably not.

**Mr Zimmer:** It's a point of order when you refer to the Attorney General as having bushwhacked this committee.

**The Acting Chair:** Withdraw the term "bushwhacked."

**Mr Kormos:** No. Thank you.

**Mr Zimmer:** Are you withdrawing that?

**Mr Kormos:** No. The Chair has no power to do anything with me here. Please, you should know that.

So here it is. We discover, weeks after the committee starts its process, that legislation exists, legislation prepared at the request of the Ministry of Community Safety. It seems to me that if we have Dr Young here, the Ministry of Community Safety is a critical player in this process. So I don't know what you want to call it, Mr Zimmer, but when ministry officials play their cards that close to their chest, after this committee embarks on its pursuit of recommendations, legislation—

**Mr Zimmer:** Mr Twohig made it quite clear that that legislation had not been sent to the cabinet, nor sent to the ministry. It was an exercise by the civil service.

**Mr Kormos:** And Mr Zimmer is correct: an exercise by the civil service—

**Mr Zimmer:** Thank you.

**Mr Kormos:** Think nothing of it, Mr Zimmer—an exercise by the civil service on the direction of the Ministry of Community Safety. So clearly, you've got the Ministry of Community Safety contemplating legislative amendments, a legislative solution to what they perceive as their problems, you have the Ministry of the Attorney General collaborating with them in secret, and you've got other ministries, as we've been told, developing protocols and doing an analysis of their capacity—this was evidence before this committee—without having reached their conclusions yet. So why is this committee in such a hurry to short-circuit the work being done by Judge Campbell? Why is this committee in such a hurry to short-circuit the work being done by any number of ministries that are developing protocols and developing a review and analysis of legislation with, one presumes, recommendations, just as the bureaucrats in the Ministry of the Attorney General did, the civil servants in the Ministry of the Attorney General, in response to the Ministry of Community Safety?

So all I'm saying to this committee—the goal isn't to upset anybody. That's a secondary impact. I suppose it's fine in and of itself. But my goal isn't to upset anybody. All I'm saying is that we seem to be in an agenda that is causing us to cut off our nose to spite our face.

I dearly want to find out the reason, for instance, that SEIU, OPSEU, CUPE and the Police Association of Ontario are not appearing, in view of the fact that the Chair tells us they have in fact been invited. I know that Mr Dunlop had expressed early on an interest in having OPFFA here, amongst others. I just want to make that clear. It seems to me those are the sort of people we should be hearing from.

We have to have the debate, I say to you, on the record about whether or not it's going to be a set of recommendations, a report, or whether it's going to be legislation. That isn't a subject matter, as seems to be suggested, “for the purpose of considering directions on the preparation of ... draft report/draft legislation.” It seems to me that considering whether it's going to be a report or legislation or both is a matter for an on-the-record debate. I leave it at that.

**The Acting Chair:** OK. Ms Broten.

**Ms Broten:** Certainly there are many things to respond to that Mr Kormos raised in his lengthy statement, but I want to start with the issue with respect to witnesses before the committee. The issue of whether witnesses have been called, as Mr Kormos would certainly know, was a matter dealt with at the subcommittee. All the members of the subcommittee had an opportunity to raise a number of individuals and organizations that should be called before the committee. Many, many organizations were suggested by myself, by Mr Dunlop, and, Mr

Kormos, you certainly had the opportunity to suggest organizations that could be called before the committee and we would have sought to accommodate that.

What I would propose we do to resolve this issue with respect to the witnesses is that we request that the clerk's office provide us with a reporting as to the status of the witnesses that have been requested to attend, because Mr Kormos raises a legitimate issue. Mr Justice McMurtry has been put on the list, OPSEU has been put on the list, the professional firefighters' association and many organizations have been put on the list, and we're uncertain as to what their response has been. Are they unavailable or do they not want to attend? So I would make the request that we have that from the clerk's office.

The second issue with respect to witnesses is, according to our first subcommittee report, the clerk of the committee was to compile and provide to the subcommittee a list of witnesses who requested to appear before the committee. It is important for this committee to know who has requested to come before us, to determine whether some organizations have been missed. For example, perhaps some of those organizations have requested to come. I don't believe that's the case, but I don't have that report to verify.

Dealing with the subcommittee report that we're currently debating, given all of this legitimate concern with respect to an inclusive process, which is certainly the perspective that I think all members of the committee want to have, I would propose the schedule of witnesses for October 13 be dealt with again by the entirety of the subcommittee so we can make some determinations and include those names that we think are crucial at that time. So that is with respect to the issue as to the witnesses.

With respect to the issue of drafting a report and meeting on September 7, September 8 and October 4, I certainly know Mr Kormos is well aware of the fact that, due to the peculiarity of the process, we are unable to have witnesses called during those periods of time. We are mandated by the parameters of this committee to make a determination and produce legislation and/or a report, or neither or both, I suspect, to be tabled on November 1. That's the deadline we're currently working toward.

I believed it was the consent and agreement of the entire subcommittee during our meeting yesterday that September 7, September 8 and October 4 would be used for an opportunity to have some discussion amongst members of the committee about what information we continue to need. Certainly we talked about having legal counsel's constitutional experts come and assist the committee in terms of, “If we proposed X proposition in a statute, what would your view be, Mr or Ms Expert?” Those were the types of discussions we hoped to have during those dates. It certainly was the consensus among everyone that that was needed and was important information.

So it is within that context that I think agreement was reached to have closed-session meetings on September 7, September 8 and October 4, to simply have an oppor-

tunity for the members of the committee to start a dialogue and put forward that material.

1220

The last issue I want to respond to is the criticism Mr Kormos has raised with respect to the Attorney General and the testimony of those representatives. Certainly, in the initial schedules of this committee the request was made that MAG be one of our initial deputants. Again, it is the month of August, and due to many scheduling difficulties, those deputants came later in the piece. It is critical and crucial, I think, to be accurate with the evidence that was brought before the committee. The testimony of the MAG representatives was clear that they had drafted a sunsetted piece of legislation and that it was very different in a number of respects, and they certainly indicated that on the record, from the process of this committee. I think that if we want to examine that further, it is imperative to turn to their testimony and the Hansard transcripts of that hearing.

**The Acting Chair:** OK. By the way, just to be clear again, the committee has said from day one that we will invite anyone recommended. Just to be on the record again, Mr Kormos mentioned a number of unions and organizations. If we've missed some of them or there's been confusion on one of them, let's invite them all again—the ones mentioned by Mr Kormos—so that we try to get them to appear before us.

As you know, in some cases there's been a scheduling problem. But we've had overwhelming participation so far, I think, given the legislation—the quality of deputations. I don't even know whether in the last legislation that was passed by Runciman there was any kind of public hearings. I don't recall any whatsoever.

Anyway, I think we're trying to do our best, given the time constraints. As I told the committee from the beginning, we are not the masters of the schedule. It's been put forward by the Legislature and agreed to by the whips, so we are trying to do our best. As I said, there are other reports. The Walker report on SARS has already come out. It's available to the committee. There's going to be the Campbell report, which has been promised at the end of August. There's nothing to stop committee members from getting that written report. So there are going to be all kinds of reports. But I think we have to try to focus on our timelines as given by the Legislature, and we'll do our best to do that. I think the underlying objective of this committee is to try to do the best it can, given the timelines. Again, if any other member has suggestions—we're going to try to have some more experts and organizations appear on the 13th.

There will be further process. There is potentially a report. Draft legislation will have to go through first, second and third readings, and public hearings again. Therefore, whatever report or draft legislation is put forward is not in stone. It doesn't prohibit the committee from continuing, and that's the way I'm looking at this. It's an ongoing process of development.

In terms of the Attorney General's legislation that was at the urging of the Minister of Public Safety or of James

Young's office, frankly, I don't care whether that's been done or not. I think the critical thing is that this committee has been charged with looking at all the information from all the expert witnesses, from all the ministries—I think we're going to finish with a few more ministries today. The committee is charged with deciding what type of report, what content they want in the report and what kind of draft legislation they want. As much as I was surprised that that existed and was never aware of it, frankly, I don't care that it exists, because I think we have a different mandate here to look at everything.

**Mr Kormos:** Chair, you've been a pretty good Chair, but you're also a pretty good member of the committee, wanting to engage in the debate. It's a dilemma, isn't it?

Having said that, I believe the matter of deciding whether it's a report, whether it's legislation or whether it's a report and legislation is not a matter for in camera. I want to make that very clear.

**The Acting Chair:** We can easily do that in public. We can make that decision publicly. That's not a problem. The committee has to decide—the mandate I saw from the Legislature was a report and draft legislation. Mr Kormos is basically saying that the discussion about whether we're going to do the two should be in public. Certainly, I, as Chair, have no problem with that being in public. Any comments?

**Ms Broten:** My suggestion is that it would be entirely appropriate to have the resolution of a discussion made public, but I do think that the members of the committee should have an opportunity to debate, because I think within the context of whether it's legislation or it's a report etc, we will be starting to talk about some of the particular details that really do come out of report-writing. It is my experience in public accounts and many other committees where you're doing report-writing that the members of the committee need an opportunity to have a discussion that won't be turned into a grandstanding exercise, and that often happens when it is on the record.

**The Acting Chair:** But remember, I think the question by Mr Kormos is whether the committee can have a discussion on whether or not it wants to proceed with a report and a piece of legislation. That's what he is saying. Am I correct in interpreting—

**Mr Kormos:** Chair, first of all, I am prepared to tolerate Ms Broten grandstanding in the event that the debate is on the record—I can live with that—or Mr Brownell, for that matter. But I am making it very clear that I think the fundamental issue of whether or not this committee drafts legislation is a matter of debate that should be on the record in its entirety, whether or not it prepares a report, because there are such things as no reports. I remember, as a matter of fact—you'll remember it as well—a committee in the last government reporting back a bill that consisted of a blank piece of paper. Remember that?

**The Acting Chair:** With no name.

**Mr Kormos:** Yeah. That was a pleasant experience, wasn't it?

Whether there's a report or not, these are matters of public debate. Once that's done, quite frankly, I still reserve the opportunity to determine exactly how a committee charged with writing a bill, if that's the decision of the committee, whether it does that in secret, in camera, or whether—this is a committee bill. We understand there are differences between private members' bills, government bills and committee bills—we learned this. A government bill, of course, is prepared in secrecy. A private member's bill is prepared in secrecy. Is a committee bill, by virtue of the fact that it is a committee bill, prepared in secrecy? I'm not prepared to concede that. I'm simply saying that in the first instance, the first challenge is to debate publicly, on the record, where this committee goes once it has heard all the evidence. I haven't heard all of the evidence, and neither have other people.

With regret, because of the confusion around that, I will be asking for a recorded vote. I'm going to be voting against the subcommittee, as I'm not prepared to concede that any element of this committee's exercise should be secret, behind closed doors, under wraps and hidden away from public scrutiny.

**The Acting Chair:** Further comments?

**Ms Broten:** I certainly think it is a very difficult task to extricate, perhaps, a discussion about the contents of a report or legislation from what route this committee will proceed along. If Mr Kormos does not want to follow what I understand to be the fairly normal course of writing reports—the decisions in the public accounts committee as to whether a report is written by that committee is a discussion that happens in closed session. It gives the members of the committee an opportunity to look at issues, to make some determinations about, “Do we need to do this, or do we need to do that?” I think it's entirely appropriate. The end result will certainly be public, because it will be clear. If there is a particular issue, I'd be more than prepared to consider whether or not we have a closed session discussion with, then, a portion of it being put on the record, if Mr Kormos wants to make it clear perhaps that he disagrees with the rest of us, and maybe that might be the concern he has. We can certainly resolve that at the time. I continue to hold the view that the members of the committee should be given an opportunity to express their thoughts in a closed-session committee meeting where we make some determinations about how we proceed.

1230

**The Acting Chair:** Further discussion on the subcommittee report?

**Mr Kormos:** Recorded vote, please.

**The Acting Chair:** I have a motion on the approval of the subcommittee report. I don't know how you want to take it. I think there are various changes put forward; do you want to just look at the whole report, sections of the report? How do you want to deal with it?

**Ms Broten:** I proposed some changes to the subcommittee report.

**The Acting Chair:** Therefore, we're going through section by section, then. If you have an amendment, please indicate, and we'll vote on each change and amendment.

The first item is: “That the committee meet in closed session on the following dates during the summer adjournment for the purpose of considering directions on the preparation of the committee's draft report/draft legislation”—

**Mr Kormos:** Point of order: If the motion is to approve the report of the subcommittee, then the motion is to approve the report of the subcommittee in its entirety. This isn't a bill with sections, where we do clause-by-clause.

**The Acting Chair:** I think there are some changes proposed on one part of the subcommittee report, and I said I would entertain those changes. It doesn't pertain to the whole subcommittee report.

**Mr Kormos:** OK. Then I'm prepared to move an amendment.

**The Acting Chair:** Yes, and you can do that. But first of all, I'd like to deal with the first part, that the committee meet in closed session. Is there an amendment to change number 1?

**Mr Kormos:** I move that part 1 of the subcommittee report be amended by deleting “in closed session” from the first line.

**The Acting Chair:** OK. All in favour of that amendment, please indicate by raising your hand.

**Mr Kormos:** A recorded vote.

**Ayes**

Kormos.

**Nays**

Arthurs, Broten, Brownell, Zimmer.

**The Acting Chair:** Therefore, part 1, there's no change there. So all in favour of part 1?

**Mr Kormos:** No, no. Point of order: This isn't clause-by-clause. We have to deal with the report in its entirety. The motion is to approve the subcommittee report. The subcommittee report can be amended, but it isn't clause-by-clause. It's the subcommittee report in its entirety, with respect.

**The Acting Chair:** So part 1 stands as it is.

Number 2: “That the committee continue its meetings with respect to the review of Ontario's emergency management statutes at its regularly scheduled meeting times after the House resumes, commencing with the first meeting date, Wednesday, October 13, 2004.” Any changes to that? No changes there.

Number 3: “That the clerk of the committee in consultation with the Chair be authorized to schedule witnesses on Wednesday, October 13, 2004.” Any changes to that?

**Ms Broten:** It's not my recollection that the subcommittee concluded that the witnesses would be scheduled by the clerk and the Chair. We talked about witnesses being scheduled that day, and it's my suggestion that they be scheduled by the subcommittee.

**The Acting Chair:** So you're questioning the clerk's recording of events?

**Ms Broten:** I don't recall that that was the discussion we had.

**The Acting Chair:** It is my recollection that it was agreed that the clerk and the Chair would do so.

**Mr Kormos:** If I may, to that motion—I presume it's a motion amending—we said very early on that the Chair and the clerk would have the authority to call upon participants to attend at the committee.

**The Acting Chair:** That is my recollection. OK—

**Ms Broten:** To deal with scheduling, as opposed to following up. I did make lengthy representations about this early in this process, following on the concerns that we need to ensure that we are fully inviting all of the outstanding members, that we deal with ensuring it's an inclusive process. It's my suggestion that the determination of the final list, if that is one of our last remaining days for witnesses, be made in an inclusive nature. I want to include you, Mr Kormos, and Mr Dunlop and have the subcommittee involved in making those decisions as to who the last witnesses will be.

**Mr Kormos:** You see, you may want to include me, Ms Broten, and I enjoy the opportunity to be included, but understand, I'm not on the same team as you. You may see this as fancifully a collaborative effort. I don't. You see, it's your agenda. It's your government that wanted the committee. It's your government that chose the subject matter. It's your government that is pursuing this, and it's you who has the majority on committee. The ball is in your court. If you want to ensure the adequacy of presentations to the committee, then you have the responsibility to do this. Let's make that very, very clear. We are not singing from the same hymn book.

**The Acting Chair:** We've got a change recommended for part 3, and the change is—could you read the change, MPP Broten, please, for the record?

**Ms Broten:** “That the clerk of the committee, in consultation with the subcommittee, be authorized to schedule witnesses on Wednesday, October 13, 2004.”

**The Acting Chair:** OK. All in favour of the change?

**Mr Kormos:** Recorded vote.

#### Ayes

Arthurs, Broten, Brownell, Zimmer.

#### Nays

Kormos.

**The Acting Chair:** So that's been changed.

All in favour of the subcommittee report, as changed?

**Mr Kormos:** Recorded vote.

#### Ayes

Arthurs, Broten, Brownell, Zimmer.

#### Nays

Kormos.

**The Acting Chair:** The committee stands recessed until 1 pm this afternoon, same room.

*The committee recessed from 1237 to 1309.*

#### ONTARIO ASSOCIATION OF FIRE CHIEFS

**The Acting Chair:** I'm bringing the standing committee on justice policy to order. This is the afternoon session. The first presentation is the Ontario Association of Fire Chiefs, if they could come forward. Just to mention to members of the committee that this afternoon we have quite a full schedule, so we're going to try to stick as much as possible to the prescribed times. So the questions will be rationed to a certain extent.

Thank you for coming, gentlemen. As you know, this committee is charged with reviewing all statutes in the province of Ontario with regard to emergency management and preparedness, with the purpose of coming up with a report and draft legislation by November 1. I want to thank you in advance for making yourselves available. I appreciate your taking the time. If you could begin, you've got about a half-hour. If you could leave some time for questions or comments, it would be appreciated. Please identify yourself when you speak, because this is all recorded in Hansard.

**Mr Rob Browning:** Thank you, Mr Chair. My name is Rob Browning. I am the president of the Ontario Association of Fire Chiefs. Accompanying me today is First Vice-President Doug Tennant and one of our long-standing directors, Lee Grant. I will take the lead on our presentation, but I will also ask them to join in with any support that they might be able to add as we go along.

We do thank you very much for allowing us to be here today. We understand that there was a panel on August 16 that included essential services. Unfortunately, do to the length of notice, we just couldn't be here that day. So we do appreciate being here today.

We do have a presentation, but I would like to just encapsulate the high points of it. That way, it will leave some time for us to answer any questions the committee may have.

For those who aren't aware of what the Ontario Association of Fire Chiefs is, it's an association that represents 600 chief officers in the province, who have the honour of leading 27,000 firefighters, those being full-time or career, composite and in volunteer fire departments. Ultimately, we work under a number of pieces of legislation to carry out our duties, but the Fire Protection and Prevention Act is the prevailing act with which we function.

Fire chiefs are the people within the municipality who have been charged with being ultimately responsible for



the delivery of fire protection services to the councils. Also, many of our fire chiefs provide leadership in emergency management within their communities. It is the natural place for councils to look for this to be looked after.

As well, the Ontario Association of Fire Chiefs has worked very closely in partnership with the office of the fire marshal over many years to develop standards, both for positions within the fire service but also in terms of the fire code and so forth. We continue to work in a very good partnership. I think the results that are being experienced in Ontario, in terms of declining death rates and so forth, are a really positive indication of the good work being done.

Today, we're going to speak to three general areas: a need for a piece of broad and consolidated legislation for major emergencies; the resource impact that this is placing on municipalities; and what we believe the role of the provincial government in major declared emergencies should be.

Just a little bit more on what the fire structure is in the province: We have 503 fire departments that are divided between career, composite and volunteer departments. A career department is one that is solely staffed by full-time staff. We have about 28 of those in the province. A composite department is one that you would probably find in an urban or growing community. It's comprised of both volunteer and career people. We have 152 of those. Then we have 323 departments that are solely staffed by what we call volunteer firefighters. We have approximately 9,000 career firefighters and 18,000 volunteer firefighters in the province.

Fire protection services in this province are generally delivered by the lower-tier government. For that reason, one of the really positive aspects of the fire service is that when those communities need to assemble large numbers of trained people, generally the fire departments are the ones that can do it. It doesn't matter which type of fire department it is, whether it's career, composite or volunteer. There are variations of call-out mechanisms. Obviously, with career people, they are sitting in the station ready to respond or they're out in the community doing work ready to respond. Composite—again, you have a mixture of full-time and volunteer people. Then, in the volunteer department, they'll have some sort of immediate-contact process that may involve pagers or sirens or some combination thereof. So we can quickly assemble large numbers of people in major incidents who are trained and familiar with operating in a structured fashion on an emergency scene.

As well, to support the emergency management system, mutual fire aid has existed for many years in this province. It's an arrangement between municipalities where, when a municipality has a major event, a major fire or other similar emergency that exhausts the resources of that community, they can call upon their neighbours to provide support to them. This is done with no fees attached. It's a good-neighbour arrangement. Certainly it's very beneficial to communities, because you

can't always staff and equip yourself for the worst-case scenario.

The fire marshal appoints fire coordinators within each district, county and region within the province who play the lead in ensuring that the mutual aid plan is up-to-date. The coordinator generally holds regular meetings with the fire chiefs to deal with issues on a county, region or district basis.

Another arrangement we can work with is automatic aid, and that exists in some communities where, for example, a fire station in the neighbouring community is closer to a geographic portion of another community. There can be what we call automatic aid agreements set up where in fact the neighbour station responds first to the municipality. This is not as pervasive in the province at this time because it does involve some negotiations with local fire associations, and obviously they haven't been as receptive to that concept yet, but we're still working on that.

As well, over the years fire departments have evolved from just being fire suppression services. When you look at any fire service today, they deliver a myriad of services, and that includes vehicle extrication, we respond to medical calls, we do hazardous materials, we do confined-space rescue, other technical rescues, ice/water rescues. So there are a whole lot of skill sets that exist within the fire service today and it's much more than just a fire department. The types of services that are offered certainly are determined by the policy of the local council, but they're usually commensurate with the risk and demands that exist within that community.

That being said, even when the public doesn't really know who they should call, they generally call us. If they need help and they can't determine which other agency within the municipality can offer it, they call us. Luckily we do have—fortunately—some excellent firefighters in this community who are very skilled, creative and innovative. They generally handle these incidents very well and at least leave the situation stable. We're fortunate to have those resources within our local communities.

Everyone knows the impact of 9/11, and I'm not going to reiterate that. I'm sure you've heard a lot of that in your deliberations. But I think one of the things that 9/11 brought to light was that we had become somewhat complacent, as a society, with emergency preparedness. We hadn't had a lot of major catastrophic events occur in our geographic area, and at a time when financial resources were becoming squeezed, it was one area that probably was cut back on at many levels of government, including municipalities. But the recent events of 9/11, the ice storm, SARS and the Peterborough flood have brought a focus back to emergency preparedness.

As I said, we'll speak to three areas. The first one I'd like to speak to is legislative needs. We work under a number of pieces of legislation, the Fire Protection and Prevention Act being the primary piece that we use on the most common basis. But from time to time we do respond with the other agencies—and it's probably more common today than it's ever been—and we piggyback on

each other's pieces of legislation to allow us to do some things. There are a number of examples of that. Probably the one that's prevalent that I've been dealing with a lot within our local area is the proliferation of marijuana grow houses and other drug factories. When we respond to those types of events, we have multiple agencies, including police, responding there. From time to time we're questioning each other as to who has the authority to go in, who goes in first and why. I think that's just a simple example of why we need to have a consolidated piece of legislation that gives all of us the authority to do the job that we're doing.

#### 1320

We know that in any major event it's not going to be one agency that will be able to handle that. It's going to take a strong team approach and it's going to take the expertise that all of the agencies have. That includes police, EMS; we see the growing role that health has in these events, public works and so forth, and the provincial agencies. I guess our point is that we need to have one piece of legislation that captures all the authorities that exist in individual pieces of legislation, and even within common law, to allow our people to do their job without question of where they would determine the authority.

One thing that can be very frustrating, because our people are very action oriented, is trying to have legal people figure out who has the authority to do what. There are arguments that these authorities exist within individual pieces of legislation. They may even exist within common law. But we, as the people who are out there responding on the street on a day-to-day basis, don't have time to go through those legal arguments. We need to know very clearly where authority comes from and, as long as our people are operating within the scope of their mission, there should be no question about what they have to do to get the job done to protect life and property.

The second piece within that legislation is some liability protection for all the responders. When we work under the FPPA, doing our general duties, we are protected, provided we perform our work in a bona fide way. We need to make sure that in a major declared emergency the same liabilities are afforded to everyone.

As well, the province and municipalities continue to promote volunteerism within communities. Bringing volunteers on now in a situation such as a declared emergency has some risks with it. We have some pieces of legislation now, the Occupational Health and Safety Act and so forth, that when a municipality takes on volunteers, they assume some responsibility for making sure these people are trained and work in a safe fashion. That creates some challenges. Number one, they're volunteers, they're not employees, and certainly employers have a lot more control over their employees than they do volunteers.

So there needs to be, in our opinion as an association, some protection for municipalities when they do bring on volunteers to protect them from some of the charges and

other things that can evolve from the various acts that are out there. That needs to be considered. That's not to say that volunteers don't need to be trained in what they're asked to do, but at the same time, we know we don't have the same control over those individuals.

Recently, in Peterborough one of the issues that came to light is that there's always political and social pressure to rescind the declaration of the emergency as quickly as possible, to bring some solace to people that the emergency is in a declining state. Unfortunately, when that happens, some of the powers that are allowed us when we're under that declaration also are rescinded.

Chief Grant, I'm sure, can speak first-hand on some of the challenges they've had in the recovery stage of the emergency and the need for some of the authorities to be able to deal with the situations. I don't know if he has anything to add to that, but certainly it's an issue that arose in Peterborough.

Another piece that creates some issues is that under the new Emergency Readiness Act and the requirements of complying with the act, we have to do risk and hazard assessments within the community. This is a fair expectation. As a matter of fact, in fire services we do a lot of analysis of our risks and our major occupancies because of the risk of fire and the environmental impacts that can result from some of those activities. A big issue is that not all of those companies have a requirement to report to us what they have within those buildings. So if we don't happen to get in to investigate what is there, we may not know. Like every organization, our resources are taxed and it's sometimes very difficult to get into those occupancies.

We would like to commend the province for its proactive approach in appointing the Commissioner of Public Safety and Security. I think we're all fortunate to have an individual such as Dr James Young leading, that being the inaugural person. Certainly, fire service has the greatest respect for Dr Young. He has supported firefighters in this province for many years. He's also well-known internationally for his experience, and we're lucky to have a person of his calibre lead us through this complex exercise of developing an emergency model for Ontario.

That being said, we really see, especially from the SARS incident, that there needs to be one central authority who takes the command role in a major provincially declared emergency. That role will certainly be one that's necessary, if it's provincial, national or international. Someone has to play the lead and has to be the command person who deals at an operational level to make sure that communications are solid between all the other agencies—whether it's at the federal level, the RCMP, whether it's at our border crossings—and that any directives that come out to any of the responding agencies are consistent and clear. There's just no room for freelancing in the event of an emergency.

One of the issues that came out that I experienced myself was the SARS event, where directives were coming out from different ministries with different vari-

ations to them. It created for us some problems in the field, when we had firefighters responding to emergencies being attired in different safety gear than maybe some of the other agencies. The directives that came to us as fire chiefs were very clear, but the directives that went to other people responsible for other emergency response agencies was different. So we see that there needs to be one central person or authority who's in command in a provincially declared emergency, and all direction should come from that person. The people who are affected and responding under those conditions of emergency should be abiding by that.

Certainly, we have a lot of experience in responding to emergencies, and you can't have multiple commanders overseeing the entire emergency. You need to have one person who's ultimately responsible. We think that the Commissioner of Public Safety and Security is an excellent person to take on that role. We highly suggest that to this committee. We don't think it's a role that should be delegated. We think that the person who is the Commissioner of Public Safety and Security should be a highly qualified individual who has the confidence of everyone at all levels of government to be that person. As I said, we're very fortunate to have Dr Young in that position right now, because I think he's doing an excellent job.

The next piece we'd like to speak to is the resources. As everyone is probably aware, fire departments are funded wholly at the municipal level. We do not receive any direct funding from the province, although there are some exceptions in northern Ontario and some small communities that do receive a little bit of assistance.

No one is going to argue that there is a need for us at the municipal level to be in a high state of readiness. Planning and practising are critical to the success of the execution in an emergency. Unfortunately, municipalities are under extreme pressure. It's not only from this legislation, it's from numerous other pieces of legislation. Tax increases are being kept as minimal as they can be; therefore, there aren't large amounts of finances to fund community emergency management coordinators, which are required under the new act. These people serve as the lead in the community. They liaise with Emergency Management Ontario regarding emergency measures matters. Unfortunately, most municipalities haven't been able to afford to hire an additional person to take on that role yet. In most communities, the amount of time being taken up is pretty close to an FTE; therefore, in a lot of cases it's being tacked on to people like the fire chiefs and deputy fire chiefs in the communities. And that's on top of a myriad of responsibilities and duties they already have.

As well, there are three levels of emergency preparedness that have been laid out to be accomplished over the next few years, those being the essential, enhanced and comprehensive. Again, preparedness should be commensurate with the risks and demands within the community. To expect a small community with virtually not many resources to start with and not that many risks and demands to have to go all the way through to a compre-

hensive level may be unrealistic. And if it is the province's wish that that be done, then at the very least the province should be funding the position of CEMC within the community.

We do have the opportunity from time to time to get funding from JEPP, but as with most programs, the constraints have increased and the funding opportunities have decreased. Again, we're being asked to put CEMCs in place. We're being asked to have emergency operation centres in communities that are fully functional and interoperable and so forth. We would strongly urge that the province consider putting some financial resources toward allowing that to happen.

### 1330

The last piece we'd like to speak to is the role of the province in major emergencies. For many years the province has indicated that it's not a direct deliverer of front-line services, and we have no problem with that approach. Since 9/11, thousands of dollars have been injected into EMO to ready the province for an emergency. We applaud that commitment. The funds are needed, as we've spoken to, to improve our infrastructure, provincially and municipally. We need to be able to train and fund CEMCs. We need to be able to establish functional EOCs so that we are ready when a major emergency happens.

We have heard and we have had some experience where Emergency Management Ontario is taking more of a front-line role. They're responding to the emergencies, and we're really questioning that role for the province. We think the support is better given to the emergency operations centre, where key municipal officials such as the CAO and the mayor are positioned and may need some guidance in terms of working their way to the provincial level. As I said, when we do need additional resources, we need to be able to have someone who can work and contact the provincial operations centre, your ministry action groups, to get us the resources we need at the local level.

We have experts out in the field who handle emergencies on a day-to-day basis. They're very skilled at it and they do a good job. In local municipalities, they work as a team. The police, fire, EMS, health units and public works people know each other and come together very quickly when they need to. That's our experience. To have someone at the provincial level, who really doesn't have any authority, start to join that group at this point just creates a mix for us that probably doesn't work as well. We see the role for an EMO officer being with our emergency operations centre.

I've already spoken to the communications challenges in terms of making sure the right and correct messages get delivered to all agencies. There are some initiatives right now in terms of looking at interoperability. I think at this point there's a lot of work to be done and it'll be a huge investment to make that work across the province over a long period of time.

We urge you, as a government, to examine your role in emergency management. There is a lot of expertise at

the municipal level. We need the support from the province to help us build our local emergency plans, but we have some excellent resources at the municipal level to actually handle emergencies.

In summary, we believe there is a need for a consolidated piece of legislation that gives us all the authority and liability protections that are required for us to do our job in the field. We see a need for some provincial support in terms of funding the community emergency management coordinators and creating emergency operation centres that work well and will make our emergency management system stronger. We believe the role of the province should be to support municipalities and their emergency operation centres in the event of a major emergency and we should leave the front-line mitigation of the emergency to the people who deal with it on a day-to-day basis.

Thank you very much. That's a quick overview of our—

**The Acting Chair:** Thank you, Mr Browning. We've got time for a question from each caucus; the Liberal caucus first.

**Mr Brownell:** Just a question: I'm not quite sure about the emergency operation centres. I spent a number of years on municipal council. I know we had the ice storm and we declared an emergency. We really had nothing in place because we were amalgamating. But after, they set up their amalgamated plan that included an emergency centre in the event that a disaster happened. Is this what you're looking at, a centre being set up in each municipality that is staffed and ready to go? I don't quite understand what these centres are like. Are they already established in cities in Ontario?

**Mr Browning:** Some cities do have emergency operation centres already. They are designed for a major emergency, either declared or leading up to a declared emergency, where a number of municipal, regional and even provincial people may assemble to make the broader decisions that are involved in an incident such as recently happened in Peterborough. They are not something you would use on a day-to-day basis, although many municipalities have a room that's multi-functional, and in the event of a major emergency, it's converted into the centre.

**The Acting Chair:** Mr Dunlop?

**Mr Dunlop:** I'm sorry, I was a few minutes late. I want to ask you, because you represent so many rural Ontario municipalities—I know Doug, of course, is from the township of Severn, which is where I live, and I'm proud to have him here. The role now, and in the future, of the mutual aid system is something I didn't really see mentioned here, but I'm very curious about your thoughts on where we may go with mutual aid in the future as far as things like train derailments, floods—things that you people are called in for. I think, in particular, of last year down at Gamebridge when we had that large train derailment. The Ramara volunteer fire department took over, but suddenly fire trucks and volunteers from all over the region where there to assist them. I'm wondering if you

see that role being very important in the future or dwindling and being taken over by an EMS type of system?

**Mr Browning:** We believe the mutual aid system will live many more years, and has to. It's a critical component of the whole fire protection system within the province. It has existed, I believe, for over 50 years now.

In the type of emergency you were speaking about in Gamebridge, the home fire department responds initially, uses all its resources, or close to maxes its resources, and then it can call into the system—in your case, the county of Simcoe system—which is set up so there's a response in progression of the fire services within that community. There is also, through the mutual aid system, the availability of calling other counties, districts or regions for specialized resources, if required.

So the mutual aid system is really a vast resource that's available within the province. As well, the province has taken a strong lead in setting up some level 1 and level 2 CBRN—chemical, biological, radiological and nuclear—teams, which are also available to respond in the case of a situation like Gamebridge. I see that being a system we're going to continue to build on.

**Mr Dunlop:** So we should build on that. There have been cases where I've heard that mutual aid wasn't welcome any more, and that sort of thing, in some of the volunteer fire departments throughout the different regions, not necessarily in our county, but I've heard different comments over the years. You're saying we should be building on that as opposed to weakening it in any way with any kind of changes to legislation.

**Mr Browning:** Most definitely.

**The Acting Chair:** Thank you, all three of you, for taking time and giving us some valuable input here. I think, in a nutshell, you've really focused on the need to consolidate and clarify the command role in an emergency situation. We'll certainly pay close attention to that suggestion; others have made the same point you have.

#### MINISTRY OF TRANSPORTATION

**The Acting Chair:** The next presentation is from the Ministry of Transportation: Malcolm MacLean, Shael Gwartz and Ross Flowers. Could you identify yourselves when you speak. We have 55 minutes allocated. We're going to try to be on time, because we've got a long-distance telephone hookup with the California Office of Homeland Security to follow. We appreciate your being here.

**Mr Malcolm MacLean:** Thank you, Mr Chair. My name is Malcolm MacLean. I am the director of the construction and operations branch with the Ministry of Transportation. It's a pleasure to be here today to speak about the Ministry of Transportation's emergency management program. I'm here today with Shael Gwartz, who is the manager of our maintenance office and the lead for our emergency management program. Also with me today is Ross Flowers, legal counsel with the MTO's legal services branch.

I have a slide deck with me today that I would like to speak to. I trust you all have a copy of that deck.

**The Acting Chair:** Yes, we do.

1340

**Mr MacLean:** I will attempt to move through these fairly quickly, in order to allow time for questions and discussion.

Slide 2 is an outline. I will be speaking about the Ministry of Transportation's emergency management program. I will lead off with our broad responsibilities, outlining some examples of transportation emergencies. I will speak about how we are organized for emergency management and the preparations we have in place. I will also outline our border crossing incident traffic management plan as an illustration of the plans we have in place. While the focus of the presentation will largely be based on highway emergencies, I do want to take a minute to review our role with emergencies related to transit, air, rail and marine. Finally, I would like to cover our lessons learned.

To start off on slide 3, we have included an extract from the Emergency Management Act. The objective of the act is "to protect property and the health, safety and welfare of the inhabitants of the emergency area." Under the act, the Ministry of Transportation has been assigned by order in council the responsibility for transportation emergencies. Transportation emergencies could include, for example, blockades of the highway for demonstration purposes, border crossing delays at international crossings, severe weather conditions such as flooding, power outages affecting highway traffic signals and crashes.

In addition, similar to other ministries, we are responsible for our business continuity during emergencies under MBS lead. This would include, for example, building security, where MTO is the lead occupant, IT systems failures, external labour disruptions and local power outages that could disrupt access to government offices.

I will be concentrating the rest of the presentation on transportation emergencies.

Slide 4 deals with transportation emergencies and identifies MTO's primary roles during an emergency. First, it is to coordinate our responses with other ministries, local municipalities, other transportation agencies and other stakeholders, including the private sector. We are also responsible for traffic control, detours and signing. MTO has the authority to close roads for repairs and construction for short periods or longer, if needed, provided a detour is in place. The OPP has the authority to close a road for other emergencies. We may be called on to provide advice on highway routes for evacuation purposes and to erect the necessary signing.

We also provide information to the public on road closures, detours, congestion and delays via the Internet, changeable message signs, MTO INFO phone lines and media bulletins.

We are responsible for making repairs to damaged highway infrastructure. This work would normally be coordinated by ministry staff, with the repair done by contractors hired by the ministry and working under the direction of the ministry.

Finally, we provide advice and guidance to others as requested; for example, to municipalities and other ministries. Just to illustrate, in the recent Peterborough flooding our staff provided advice related to municipal road repairs and cost estimates.

Slide 5 provides a broad overview of our management approach in responding to emergencies. Local MTO offices are routinely called on to respond to transportation emergencies. They are well versed in responding to emergencies in a timely and comprehensive fashion, in co-operation with others. Examples of these emergencies are crashes and spills on the highway; bridges that require emergency repair or replacement; flooding resulting in road closures and washouts that require repair; and other road closures, including train derailments on or adjacent to the highway, which may result in the need to detour traffic.

In some cases, the nature of the emergency will require a broader coordination effort by MTO's emergency management team. Examples of these include the ice storm in eastern Ontario; heightened international border security, which can result in delays and congestion leading up to border crossings; SARS; and the blackout of 2003.

Slide 6 outlines our emergency management team. If the provincial operations centre is on active status, we have a senior staff representative present to ensure full coordination with all ministries.

We have a central ministry action group, involving staff from all of MTO's critical business lines. This group coordinates the overall MTO response and, if necessary, is in regular contact with other transportation agencies. I also want to mention that the lead for this group is available and on call 24/7 to fully mobilize the entire team, if needed.

There are also regional action groups for each of MTO's five regions that operationalize response, including coordination with municipalities, police and other local stakeholders.

In the event of a nuclear emergency, a joint traffic control centre is mobilized, consisting of staff from MTO, OPP and other local police forces, as appropriate. Their role is to coordinate evacuations from the affected area.

Each of the various groups is in regular contact to exchange information. The team is also linked to our senior management staff, providing regular status updates and seeking approval and direction, as needed.

Slide 7 outlines our emergency management preparations. We have four full-time staff members dedicated to emergency planning and coordination.

We have several plans, either completed or underway, that deal with emergencies, including a general response plan; a nuclear emergency response plan detailing planned evacuation routes for each nuclear power plant that could impact Ontario; a border crossing incident traffic management plan, which I would like to speak to in some detail later as an illustration of our roles and activities; like other ministries, we are in the process of

developing critical infrastructure assessments and mitigation plans as well as business continuity plans.

We have an emergency operations centre equipped with an independent power supply and communication tools, including satellite phones, in the event of disruptions to other telephone systems.

Our staff has been trained in emergency response and we participate in annual nuclear emergency exercises.

In addition, we have established emergency detour routes in co-operation with municipalities to help address incidents that require complete closure of major highways such as the 401.

Slide 8 details our border crossing incident traffic management plan. The plan outlines the strategy for managing traffic impacts resulting from significant delays at border crossings. Similar to our other plans, the objectives are to minimize delays, maintain driver safety, minimize economic impacts, provide accurate and timely information to the public and coordinate input and support from others.

First, there is 24/7 monitoring of traffic delays by OPP and MTO staff supplemented by closed-circuit television cameras.

We have automated queue-end warning systems in advance of some border crossings such as the Highway 405 and QEW. These automatically detect the location of the queue end and trigger signs to advise motorists of conditions ahead. Mobile vehicles with sign boards are used in some areas and, if necessary, to supplement the automated systems.

When queues or delays exceed established thresholds, MTO staff determine the next mitigation steps, which could include:

—The activation of changeable message signs, providing delay information at key decision points along the highway. For example, changeable message signs in advance of the 405-QEW interchange would advise motorists of delays at both Fort Erie and Queenstown-Lewiston. This strategy balances traffic flow to the border crossings;

—On-ramp closure gates are in place in some areas; for example, starting 40 kilometres from the Windsor border. These can be closed to prevent traffic from entering the 401 when it's severely congested; and finally,

—The use of marshalling strategies for commercial vehicles destined to cross the border.

MTO also disseminates information to the public about delays through the MTO's Internet site, MTO phone lines, as well as bulletins to the media.

In addition, the plan considers the need for managing the public's and livestock health during prolonged congestion, in coordination with other ministries and local municipalities.

Slide 9 speaks to emergencies related to transit. GO Transit and municipal transit authorities have protocols for emergency response. GO Transit has a close working relationship with local police and they work closely with the MTO and the city of Toronto on emergency planning.

Municipalities have emergency plans for their transit systems, which vary somewhat depending on the scale of operation and complexity of the operation. MTO monitors transit emergencies through contact with transit authorities to track issues and develop coordinated responses as necessary.

#### 1350

Slide 10 deals with emergencies related to air, rail and marine transportation. These authorities respond to emergencies based on established plans and protocols. In the event of emergencies, MTO would liaise with the appropriate authority to determine status and coordinate responses, if needed. In certain cases, such as train derailments adjacent to highways, MTO would be called on to assist the OPP with road closures and detours by signing.

Slide 11 speaks to lesson learned. One of the key lessons learned is the need for continuous improvement of plans and preparations based on experience. For example, the experience with the border delays as a result of 9/11 led us to prepare the border crossing incident traffic management plan. That plan has served us well in other situations: for example, during heightened border security at the time of the Iraq conflict.

We do recognize the need for continued improvements at border crossings. MTO, in partnership with the federal government, has a number of projects currently underway. Under the border infrastructure fund program, work is underway on several projects to improve highway capacity. In addition, in partnership with the federal government, we are developing an action plan for intelligent border crossings to determine how intelligent transportation systems like cameras, automated queue-end detectors and changeable message signs can be further deployed to improve and enhance our ability to respond to delays. In addition, the ministry is working with our partners to develop cross-border transportation strategies which will drive future infrastructure investments at several border crossings, including Niagara and the Ontario-Michigan crossings.

We have also learned the value of staff training through simulated exercises.

In addition, we learned the value in establishing communication links with other agencies, ministries, stakeholders and the private sector. Such contacts are critical during emergencies. For example, as a result of the border delays experienced after 9/11, we have forged a much closer relationship with Canada Customs authorities, and we have now worked out a joint protocol for projecting border crossing times and delays.

Just to conclude, in summary, MTO is better prepared than ever to move people and manage traffic during emergency situations. We have more changeable message signs at US border crossings. This gives drivers real-time traffic information about what's ahead. We have also identified truck marshalling strategies to better manage heavy border traffic in emergency situations. We have clear plans and procedures to quickly manage traffic during emergency situations and/or in the event of infra-

structure damage. More detour routes have been identified and signed. We also have more changeable message signs across the highway system to give drivers real-time information about traffic questions. MTO has improved communication links with Emergency Management Ontario, municipal transportation departments and transit agencies to ensure a coordinated response to emergency situations.

That concludes our presentation. Thank you for your attention.

**The Acting Chair:** Thank you very much. We'll begin with questions.

**Mr Dunlop:** I've just got one question, and that's on the changeable message signs. We've got a number of them across the province. I happen to think they're very good. I think they send a strong message no matter what the message may be on the sign. Since you've put them up, have you done follow-up studies to see if what's on those signs is actually paying off? For example, if you're saying to someone that traffic is—I'm talking mainly about the flow of traffic right now. With things like, "The highway collector lanes are blocked. Use another lane," are people doing that? Are you getting any results from that?

**Mr MacLean:** The changeable message signs and systems across the top of Toronto have been in place for several years, actually. They have the ability to divert traffic to core or collector lanes, depending on where accidents are. In fact, they have the ability to observe problems and call in emergency personnel as necessary.

We have done several studies on the value of these in terms of relieving congestion. While I don't have the figures in front of me, they have proven their worth in terms of moving traffic through and getting emergency personnel to the scene of a problem much quicker than would have been the case before. While I don't have the data studies in front of me, we have assessed those and proven the value of them.

**Mr Dunlop:** OK. Just a quick question—I should know the answer to this. Do they work in a blackout? Are there backup batteries, or do they go out with a hydro blackout or anything like that?

**Mr MacLean:** We have two versions of them. We have versions that are permanently mounted, and in some cases those are linked directly to local power lines. So they would be out during a power outage. We have other situations—these are the portable ones you see regularly around the highway—where they're equipped with battery backup power and can operate, I think, for a period of 24 to 48 hours without connected power.

**The Acting Chair:** Mr Zimmer.

**Mr Zimmer:** I've listened carefully to all the plans you have to keep traffic flowing, roads and bridges open and so on. Perhaps you can help me on this: On all the 400 highways, the expressways and so on, my sense is that every time there's a local highway emergency, an accident of some sort, and recognizing they are often serious accidents and so on, the whole system just grinds to a halt and it seems to take a long time to get traffic

moving again. That, of course, is expensive and creates all sorts of other problems. What's the bottleneck there? What's the plan to eliminate that sort of thing? Sooner or later we're going to have a big crisis and the highway system will shut down. If what goes on in a typical summer in Toronto is a precursor of things to come, it'll be a while before things move again.

**Mr MacLean:** It's a very good question. A lot of work has previously been done on it by the Red Tape Commission. They worked with MTO, the OPP and others to devise a number of draft recommendations. The ministry has moved ahead and implemented many of those recommendations. We are continuing to work with the OPP to look at the remainder of those recommendations and implement those to ultimately improve the situation. So it is work underway, although I don't have a time frame in terms when that will be completed.

**The Acting Chair:** MPP Broten.

**Ms Broten:** I wanted to ask you what was the statutory authority that provided you with the ability to undertake traffic control and detour. We've been talking, throughout this, about evacuation and the ability of our province to respond to a large-scale emergency in terms of evacuation, and the ability to close off our borders for livestock, transport and simple travel. I'm wondering if, in the context of the authority you have in the ministry to close down roads, you could speak to whether you have the tools necessary within your ministry to assist with that type of limitation on transport in the province.

1400

**Mr MacLean:** The authority we currently have is expressed under the PTHIA. It allows the Ministry of Transportation to close a road for a period of 72 hours. If the closure needs to be longer, then we have to provide a detour to the highway. The police have the ability to close a road for any emergency purposes whatsoever.

In terms of other things we might need to do, it's a good question and something we have been considering carefully. We're currently in the process of reviewing our legislation, the experience with some of the previous emergencies and some of the future emergency scenarios. We expect to complete this review over the next several weeks and would be in a position advise the committee at that time whether we feel there are changes that would improve our ability to deal with emergencies more expeditiously in the future.

**Ms Broten:** Thank you. We have requested ministries to provide us with a response to this query by September 8, so I hope that's the deadline you're working toward. Obviously, it's the mandate of this committee to look at what legislative tools we need in the province to respond to emergencies, and your insight and expertise on that front will be invaluable to the committee. So we look forward to receiving it.

**The Acting Chair:** I had a couple of questions. First of all, in terms of prohibition of travel, in the province of Nova Scotia they can prohibit travel on roads and there is a fine imposed if you disobey that. MTO can declare a road closed—I guess that's how you prohibit travel—but

what happens if someone travels on roads that are closed? Is there a penalty or sanction?

**Mr MacLean:** Yes, there is. I don't have the details in front of me, but the PTHIA does describe financial penalties to anyone who disobeys a road closure sign. So there are penalties in place for that, typically fines.

**The Acting Chair:** And in terms of your work in emergency situations, one of the things we're hearing over and over again is the lack of coordination. For instance, we've had the fire chiefs and other organizations say, basically, "Tell us which ministry is in charge, who's in charge."

Is there anything we can do in updating our emergency statutes in terms of helping the MTO do its work better—I know you may not be able to answer this today, but perhaps in a further written submission. What can be done to make the lines of command and control clearer so there isn't delay or dispute? Everybody wants to get the task at hand done, but there seems to be a lack of cohesiveness and, given the very nature of an emergency, there is always a lack of clear understanding of lines of power. Can you respond to that? Is there anything we might be able to look at to try to facilitate what you, as MTO, are going to do in an emergency situation?

**Mr MacLean:** I think we'd like to take that away as something we could think about and respond. We would like to consult with colleagues and look at some of the experiences we've had before we respond to that. We can certainly undertake to do so in the same time frame as we're responding to the other items.

**The Acting Chair:** I was noticing that we've had a lot of information brought to us about livestock and animal health as it might impact on safety. One of the powers you have, it seems, is managing public and livestock health in coordination with other ministries. Do you know what role MTO plays in managing livestock health?

**Mr MacLean:** What we were referring to there was situations where there may be congestion at borders and commercial vehicles transporting livestock would be delayed for extended periods of time, in which case there are some livestock, for example, that would need water—it can't go without water for very long. What we were referring to there is working with other ministries—the Ministry of Agriculture, for example—to understand some of the implications of that, and then we would be working with local municipalities and others to ensure that those kinds of services could be provided.

**Mrs Sandals:** I presume that when you get into issues around air travel and rail travel, there is some shared jurisdiction between the provincial and federal governments. Is that correct?

**Mr MacLean:** In the air travel circumstances, the majority of the air travel would be under federal statute.

**Mrs Sandals:** What about rail travel?

**Mr MacLean:** The majority of rail travel is as well.

**Mrs Sandals:** What about waterways?

**Mr MacLean:** That is the situation for waterways as well.

I should add the MTO does actually operate eight ferry services. We also operate 29 airports in the remote part of northwestern Ontario. Both those services would come under our responsibility for managing emergencies associated with them.

**Mrs Sandals:** I was wondering, given that crossover in terms of transportation—roads, I presume, are pretty clearly our jurisdiction, but in some of the other forms of travel there are maybe some cross-jurisdictional issues. Do you run into, in an emergency situation, any problems in terms of interjurisdictional authority?

**Mr MacLean:** That hasn't been apparent so far. We are in the process of meeting with Transport Canada to talk about emergency measures in a broader way, and that subject will certainly be raised there to clarify what those lines of responsibility are. As I say, it hasn't been a problem to date.

**Mrs Sandals:** OK. One of the things the truckers had raised is rules around maximum hours that a driver can be on a road. Just because of backups or perhaps in an emergency situation, where you're calling on the trucking industry to have emergency delivery of supplies, there are issues around the regulations, but it isn't entirely clear always whether that's federal regulation or provincial regulation in terms of where the authority lies. Are those issues that have come to light when you have been dealing with emergency situations?

**Mr MacLean:** I don't think there's an issue with a misunderstanding of who has authority to look after that. Those working hours are stipulated under the Highway Traffic Act, and they're quite clear in there. There is provision of an exception to that hours-of-work legislation for emergency services. Those would be services such as providing essential services that impact the health or safety of individuals. So there currently is, within the act, provision for an exemption to the hours of work.

**Mrs Sandals:** Is that something that can be delivered fairly expeditiously, or is it a case of individual permits?

**Mr MacLean:** I think it really boils down to the driver keeping accurate records about what he was doing and justifying the nature of his trips and the reason why he had to work extra hours. So it really is incumbent upon the driver to keep accurate records and justify to the authority in terms of his need for exceeding the hours of work.

**The Acting Chair:** One of the questions that was raised by the truckers yesterday was whether or not there's a stockpile of oil or gasoline or diesel reserves in the province of Ontario. Does the Ministry of Transportation keep a stockpile of reserves in case of a protracted emergency?

**Mr MacLean:** No, we do not.

**The Acting Chair:** Is there any contemplation of maybe doing that, or why wouldn't you have reserves, given that you might be unable to, in a blackout or an elongated emergency, acquire fuel? Maybe you could respond to that in that written submission later. This is one of the things that has been brought to our attention. We're doing a survey of all ministries to see if there are



any kind of reserves of gas or oil that might be available, especially for emergency vehicles, like your snowplows, for instance, that we could access if we had a protracted blackout in the middle of winter. How could we get available diesel or gas for the snowplows so emergency vehicles can then access the roads? That's maybe one of the questions we'd like you to look at for us.

1410

**Mr MacLean:** Certainly. I think there is a plan in place for that, but I can't speak to the details. We can certainly do that in a follow-up submission.

**The Acting Chair:** OK. One final question is in terms of the management of accidents at accident scenes on provincial highways. I know that Dr James Cairns, the deputy chief coroner, has just done an analysis of the delays caused by the fatality, the accident with the GO train at Union Station. He has come up with a series of recommendations in terms of speeding up the protocol in dealing with an accident scene to ensure that it's done in a manner that doesn't, in essence, create a ripple effect in other delays, accidents and problems for people.

You mentioned the royal—not the royal; it was anything but royal. What was that commission?

**Mr MacLean:** Red Tape Commission.

**The Acting Chair:** Yes, the long coats, the guys with the coats—the Red Tape Commission. They made a series of reports. Is anything being done that's available for us to look at in terms of how you deal with the closure of highways? I know that after 72 hours, supposedly you're supposed to have detours available. The question I have is, what happens up to those 72 hours? What's the lead agency, government body or level of government that handles that road closure that may be up to 72 hours to ensure that people who have medical conditions or have run out of gas in the middle of a freezing winter and are stuck on a 400-series highway without any way out—is there a plan to deal with that?

**Mr MacLean:** Yes. I should be clear that the closures for emergencies of that nature are normally managed by the police. It's their function to provide such activities.

In terms of what we are doing to speed up opening up those sites, I did speak before about dealing with some of the recommendations from the Red Tape Commission. In terms of the specifics of plans to deal with inconvenience and people caught up in that, I can't speak to that at this point in time. We can certainly endeavour to get back to the committee on that.

**The Acting Chair:** I know that MTO does the traffic information boards on the highways for safety etc. Is there a way that MTO can communicate with ordinary citizens, or does any government agency or body communicate with ordinary citizens caught in a protracted road closure situation? Or do you just do it through the private media news alerts? How is it done?

**Mr MacLean:** It's normally done through issuance of bulletins to the media. They tend to be very good at picking up that type of information and broadcasting it across the radio. We do post information on the changeable message signs, but they may not necessarily get to all the individuals.

**The Acting Chair:** Thank you very much for taking time and contributing to the work of this committee. Again, if you want to help us with further details on some of the questions that were asked, we'd appreciate that. Thank you very much for appearing.

Members of the committee, we are trying to connect with California. What I might suggest is that if we connect a little earlier here, we might get more time to ask questions of the homeland security office in California. Can we be back here perhaps in 10 minutes? Would that be OK?

There's a recess for 10 minutes.

*The committee recessed from 1415 to 1426.*

#### CALIFORNIA OFFICE OF HOMELAND SECURITY

**The Acting Chair:** Members of the committee, we'll come to order. We have a teleconference connection established with the chief counsel for the California Office of Homeland Security, David Zocchetti. David, this is MPP Mike Colle. Can you hear us?

**Mr David Zocchetti:** Good afternoon, gentlemen. I can hear you just fine.

**The Acting Chair:** Thank you very much. With us here we have the committee on justice policy, and we're reviewing Ontario's statutes for the purpose of coming up with a report and draft legislation in terms of ensuring that our statutes meet the needs of future—hopefully, not too many—emergencies. Thank you in advance for being with us. If you could begin with a presentation, then we will follow with questions and comments, if that's OK with you.

**Mr Zocchetti:** That would be fine with me, and I greatly appreciate this opportunity to speak to you. As you know, California's had the misfortune of having a number of both man-made and technological disasters over the years, and we've hopefully learned from some of our experiences in those disasters.

Just last week, Governor Schwarzenegger declared a disaster in Shasta county, which is in the northern part of the state, for about an 11,000-acre fire that burned about 80 homes and displaced about 350 people. So some of our experience in disaster unfortunately is very recent.

What I'd like to do is give you a very quick history of how we got to where we are today legally in terms of the disaster area, and then talk about six of the major components of our state disaster laws.

First with the history: Some of the history of our disaster statutes actually started prior to World War II but, really, World War II was the precipitating factor in a number of statutes, as crisis situations often are.

Predating any statutory activity in California dealing with emergency management, back then, Governor Earl Warren, who went on to greater fame after leaving his Governorship in California, got started, during his Governorship, the creation of what is called the California master mutual aid agreement, and that was a contract that bound all of the 58 counties in California

and approximately 600 cities in California to an arrangement whereby cities and counties will share their emergency resources in times of emergency or disasters. Dating back to the early 1950s, all California counties and all cities bound themselves together so that when one jurisdiction needs assistance, be it for a fire or for a civil disturbance or for a flood or earthquake or whatever it might be, they will send their resources to other jurisdictions to help out, to the extent it doesn't exhaust their capability beyond a basic minimum level.

That master mutual aid agreement was really the starting point. Later on, going forward in history to the early 1970s, that master mutual aid agreement and a number of other concepts were placed in California state law. Keep in mind here that when the laws were created in that 1950s to 1970s period, California was a much more rural state than it is now and had a lot less governmental resources at every level—local government and state government—to actually deal with emergencies and disasters. So a lot of the laws that were created back then, including the master mutual aid agreement, reflected that simpler situation we had in California. Most of the fire departments were volunteer fire departments at that time. Most of the county sheriffs' offices just involved a couple of officers. Most of the ambulance services were only in major jurisdictions. So the resources were very thinly spread throughout the state, and the laws back then reflected that more rural nature of the state.

In the early 1970s, though, the laws were updated, and I'll be talking about those in a second. There was also a national effort that a number of the states looked at to have essentially model disaster legislation. California's disaster legislation looks like that of many states, but of course it has some unique attributes to California. But there was model national legislation in the early 1970s, and California adopted much of that and then incorporated its own unique systems.

Getting to that, I'm going to go over approximately six major components of the California emergency management system from a legal perspective, and these, I should emphasize, are just really the highlights. I welcome you to ask questions about the details of any of them.

The first of the six is the California Emergency Services Act, which is our basic law dealing with the emergency management area here in California. It provides a broad array of powers to the state Governor. Keeping in mind the history here, that it was started with World War II, where the powers of government were greatly expanded on a number of levels, our Emergency Services Act gives the Governor complete power to direct the resources of the state at every level, basically up to the point that he cannot, of course, violate the state or national Constitutions. So the Governor has a substantial amount of power. He can order state agencies to do various things that are well beyond their normal jurisdictional capability. He can move funds between accounts in order to address the emergency situation. He can have special appropriation powers. He can waive any

laws, both statutory and regulatory, so if he needs to waive an environmental law or a procurement law or something in the process area, he can waive those laws to expedite the disaster response. So the first component is the powers of the state government.

The second component that I'd like to mention is that the state law creates an emergency organization. I mentioned earlier the master mutual aid agreement that binds all cities and counties in the state together to assist each other. But California has also adopted a single management system that basically has to be used on all emergencies of any significance. We call it the standardized emergency management system, or SEMS. It is based upon the incident command system that emanated from the fire services in southern California, and I think it's used pretty much nationwide in the United States at this point. We now have the standardized emergency management system in California that must be used in all emergencies by all levels of government. The advantage has been there—of course, as you know, in all emergencies it's always the question of who's in charge and who has what responsibilities. The adoption of that single organizational structure has addressed a lot of the communications and coordination issues that we experienced during disasters. So the emergency organization adoption is a key point of our disaster management laws.

The third thing that's provided in our emergency management laws is our office, the state Office of Emergency Services, which is actually part of the California Governor's office. It is a separate and independent agency from the other more encompassing agencies in California government. Our director reports directly to the Governor, and is appointed by the Governor. So that creates an important communications link, particularly during disasters, between the administrative officer, if you will, and the elected officer for the California emergency management situation.

That, of course, is under review. As you may have heard, Governor Schwarzenegger has instituted a process called the California performance review, often called the blowing-up-the-boxes situation, where all organizations in California are currently under review and subject to change. So the organizational structure of OES may be changing in the future, depending upon how that review goes over the next few months.

The fourth item I was going to mention, and it relates back to my earlier comments about the master mutual aid agreement, is that state law actually incorporated that contract that was signed by all the counties and cities. So basically it is now a fundamental requirement in California that these jurisdictions assist each other. An interesting attribute of that master mutual aid agreement is also that it binds the local governments to any agreement the state might enter into with other states and the national government. For example, California is a member of a compact with the other 49 states to provide disaster assistance. By virtue of this master mutual aid agreement and state law, all local governments are also bound to the contract between California and all the other states.

The fifth thing I was going to mention, and it's particularly important in California, is that the Emergency Services Act provides certain privileges and immunities for any actions taken by emergency services individuals or agencies during a disaster. Of course, we have to be conscious of situations of negligence or gross negligence during an emergency and how people function in their job and whether damages and injuries occur. When the law was created in the 1970s, there was enough foresight to consider this situation and recognize the fact that if people or organizations had to be looking over their shoulders while they were responding to a disaster, those people and organizations might be inhibited in responding. They may think about things twice. They may think about their statutory or court-driven liability if there is a disaster and not respond as quickly as possible. So in our statutes is a broad provision that pretty much immunizes both individuals and agencies for their actions that might be found negligent during a disaster. Our California courts have upheld that on a number of occasions, all the way up to the California Supreme Court. So there are broad protections particularly for tort violations during a disaster.

The final thing I was going to mention, item number 6, is that we've also put a recovery program in place in California. So we not only have disaster legislation to deal with the response aspect of a disaster but we also have a program that to some extent is modelled on the US federal model, under the Stafford Act, to provide recovery, particularly for local governments, after disasters. We have a process where, if the Governor of California proclaims a state of emergency, he can essentially open up the state general fund to assist, at least on a proportional basis, local governments and special districts that have impacts on their infrastructure from the disaster and have some extraordinary response costs. This is not used real frequently, maybe only four or five times a year, but it really provides an intermediate step between local assistance and federal assistance in California whereby the Governor can take a specific action based upon his emergency powers to financially assist local government infrastructure that is damaged by the disaster.

With that, I will just close. That's, as I say, a very broad-brush overview of our emergency services laws here in California. Of course, the devil, as they say, is in the details, so at that point I'd like to open it up to any questions you might have.

**The Acting Chair:** Thank you very much, David. We'll have questions and we'll start with MPP Broten.

**Ms Broten:** One of the things that we in the province have been talking about over the last three weeks is finding the proper balance between giving the state or, in our case, the province the tools it needs to respond to extraordinary circumstances and the individual rights of our citizens. I'm wondering whether you can comment on the balance you've reached in California, having regard to things like evacuating locations, for example, and not allowing people to return to their homes, closing

access to private property, requests for information, all the types of things we see many jurisdictions having as extraordinary tools during an emergency situation, and whether any of those have been challenged in the state of California as to infringements on personal civil liberties.

**Mr Zocchetti:** We have laws in the areas that you mentioned broadly in terms of evacuation, quarantine, closing out areas, or isolating individuals and areas during times of disasters. Like everybody else, we have struggled with the balance between the civil or individual rights of people and the need for government, representing all the people, to accomplish a particular goal in a disaster. The debate has been obviously heightened because of issues of bio-terrorism and the need to be able to respond quickly.

I'm being really clear here: There is a division in how people feel we should address this. In California currently, we are still basing things like evacuation, quarantine and isolation on laws that go back, for the most part, to the early 1970s, where due process steps were not included as part of the law. So if in a jurisdiction a public health officer, for example, calls for a quarantine, he or she pretty much has unfettered power, once the criteria are met for calling for a quarantine, to establish that quarantine in a particular area to achieve public health goals.

**1440**

In terms of court challenges to that, there really have not been any, emphasizing that most of the quarantine and evacuation actions taken in California, even though we've had some very major disasters, are very isolated, often only impacting a few hundred people. So those cases have not come to court. As I say, there has been a lot of debate as to which due process requirements should attach to that, but so far, those have not been challenged in California, although I know of discussion in California and a number of other states.

**Ms Broten:** Just a follow-up question to that on issues of due process, the broad powers that the state Governor has: In what way is the Governor called to account for decisions he or she may make in terms of the direction of resources? For example, during emergency management, is there an obligation to report before the state Legislature in some way, or is it truly just political accountability: If you do the wrong thing, you may have problems in the future?

**Mr Zocchetti:** As you know, we're very familiar at this moment with the recall process for the Governor. So yes, if people were truly unhappy with the decisions made by the Governor during a disaster, they could take immediate political action relative to the Governor.

Also in place in statute is something called the California Emergency Council. That pretty much has not been a particularly viable organization, but it touches on your question in that it's a council made up of a particular group of legislators. It also has representatives from a number of specialized areas; for example, the American Red Cross. In a theoretical sense, that council is supposed to meet whenever there is a disaster to essen-

tially vet some of the decisions made by the Governor. As I say, though, in practice that council has not really been used. It was created during a time when California did not have a full-time Legislature, which we do now. I think it was created essentially to take the place of the Legislature if it was not in session during a disaster.

So right now, the Governor's power is pretty much unfettered, other than politically. Of course, the Legislature could always take action vis-à-vis the budget, but even in that area, the Governor has pretty supreme powers once a disaster is proclaimed.

**The Acting Chair:** MPP Zimmer.

**Mr Zimmer:** You touched briefly on the relationship between the chief civil service authority and the chief political authority in crisis management. I'm wondering if you could just elaborate on the situation in California. Here, we have heard arguments on both sides: that in the close management of a civil emergency the authority should rest with the chief civil servant responsible; another line of thought is that day-to-day leadership in an emergency crisis should rest with the chief or senior political authority. What's your experience in California?

**Mr Zocchetti:** I think I can probably give you a longer answer than your question really—

**Mr Zimmer:** We're interested in it.

**Mr Zocchetti:** Let me just give you some background, then. In California—I'm speaking from the state perspective, of course—by law, all disasters are local issues. Local government remains in charge of a disaster until such time as they basically say they need state help and they've declared a local emergency. But even at that point, local government is still in charge of the resources to address the disaster situation, no matter what it might be. So they retain, if you will, tactical control at the local government level.

Dealing with essentially the issue of who's in charge of those resources is quite complex. In any emergency response—and I've been doing this for almost 30 years—you have basic operational and tactical issues that are very technical, and you really need to have someone who has knowledge of the fire science involved, the geology issues involved—there are just so many technical issues involved. Really, the tactical operational issues have to be, to use the term, essentially in civil service hands, or at least in technical hands and not the political appointees' hands.

On the other side of that coin, of course, the political appointees are the ones who can truly be held accountable for any errors of judgment; for example, we were talking earlier about the call for a quarantine or an evacuation. So, really, the political officials have to be in the mix, at the very minimum for purposes of accountability, but also a lot of calls during a disaster are really policy judgment calls. A lot of the things are not science. There aren't triggers for certain things, be it quarantine or anything else, and at some point, somebody just has to make a policy call for the good of the community or for the good of the larger area. In my mind, that really speaks to the politician or the appointed individual to make those decisions.

**Mr Zimmer:** So I understand, then, that the technical decisions tend to rest with the civil service side and, if it gets into a policy or political choice, you look to the political authority.

**Mr Zocchetti:** That's accurate. In most cities and counties in California, on paper the head of emergency management is usually the chairperson of the board of supervisors or the mayor, but in actuality there's usually a step right below that that's actually doing tactical control of the emergency management situation.

But as you probably know and have heard from earlier testimony, the lines aren't always that clear between what is tactical and what is, if you will, strategic in terms of political things. So there's a lot of drift between the political element of disaster response from the politicians down to the civil service, and obviously a lot of the tactical issues flow uphill because they have such broad consequences in terms of their human outcome and in terms of their fiscal outcome.

**Mr Zimmer:** When you get into those situations where the distinction between tactical and political judgments is a grey area, do you have any sense of the experience in California in sorting out those sorts of jurisdictional blends?

**Mr Zocchetti:** I haven't seen, in my years, that much tension between the vertical issues in terms of political and civil service tactical issues. That usually runs pretty smoothly. I think, typically, the politicians do not want to be involved in the tactics of the situation during the event because of their lack of expertise in that area.

After the fact, we have the interesting criticizing of all the tactical issues. We're still dealing with the political fallout of our southern California fires last year and whether one particular helicopter should have dropped retardant or not dropped retardant. So, afterwards, the politicians are often involved in the tactical second-guessing, if you will, which is frustrating but also appropriate in terms of the application of the people's resources.

Typically, during the incident, we do not often see the blending between the political and the tactical. Most of our issues lie more on the horizontal plane: jurisdictional disputes between the fire service and law enforcement service or the emergency medical service, or between governmental entities—cities and counties and city agencies—as to who has responsibility for what. That is more the issue we have here.

**Mr Zimmer:** My last question is on horizontal disputes, jurisdictional disputes at the horizontal level on the tactical side. What sort of mechanisms do you have in place to give somebody the hammer on a jurisdictional dispute? How do you sort that out?

1450

**Mr Zocchetti:** Really, what we've put in place—and it doesn't answer the question 100%, but it's the best we have found to address it. I mentioned earlier that we have adopted the standardized emergency management system, which is an outgrowth of ICS, or the incident command system. We have adopted that at all levels of

California government in all disciplines. That has been a 10- to 15-year process to integrate that into all the training for all the disciplines at all the levels. It's been very expensive, but it has paid off greatly in addressing the issue that you raised on this horizontal plane.

One of the key tenets of the standardized emergency management system or even ICS is something called unified command. So we have essentially given up trying to say that somebody is in charge of this incident and somebody else in charge of that incident, because in reality there was no way to change areas of responsibility and too many of our disasters involved all disciplines, if not a large part of the disciplines. So through using the unified command system, everybody that has a legal role or a legal responsibility in the response to the incident gets to be in the unified command.

We often see situations where we'll have—especially when we have a lot of wildland fires—five different fire chiefs in the unified command, plus a sheriff, because of the responsibilities for evacuation, all in the unified command. Ostensibly they are all in charge, but what they're truly in charge of is just what their legal responsibility area is. One fire chief might just have legal responsibility for his or her community and another might have the responsibility for a much different area. As I say, the sheriff may just have responsibility for the narrower area of evacuation. They're all in charge of their area, but by using the unified command, they can collaborate on the decision-making to the extent it impacts the other individuals' jurisdictions.

**The Acting Chair:** MPP Sandals and then MPP Kormos.

**Mrs Sandals:** We really appreciate your taking this time for us today, Mr Zocchetti. You mentioned, in a situation of emergency, that the Governor has quite broad powers. One of the things we're examining is what, if any, emergency powers should exist in an emergency situation in Ontario. I wonder if you could tell us what sorts of powers, historically, the Governor has exercised, exactly what those powers are, and what the challenges have been around exercising those powers.

**Mr Zocchetti:** Sure. I'll do the best I can. One of the things you need to consider going in on this is that the Governors, over history, probably have never exercised their powers to the extent they're actually allowed under law. They to a great extent have never gone as far as the law would probably allow in this. So the number of legal challenges that would sort out the limits on the Governor's powers are few.

Within that overall context the Governor in California, as I mentioned, has the ability to waive all regulatory laws. So in terms of environmental laws, procurement processes, licensing requirements, days that have to be set before somebody has to post bail, all those types of laws the Governor can waive and has waived in various disasters.

Like yourselves we are limited, essentially, by the national laws to some extent. The Governor can't waive a law that would endanger a particular species of animals if

that would not be allowed under federal law. There is a check on that in terms of the federal law.

The Governor can't do anything that would violate any state constitutional issues in terms of state constitutional privacy rights etc, another check on the Governor's authority.

The Governor also has the authority, when he or she has proclaimed a disaster, to seize private and public property. That has been used in a very limited way by the Governor, but I think it's an important aspect in terms of disaster response. It has come up a few times, historically, when the government has had to seize property in order to destroy it, to get it out of the way of fire or earthquake removal. It has come up more recently in modern history with the energy crisis situations we've experienced over the last decade, where Governors have had to seize contracts between the energy providers and their sources of energy. That has been a unique aspect within the Governor's powers and it was not challenged successfully.

I'll essentially conclude with that, basically saying that the Governor has pretty extensive powers. To the extent he has exercised all those powers, that hasn't come to fruition, at least not recently.

**Mrs Sandals:** And you mentioned that there had been very few legal challenges, which I presume means that there have been a few. Could you tell us very briefly what was challenged and what the outcome was of that challenge?

**Mr Zocchetti:** The only challenge that really came by some, for example, during the energy crisis was over how long the Governor could operate under his emergency powers. The energy crisis was going for some time. Governor Davis at that time left his proclamation of a state of emergency open so he could continue to exercise his powers under that; I gave the example about seizing contracts for energy. That was challenged in the courts. Basically the courts came back and said, "Well, there are probably some limits to how long the Governor can keep his state of emergency open and exercise those powers, and the Governor needs to be mindful of that. But so long as the conditions of emergency exist, he can continue to exercise those powers he would have flowing from that situation." So that's really the limit.

The other major court challenge—I think I alluded to it earlier—was in terms of liability protection. There have been challenges over the years. For example, if a governmental entity, during the course of responding to an emergency, broke a state law that hadn't been otherwise waived by the Governor, could the agency or its employees be held liable? The Supreme Court said, "No. We do not want governmental entities looking over their shoulder during an emergency response, concerned about liability." So they are not liable for those types of negligent actions even if they do break a law. Those are pretty much, in summary, the challenges in that area.

**Mrs Sandals:** Thank you very much.

**Mr Kormos:** By the way, you should know that a large and growing number of Ontario voters have an

intense interest in California's recall provisions and procedure. But I appreciate that that's not the subject matter of today's discussion. We may have to have you back here in a couple of months' time.

Let's talk about evacuation in the context of a fire, because I think we can all understand that. Most of us folks watch the television news coverage in the area west of Los Angeles, the Topanga canyon, those kinds of places where we have these fires that put residential areas at risk. What does evacuation mean in real terms? What happens in the course of an evacuation? Do you go knocking on all those rich people's homes and drag them out, kicking and screaming? What are the nuts and bolts of an evacuation?

**Mr Zocchetti:** We have a lot of debates in California as to whether our evacuation laws are mandatory or voluntary. If you really drill down to the details, our evacuation laws probably can allow for a local government to have a mandatory evacuation. So in a legal, theoretical sense, you can have a situation where we could drag those rich people, kicking and screaming, out of their houses.

**Mr Kormos:** Sounds good to me.

**Mr Zocchetti:** Yes. But in a practical sense, generally local governments who do the evacuation in most cases—it's not usually a state government doing evacuations—treat evacuations as voluntary. What they do is make very clear to the people who should be evacuated for a fire, or for whatever reason, the need for evacuation, and that in fact if they don't evacuate, that will be the end of governmental assistance to them in terms of that particular emergency. So if a fire is bearing down on their home, somebody would either knock on their door or go down the street with a bullhorn, or via helicopter or some other notification processes electronically, via phone, letting these people know that they have to evacuate, they can't equivocate, they must leave, "Here are the risks involved." I even heard rumours that they just ask the people who their next of kin is and then leave them, basically, to go through the evacuation process.

**Mr Kormos:** Obviously it's one thing to evacuate, indeed even easier, a very small community, a hamlet, a rural type of community as compared to—heck, I've seen the traffic down in southern California. It looks like there's a perpetual evacuation.

We watched the news coverage of the evacuation of southern Florida. What are the logistics of evacuating a major community when you already have dense populations and crowded, exhausted highways?

1500

**Mr Zocchetti:** They're immense. There'd be no difference here from in your province. The issue underscores part of what I think you're asking for here. In those southern California fires, we lost 12 people, and those people were lost, we believe at this time, because they didn't get the notification about evacuation quickly enough. But any time you're trying to evacuate a major urban area, it is very difficult.

Florida, fortunately or unfortunately, with the experience with their severe weather situations, has probably

done more evacuations than anybody else and they still end up with situations of loss of life and serious injuries when they do evacuations.

In California, by the nature of our disasters, most of the evacuations have not been on a large, large scale. Really, you can't evacuate for an earthquake, you can't evacuate for a flash flood situation like we had in southern California. Even in a slow-rising flood, which is more typical where I live here in Sacramento, California, evacuation is still fairly localized. It's more likely you have situations of people being isolated and having to get supplies to them. Though with that said, we do place a lot of effort in our planning side on trying to figure out the logistics of actually evacuating large numbers of people. Obviously, this effort has been accelerated because of threats of bio-terrorism, but we also have chemical facilities throughout California, so we have evacuation plans that local governments developed to deal with threats that might come out of those.

But there's just no way to get around the logistical issues. They are just there and we use all the techniques that anybody else would use in terms of phasing the evacuation and opening up highways to two-way traffic in both lanes. We've done all those kinds of things that any other state would do, but it's still a huge logistical nightmare.

**Mr Kormos:** Finally, is there an emergency management reform movement in California, that is to say, lobbyists or legislators who are advocating fundamental changes and, if there are and they are, what's the drift, what's the bent? What are these people seeking?

**Mr Zocchetti:** I'm not aware of that in terms of any kind of campaign to make a significant change in emergency management in California. My sense is—and I'm fairly parochial in this, obviously, given where I work—the state is pretty happy overall with its emergency management system. We have the perverse benefit of using the system a lot because we have a lot of disasters. So most of the bugs have been worked out of the response aspect of the system, and it works very smoothly. I mentioned the example of southern California fires, where people are still arguing whether a helicopter should have been called back that was applying retardant to the situation. Those discussions we typically have are much more specific to a specific incident. There's not this broad campaign to reform emergency management at this point. Most of the reforms I think occurred—and there I mean wholesale reforms. The most significant changes in emergency management occurred about 15 years ago when we adopted the standardized emergency management system, that common organizational system. That was probably the most fundamental change.

Really what we're looking at here now in California is more the emphasis by the Governor for an overall reform of government. The focus is not specifically on emergency management, though we will probably be affected by the change, but it's looking at all aspects of government, not just the public safety aspect.

**Mr Kormos:** I am allowed one more, and that is that the sort of natural disasters that you've experienced, as

has Florida, have had huge costs attached to them, just extraordinary, multi-billion-dollar property loss costs. How does the insurance industry respond to those and have they, in effect, punished property owners and premium payers by either excluding them from future coverage once they've made a claim for a catastrophic loss or by diminishing their coverage? Have either of those happened, and is there a legislative movement or legislative response to that?

**Mr Zocchetti:** I'm not an expert on the insurance side of this; I will just give you a broad brush. In California, after a catastrophic event like the Northridge southern California earthquakes or some of the major fire seasons we've had, what we've seen is more the fact that insurance companies just won't write new policies, either in a particular area or they'll leave the state entirely. We had a situation a number of years ago, which I think Florida also experienced, where insurance companies just would not write insurance any more in the state. But there's kind of an ebb and flow to that, because we're a huge market for the insurance companies and there are many areas of the state that don't have as many disasters as others. So the companies come back, driven more by the market than anything else. But I've really never seen issues where they're just punishing individual policyholders. Generally the insurance companies I think look at it from a public relations marketing perspective. They pride themselves—in fact, in California, and I don't know if they do this elsewhere, they advertise how quickly they respond when a disaster occurs, with their adjusters on the spot. That's almost a marketing tool for them—although there have been issues over the years with the insurance companies.

**Mr Kormos:** I've been trying to encourage folks up here to develop a public non-profit insurance system like they have in Saskatchewan and British Columbia.

**Mr Zocchetti:** Actually, we do have an earthquake insurance authority here in California, but that has been a very difficult thing to fund because the damages from earthquakes are just so catastrophic. In California, the potential is that it could be so widespread, we could lose the entire LA basin or the entire San Francisco Bay area. The ability to come up with an underwriting scheme that anybody could actually afford is very difficult, but we've also made efforts in that area.

**The Acting Chair:** Thank you very much, David, on behalf of the committee for an absolutely incisive presentation. A synopsis of your legislation in such a time frame was quite astounding and, considering the scope of your emergencies and your emergency statutes there, it's quite impressive. On behalf of the committee, I certainly give you our thanks and appreciation and hopefully we can return the favour to you some day. We wish you the best of weather and the best of health and hopefully you won't have to put those statutes to work for a while. Again, thank you very much for making yourself available and please send our thanks to—do you report to Tom Ridge?

**Mr Zocchetti:** No. Tom Ridge is the secretary for the federal Department of Homeland Security. Here in

California, I report to the director of the Office of Emergency Services, Henry Renteria, who then reports to Governor Schwarzenegger.

**The Acting Chair:** Well, you can thank Governor Schwarzenegger, who we know, and your superior. Again, we're deeply indebted to you taking this time. It's been valuable to us.

**Mr Zocchetti:** I wish you the best of luck in your deliberations. You've taken on a very important job.

#### CANADIAN CENTRE FOR EMERGENCY PREPAREDNESS

**The Acting Chair:** The next presentation, a little closer to home, is the Canadian Centre for Emergency Preparedness. Adrian Gordon is the executive director. If you could come forward, Adrian, we would appreciate it. You've got a half-hour, and if you want to leave some time for questions or comments, feel free to do so.

**Mr Adrian Gordon:** May I begin by saying how much we appreciate the opportunity to make a presentation to this committee. I don't believe my presentation will last for much longer than 15 minutes.

My name is Adrian Gordon and I am the executive director of the Canadian Centre for Emergency Preparedness, or CCEP. For those committee members who may not be familiar with CCEP, we are an independent, federally incorporated not-for-profit organization based in Burlington. Our vision is: "Safer, more resilient communities through emergency preparedness."

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CCEP is perhaps best known for presenting the World Conference on Disaster Management, or WCDM, now regarded as one of the largest and best conferences of its kind in the world. This year's event, our 14th, was held in Toronto just two months ago and attracted over 1,300 experts, practitioners, academics and planners from 43 countries to address the question: "Are We Really Prepared?" The consensus of professionals from many fields of emergency management was that we are not.

CCEP has been a member of EMO's emergency management doctrine and standards committee since November 2002. We have been honoured to participate in what we regard one of the most exciting developments in emergency management in any province or state in North America in recent times.

In reading the proceedings from previous committee meetings, my impression is that members have focused on the powers invested in the Premier and his ministers to effectively manage emergencies in the province. Our focus is on a different part of the legislation: the regulations that set the standards for the development and implementation of emergency management programs under sections 2.1 and 5.1 of the Emergency Management Act.

We understand that these regulations were drafted over a year ago and we are deeply concerned that the delay in approving the regulations is having a profound impact on the communities that are on the front line of

emergency management in the province. I should mention it is our belief that the delay is also impacting on the levels of preparedness in those ministries that are now mandated to develop and maintain emergency management and business continuity programs. In a nutshell, the delay in passing these regulations into law is seriously affecting the province's ability to effectively respond to, manage and recover from the emergencies that await us.

I do not propose to dwell on the very real risks that the province faces in terms of emergencies; other presenters have described these in some detail. However, I would add that reports in the media just this week on the return of El Niño and the discovery of bird flu for the first time in Malaysia are illustrations of some of the potential disasters that may come our way in the months to come.

The committee will not be surprised to hear that since 9/11, public expectations of how emergency management agencies and governments at all levels deal with emergencies and disasters is now far higher than ever before. Some of the delegates at our conference commented that if we are unable to meet those expectations when the next event happens, as surely it will, the economic, social and political implications will be profound.

Recently, the Institute for Catastrophic Loss Reduction and Wilfrid Laurier University released a research report entitled *Emergency Management and the August 14, 2003 Blackout*. Based on an Ontario survey conducted in February 2004, it found that respondents believe that both local and provincial governments should do more to effectively prepare communities for emergencies. A recommendation of the report is that "Especially in quiet, non-crisis periods, all levels of government must continue to contribute to, and upgrade, their proactive emergency management."

I will return to this issue of public expectation, as we believe it is directly relevant to the current situation in our province.

The Emergency Management Act provides a broad framework that governs emergencies in Ontario and provides for the declaration of an emergency. The detail of how the province's emergency management strategy actually works and the implementation of performance standards and compliance, both necessary to move it from the voluntary to the mandatory, is to be contained in regulations. Without the regulations in place, the government has no authority to implement the details not contained in the act itself.

The implications of this are clear. Whereas the act sets out what is to be done in broad terms, the absence of the supporting regulations means there is no enforcement, no penalty, no incentive for emergency management programs to be put in place in Ontario's municipalities or for municipalities and ministries to conform to common standards.

Let me provide you with some examples. The following are taken from discussions I have had recently with a number of community emergency management coordinators, or CEMCs, in both large and small communities.

The deadline of December 2004 for all municipalities and ministries to attain the essential level is meaningless;

the deadlines for enhanced—December 2005—and comprehensive—December 2006—even more so.

As the deputy fire chief of one municipality said to me: "There's not a lot of teeth in Bill 148. There are no regulations for the essential level."

Let me stress that the essential level is to bring all municipalities and ministries up to a basic level of emergency preparedness. In our opinion, it will only be at the enhanced and comprehensive level that the government of Ontario can justly claim to have met due diligence in protecting the lives and property of its citizens in emergency situations.

Many CEMCs have been working hard to meet the requirements of the new legislation, but it is very hard for CEMCs to obtain approval for funding and resources from their municipal councils if the regulations are not in place.

Another CEMC said to me: "That is already happening. Why should councils commit resources and money to something that is not regulated, when we have so many other priority issues to deal with?"

A major feature of the regulations will be the introduction of an incident management system, which has been developed from the incident command system that is commonly used in Western Canada and the United States, as we have just heard is the case in California. This will greatly improve the ability of all levels of government and emergency response agencies to communicate during a disaster. However, without the regulations, it is highly unlikely that any real progress could be made in this respect.

In our presentation to this committee on October 7, 2002, we commented that long-term political commitment was essential to an effective emergency management program in the province. If I may quote from that presentation:

"I mentioned ... that mitigation and preparedness are commonly given little attention and even ignored in normal times. It is essential that Emergency Management Ontario be provided with the necessary funding and resources to be able to effectively manage this program. Our concern is that when the perceived level of risk and threats to our way of life declines, funding may be reduced to meet other needs."

For just over a year, Ontario has been spared a disaster of major proportions, notwithstanding what happened in Peterborough a few weeks ago. As a disaster management professional, I know that after every major disaster complacency returns, levels of preparedness slip and the political will to support emergency management programs declines.

We at CCEP and, I believe, other members of the Emergency Management Doctrine and Standards Committee, are deeply concerned that the great steps that Ontario has taken over the last few years, which have made it a leader across the whole of North America, are being stalled by political inertia. It does not reflect well on us, on Emergency Management Ontario, on the government of Ontario or on the honourable members of the Legislature.



Before I conclude, I would like to offer two quotations. The first is from the late Sir Winston Churchill:

“One ought never to turn one’s back on a threatened danger and try to run away from it. If you do that, you will double the danger. But if you meet it promptly and without flinching, you will reduce the danger by half.”

1520

The second is from the current Premier, when he addressed the Ontario Legislature on October 31, 2001:

“I can tell you, Minister, that I have had the opportunity to visit ground zero and I have personally witnessed the destruction. I have talked to New Yorkers and I have talked to many people who are expert in the matters of emergency preparedness. One of the things they keep driving home is that one of the most important things we have to do is have in place, in all of our cities and towns, an emergency preparedness plan.”

Make no mistake. The longer we enjoy relative freedom from catastrophic events, the closer we are to the next one. The time to prepare is now. The time to clear legislative roadblocks to becoming prepared is now. The public expectation that their government is doing what needs to be done has never been higher. Will Ontario meet that expectation before the next disaster?

Thank you again for allowing us to make this presentation.

**The Acting Chair:** Thank you. We have time for some questions.

**Ms Broten:** Thank you very much. I guess I would suggest to you, regarding the statement about political inertia, that all of us here have been meeting and talking about this important issue for the last three weeks. I guess I can give you some hope that there is no political inertia on our part, that we are examining the issues with a great deal of intensity, that we have had three weeks of public hearings and have been willing to hear from groups that bring diverse perspectives to us to find the right balance in the province. Certainly, we appreciate the work that you’ve done in this sector for many years. I hope that we will be able to answer “yes,” that the province is ready to respond and that we have the right tools in place. That is the mandate of this committee and the reason we have been looking at the issues of tools and powers. That is primarily our focus at this point in time.

I do want to ask just briefly in terms of recognizing the area of expertise that you have in terms of the emergency management plans, the representations that you’ve made reference to from October 7, 2002, would have been before the committee hearing that proposed legislation at the time; is that correct?

**Mr Gordon:** I believe so.

**Ms Broten:** OK. Perhaps, Chair, so that we can build on that, recognizing what has been pointed out to us today, we might get the clerk to provide us with copies of the deputations from 2002, which would have been focused on the emergency management plans but which might provide us with some solid background just on that front.

The question I had for you was with respect to your conference that was held in Toronto. Who would be the

experts and practitioners and academics? How are they invited? Could you just give us a little snapshot of the conference? I’m wondering whether there are conference materials or deliberations we can get copies of from that conference.

**Mr Gordon:** The conference program is developed by CCEP. So our focus in the conference is determining the theme of the conference, identifying what are the most pressing issues of concern to professionals in the disaster management field, all fields. And then we combine a number of invitations to individuals who we have identified. Principally, those would be key speakers. Then we call for presentations, which resulted last year in about 300 submissions, principally from the United States and Canada, but from many other parts of the world. We then have a small committee that reviews those presentations and makes those selections.

To give you an idea of the kind of people who are among our delegates, we have both federal and provincial ministers who participate, including Dr Jim Young. We have professors from universities who may specialize in general fields of disaster management or specialist areas like telecommunications.

This year we focused on one area of considerable concern among the disaster management practitioners, which was the treatment of trauma management, how to effectively deal with both professionals and civilians who have been traumatized as a result of crises. There are different opinions as to what works and what doesn’t work. That was the subject of several presentations and panel discussions. The range is very broad. The focus is practitioners in the field. We try to put on a program that also provides for the opportunity for academics to present their findings and research to the practitioners.

**Ms Broten:** Were there conference materials prepared?

**Mr Gordon:** We have copies of most of the presentations and we can certainly make those available to this committee.

**Ms Broten:** Thank you.

**Mr Gordon:** We would be very happy if any members of this committee would like to attend next year’s conference.

**Ms Broten:** We plan to be done with our work by then, but we might take you up on the offer.

**The Acting Chair:** If we’re allowed to. I have another question here from MPP Brownell.

**Mr Brownell:** I have a question related to a statement here, and I’ll quote: “... I know that after every major disaster, complacency returns, levels of preparedness slip, and the political will to support emergency management programs declines.”

I went through an emergency in my municipality when I was the mayor: the ice storm of 1998. We had just amalgamated two municipalities and the ice storm hit. We hadn’t even fired up our township hall. We were flying by the seat of our pants, basically, at that time. We put together a plan in the new amalgamated municipality, and very regularly, in fact, I saw just the opposite of what

this statement says here. I'm just wondering how serious it is, from your perspective, in Ontario with regard to your statement. I see the opposite in the municipality where I live, but how serious is it across the province?

**Mr Gordon:** I wish I heard more case studies like that. That would be an excellent presentation at next year's conference.

I wouldn't like to say how Ontario compares with any other province in Canada or any other jurisdiction in North America, or around the world, for that matter, but I know this is a real concern. Even after 9/11, the signs in certain sectors, both in the public and in the private world, even after, I would think, five to six months—I guess it's part of our characteristics as human beings that once we have experienced a major disaster, there comes a point when we want to get on with our lives again. I think it is a very real problem.

1530

The power outage was perhaps the most recent classic example of a major crisis, where frankly we got off very lightly. I don't think that in very general terms in Ontario we have learned the lessons that we should have, particularly when you consider what might have happened if, say, that power outage had happened in the middle of winter. But certainly I think if you ask any professional in any of the fields of disaster management, whether it's response, whether it's management recovery, academics—I can think of Joe Scanlon, who is head of Carleton University's emergency management department, who has actually written a study on this research which is entitled something along the lines of *We Don't Learn Our Lessons*. So it's a problem, but it's also a characteristic or nature of the business that we're in.

**The Acting Chair:** Thank you. Just for the record, Mr Gordon, I want to mention that I've been doing some research in terms of the public hearings on Bill 148. I think you're one of six people who presented. I think two of the six are here. Dr Young was there; you were there. I would just let you know that we have a sense of urgency ourselves, and that's why the committee has invited and listened to over 50 organizations already. That's quite an improvement over the last process.

I should mention that we've been, I think, seeking advice far and wide. We've just talked to, as you know, the coordinator from the state of California. We've talked to Quebec. We've talked to the authorities in Nova Scotia and Alberta. That wasn't done before. We've done that. We have talked to the city coordinators for emergency services in Sarnia, Windsor, Ottawa and Toronto. They've been here. They weren't here last time. We've talked to over 12 ministries. That wasn't done last time. We've also brought in a private sector panel, which wasn't done last time: Bruce Power; Bell Telephone, which is going to present; Enbridge Gas; the Canadian Bankers Association, which is here. I could go on and talk about the information we received from Deborah Whale about zoonotic dangers. We brought in the agricultural sector: the poultry farmers' association, the marketing boards. So it's not as if—we've brought in

climatologists. We brought in one of the foremost climatologists in North America, Dr Smit.

This is, I think, an attempt by us as members of the committee—it is not as if we do not have the intention to ensure we are prepared and to do whatever we can as a committee to search far and wide for information so that we can either put into effect statutes or amend statutes to ensure that, as a province, there isn't inertia in this area. I just want to put that on the record, that it's not business as usual. We've gone through a pretty extraordinary exercise here over the last three weeks. I wanted to say that on behalf of the committee.

**Mr Gordon:** If I could respond, I certainly commend the committee for allowing so many people and so many representatives from different parts of the community to have input into what's going on. I guess the message that I'm bringing from the trenches, if you like, is that there has been tremendous work done by this province and, from the municipal perspective, there has been a very clear message that all the municipalities and the ministries that I mentioned will be expected to meet certain standards within certain deadlines. That, however, is not going to happen without the regulations being in place. The first deadline is at the end of this year. If the regulations are not in place, as is happening in some communities that have, as I'm sure you are all too familiar, limited budgets, priorities coming out of their ears—if something isn't mandated, it's easy enough to put it off until those regulations are in place.

**The Acting Chair:** We appreciate that. I thought that was a very important submission you made in terms of the regulations as they pertained to 148. We hope, as a committee, to address that very thing. That's why I think it was important that you brought it to our attention. We appreciate your contributions, not only to this committee, but the interest you've had in this important area for the public safety in terms of emergencies. We hope to continue to count on you for advice and we will possibly be back to you, and appreciate you taking the time to do so here today.

#### BELL CANADA

**The Acting Chair:** Next on the list is Bell Canada, Kelly McDougald, the senior vice-president, and Claude Elliott, director of industry marketing. Could you come forward.

As you know, we invited various private sector stakeholders to be part of a panel with this committee. I know we couldn't fit everyone into that time frame before, but we do appreciate you coming here representing Bell Canada, a critical cog in our communications scheme of things in the province of Ontario.

**Ms Kelly McDougald:** Thank you. We very much appreciate the opportunity to share our experiences and insights with you as a result of our work within Bell Canada during times of emergency and crisis. Does everyone have a copy of the presentation?

**The Acting Chair:** Yes, we do, thank you.

**Ms McDougald:** Let me just provide context for you on chart 1. What I'm hoping to do this afternoon, certainly leaving much time for questions, is just to take you through a bit of the experience Bell has had so that you have an appreciation for the scope and extent of work we've undertaken in various situations throughout the province; secondly, to position for you some of what we think are very strategic initiatives being undertaken at multiple levels of government with regard to preparedness for emergencies and how we would hope the province could participate in either expediting or supporting some of those initiatives going forward.

Just to provide some context, on chart 2 with regard to Bell's experience, I'm sure most of you are aware, but we do run all of the 911 centres across the province for daily emergency response situations.

We have had extensive experience with regard to supporting many different aspects of both the public and private sectors during the SARS crisis, the power outage last year, the ice storm and how it impacted eastern Ontario and Quebec. Those are exceptional situations in crisis.

We also have ongoing and recurring crisis situations like forest fires in northern Ontario, where there's continually a requirement to set up emergency communications systems, often in schools or public community centres, as we relocate people out of their communities and into those crisis management operations, and also to support the front-line workers in those operations.

One other element I'll draw your attention to as we go through the discussion is our involvement in supporting anti-terrorist activity with regard to the Internet and cyber attacks. I'll speak to specific references on that, but clearly, our forms of communication are not necessarily just voice communication; we are much more heavily reliant upon data communication and the Internet, and we see that as an area for disaster preparedness as well, as many people attempt to sabotage and bring down those forms of communication.

Turning to chart 3—it's the chart entitled "In Service Today"—as I mentioned, we do provide all 911 services across the province, both those run by the OPP on behalf of multiple communities and those run by local municipalities themselves.

There are two extended forms of 911 service also available to you today. One is cellular location service, which continues to improve on an ongoing basis so that we can locate you on your cell through triangulation of the cell sites to be able to provide emergency services to you, whether you be on a roadside of the highway, in an area not covered by wire line services etc.

We also have the ability to provide, through our local communication services on campus environments, specific pinpointing of disasters. So if you were at the University of Toronto and you called 911, for example, we can pinpoint where within the university's physical campus you are requiring services without you having to articulate that to the emergency services responder.

We also have the capability—and this is lesser known—to provide priority access to dial tone on a local

switch basis. You well know that when a crisis occurs, many people first lift the phone. In fact, many of them call our operators to understand what's going on and they become a front line of information dissemination. But that does challenge the network in terms of providing dial tone. There is the opportunity to prioritize access to dial tone for emergency services respondents like police, fire, ambulance, government etc, and that does happen with access to local dial tone today. So, heaven forbid a crisis occurs while you're in a city voting on a Canadian Idol contestant and everybody's got the phone off the hook, either for the crisis or the Canadian Idol. We can prioritize who has access to dial tone, to the local switch.

**1540**

I'll emphasize that we do not have the ability today to provide access from the local switch into the broader network. That's a service, while technically available, that has not yet been implemented in the network today. So while you're guaranteed dial tone locally, you can't necessarily get out of your community and into the broader network.

We are there, as I mentioned, in multiple times of crisis. If I refer to the SARS incident specifically as an example, the Toronto public health hotline handled over 300,000 calls during that crisis. It peaked at 47,000 calls in one day. I offer you that that's in contrast to an average day of 6,000 calls, so you can understand the relative volume they were dealing with. We were there immediately to provide incremental services capacity bandwidth and to offer support on location at all of the command centres in order to support that initiative. Clearly SARS, as you know, went well beyond the boundaries of both the city and the province in terms of its impact in the community and the visibility of our responsiveness.

If we move to the chart titled Professional Technical Team, I will suggest to you our learnings on that were that there are multiple forms of communication facilities available, whether through interactive voice response systems that can help qualify a language, where the call needs to be directed to, provide repetitive kinds of information, take information electronically or whether it's through Web casting to disseminate information, or video conferencing. All of those exist but were grossly underutilized during the time of the SARS crisis. The challenge in that situation was an absence of governance as to who was going to prime the messaging there, who was going to set up these capabilities, who was going to be the coordinator of the services. So while technology existed in order to alleviate some of the challenges and disseminate information, a lack of governance and co-ordination really prohibited the maximum exploitation of that infrastructure in order to support what could have been a much more effective infrastructure for communications.

That was highlighted again—I'm sure you're all well familiar with it, but if you turn to the next chart with regard to a number of the panels that existed on SARS and the reports that were fed back, clearly there's an

opportunity for enhanced communications infrastructure; simple things like, as you well know, cell phones can't be used in hospitals, so what do you do within a hospital to disseminate information to front-line workers who are mobile within the hospital? Many of our health care workers in the community also don't have access to cell phones or wireless PCs. Again, how do you contact them? The technology all exists; it's just a matter of coordination and an overall game plan.

Of course, at the same time, we had the issue of the largest blackout in North America. You're well familiar with the impact of that on business overall. We clearly were very proud of the communications infrastructure and how it operated during the blackout. The wire-line network for voice communications stayed active during the entire outage. We did have challenges with the wireless network, as it is a contention-based network and many of the cell sites are diesel-operated, on tops of roofs and in steeple towers etc. The greatest learning for us in that incident was both the reliance on the wire-line network but also the new and growing dependence on wireless and an expectation of wireless service provision at the same level as exists in the wire-line network itself. I particularly draw your attention to the OPP as an example, which very much depends on wireless operations from their cars. In a contention-based environment, we were challenged to provide dedicated services to the OPP, because it has always been perceived as the second-tier network and not the primary network. We have done considerable work to reinforce the resiliency of that network since the time of the blackout.

At the time of the blackout, we were very pleased with the Bell response to ensure that we had all of our own contact centres up and running—911 absolutely remaining in operation and able to field all calls. We were able to ship generators from Quebec and moved in 150 generators. Pay phones also provided a valuable source of access for people who were otherwise reliant upon cellular phones. We were quite proud of how the network operated, but with the key learning, as I mentioned, of the new dependency on the wireless network.

There was a similar situation—and I won't go into detail—with the ice storm; again, the wire-line network operating well, both within Quebec and Ontario, and our ability to move resources between them.

The one thing I would highlight to you in this regard is that one of the things we have learned in this process that we'd be pleased to share with government is all of the associated implications with workforce management: how you deploy resources, how you pay resources, how you manage resources when you're picking them up from their primary work location and dispatching them otherwise. What happens when you move workforce from Ontario to Quebec or within Ontario? How do you pay them? How do you manage them? How do you guarantee their availability? We have done considerable work and thought on that within Bell Canada for disaster preparedness, and I think you saw that operationalized as we deployed those resources in those crises.

For more traditional and recurring types of disasters—as I mentioned before, we do have regular situations like fires in northern Ontario. In those situations, we use mobile services, typically satellite, and have numerous mobile units that we can deploy across the province for both emergency services front-line workers and for those people who have been displaced from their homes and relocated elsewhere.

As I mentioned at the onset, I'd like to draw particular attention to the requirement to focus our energies on and have a plan around terrorism specific to the Internet and the data communications network. I'm not sure if you are aware, but at the time of the blackout last year when government shut down their offices for the week with the intent to conserve energy, there was also a very significant Slammer virus that occurred that also shut down all of the province's operational computer systems as well for a large portion of that week. While that was not obvious to the public, it was a crisis in and of itself. Provincial workers would not have been able to come to their offices and operate because of the virus. So we had these two concurrent issues going on at the same time, one certainly less visible but of no less impact with regard to the operation of government and their ability to sustain services. I believe there has been a tremendous focus on voice communication, video communication and broadcast services but less so a focus on data communication services. Certainly we would suggest that there's an opportunity to expend energies in that regard.

Just in summary, with regard to experience, we have demonstrated certainly within our own infrastructure and our employee base our disaster readiness and ability to sustain service and recover from outages in that environment. We do have extensive experiences in emergency preparedness planning, both for our own organization and also working with numerous organizations in the private and public sector—the banks, the insurance companies etc—and we offer that experience to government as you look at what we should be doing within the province.

In summary, on chart 14, we simply learned, as you all well know, that communication is critical in times of emergency; not only communication infrastructure but governance of communication messaging and hierarchy and how that should be handled. We were responsive to anyone who called us during the outage and in the various disasters, but it's not always intuitive for us who the adult in charge is, so to speak, and how we should be best assisting in terms of responding to that. Clarity of those mandates and ownership would be helpful.

We also learned, as I mentioned, that the wireless network has become as critical as the wire-line network, as has the Internet network as well, and we need to deal with multiple stakeholders across all those mediums as we look at being prepared on a go-forward basis.

I'd like now just for a minute to turn our attention to some of the strategic initiatives we're taking on a go-forward basis, where we would welcome the involvement of the province and your participation.

The first is an emergency notification system we have been trialing within Sarnia. As you know, Sarnia has the potential for petrochemical disasters within the community and they have been working quite proactively in terms of emergency notification beyond just sirens, horns and broadcast across cable TV. I'm on chart 16 now. The system we have implemented with them on a trial basis, which has been very successful, is essentially a reverse 911 system, where instead of people calling in to us on a crisis basis, we actually place out calls to them. Calls can be placed to cellular telephones and to wire-line telephones. They can be placed as a voice response. They can be placed as a digital message out to PDAs, BlackBerry devices, PCs etc. We have the ability to roll this out across the province to all communities. The technology, again, exists and has been proven with Sarnia. The question is now one of funding. Is it funded through the local municipality; is it funded through the province? This particular project received initial trial funding through the feds, but the sustainability and mass deployability of this is not yet defined. You can think of the advantage this might have had in a Walkerton situation, had we been able to broadcast and phone everyone's home immediately and advise them. So our challenge now is how we deploy it en masse without having to go community by community and fight the funding battle within each individual community. The next couple of charts simply take you through a pictorial of that.

#### 1550

Similarly, as I mentioned before, on high-priority routing we do have the ability to prioritize and allocate dial tone in the case of emergency. Right now, today, as I mentioned, that's done to the local switch and it is managed by Industry Canada. They keep a record of 180,000 names right now which need prioritized access to dial tone. That's done through an application process on the Web, but once you get to your local switch, there's no guarantee that you can go beyond that into the wide area network. What we have proposed to the federal government is that they extend that across the country and the ability that you can prioritize calls anywhere in the country. The US has already deployed this widely as a result of 9/11. It does require incremental funding and we have provided that submission to the federal government in order to support that through what is called the deferral account, or a pot of monies that is set aside as a levy on the telephone companies. To date, we have not had support from the province to say, "Hey, this would be a tremendous thing. It would assist in our emergency preparedness within the province and be an asset to communities as well." We would welcome your support of the allocation of that funding to ensure that we have that kind of capability across the network.

Similarly, with regard to civic notification on chart 21, there are numerous other ways that we can provide notification, other than the Sarnia example or prioritized dial tone. We offer you creative ideas like the lottery terminals that we have across the province that are owned

by the province. Those are in every single convenience store; there are thousands and thousands of them. They're migrating to a digital infrastructure and there is the possibility, as an example, to broadcast information to all of those terminals across the network. So we have a tremendous opportunity, with the introduction of Internet protocol technology, to now use multiple devices owned by the province, whether it's MTO kiosks, lottery terminals etc, as emergency notification vehicles for the dissemination of information.

Finally, I draw your attention to 311. This is a service that has been applied for by a number of municipalities to augment 911 service. It is to take information queries that are not of an emergency nature and direct those away from the 911 system through one centralized telephone number. Toronto, as an example, has applied for that; the region of Halton has applied to the federal government for permission to proceed with that. What we've seen in the US examples is that it substantially offloads the 911 emergency services capabilities and, through deployment of that, we are quite certain that in times of emergency we could make much better and effective use of our 911 services going forward.

So as a final recommendation that we'd like to respectfully offer the committee, we believe that companies such as Bell Canada have extensive experience with emergency response both in terms of technology and in resource management, and we would welcome the opportunity to participate in further working groups or committees to provide those insights and help marshal the initiative going forward. We believe that the cyber threat is as significant now as the voice threat and that we need to focus our attention in terms of how we secure, support and reinforce those networks and access to information. We believe the province can provide leadership with regard to funding models for municipal support programs, such as 311 programs and emergency alert programs such as in Sarnia, which will also support us in times of crisis. Finally, while the province has typically been reluctant to participate in the federal initiatives of the CRTC, we think there are very specific areas such as support of dial tone accessibility where it's not a competitive issue, and the province could do considerable value in terms of weighing the imperativeness of that with regard to emergency response and encouragement of the federal government to allocate funding from such funds as the deferral fund in support of those types of initiatives.

**The Acting Chair:** OK, that's a lot to digest. The first call is from MPP Zimmer.

**Mr Zimmer:** On page 23, the last point you made was that Ontario should perhaps get more involved with CRTC issues. Are other provinces involved more so than Ontario in CRTC issues?

**Ms McDougald:** We have had opportunities in other provinces where they have written letters of support in terms of applications we have made for allocation of funding. There are two ways the province can get involved, one which could be deemed to be favouring a

given competitor, whether it be the cable companies or the telephone companies, and we certainly don't want to put you in that position; but there are other ways that simply an articulation of your priorities in terms of allocation of funding would be valuable.

**Mr Zimmer:** What are some of the issues the other provinces have written to the CRTC on?

**Ms McDougald:** As an example, one of the things being lobbied heavily by a number of telephone companies, including ourselves, is allocation of funds for northern development in provinces. We had gone, actually, to the Ministry of Economic Development to ask for support for allocations, some of those funds, in Ontario to put broadband access in the north. We've not yet been successful in getting as much support as we'd like there, but that example, plus the emergency preparedness and funding would be—

**Mr Zimmer:** Which provinces are you—

**Ms McDougald:** I'm sorry, I can't off the top of my head tell you, but we could certainly reply.

**Mr Zimmer:** Could you give us that information?

**Ms McDougald:** Yes.

**Mr Zimmer:** I'd ask the clerk to follow up on that, about the provinces that are interacting with CRTC and on what issues.

**Ms McDougald:** Certainly.

**Mr Zimmer:** Thank you.

**Ms Broten:** Thank you for joining us today. The goal of this committee was to reach out at an early stage in our process as we're trying to develop where we are going to go as a province in terms of ensuring that we have the tools. Many of us can think to the fact that it was very important that that telephone was there, whether it was on 9/11 or the day of the blackout. The importance of communication was clear.

One of the things that other panels have raised, and in particular the private sector panel has discussed, was whether sufficient tools were in place for the government to call upon the private sector to partner, and whether that should remain voluntary or whether there should be some legislation in place to be able to say, "Bell Canada, we need access to this many lines because of the communications necessities of the provincial government, of the hospital, of whatever." So I want you to comment on that aspect of whether it should remain voluntary or whether there is room for a more entrenched and formalized process.

**Ms McDougald:** I'd offer that, I think without exception, we've been able to, with the demand of government, provide the services required in time of crisis. So we're very pleased with the track record of immediately being able to set up war rooms, task force centres and incremental access. So I'm not sure I would jump to the conclusion that legislated participation be required, though perhaps as a safety net it would be valuable. But I would not suggest that experience would dictate that that's mandatory.

**Ms Broten:** In terms of a process as to seeking out the advice of some of the private sector companies who have

had to do work in the various fields, we talked to the Canadian Bankers Association, for example, Enbridge and others in the private sector who also indicated a desire to participate and share what they've learned over the last number of unfortunate emergencies we've had in the province.

I wonder if you could give some insight into a process by which you think we could seek out that advice and whether any other provinces or, for example, the federal government as they've examined these issues have established a process that we might be able to look to.

**Ms McDougald:** We'd welcome a process of defined committees or a working task force with very clearly delineated participation. We did try, post the SARS arena, to engage with the respective stakeholder groups to provide the input that we had. We found it very difficult to understand where we could intersect and provide that input. So formally defined and announced working groups who are looked to specifically for input would be welcomed.

I defer to my colleague, Claude, though, to talk about the federal government—he works very specifically with the feds—and how they engage the private sector.

**Mr Claude Elliott:** There is an association called the Canadian Telecommunications Emergency Preparedness Association. Most phone companies are members of that and there is representation on that association by the government of Canada. That's represented by Industry Canada and by OCIPEP, which is now Public Safety and Emergency Preparedness Canada. So there is a process there. I'm not sure if the provinces are engaged in that or not, but certainly we would welcome that opportunity.

**1600**

**Mr Zimmer:** Just a follow-up question. We've heard what Bell's up to in this whole emergency preparedness thing. Can you comment on the level of co-operation between Bell and your competitors in the Canadian market, Telus and the other companies and so on? Do you have common approaches to these things?

**Ms McDougald:** Yes, we can. It's one of those situations where you're competitors until times of crisis, and then everyone steps up. I think you'll find an example in the tremendous forest fires that occurred in Vancouver. Bell was there to say, "How can we help? How many resources can we send? Do you need trucks? Do you need generators? What do you need?"

We similarly get calls from Telus and our other competitors at the same time when we have crises, certainly in the ice storm situation. While the competitive environment was not as extensive then, we had calls from power companies, from competitors and others to assist in support.

There's no formal hierarchy of contribution, if you will, in those types of situations, but there is repeated example of the call being immediate in both directions in order to provide support.

**Mr Zimmer:** Thank you.

**The Acting Chair:** I just have one request. I'm intrigued by the 311 pilot project in Sarnia, and I'm not

quite sure how we could help. You're referring to the CRTC application by Toronto and others, but I don't think we have time now to get into the details. What I'd like is a report to the committee—it doesn't have to be a long one—summarizing how the pilot project is proceeding in Sarnia, how it works, and how the province might be interested in examining this as a way of enhancing communications during an emergency situation. If you could just forward that to the committee, I would appreciate it.

**Ms McDougald:** We'd be very pleased to.

**The Acting Chair:** OK. On behalf of the committee, again, thanks so much for making yourself available. It was very informative and very thought-provoking. Certainly, we will follow up on some of those suggestions, I'm sure, to say the least. Thank you again.

#### JAMES YOUNG

**The Acting Chair:** The next presentation is from the Ministry of Community Safety and Correctional Services. I have to get this name—this ministry changes every year, it seems. It's Dr James Young, who's the Commissioner of Emergency Management. Dr Young is making a second appearance before this committee.

We appreciate, Dr Young, your making yourself available for the second time. We are at a different point in our steep learning curve since the first time you came. I hope we've all benefited by these three weeks of this crash course on emergencies.

**Dr James Young:** Thank you, Chair. I want to start my brief remarks by emphasizing that I'm, in fact, here representing my views rather than necessarily the ministry's views. I hope my comments will assist. I tried, last time, to lay out the framework of emergency management in Ontario and where we had come from and where we were, and then left the question of legislation as your area of study.

I'd like to now, at this point, now that you've been studying it, make some comments, if I may. The comments are based on my understanding of some of the issues that have arisen. So if I have not understood those correctly, I apologize in advance to the committee.

**Mr Zimmer:** On a point of order, Mr Chair: Just a clarification. I'm wondering if you could make it clear those areas where you're speaking personally and those areas where you might be speaking on behalf of the ministry. You said that your comments were not necessarily on behalf of the ministry but personally.

**Dr Young:** I have not vetted these comments or my opinions through the ministry or through the minister. In my independent role as an adviser to government, no one has seen my comments or had any role to play in what I'm going to say today.

**Mr Zimmer:** Thank you. I just wanted to be clear on that.

**Dr Young:** It seems to me that the theme of these hearings has been the responsible use of authority. Clear-

ly, as part of that, then, there is the need for an accountability framework.

The authority we're talking about is the authority we may need in order to save lives when other measures are unavailable or inadequate. The measures we're talking about are measures that we hope we never have to use. We believe, in fact, that if the acts are strengthened, they will in part allow us to not have to use them, because the very existence of them will make their use less likely.

The authorities we're talking about in this committee relate to defined emergencies and would not relate to everyday happenings in the province, even if they were going on at the same time. So the powers would relate specifically to the defined emergencies.

I know there has been discussion within the committee of adding to existing statutes. I believe that extraordinary circumstances demand extraordinary measures. I think that using existing legislation and improving it would help us avoid emergencies in some situations, but is not the way to go in regard to actual provincial emergencies. I'd like to give you, very briefly, six reasons why I do not believe this is the way to go.

The first is to look at the intent of existing powers. One of the purposes of special emergency powers is to ensure that there is general authority to cover all eventualities. The need for emergency powers presumes that there may be gaps in existing legislation. Existing legislation is not necessarily intended to address the catastrophic consequences of an emergency.

Provincial emergencies, by definition, are not, nor should they be, dealt with through statutes designed to address the state of normal. Even legislation designed to deal with serious occurrences such as environmental spills deals with situations that can be reasonably anticipated. Such legislation does not really address the catastrophic event that would call for a provincial emergency to be declared.

The second reason is that I believe it would be difficult, if not impossible, to cover all circumstances. Powers, although they may be very broad, exist currently in specific regulatory regimes and are therefore limited in accordance with that legislation. The Forest Fires Prevention Act, for example, includes a very broad power to require that assistance be rendered. The questions that you have to ask, though, are: Do such powers exist with respect to floods, earthquakes, other natural disasters or anything else that might come along? Do they exist with respect to emergencies that are not natural disasters? It would be a difficult exercise to canvass all existing legislation to fill all the gaps that exist.

As we learned in SARS, issues arose that could not reasonably have been predicted in advance, or even anticipated. Even with the most thorough review and consideration of existing authorities and legal frameworks, it is the nature of an emergency that no one can plan for all eventualities or anticipate all possible scenarios or individual issues that may arise. If you could, there would be no emergencies.

One example that comes to mind from SARS relates to international adoptions. We had issues concerning health and health protection in the province and had to establish some rules in regard to international adoptions. Could anyone have reasonably foreseen that adoptions were relevant to emergency management?

Further, if we wish to forgo general powers, we would have to fully satisfy ourselves that we had covered all gaps. The advantage of general powers is that we can be fully satisfied that most likely all possibilities have been covered.

The third reason for considering general powers rather than changing existing legislation is that powers in existing legislation may not go so far—in fact, it could be said that they likely would not go far enough to cover the emergency situation at hand.

#### 1610

One of the scenarios that's been talked about is the entry upon private property to manage a flood. While there are various existing powers that may be relevant to that scenario, there are a number of questions that arise as well. Would existing powers of entry allow contractors, engineers and others to do the emergency remedial work? In an emergency, workers from other jurisdictions and neighbouring provinces might volunteer to assist or be requested to assist. Would existing powers authorize such workers? If some of the remedial work merely involved sandbagging, for example, regular citizens might be involved as part of that operation. Would existing entry powers authorize the entry of private citizens?

If we look at a major disaster, such as pandemics, and we look at conscripting people to work, the number of people and the range of people who might be involved in such conscription could be very broad. It's not hard to imagine in a pandemic situation that we may run into shortages of healthcare workers; first responders, whether they be ambulance, fire or police; manufacturing facilities might be vital if they manufactured, for example, gowns and gloves and masks that were necessary in the medical sector; and we might face problems in the funeral industry or in corrections or any other government agency. So trying to figure out in advance where those issues would arise is very difficult.

The fourth reason for looking at broad powers rather than changing specific legislation is a need for streamlining existing powers. We have some of the powers that are being discussed already in legislation. For example, we have the ability to establish facilities, to construct works and to procure goods. The problem is that, in order to do many of these things, under existing legislation we need to follow sets of rules that, in many cases, may be very onerous. Anyone that's been in government for any period of time knows what "procuring goods" means and the difficulty in doing it. We cannot follow, during an emergency, the normal practice of procuring goods; we need to go out and purchase quickly and, in essence, break the rules. In the case where we needed to build dams or other buildings, SARS hospitals or anything else, again, we may not have the luxury of environmental

studies and all the various rules of bidding etc that normally take place. So some of the powers you're considering are simply a way of streamlining existing things.

The fifth reason, I think, is that we should look to the example of other jurisdictions. All the jurisdictions I had brought forward in my previous appearance had special powers legislation. All of these jurisdictions would also have existing statutory regimes similar to Ontario. These probably include broad warrantless entry powers and order-making powers under a number of regulatory statutes, such as environmental protection. Despite these, all these jurisdictions have chosen to add broad powers in the case of an emergency as well, and I think this is for good reason.

The sixth and final reason—and the least important, but still a consideration—is that there are administrative efficiencies in doing it this way. The reasons under this that I would note would be a potential lack of coordination between existing agencies if there is no central authority. If we rely on existing powers, there can be various agencies issuing orders, each within their limited mandate and regulatory sphere. In a complicated emergency, this could create chaos, as the orders that are issued could be conflicting between one piece of legislation and another.

By having one act, it clarifies existing powers as well. In an emergency, existing powers could be applied in novel ways. Because of the novel circumstances existing in provincial emergencies, there may be ambiguity or a lack of clarity on how the existing powers would apply. Clarifying the powers available to emergency officials in advance would help them carry out their functions quickly and with assurance in an emergency.

The third and final reason under administrative efficiency is compliance or enforcement. An order under central emergency legislation would carry a lot of weight. The mere existence of such authority would likely result in greater compliance than reliance on either existing compliance or enforcement mechanisms.

I've handed out two sheets to the committee today, and what I'd like to do is give you some of my thoughts about the various powers you've been asked to consider, among others that have come up during the hearings, I'm sure.

I looked at it and asked, from my own experience—and these are only my own opinions—how would I rank these and consider what to do with these if I were in your shoes? I looked under three criteria: intrusiveness, need and timing. I ranked intrusiveness from "least intrusive" to "most intrusive," with one point for "least intrusive" and three points for "most intrusive." I looked at need in an emergency as "more likely," "somewhat likely" and "less likely," and awarded them one, two or three points, with "less likely" being three points. I looked at timing from the point of view that if an emergency were called, would there be time to recall the Legislature and add pieces to the legislation before the power was needed? I awarded "no time" one point and "there would likely be time" three points.



Having done that and plugged in those values from my own experience, I ended up with a list of powers in a ranked order. Interestingly enough, the most controversial of those, things like curfews and mandatory recruitment, fell to the bottom of the list with the highest number, but also fell in the timing area, where there “may be time” to do them. So it produced a list where, in my mind, the least contentious things were near the top, the more contentious things near the bottom and the issues that fell on both sides toward the middle. These are only my rankings, and this is only intended, in some small way, to assist the committee if I could.

Finally, just a single comment on the proposed legislation, which I saw this past week, after it was introduced to the committee: I looked at it and do not think that at the end of a period of time there should be a full sunset of an act and a reverting to what we have now. I think there should be a review process. Until a review is completed, whatever legislation is proposed by this committee and passed by the Legislature, ultimately, should be the legislation that stands until any new legislation replaces it in future.

With that, Chair, I am very pleased to answer questions.

**The Acting Chair:** Thank you, Dr Young. We’ll start with Mr Zimmer and Ms Broten.

**Mr Zimmer:** So your sense is that there should be a central authority which this existing power should be tested or operated by, that that’s the most efficacious way to manage an emergency crisis. Having said that, do you think the central authority should be on the senior public service side or on the senior political side?

**Dr Young:** I think the authority rests in both spheres for different reasons. The ultimate accountability in a democracy is to the elected officials. The policy decisions in an emergency should be made by the Premier and by cabinet, and by as broad a group within cabinet as is possible in the circumstances. My job in an emergency is to lead the technical and operational side and to bring forward those issues and bring forward good options, and then act on those. I bring to the table both my own and other people’s technical expertise and experience. Our job is to implement that and operationalize that. So I think both parts are important, but the major policy issues and the major directions that a government takes are certainly the political decisions as well. Obviously, in a real crisis you act as quickly as you have to and you make the decisions that have to be made instantly, but then you go back and loop through and get approval.

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**Mr Zimmer:** I appreciate that that’s the theory of the relationship. Have you given some thought to how that relationship between the senior civil service authority and the senior political authority would actually work in practice in the context of a rapidly developing emergency?

**Dr Young:** Yes, we have. We’ve in fact planned this and charted this out. The concept is that there’s an operational side and a policy side which are separated from each other, with myself and others as the bridge between

those. The key on the operational side is to get information and to get decisions to them as quickly as possible on an ongoing basis and to ensure that they have those decisions so they can move. You solve as many problems as low down as you can, and then the problems that can’t be solved gravitate up through a set of operational committees, assistant deputy minister and deputy minister, and then come to me to filter and bring forward as policy decisions to government. We would intend to operate with a committee of cabinet, then, who make those policy decisions, and I’m the conduit, along with the medical officer of health, on that committee, along with other senior civil servants who go to that committee and present these issues and then operationalize them afterwards.

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

**Ms Broten:** In talking to other jurisdictions, I just wanted to pose to you, looking at Quebec—when we had an opportunity to speak to them yesterday, their structure appears to be that everything must be done within the line ministry before you can turn to the broad, sweeping Civil Protection Act. For example, in the context of a health emergency, the question we’ve heard day in and day out on this committee is, “Who was in charge? Who was in charge?” In talking to them, it appears that in the context of a health emergency, health is in charge, unless they’ve done everything they can do, and it is at that time that you turn to the emergency legislation. In fact, they indicated that there have been requests made in the province to turn to that broad, sweeping emergency legislation that the province has turned down and said, “No, you must do what you have within the powers of your legislation.”

I raise that with you in the context that there’s a view, or my own personal view is that we do need to look at the powers in other pieces of legislation. If we’re looking at a structure like Quebec’s, we need to make sure that Dr Basur has what she needs. We’ve heard it is a problem that we don’t have a chief veterinarian who has those powers. Would you disagree that we need to look at the powers that exist in the context that there is line ministry responsibility to deal with it at first hand?

**Dr Young:** No, not at all, and if I left that impression, I want to correct it. The aim of what you try to do, in fact, is to manage things short of declaring a provincial emergency. We did the ice storm as an example of that. In those instances, you would manage using existing legislation. It’s very useful to have existing legislation bolstered that allows you to do that. We want existing legislation to assist us in managing, for example, avian flu etc. You use a provincial emergency when you need a massive amount of provincial assistance, you need emergency powers or you need to get public attention focused on something. Those are the instances when you declare a provincial emergency.

I don’t want to leave the impression that you would manage even a health emergency only within the Ministry of Health. Once you deal with any issue, whether it’s avian flu or health or anything else, and it gets out-

side of a certain size—you start out with a problem with public health in Toronto. Toronto would notify provincial public health that they had a problem with meningitis or an infectious disease. If that infectious disease spreads and becomes involved in three or four different health units, then the province becomes more active and more involved because the size of the problem is expanding and there's a need for continuity and the provincial medical officer of health has a larger role to play.

Somewhere, as that's transitioning, the Ministry of Health and the provincial medical officer of health start to involve my office as well, because what happens is that you very quickly get into issues that start to affect all the rest of government as well. An infectious disease element begins to affect, as we learned in SARS, occupational health and safety, so the Ministry of Labour has a major role to play. You get into problems in crowded places like jails, so you get into corrections issues. You get into problems about keeping schools open or closed, and you get into education issues. On and on the list goes, and pretty soon you get into economic consequences.

As I mentioned the last time, when we're dealing with avian flu, we've got about eight or 10 ministries at the table. An infection on a farm now in Ontario, even if we don't declare an emergency—when we managed it a few weeks ago when we had a false alarm, we had eight or 10 ministries and three levels of government at the table, all managing it before and preventing it from becoming an emergency. So it's not one ministry. We actually pour in all of government resources in a smaller way, but many of the ministries very early in a proactive way.

**Ms Broten:** Thank you.

**The Acting Chair:** MPP Kormos.

**Mr Kormos:** Thank you, Citizen Colle.

Thanks for coming back. This is an interesting and valuable analysis of these respective parts. I was really fascinated by the two civil servants from the Ministry of the Attorney General who came here—when was that, Mr Zimmer? A week ago? A week and change?—and told us about the bill they had drafted at the request of the Ministry of Community Safety, relayed to the Ministry of the Attorney General. This wasn't an exercise—I understand that sometimes policy people, if they have a slow period, will anticipate requests from their own bureaucracy and spend some time preparing contingency plans for their own boss. This wasn't the case; this wasn't self-initiated. It was a request from the Ministry of Community Safety over to the AG, down to these people. I was surprised to learn about it, and I don't want to speak for my Liberal counterparts, but I could read the looks of surprise and the “Oh, gosh” expressions on their faces when they learned about this bill.

The bill they showed us seems—I don't have it here; Mr Fenson may want to help us—to incorporate every one of the things, perhaps with the exception of one or two, that you put on this list that you've rated here, that you've prioritized today. Is that your understanding of it?

**Dr Young:** Could I make a comment about that? I want to be very clear: I had not seen the bill. I certainly

alluded very clearly, when I was asked questions, to the fact that there had been discussions taking place, and I remember members asking me specifically what some of the issues were that were being drawn out and what some of our thoughts were on that. Certainly, when I was referring to that, I was referring to the very discussions that are contained in what's before you now, but it was not at a stage where it had returned or I was aware of it. Certainly I wasn't aware at the time I was here that that was an issue. Had you asked me specifically if there was a bill being worked on, my answer would have been, “Yes, the Ministry of the Attorney General is working on one, but I haven't seen it at this point. We're having meetings,” and the discussions are exactly as I portrayed them. I don't want to leave any impression that I was attempting to mislead you or the committee in any way, shape or form.

**Mr Kormos:** No, and I do not want to suggest that in any way, shape or form.

**Dr Young:** But I think it's not a surprise that the things that are in that document are the things that I brought forward, because the basis of what we were discussing among the group was what was contained in other legislation, and that's the chart I brought you. Any similarity is because that's the basis of our discussion.

1630

**Mr Kormos:** I do want to get the time frame right. Did your letter to the Premier, with the chart attached, the appendix attached, predate your awareness of the Ministry of the Attorney General policy people drafting that bill?

**Dr Young:** The discussions about the need for change in legislation have been going on for some time in government, so that's a process that's been underway. As bureaucrats, we were discussing the accountability mechanisms and the need for legislation among ourselves since last year. So that's been an ongoing process. My letter to the Premier was because I felt very strongly that the process needs to move along and we need to have it debated and reach a decision so that if something happens, we have the tools at hand, whatever they may be.

**Mr Kormos:** As I told you the last time you were here, government staff and opposition member staff were bumping into each other as they were simultaneously leaking that letter to the press gallery upstairs. It's true. They were crossing each others' paths. They were rushing from media room to media room.

The other document we took a look at was the 1981 McMurtry white paper, wherein McMurtry, justice minister as he was then, considers the codification of powers. It doesn't enumerate those powers but, by and large, it's talking about some of the same things you're talking about. Then it goes on to conclude that not only should they not be codified, but it is preferable that the common law be maintained. Granted, that was in 1981. We've had experiences since then; that's one observation. Two, the charter has kicked into place—and Mr Zimmer can probably enlighten us on the impact of the charter—but I, for

the life of me, can't see it. Was McMurtry wrong in 1981 or is his conclusion no longer relevant now?

**Dr Young:** First of all, I have tremendous respect for the chief justice in all his various roles and have admired his whole career, so I would be loathe to disagree with the chief justice on anything. Actually, had I been sitting there—and I read the report so that I would be familiar with it, anticipating you might ask me. Had I in 1981 been writing that report, I think I would agree with the findings of the report at that time.

I believe that we're living in a very different time in 2004 than we were in 1981. I looked through the report, for example. That's an era when even then we weren't saying that we needed mandatory plans for municipalities. It's based on the Mississauga train derailment. There were no deaths, there were no injuries during that period of time. There's one vague mention in that report to terrorism. There is one mention that I could find but it's very much in passing. There is no discussion of global warming. We certainly, as I demonstrated with the chart I gave you last time, face aging infrastructure like we never have before. SARS was not even in our worst dreams at that point in time.

We are in a different communications age, in a much more instant age. None of us was saddled with Black-Berrys in those days, and some of the other things we have now. This report doesn't advocate strong recovery plans, which we now have and didn't have in place then. The report didn't suggest that, either. There were no mandatory training or exercises for either municipalities or provinces at that point in time.

It's a long answer, but I think the answer is this report served us well from 1981, but I would not endorse it if it was made—personally; this again is my personal view. I think we're in a different age in 2004.

**Mr Kormos:** And McMurtry may have agreed with you. I would dearly love to find out.

**Dr Young:** I hope so.

**Mr Kormos:** I know. But you see, having said what you did—you said the Mississauga train derailment. Come on. Hurricane Hazel, because that had been talked about. When was that—1957? We had already undergone two decades plus of hyper-planning—and we talked with Mr Collenette about that earlier today—around the risk of nuclear attack. So it's not as if we were oblivious to these catastrophic things. Granted, we didn't have the menu that we have now, but we weren't oblivious to it.

**Dr Young:** Well, we weren't oblivious to it, but I think the size, the scope and the regularity of them is very different now than it was before. I agree with you. Hurricane Hazel struck several countries, but virtually everything we can think of now, whether it's SARS, 9/11 or the Bali bombing, affected multiple nations all at the same time. The world we live in is much more complex. The management of these and public attitudes are very different. Things we believed and the way we behaved in 1981 is not the way the world works in 2004.

**Mr Kormos:** Thank you, sir.

**Mrs Sandals:** Thank you for coming back, Dr Young. One of the things that we seem to have heard about

consistently from the people who are the first responders, the front-line health care workers, particularly in the case of SARS, was that there seemed to be a fair amount of confusion around conflicting directives and who was in charge. What we've heard consistently from a variety of people is, "Let us know who's the boss." Thank you for discussing the political policy decision versus the implementation decisions that someone like yourself would be making.

But we've also had some conflicting advice around, when is it the chief medical officer of health? Should we have a chief veterinarian? Should it be yourself? There's this expressed need: "Tell us who is the boss." Is that something that we should be trying to codify in legislation, or is that something that is codified in your job description, essentially? Or is it something that should be played out on a crisis-by-crisis basis?

**Dr Young:** That's a very difficult issue, and that's why there isn't an easy answer. My own belief is that a structure needs to be put in place and agreed to, but it will be somewhat dependent by the time and by the people who are available at the time.

Let me explain what I mean. There is a need in an emergency for someone who is technically very good. Let's use an example of a health emergency, and I'm not referring to the current people in the role. But we could have a medical officer of health who is technically and medically very competent but very uncomfortable in the overall managing of an emergency situation. They're different skill sets.

In an emergency, as I've tried to illustrate to you, health is maybe a central issue, but it's a long way from being the only issue. There's a huge big picture, and that's what emergency management is: putting all of that together. So you have to have both. You have to have good technical advice and good technical leadership in the area—that's very important—but you have to have overall management and overall direction and coordination.

The way I believe it should work, then—and it did. The directives, of course, were confusing in SARS because there was no textbook to go to and we were doing it on a day-by-day basis. So the criticism is valid in that we were trying to protect people and do the right things, but we were doing it in a medical vacuum. So I accept the criticism, but faced with it again, it would still be a difficult thing to do.

But the reality was that on the technical side of it, there was virtual unanimity among all of us as to what to do and how to do it. Then there's the question of putting it all together and connecting it all. So in a medical emergency, if we had a repeat of SARS, the Ministry of Health would be managing and putting together the expert committee and working on the medical issues. I would certainly be there and be part of that and have input into that. There are all the other pieces that have to be considered, too, as we learned in SARS, and have to be managed, and that's not Sheela's responsibility to look at that. I would be bringing that stuff to the table and be

concerned with that as well, and the overall pieces. Then we marry that at the cabinet table.

**1640**

The managing of it is two skill sets, and it's true: There's the highly technical area that you're most concerned about, but there's the overall management and putting it together, and that's my role. It happens that I'm a doctor and I understand the medical stuff, and that's why I say that could change. You could have somebody who is completely foreign to the area and doesn't understand any of it, but somebody still has to put the overall management together.

The problem with enshrining things in legislation is that none of us are going to be at this forever and it would change over time, depending on the strengths of the people available in the province. So I'd worry about enshrining. I'd make sure that somebody is thinking about, for now, what are we going to do, and always looking at that. To my mind, that's the most important way of doing it, and I think we've been doing that. Certainly we've been having those discussions in government.

**Mrs Sandals:** I noticed in the legislation, which MAG had drafted as contingency legislation—and they probably were thinking about individuals because, as you've just pointed out, they seem to have drafted it so it's sunsetted. So this is probably a compliment to you. But they did have a clause in that allowed the Premier or cabinet, as the case may be, to delegate some of those emergency powers specifically to the person with your title. Should there be some facility within the legislation to delegate emergency powers to a lower level, even if we don't codify to whom that is done?

**Dr Young:** Yes, I believe there should be. Again, you're on the line between policy and operational, but what you're doing is talking about these extraordinary powers, so you want to have accountability and you want to have very tight controls on them. But in practical terms, if, for example, the basic policy decision was made to order an evacuation, once that policy decision is made and it has to be operationalized, I don't want to have to wake up the Premier all night long to ask him whether Mrs Smith can be evacuated versus Mr Jones. I want to have the ability to operationally manage that, and I believe that's the direction that's being taken in the attempt by the Attorney General to recognize the operational need to make these things work and the recognition that something could happen in the middle of the night and a decision has to be made instantly. I believe there's provision to allow someone in my position to effect something and then go and get approval afterwards because it was so urgent that it be done that it had to be done first. I think that has to be there as well.

**Mrs Sandals:** This was a decision at the political level, obviously, but the example we heard this morning from Mr Collenette was that if the planes are in the air over the Atlantic Ocean, somebody has a couple of minutes to figure out where they're going to land.

**Dr Young:** Yes. You very often don't have a long time and you just simply have to do something. It's a

sensible thing and you know it'll probably be all right afterwards, but it's nice if it's legislated first and then you have a process of going back and accounting for it after.

**Mr Arthurs:** Dr Young, just a few things. When you began, you made reference to provincial emergencies as being a catastrophic event and you identified some of the kinds of things that the general powers would allow for that otherwise wouldn't be available, everything from access to property to the whole warrant issue, evacuation, as has been referenced now, the conscription of people, the acquisition of goods and those kinds of things—the centralization of authority.

There have been a number of incidents that have been identified and that we've talked about here over the past few weeks—these have occurred over a period of time, everything from the 9/11 situation to the blackout—which one might consider to be of a province-wide impact and potentially catastrophic and which, in my view, might require the application of provincial powers, potentially of the nature we're talking about.

SARS is maybe somewhere in the middle, whether it got to that scale within the context of it being isolated for the most part within the GTA and didn't spread—

**Dr Young:** That's why we made it a provincial emergency, so that would happen. That was good management. That's why it was a provincial emergency, so it didn't get out in the rest of the province.

**Mr Arthurs:** And that was a good thing. Municipal emergencies, whether the Peterborough flood, even the Mississauga train derailment in the past—I wouldn't see those as being of a scale that would warrant the application of provincial emergency status if these general powers were being put into effect. Certainly a nuclear event, to me, and that's obvious from my past history, there isn't too much question about making—

**Dr Young:** That already is. A nuclear event is already a provincial emergency if it reaches a certain point.

**Mr Arthurs:** But the nature of the powers within that would be, for me, far more obvious than some of the others. I have a greater comfort level in discussion if there's clarity on the scale of the catastrophe, that we isolate from the legislation municipally declared emergencies and provincially declared emergencies in any legislation that might consider the powers we're talking about in this deliberation, that it's very clear that the level of the emergency was at such a scale that it allowed these extraordinary powers to be brought into play. Is that in essence, in part, the kind of thing you—

**Dr Young:** Yes.

**Mr Arthurs:** As I say, when you came in today, I kind of thought you had the guns blazing at first.

**Dr Young:** No. I very much see this as a size that is a provincial emergency. I'm not advocating these powers at a municipal level in a municipal emergency. I think if there's a municipal emergency that is getting large enough, it could be a localized provincial emergency but you would look at it and look at what goods and services and expertise you have to bring to bear. Very often we're

able, as we were in Peterborough, to go to Peterborough and provide expertise and provide financial assistance and do all the things we needed to do without escalating that municipal emergency into a provincial emergency. It didn't change anything we would have done.

**Mr Arthurs:** To have the capacity to ramp it up at that point in time.

**Dr Young:** That's right.

**Mr Arthurs:** There very well could be, I would think, a provincial emergency that, in and of itself, might not require the application of these extraordinary powers. Quite frankly, there could be a provincial emergency where legislation could be in place that wouldn't even be in use for a provincial emergency.

**Dr Young:** I would hope that in most provincial emergencies you would never need the legislation, that you wouldn't use the extraordinary powers. You only use them in extraordinary circumstances and when you have to use them. The calling of an emergency, in my mind, is very different from—you don't call it just because you need the powers; you call it because the issue is big enough that it needs the resources and the attention of the province and the attention of the public. One of the features might be the use of extraordinary powers or authority.

But the key also is that if you have these abilities, very often then, you can find ways and compromises and settlements short of even having to use them. If somebody then says, in an evacuation situation, "Can it be ordered?" and you can say yes, then that's different from saying, "Well, no, it actually can't be." Now you're into a negotiation, into a fight and into a problem.

**Mr Arthurs:** Could the application, the inclusion in legislation of these extraordinary powers, be in distinct legislation?

**Dr Young:** I would recommend against it. I think when you separate it out, you're making it—it makes more sense to me that it's part and parcel of an emergency, and I don't think it's an accident that it sits within other acts as well and not as a separate and distinct thing. If you start putting it outside and putting it separately, then you're saying, "We've got about five levels of emergencies," and I think it's very confusing.

If we start and we have a provincial emergency and then on the third day I need an extraordinary power, we announce we've bumped it up and we're using an extraordinary power, and two days later I say, "We've still got an emergency, but we've bumped it down one level of emergency," what you get is the weariness and the problems the United States is having with the coding system: What does it mean and how do you manage and do I not have to pay attention now because the extraordinary powers are out? I think it just becomes potentially a management issue in running the emergency, because you've got so many levels that people are going to be arguing with you, "Well, yesterday I had to follow your direction; today I don't." So I think there are issues around it.

1650

**Mr Arthurs:** I want to be clear: The authorization for the application of legislation, to be able to initiate activity, does that rest with the political body or whomever?

**Dr Young:** Yes. I think in my reading of it, unless it was some extraordinary thing happening that didn't allow time to even get any political OK, then you would do it and go and get approval. In every emergency, no matter what you do, the calling of an emergency or the use of powers, you have to understand that there's a slow way and a medium way and then there's the time that you can't follow any of those rules and you have to do it quickly. In essence, yes, it's a political decision to use the powers.

**Mr Arthurs:** But my concern is not whether the capacity to begin a process of responding—because I think that should be a fairly natural reaction within emergency management, provincially or locally, as the case might be. The ability to actually declare an emergency is the point I'm driving at.

**Dr Young:** Currently it's the Premier, and ideally it would be a cabinet committee. But there would be circumstances where you either didn't have time or you physically couldn't get a cabinet committee together.

We were very lucky during the power blackout. We got a number of ministers very quickly, and they happened to be present when the Premier declared the emergency. There could be other circumstances where that's not possible. Ideally, it would be a group of cabinet that would make the decision.

**Mr Arthurs:** It would be a group or be an individual in that sense. OK. Thank you. That's helpful.

**The Acting Chair:** MPP Broten.

**Ms Broten:** I just wanted to pick up on something that Mr Arthurs was talking about. We've heard some of the individuals who have made deputations before the committee talk about scalable powers, that we might consider scalable powers. In your response to Mr Arthurs's question, I'm getting the impression that you are opposed to scalable powers. I wanted to get confirmation on your views on that and an explanation, if you are opposed, just some clarity as to why that is.

**Dr Young:** I think the more you do scales and the more you do these things and the more complicated you make it, you risk, first of all, it not being practical when you need it; you make it unduly complicated and rule-bound. It may not work for what you need. I think you need adequate and proper accountabilities in all of these things. But the nature of emergencies is, as I said in my remarks—if I could predict all of the things, we wouldn't need emergency legislation because we wouldn't have emergencies. Everything you couldn't think of is what happens during an emergency. So it always worries me if you get too many rules and too many scales, and it's very confusing to the public. That's my worry. It's an extraordinary time, and you need to act. The aim of the whole exercise is to save lives. You're going to do what you need to do to save lives at a point like that, and somebody

has to lead. The guiding principle is, "We're here to save lives."

**Ms Broten:** That's what we heard from the experience in Quebec, that the sole purpose of their legislation, which is viewed to be turned to in extraordinary times, is to save lives. They indicated to us that in fact since 2001—I think I'm right—they've never turned to that legislation. I think it's important in the context of our discussions to acknowledge that some provinces that have had these powers in place have never turned to them, have never used them.

**Dr Young:** Yes, and we've only had two provincial emergencies in the history of Ontario. They both happened last year. So you're right, you're absolutely right: You could have the powers and never need them. I couldn't be more serious when I say that even if we have them, my fondest hope is that we never use them, and I mean that.

**Ms Broten:** I just have one last question with respect to accountability mechanisms. There are various forms of accountability. Certainly, again the Quebec legislation is fresh off the top of my mind. If a minister makes a decision, the calling to account is just 48 hours back to cabinet; if it's the Premier of the province, it's seven days or something back to the Legislature—various mechanisms in place. Do you have any opinions as to the accountability mechanisms and the time frames from your perspective?

**Dr Young:** As you've gathered, I have opinions on most things, so I do on that as well. Again, I think it's practical. I firmly believe there must be accountability and that's the way you have to operate, but I also think you have to be careful that you don't trip over your accountability. In the middle of an emergency, there is an awful lot going on and there are a lot of ends, so if your accountability time frames are either too rigid or too short, you're going to stop what you're doing and lose focus on what you're doing just so you can go back and account. Then you're going to be accounting for why you lost your focus and why people died because you were busy producing a report to go to a Legislature or somewhere else. So I think the accountability has to be at a point in time when you have the ability and the luxury to do it and do it well and to stop and consider it. It should be on an ongoing basis but it shouldn't be so tight that it interferes with the actual management of the emergency.

**Ms Broten:** I guess, similarly, it shouldn't be such a long period of time that any discussion of what happened and the accountability is moot. You could certainly put the time frame so far away that it doesn't really matter at that point because we're months and months past the incident.

**Dr Young:** Absolutely. But I would also say that you don't want it inadvertently to turn into a political discussion rather than a public safety discussion in that there are risks if it's too close. There's a balance there between all of these things. I understand them and there is no magic. Unfortunately, it would depend on the type of emergency and how long you're engaged in it. I would

have been quite happy in the power blackout—you know, two weeks after we're in pretty good shape and we can start to account for it. In SARS, after two weeks we were still at the height of it, and being accountable two weeks into it would have been a very major burden.

The other thing, from a personal point of view, is that after you're over it, for the people who are involved in it, there's a certain level of fatigue that sets in at that point and you'll get a better accounting a little bit later, when you've had a couple of days off once in a while.

The problem with accountability—and I don't know the solution; I can't give you the answer—is that it does vary to some extent. If it's an ongoing process and an ongoing emergency like SARS, the accountability needs to be further out; if it's a shorter thing, then the accountability can be sooner. So there's no absolutely right answer, in my view.

**Mr Zimmer:** We heard this afternoon the California model, where they said they try to manage state emergencies if at all possible at the local level: the local political level or the local geographical level. Do you see that sort of model in Ontario and, if that was the Ontario model, when would the central authority, that is, the Queen's Park authority here, intervene or override or get involved in what Mr Arthurs was concerned about, a very local municipal emergency?

**Dr Young:** The practical way you manage an emergency is that you manage as much of it as far down the string and as locally as possible. Even if we look at whether it's SARS or whether it's a terrorism incident or any sort of thing, a lot of the actual management of it is taking place on the ground at the place—or the floods in Peterborough. When an event overwhelms a community or when the event gets bigger than the powers of the community, then it becomes a provincial concern as well. So in the case of SARS, for example, the hospital system, which it actually most affected, is really a provincial responsibility, not a local responsibility. In my view, then, it became a provincial problem because we needed to effect change in the hospital system and do it quickly. Metro Toronto doesn't have that authority and doesn't have any jurisdiction there. There are obviously areas where there's provincial expertise. In a terrorist act, for example, all of the death investigation, expertise and authority is at the provincial level. It's neither at municipal or federal.

**1700**

Certain things can only be done at certain levels of government statutorily, so you sort of balance all of that in. But what you try to do, irrespective of where it's running, is run it with all levels of government at the table together, and you run it in an integrated fashion, and you do as much as you can at ground level. In SARS, we brought Toronto and York and Durham public health units into the mix, and they sat at the table, as did the federal government, while we were making the decisions. So you bring people together and you try to form a team and build a consensus as much as you can.

We went to Peterborough to assist. We certainly didn't try to take over. We tried to complement, and then we

offered financial assistance and we offered technical expertise. The Ministry of Health got a nursing home open in a hurry, and we did all kinds of things that only the province could do. We got the hydro turned on quickly, which only we had the ability to do. So we broke the bottlenecks where we had control.

**Mr Zimmer:** In the California model, if I understood it properly, the request for the central state government to get involved comes from the bottom up. That is, the local area calls Sacramento and says, "Help," but Sacramento waits until the local jurisdiction calls. Is that the model here?

**Dr Young:** I think we're a little more hands-on here, perhaps. We tend to be monitoring a little more and watching a little more. We're very likely to go through the door and say, "Can we help?" and, "We are here." When you get into different jurisdictions, you get into different splits and who does what. So I think different models work, but we would be much more inclined here to be a little more proactive and be there and a little more active a little sooner.

**Mr Zimmer:** If you met some resistance from a local political jurisdiction, who would have the hammer?

**Dr Young:** Well, it depends on the situation and on what someone needed. I think it really would depend on the nature of it. Even when there's resistance, generally, if you move it up the line—my own experience is that, if we have a discussion with the mayor in a little more detail and move it a little higher, there's an agreement on what to do and people move forward in the public's best interest. I think almost anything's solvable, and you rarely have to resort to who's in charge or power plays.

**Mr Zimmer:** But in the last analysis, if push comes to shove?

**Dr Young:** If it was large enough and the province believed that public safety was an issue, then the province would take over, but I don't envision a situation, and certainly haven't come anywhere near a situation, like that in this province. I think the level of co-operation between police, fire, ambulance, civic officials, emergency officials, provincial officials—what we're working on is building those relationships.

**The Acting Chair:** Another question, Mrs Sandals?

**Mrs Sandals:** Yes, just a quick follow-up. In the discussion you were just having with Ms Broten around accountability, if I was understanding you correctly, where you were talking about the sort of accountability after the fact, you were referring to the requirement to report back to the Legislature as opposed to, if you were hypothetically exercising an emergency power, having a very short-term report back to cabinet for confirmation, which would be reasonable.

**Dr Young:** That's not an issue because what ends up happening is, as happened in, for example, the hydro blackout, I was seeing cabinet once or twice a day anyway. So it's not a problem.

**Mrs Sandals:** Yes, I just wanted that clarified, that there's one level of accountability, which is the order, and the other is the report.

**Dr Young:** At the height of an emergency, cabinet's your new best friend. That's right.

**The Acting Chair:** I just have a couple of questions, Dr Young. In the deputation made by the superintendent of the OPP, Maurice Pilon, he was quite emphatic in saying that we don't need any more powers, that the existing power structure is more than adequate.

**Dr Young:** Yes, and that's in regard to policing in what they do day by day, I believe. I think within the realm of what police do and how they do it, I have no problem; they've learned to operate and they do what they do. The problem is that most of what we're looking at are much broader things and much broader issues; for example, the right of entry or the right to trespass for workers doing sandbagging along a river, which is different from police entering in other circumstances. I don't take any issue with what he says specific to what he does and their experiences. I've got the broader view because I've got the larger management issues, not just the policing issues.

**The Acting Chair:** I guess what it gives rise to is the delicate balance that you have to have in legislation to ensure that existing powers, where they may be adequate, are maintained at that level and only triggered if the issue of policing all of a sudden has to dovetail into the issue of health safety in a SARS-like situation.

**Dr Young:** I agree that we should be looking eventually, or now or whatever, at all the existing legislation to see whether or not there are things that could be added to give us the necessary tools to prevent things from becoming an emergency. That's a different issue than when you have a full-blown provincial emergency and you may need very different and broader powers. I wouldn't want to see anything that takes away from what we currently have that allows us to operate day by day. In fact, if we can strengthen it, we'll decrease the number of times we have to call a provincial emergency, we'll manage events better on a day-by-day basis and we'll be able to lessen the effect of anything that does happen.

**The Acting Chair:** One other issue that comes up by cynics is, "Well, this is not a matter of powers or legislation; it's a matter of resources, resources, resources." How do you respond to that?

**Dr Young:** Would police and emergency management—everyone—like more resources? Of course. I can tell you all kinds of places where I'd like more resources. That's a different issue: where to put the resources and how much. But no matter how much resource you have dedicated to things, the nature of an emergency is that it's a bigger issue than you have resources. So you can't have enough resources in an emergency. In the middle of 9/11, as big as New York City was, everybody had to pile in and assist as well. As big as Toronto public health is, we needed provincial help and federal help and help from experts from other jurisdictions to assist us. We needed experts as well. You can't put enough resources—it's a separate question, in my mind. You couldn't build anything big enough to withstand every possible thing and be

ready and never have to call an emergency. I think we'd be turning over 100% of our income to taxes.

**The Acting Chair:** The final question I have is that you have been directly involved in the front lines of the two provincial emergencies: SARS and the blackout. As one intricately involved, seeing how things work, don't work, how our legislative apparatus meets the need or doesn't meet the need, what are you saying to this committee in a very concise way that you would like to see corrected, if anything?

**Dr Young:** Hopefully what I've said is that we have a lot of work to do in a number of areas. I think we are working in those areas, including the regulation and plans and training. Specifically, this legislative committee was then asked to look at whether or not we have the legislative tools in an emergency. It's my considered opinion that I can think of many instances where our efforts would be hampered by the lack of specific authority within the existing legislation. I believe there are ways of building proper accountability into it and, recognizing that other jurisdictions have it, putting safeguards in place and ensuring that it's exercised by the right people that make it safe, because the goal of it is to save lives. I would find it very frustrating to try to manage something

and not be able to do something that would result in saving lives. I think we all would find the post-mortem rather difficult to handle if we knew that we had weaknesses—and we do; I've seen them directly.

**The Acting Chair:** So before we go into our next provincial emergency—and hopefully we won't—we need to give you or others like you the tools to better deal with those emergencies to protect the public interest?

**Dr Young:** I would appreciate it. I think this has been a very positive process and I think it's important that you heard the risks and the benefits both, but I would certainly ask for greater authority in certain situations—very well defined—in order to be able to protect people in another emergency.

**The Acting Chair:** On behalf of the committee, I would like to thank you, Dr Young, for being here and making yourself available for our questions and comments. We again thank you for helping us through this challenging process that we're going through.

**Dr Young:** Thank you very much.

**The Acting Chair:** The committee now stands adjourned forever—no, no, till September 7.

*The committee adjourned at 1711.*







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