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Thursday 1 June 2006

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Jeudi 1er juin 2006

Standing committee on justice policy

Emergency Management Statute Law Amendment Act, 2006

Comité permanent de la justice

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

Chair: Vic Dhillon
Clerk: Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 1 June 2006

Jeudi 1er juin 2006

The committee met at 1007 in room 228.

EMERGENCY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2006

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

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

The Chair (Mr. Vic Dhillon): Good morning. Welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997. We'll continue the clause-by-clause consideration of Bill 56. I believe we finished in section 1 and we'll continue with page 16, with a government motion. Mr. Balkissoon.

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that subsection 7.0.12(2) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

"Content of report

"(2) The report of the Premier shall include information,

"(a) in respect of making any orders under subsection 7.0.2(4) and an explanation of how the order met the criteria for making an order under subsection 7.0.2(2) and how the order satisfied the limitations set out in subsection 7.0.2(3); and

"(b) in respect of making any orders under subsection 7.0.2.1(2) and an explanation as to why he or she considered it necessary to make the order."

Bill 56 requires the Premier to report to the assembly—

Mr. Peter Kormos (Niagara Centre): I understand the purpose of the motion.

Mr. Balkissoon: Okay, super.

The Chair: All those in favour? Opposed? Carried.

Next is a government motion on page 17.

Mr. Balkissoon: I move that subsection 7.0.12(4) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

"Commissioner's report

"(4) If the Commissioner of Emergency Management makes any orders under subsection 7.0.2(4) or 7.0.2.1(2), he or she shall, within 90 days after the termination of an emergency declared under subsection 7.0.1(1), make a report to the Premier in respect of the orders and the Premier shall include it in the report required by subsection (1)."

This is just to clear up a problem of timing. The commissioner's report and the Premier's report were both due in 90 days in the past. This allows the Premier to receive the commissioner's report and include it in his report.

The Chair: Thank you. Any debate? All those in favour? Opposed? Carried.

I believe we have an agreement to skip over page 18?

Mr. Kormos: The Conservative motion next: On behalf of the Conservative caucus, I ask that it be held down till later this morning.

The Chair: Okay. We'll proceed to the next government motion on page 19.

Mr. Balkissoon: I move that section 7.0.13 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Exception

"(4) No person shall be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that is retroactive to a date that is specified in the order, if the failure to comply, interference or obstruction is in respect of conduct that occurred before the order was made but is after the retroactive date specified in the order."

This motion is as it reads. It just gives protection to someone who acted before an order was issued. If the order was retroactive, it just covers that period of retroactivity for further protection.

The Chair: Any debate? All those in favour? Opposed? Carried.

Mr. Kormos: Chair, I note that the next government motion is a rather substantive one. I wonder if we might have a five-minute recess before that one is moved.

The Chair: Is there any opposition to a five-minute recess? Five-minute recess.

The committee recessed from 1012 to 1021.

The Chair: We'll be recessed until 10:45.

The committee recessed from 1021 to 1045.

The Chair: This committee is called back to order. We'll be resuming the government motion on page—

Mr. Balkissoon: Maybe we can go back and do 18?

The Chair: Right. My apologies. We'll go back to number 18. It's a PC motion. Mrs. Elliott.

Mrs. Christine Elliott (Whitby–Ajax): Thank you, Mr. Chair. I apologize for being delayed this morning. I appreciate the committee's accommodation. With respect to number 18, we won't be proceeding with that motion.

The Chair: Thank you. The next one is a government motion, page 20.

Mr. Balkissoon: I move that subsection 1(5) of the bill be struck out and the following substituted:

"(5) Section 7.1 of the act is repealed and the following substituted:

"Orders in emergency

"Purpose

"7.1(1) The purpose of this section is to authorize the Lieutenant Governor in Council to make appropriate orders when, in the opinion of the Lieutenant Governor in Council, victims of an emergency or other persons affected by an emergency need greater services, benefits or compensation than the law of Ontario provides or may be prejudiced by the operation of the law of Ontario.

"Order

"(2) If the conditions set out in subsection (3) are satisfied, the Lieutenant Governor in Council may, by order made on the recommendation of the Attorney General, but only if the Lieutenant Governor in Council is of the opinion described in subsection (1),

"(a) temporarily suspend the operation of a provision of a statute, regulation, rule, bylaw or order of the government of Ontario; and

"(b) if it is appropriate to do so, set out a replacement provision to be in effect during the temporary suspension period only.

"Conditions

"(3) The conditions referred to in subsection (2) are:

"1. A declaration has been made under section 7.0.1.

"2. The provision,

"i. governs services, benefits or compensation, including,

"A. fixing maximum amounts,

"B. establishing eligibility requirements,

"C. requiring that something be proved or supplied before services, benefits or compensation become available,

"D. restricting how often a service or benefit may be provided or a payment may be made in a given time period,

"E. restricting the duration of services, benefits or compensation or the time period during which they may be provided,

"ii. establishes a limitation period or a period of time within which a step must be taken in a proceeding, or

"iii. requires the payment of fees in respect of a proceeding or in connection with anything done in the administration of justice.

"3. In the opinion of the Lieutenant Governor in Council, the order would facilitate providing assistance to victims of the emergency or would otherwise help victims or other persons to deal with the emergency and its aftermath.

"Maximum period, renewals and new orders

"(4) The period of temporary suspension under an order shall not exceed 90 days, but the Lieutenant Governor in Council may,

"(a) before the end of the period of temporary suspension, review the order and, if the conditions set out in subsection (3) continue to apply, make an order renewing the original order for a further period of temporary suspension not exceeding 90 days;

"(b) at any time, make a new order under subsection (2) for a further period of temporary suspension not exceeding 90 days.

"Further renewals

"(5) An order that has previously been renewed under clause (4)(a) may be renewed again, and in that case clause (4)(a) applies with necessary modifications.

1050

"Effect of temporary suspension: time period

"(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted.

"Effect of temporary suspension: fee

"(7) If a provision requiring the payment of a fee is temporarily suspended by the order and the order does not provide for a replacement fee, no fee is payable at any time with respect to things done during the temporary suspension period.

"Restriction

"(8) This section does not authorize,

"(a) making any reduction in respect of services, benefits or compensation;

"(b) shortening a limitation period or a period of time within which a step must be taken in a proceeding; or

"(c) increasing the amount of a fee.

"Orders, general

"Commencement

"7.2(1) An order made under subsection 7.0.2(4) or 7.1(2),

"(a) takes effect immediately upon its making; or

"(b) if it so provides, may be retroactive to a date specified in the order.

"Notice

"(2) Subsection 5(3) of the Regulations Act does not apply to an order made under subsection 7.0.2(4), 7.0.2.1(2) or 7.1(2), but the Lieutenant Governor in Council shall take steps to publish the order in order to

bring it to the attention of affected persons pending publication under the Regulations Act.

"General or specific

"(3) An order made under subsection 7.0.2(4) or 7.1(2) may be general or specific in its application.

"Conflict

"(4) In the event of conflict between an order made under subsection 7.0.2(4) or 7.1(2) and any statute, regulation, rule, bylaw, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the order made under subsection 7.0.2(4) or 7.1(2) prevails unless the statute, regulation, rule, bylaw, other order or instrument of a legislative nature specifically provides that it is to apply despite this act.

"Chief medical officer of health

"(5) Except to the extent that there is a conflict with an order made under subsection 7.0.2(4), nothing in this act shall be construed as abrogating or derogating from any of the powers of the chief medical officer of health as defined in subsection 1(1) of the Health Protection and Promotion Act.

"Limitation

"(6) Nothing in this act shall be construed or applied so as to confer any power to make orders altering the provisions of this act.

"Same

"(7) Nothing in this act affects the rights of a person to bring an application for the judicial review of any act or failure to act under this act.

"Occupational Health and Safety Act

"(8) Despite subsection (4), in the event of a conflict between this act or an order made under subsection 7.0.2(4) and the Occupational Health and Safety Act or a regulation made under it, the Occupational Health and Safety Act or the regulation made under it prevails."

This is a pretty hefty amendment. It's more of a cleanup process to organize the bill. It rewrites section 7.2 to clarify the override clause with regard to certificates and licences. It rewrites the existing EMA, section 7.1, which has a scheme of emergency orders to be made by cabinet. It also does a little bit of a cleanup where some places of the bill have orders in council and some have orders, and it specifies now that they are orders, just to provide consistency throughout the entire Bill 56.

The Chair: Debate?

Mr. Kormos: Only a Liberal could describe a four-page amendment which is in effect the war measures provision of this bill as but housekeeping and cleanup. What this bill does is allow the Lieutenant Governor in Council, effectively the Premier and cabinet, in private, in secret, behind closed doors, without public scrutiny, without press scrutiny, without a record—no Hansard—to suspend the operation of laws in the province of Ontario for up 90 days. That's in addition to the 14 listed powers that are earlier in the bill.

New Democrats don't buy into that. That's not what we need in this province for emergency management. We need front-line resources, including staffing. We need respect for those people and we need for them to be involved in the planning process. We will be voting against this and I'll be calling for a recorded vote.

The Chair: Any further debate? If there's no further debate, I'll put the question.

Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Berardinetti, Van Bommel.

Nays

Elliott, Kormos.

The Chair: Carried.

Next is an NDP motion, page 21a.

Mr. Kormos: Do you prefer that before 21?

The Chair: I'm sorry.

Mr. Kormos: It's up to you. I'm in your hands.

The Chair: A government motion, page 21. Thank you.

Mr. Balkissoon: I move that subsection 11(1) of the Emergency Management Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"Protection from action

"11(1) No action or other proceeding lies or shall be instituted against a member of council, an employee of a municipality, an employee of a local services board, an employee of a district social services administration board, a minister of the crown, a crown employee or any other individual acting pursuant to this act or an order made under this act for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty under this act or an order under this act or for neglect or default in the good faith exercise or performance of such a power or duty."

This, as it reads, just provides protections for individuals against liability. It includes municipalities, local boards and DSSABs because they come under the description of a municipality earlier in the bill.

The Chair: Any debate? No debate. All those in favour? Opposed? Carried.

Mr. Kormos.

Mr. Kormos: I move that section 11 of the Emergency Management Act, as set out in subsection 1(6) of the bill, be amended by adding the following subsection:

"Indemnification of employees

"(3.1) The crown or, in the case of an employee of a municipality, the municipality, or in the case of any other employer, the employer, in accordance with such guidelines as may be approved by the Lieutenant Governor in Council, shall indemnify an employee acting pursuant to this act or an order made under this act for reasonable legal costs incurred,

"(a) in the defence of a civil action, if the employee is not found to be liable; and

"(b) in respect of any other proceeding in the which the employee's manner of execution of the duties of his or her employment was an issue, if the employee is found to have acted in good faith."

It's not enough to merely have the indemnification section that the government amended in its last motion, because that's meaningless to an employee who can raise the defences that are contained in section 11 of acting in good faith, but it costs them $20,000, $30,000, $40,000, or $50,000 in legal fees in a court action to defend themselves. Sure, they'll be found not liable if they acted in good faith, but they'll have coughed up—even with the recovery of costs by virtue of court-ordered costs, you know, Chair, that that doesn't mean all of your costs. It's in the very rarest of circumstances that anything close to all of one's real legal costs are covered in an award of costs.

This is a very reasonable proposal. It says that, yes, you give the employees that defence but then you also make sure it's meaningful by ensuring that they have the capacity to offer up that defence should they be prosecuted or sued.

The Chair: Any debate?

Mr. Balkissoon: The government's position is that subsection 11(1) provides the protection from personal liability as long as the person is acting in good faith in the performance of their duties under this act. That protection specifically includes barring actions and proceedings; therefore, civil action cannot be brought against an individual, in accordance with this subsection. The government will not be supporting this amendment.

1100

The Chair: Any further debate?

Mr. Kormos: You have to plead that defence. Do you understand what I'm saying? If somebody sues you—they've got the sheriff knocking on your door; they serve you with a pile of papers this thick—you've got to go to a lawyer. You've got to pay that lawyer his or her reasonable fee. His or her reasonable fee is going to amount to thousands and thousands of dollars, even in terms of preparing a statement of defence, those initial pleadings.

I supported—everybody here supported—the indemnification section, the defence. But just because you have a defence doesn't mean that nobody can sue you. People sue each other every day when there are reasonable defences to the action. That's why you have lawsuits. You've got a statement of claim—I hope I've got the current language right—and you've got a statement of defence. Then you do all the process. This is to make sure that employees—not the folks making $85,000 and $95,000 a year like MPPs at Queen's Park, or parliamentary assistants with their $12,000 or $13,000 stipend in addition to the $86,000 or so that's their base salary; we're not talking about those people. We're talking about people making $30,000 and $35,000 and $40,000 a year, raising families. Those are municipal workers; those are civil servants. Those are the people who are going to find themselves at the receiving end of lawsuits. It's not enough just to give them a defence. We endorse that. You've got to give them the capacity to plead that defence, which means paying their legal costs.

I'm asking for a recorded vote on this one, sir.

The Chair: Any further debate?

Mrs. Elliott: I agree with Mr. Kormos that the indemnity provision does protect you if you're found to be acting in good faith in the performance of your duties, but you may be called upon to prove that, and you will incur substantial legal costs if that's the case.

The Chair: Thank you. All those in favour?

Mr. Balkisoon.

Mr. Balkissoon: I hear what the opposition party and the third party are saying, but from my personal experience in being in the municipal world for a long time, municipal employees have indemnification as long as they are performing their duties in good faith as directed by the municipal policies and procedures, etc. The same would apply for agencies, boards and commissions, etc. This is why we disagree with this particular motion. We also have the previous clause that we dealt with—no, we're going to deal with it soon—number 25, in which you can apply to the Lieutenant Governor in Council, if there's an extraordinary case, for covering some expenses that may or may not arise.

We believe that the agencies and the municipalities—that people who are performing the emergency duty are indemnified by their particular organization. But if there's an extraordinary case, you can apply to cabinet.

The Chair: Thank you. Any further debate?

Mr. Kormos has asked for a recorded vote.

Ayes

Elliott, Kormos.

Nays

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: That's lost.

Next is a government motion.

Mr. Balkissoon: I move that section 11 of the Emergency Management Act, as set out in subsection 1(6) of the bill, be amended by adding the following subsection:

"Application of subs. (1)

"(3.1) In the case of an order that is made retroactive to a date specified in the order, subsection (1) applies to an individual referred to in that subsection in respect of any act or any neglect or default that occurs before the order is made but on or after the date specified in the order."

This amendment is again made to provide retroactivity, and we think it should be supported.

The Chair: Any debate? No debate. All those in favour? Opposed? Carried.

Mr. Balkissoon.

Mr. Balkissoon: I move that the definition of "municipality" in subsection 11(4) of the Emergency Management Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"'municipality' includes a local board of a municipality; ('municipalité')."

This is a required amendment to remove the—

Mr. Kormos: We agree with it.

Mr. Balkissoon: Okay.

The Chair: All those in favour? Carried.

Mr. Balkissoon: I move that subsection 13.1(1) of the Emergency Management Act, as set out in subsection 1(7) of the bill, be amended by striking out "an order made under this act" and substituting "an order made under subsection 7.0.2(4)."

This is another provision that supports the distinction between the Premier's orders and cabinet orders so that they could be kept separate. It clarifies that exemptions from the Expropriations Act, provided in section 13 of the bill, will only apply to cabinet orders and not Premier's orders.

Mr. Kormos: What a relief. So cabinet can expropriate, confiscate property without compensation but the Premier can't. Wow, I feel so much better now. I can go to bed happy tonight.

I'm going to oppose the amendment because—let's be very careful. The section of the act that it's amending is an incredibly offensive one. Nothing done under this act or under an order under this act constitutes an expropriation, and there is no compensation for the loss, including a taking of any real or personal property. Wow: except the discretionary, arbitrary, behind-closed-door power of the Lieutenant Governor in Council—that's subsection (3) of that section. This is incredibly offensive stuff. This is the stuff that takes place in totalitarian regimes. It does. This is an incredible affront where the determination of any compensation isn't done by a public tribunal, like a court under the Expropriations Act, where the rule of law prevails and where there's public oversight, but behind closed doors, in the secrecy, in the darkness, in the solitude of a cabinet room. Very offensive stuff.

As I say, this is the stuff you expect out of two-bit dictatorship regimes. The power of the Lieutenant Governor in Council to suspend the rule of law for up to 90 days and then renew it without scrutiny of Parliament is a dangerous thing. This is just outright offensive, and I'm opposed to the amendment, because we will of course have a chance to vote on subsection (7), but I'll be voting against section 1 in any event.

The Chair: Any further debate?

Mr. Kormos: Recorded vote, please.

Mr. Balkissoon: I would like to just remind the member opposite that we are dealing here with an emergency, and there will be times in an emergency, just to protect Ontarians, that we would require to use this, but it would be for the period of the emergency. There are other parts of the act that talk about that if land or whatever is commandeered, there will be a method of applying for compensation or the government is obligated to do restoration if necessary.

So it's a state where you're in an emergency, you have to act, and you don't have time to follow the processes that he's talking about. This is why we, the government, require this. If not, you'll hamstring the government's ability to act during an emergency.

Mr. Kormos: That's condescending pap, and again, it adds to the offensiveness of the whole direction that the government is taking here. The member should read the bill and understand what the compensation provisions are in subsection (3) of this very section that it purports to amend now: If a person suffers loss, including the taking of any real or personal property—so, clearly, the extraordinary powers contemplated include the taking of real and personal property—the determination of compensation shall be the Lieutenant Governor in Council, with such guidelines as may be approved by the Lieutenant Governor in Council. This is after the fact. This isn't during the course of an emergency; this is after the emergency presumably is resolved or addressed.

1110

What does this government have against our public court system that it won't permit courts, judicial authorities, to determine the quantum of compensation; that it won't allow a party who has been deprived of real or personal property, who's had it seized from him, confiscated, to make arguments in a public forum about the value of that property or the extent of his or her loss? This has nothing to do with emergency management. This has nothing whatsoever to do with emergency management.

The argument that the government should be making, and we dispute that, is that the extraordinary powers, 1 through 14, have to do with emergency management. This says that there will be no compensation determined in a public forum, in a court, pursuant to, amongst other things, the Expropriations Act.

This is the stuff of, again, two-bit totalitarian dictatorships.

The Chair: Any further debate?

Mr. Kormos: A recorded vote, please.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: It's lost.

Next is a PC motion. I understand we have a replacement.

Mrs. Elliott: We do. I believe everyone has a copy of the amended version of the amendment.

I move that section 13.1 of the Emergency Management Act, as set out in subsection 1(7) of the bill, be amended by adding the following section:

"Compensation for municipalities

"(4) Without limiting the generality of subsection (2), the Lieutenant Governor in Council may by order authorize the payment of the costs incurred by a municipality in respect of an order made under this act out of funds appropriated by the assembly."

This is simply to clarify that for any costs incurred by the municipality, there may be a claim for compensation.

The Chair: Any debate?

Mr. Kormos: New Democrats support this. This is a modest effort. The Conservative caucus has drafted it in such a way that it is consistent with the other sections of the act in that it's determined by the Lieutenant Governor in Council. I obviously have concerns about that, but clearly the interest that the Conservatives had when they drafted it that way was to make it palatable to the government so that the government would have no reason whatsoever for rejecting it.

This is cost incurred by a municipality, and we've already learned that the government was very careful to vote down the sections that were moved by the Conservatives yesterday—Mr. Dunlop, amongst others—that would permit municipalities to exercise some control over their own resources so as not to have resources depleted, putting that municipality at risk. The government voted that down so that the provincial government, the Premier—sitting in his backroom with his high-priced, unelected consultants—can call the shots, including forcing already hard-hit, already cash-strapped municipalities to utilize their resources.

When you're in small-town Ontario, whether it's Whitby–Ajax or down in Niagara, one major police investigation—a horrific crime, for instance—can generate hundreds of thousands, millions, of dollars in policing costs for small-town Ontario in the course of one fiscal year. One extraordinary event that requires utilizing firefighting services, paramedics, emergency personnel—and I'm talking about crises that happen that aren't even within the scope of provincial emergencies—hits these communities hard. We're not the communities of scale like Toronto. They put a huge dent. This is a provision whereby those municipalities can come to the government and seek some relief when they've been called upon—no, they've been ordered—to utilize scarce resources.

I support the motion.

The Chair: Any further debate?

Mr. Lorenzo Berardinetti (Scarborough Southwest): The government will be supporting this motion.

I just wanted to congratulate the parliamentary assistant, Ms. Elliott and Mr. Dunlop for working on this together to get a revised motion that's acceptable to all of us—including Mr. Kormos, it appears. So we will be in support of it, and ask for a recorded vote as well.

Mr. Kormos: One moment.

The Chair: Mr. Kormos.

Mr. Kormos: And for the life of me, I don't know how Mr. Balkissoon can suggest that this motion is the one that deals with the concerns raised by the incurring of legal costs by municipal employees. He actually suggested that motion number 25—this motion; he suggested, when he ordered his fellow travellers over there to vote down the motion that would provide compensation for municipal employees who get themselves sued and pulled into court, that somehow Bill 25 addresses that. It's the farthest thing in the world from addressing that. Even you understand that, Chair.

The Chair: Further debate?

Mr. Balkissoon: Just a quick comment: I referred to 25 as part of the larger clause in the bill. There is the opportunity to apply to cabinet, and the bill provides it.

The Chair: Seeing no further debate, all those in favour?

Mr. Berardinetti: Recorded vote, please.

Ayes

Balkissoon, Berardinetti, Elliott, Kormos, Leal, Van Bommel.

The Chair: I declare that carried.

Next is an NDP motion.

Mr. Kormos: I move that section 13.1 of the Emergency Management Act, as set out in subsection 1(7) of the bill, be amended by adding the following subsection:

"Compensation of employees

"(4) The Lieutenant Governor in Council,

"(a) shall, in consultation with employees most likely to be affected during an emergency and their bargaining agents, develop guidelines on the compensation of employees who expose themselves to serious harm or serious financial losses by continuing their employment during a declared emergency or by accepting any restriction on their employment because of the emergency;

"(b) shall publish these guidelines and any updates to them; and"

A typographical error, I apologize.

"(c) shall, after an emergency is declared, ensure that these guidelines are communicated to employees and"—another typo: bargaining—"their bargaining agents at a workplace affected by an order made under this act."

It's self-explanatory. This is all about communication. It's all about openness. It's all about transparency. It's all about recognizing that in the event of an emergency public sector workers, first and foremost, are called upon and readily expose themselves to risk and harm and similarly deprive their families—look, you've got the scenario. Poor folks in southern Louisiana and the Florida panhandle: You had the phenomenon of police officers down in New Orleans, for instance, being homeless because they themselves were victims of the crisis, the flooding, the breaking of the dikes and levees. This is the sort of thing that this amendment contemplates.

The Chair: Any debate?

Mr. Balkissoon: This amendment would appear to apply to employees represented by a bargaining agent. It would be very difficult to expressly address compensation for certain groups and not others. As I stated

yesterday, there are many employees who are involved in emergencies who are not part of a bargaining group. We believe that the order-making power in the bill pertaining to compensation is sufficiently broad and open for application to the Lieutenant Governor in Council.

The other comment I could add to this is, as I stated continuously yesterday, every institution, every municipality out there will have an emergency plan; therefore, the bargaining units can work with their employer and work out what they would like to see in that emergency plan with regard to compensation. They could also bargain for it in their collective bargaining agreement.

We don't believe that this motion should be supported and be part of the bill because of those problems that I identified. We will not be supporting it.

Mr. Kormos: This is the second day in a row that the parliamentary assistant states that whole bunches of these public sector workers are not organized into collective bargaining units, as members of a trade union. Sid Ryan and Leah Casselman phoned me last night asking, please, for Mr. Balkissoon to tell them which of these public sector workers in health and municipal levels aren't organized, because they're eager to sign them up with CUPE or OPSEU cards.

I hear you, now day two, Mr. Balkissoon, talking about significant numbers of these front-line emergency workers who don't belong to unions. Surely, you'll join Leah, Sid and me in helping them organize, won't you?

Mr. Berardinetti: As long as you help Bob Rae. Why don't you help Bob Rae?

Mr. Kormos: Why should I support a Liberal Prime Ministerial—

Mr. Berardinetti: A former NDP Premier.

Mr. Kormos: He's yours now, Lorenzo.

1120

The Chair: We're not here to discuss that.

Interjections.

Mr. Kormos: Whoa, somebody—George does. Greg does; the Minister of Finance likes Bob Rae.

The Chair: Any further debate? Seeing none—

Mr. Kormos: What have you got against Greg Sorbara and George Smitherman, Lorenzo? That's a career-limiting move.

The Chair: Order.

Mr. Berardinetti: What have you got against Bob Rae? He was your Premier.

Mr. Kormos: What have I got against Bob Rae? How he has been a Liberal.

The Chair: Mr. Berardinetti.

Mr. Kormos: A typical Liberal: He's unprincipled; he'll promise anything to get elected. He'll lie, cheat and steal his way to a position of leadership.

The Chair: Mr. Kormos. I'm warning you.

Interjection.

The Chair: Mr. Kormos, that's not why we're here. Any further debate?

Mr. Kormos: I guess Bob is really excited that you're on his team.

The Chair: Mr. Kormos, we're not here to talk about your ex-boss.

Any further debate? Seeing none—

Mr. Kormos: Recorded vote, please.

Ayes

Elliott, Kormos.

Nays

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: It's lost. Shall section 1, as amended, carry?

Mr. Kormos: Recorded vote. We're not going to debate it?

The Chair: All those in favour? I'm sorry, is there any debate on section 1? None.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: That's carried.

Section 2: A government motion. We're on page 26.

Mr. Balkissoon: I move that section 2 of the bill be struck out and the following substituted:

"Bill 14

"2(1) This section applies only if Bill 14 (Access to Justice Act, 2006), introduced on October 27, 2005, receives royal assent.

"Same

"(2) References in this section to provisions of Bill 14 are references to those provisions as they were numbered in the first reading version of the bill and, if Bill 14 is renumbered, the references in this section shall be deemed to be references to the equivalent renumbered provisions of Bill 14.

"Same

"(3) On the later of the day Bill 14 receives royal assent and the day subsection 1(5) comes into force, subsection 7.2(2) of the Emergency Management and Civil Protection Act is repealed and the following substituted:

"Notice

"(2) Subsection 18(4) of the Legislation Act, 2006 does not apply to an order made under subsection 7.0.2(4) or 7.1(2), but the Lieutenant Governor in Council shall take steps to publish the order in order to bring it to the attention of affected persons pending publication under the Legislation Act, 2006."

This is just a—

Mr. Kormos: On a point of order: This is a most interesting motion because it incorporates a bill that

hasn't even received third reading, never mind royal assent. It's not even law. It incorporates but a motion, because all it is is a motion before the House, right? Move first reading; move second reading. It introduces a motion, which is still before the House, and incorporates it into—and we're asked to vote on an amendment that is a "what if" amendment. I'm concerned about the orderliness of this.

Mr. Albert Nigro: For the record, I'm Albert Nigro from the office of legislative counsel. Mr. Kormos, I can't speak to the parliamentary procedure involved, and I won't address an area outside of my area of expertise. I can speak for the experience of the drafter and the practices of my office.

Where there is legislation in the House that has been introduced and will affect a bill that's also working its way through the House, we will draft contingent provisions. They will have no force or effect if both bills are not passed. If you read that section, technically that's the effect of it. All this section does is change a reference from the Regulations Act to what may be a newly enacted Legislation Act. Again, I can only say from my experience that it's fairly common to do this in legislation.

Mr. Kormos: I'm not quarrelling with the fact that it's drafted and what legislative counsel is doing, but I am speaking very specifically to the parliamentary appropriateness of it, and I appreciate Mr. Nigro's comments in that regard.

You know that there have been Speakers' rulings in the recent history of this Parliament—I'm talking about within the last five and six years—that have severely criticized, to the point of suggesting that government got close to prima facie contempt for treating unpassed legislation as if it were law. Off the top of my head, if I recall, I think it was Speaker Stockwell who made that ruling. So there has been concern about that.

I'll live with your ruling, but I'm raising this now. I appreciate what legislative counsel is doing. It seems to me that what has to be done, in terms of maintaining regard for Parliament, is that you pass Bill 56 or let it pursue whatever course it takes. If it has to be amended to comply with subsequent law that passes, you amend Bill 56 either in the stage that it's at through second reading/committee/third reading or after the fact by way of a stand-alone amendment. It's just a proposition. Again, I'll stand with your ruling, but I think this could be one of the more important rulings you're called upon to make in your career as Chair of this committee.

The Chair: It appears that this amendment is in order. I'm going to ask if there is any further debate with respect to this. No further debate?

All those in favour? Carried.

Shall section 2, as amended—

Mr. Kormos: One moment. You're not going to entertain debate on section 2?

The Chair: Yes. Is there any debate on section 2? I see no further debate on section 2. Shall section 2, as amended, carry? Carried.

Section 3, page 27, is a government motion.

Mr. Balkissoon: I move that subsection 50.1(5) of the Employment Standards Act, 2000, as set out in subsection 3(3) of the bill, be struck out and the following substituted:

"Limit

"(5) An employee is entitled to take a leave under this section for as long as he or she is not performing the duties of his or her position because of an emergency declared under section 7.0.1 of the Emergency Management and Civil Protection Act and a reason referred to in clause (1)(a), (b), (c) or (d), but, subject to subsection (5.1), the entitlement ends on the day the emergency is terminated or disallowed.

"Same

"(5.1) If an employee took leave because he or she was not performing the duties of his or her position because of an emergency that has been terminated or disallowed and because of an order made under subsection 7.0.2(4) of the Emergency Management and Civil Protection Act and the order is extended under subsection 7.0.10(4) of that act, the employee's entitlement to leave continues during the period of the extension if he or she is not performing the duties of his or her position because of the order."

This is an amendment that was suggested to provide job protection in case of an extension of the emergency order beyond the termination date.

The Chair: Debate? No further debate. All those in favour? Opposed? Carried.

Next is an NDP motion, page 27a.

1130

Mr. Kormos: I move that section 50.1 of the Employment Standards Act, 2000, as set out in subsection 3(3) of the bill, be amended by adding the following subsection:

"Same

"(5.1) Without limiting the generality of subsection (5), an employee is entitled to include in his or her leave under this section a reasonable amount of time after the declared emergency is terminated and the reason referred to in clause (1)(a), (b), (c) or (d) is over before recommencing performing the duties of his or her position."

This provides some reasonableness to the leave permitted and the understanding that there is a transition, that there may well be any number of things that somebody who has been out there dealing with SARS, floods or any of these crises that we could possibly anticipate—that they would need a time frame from when the emergency is terminated, when the state of emergency ends, until they're reasonably expected to return to work.

The Chair: Any debate?

Mr. Balkissoon: The government's position is that our motion 29 deals with this amendment. We feel that 29 addresses the issue appropriately to satisfy the government's position, and we will not be supporting this in light of what is proposed in 29.

Mr. Kormos: That's so unreasonable, Mr. Balkissoon.

The Chair: Any further debate?

Mr. Kormos: Recorded vote.

Ayes

Elliott, Kormos.

Nays

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: That's lost.

Next is a government motion.

Mr. Balkissoon: I move that section 50.1 of the Employment Standards Act, 2000, as set out in subsection 3(3) of the bill, be amended by adding the following subsection:

"Retroactive order

"(9) If an order made under section 7.0.2 of the Emergency Management and Civil Protection Act is made retroactive pursuant to subsection 7.2(1) of that act,

"(a) an employee who does not perform the duties of his or her position because of the declared emergency and the order is deemed to have been on leave beginning on the first day the employee did not perform the duties of his or her position on or after the date to which the order was made retroactive; and

"(b) clause 74(1)(a) applies with necessary modifications in relation to the deemed leave described in clause (a)."

Again, this is an amendment we're proposing to provide job protection corresponding to the retroactivity, just to be consistent.

The Chair: Any debate? All those in favour? Opposed? Carried.

Next is also a government motion.

Mr. Balkissoon: I move that subsection 141(2.1) of the Employment Standards Act, 2000, as set out in subsection 3(4) of the bill, be struck out and the following substituted:

"Regulations re emergency leaves, declared emergencies

"(2.1) If a regulation is made prescribing a reason for the purposes of clause 50.1(1)(d), the regulation may,

"(a) provide that it has effect as of the date specified in the regulation;

"(b) provide that an employee who does not perform the duties of his or her position because of the declared emergency and the prescribed reason is deemed to have taken leave beginning on the first day the employee does not perform the duties of his or her position on or after the date specified in the regulation; and

"(c) provide that clause 74(1)(a) applies, with necessary modifications, in relation to the deemed leave described in clause (b).

"Retroactive regulation

"(2.2) A date specified in a regulation made under subsection (2.1) may be a date that is earlier than the day on which the regulation is made.

"Regulation extending leave

"(2.3) The Lieutenant Governor in Council may make a regulation providing that the entitlement of an employee to take leave under section 50.1 is extended beyond the day on which the entitlement would otherwise end under subsection 50.1(5) or (5.1), if the employee is still not performing the duties of his or her position because of the effects of the emergency and because of a reason referred to in clause 50.1(1)(a), (b), (c) or (d).

"Same

"(2.4) A regulation made under subsection (2.3) may limit the duration of the extended leave and may set conditions that must be met in order for the employee to be entitled to the extended leave."

This is an amendment to ensure job protection—

Mr. Kormos: We support it.

Mr. Jeff Leal (Peterborough): I'd ask for a recorded vote.

The Chair: A recorded vote has been asked.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: Carried. Is there any further debate on section 3? Seeing none, shall section 3, as amended, carry? All those in favour? Opposed? Carried.

Is there any debate on sections 4, 5 and 6? Seeing none, then shall sections 4, 5 and 6 carry? Carried.

Shall the title of the bill, as amended, carry? Is there any debate on this?

Mr. Kormos: Well, Chair, you know that New Democrats have grave concerns about this bill, especially when this is it, after three years. This is what the government of the Dalton McGuinty Liberals comes forward with in terms of emergency management—after witnessing SARS, and suffering SARS and seeing the incredible dedication of so many health workers; after witnessing the flooding in Mr. Leal's community, in Peterborough—not just once but twice, at least twice; and after the experience of Bill 138—and that dog is still penned up somewhere in the government House leader's dog pound. Remember Bill 138? I remember it oh, so well. That was the phoney, incredibly self-serving, pompous, silly exercise that was part of keeping some government backbenchers occupied, at least until Ms. Broten found her way into cabinet.

I remember being at the committee, and poor David Zimmer, for whom I have regard—I have regard for Ms. Broten as well, but she and he were like two pit bulls, if you will, trying to mark out turf, because the competition as to who was going to make—because you've got to understand, folks, it's different for Mr. Leal and for Ms. Van Bommel. For Toronto members, it's difficult to get press, right? Your wife has to provoke you to present some creative and interesting private member's bill that I end up having to defend on—

Mr. Berardinetti: For the record, my wife's name is Michelle. She always likes to see her name in Hansard.

Mr. Kormos: Michelle has to come up with creative, provocative subject matters for legislation that I end up defending on talking head shows.

Mr. Berardinetti: For the record, I thank Mr. Kormos for defending that bill.

Mr. Kormos: When is it going to be called for third reading?

Mr. Berardinetti: Unfortunately, I don't sit in all the House leader meetings, and I would ask Mr. Kormos to bring it up at the next House leader's meeting.

Mr. Kormos: I'll do my best, Mr. Berardinetti.

But Bill 138—and here were Ms. Broten and Mr. Zimmer, two Toronto members. They were like two pit bulls marking their turf. Then, Mike Colle—who wasn't in cabinet yet, you understand—wanted a piece of the action too. So he got himself made sort of honorary Chair. Remember? That was the one where Mr. Orazietti had been made Chair of the committee and didn't come to work for six months. Mike Colle took the chair gladly, gleefully, because Mike wanted a piece of this action.

This was the emergency management bill that was going to be drafted by the committee. What a dog's breakfast it was, if we're going to carry on with these canine metaphors and similes—what a dog's breakfast. There were little bits and pieces of everything. I mean, Julian Fantino, not yet then emergency management czar, still sending Jim Karygiannis out on his hands and knees, sniffing out pot-grow operations. Julian Fantino was here, and just the lineup was incredible.

1140

I questioned Ms. Broten, now Minister of the Environment, and Mr. Zimmer, now parliamentary assistant to the Attorney General. I said, "You guys aren't serious. The Premier's office is just sending you out to play: 'Go entertain yourselves and pretend that you're doing something important.'" Well, no; they were adamant. Ms. Van Bommel, you read some of those Hansards. They said, "No, this is a serious process. The Premier's office has assured us that they're going to give effect to our serious deliberations." Ms. Broten wanted to hire high-priced Bay Street lawyers to come in, and I don't know whether Mr. Nigro remembers. Well, legislative counsel had to chastise some of these members because legislative counsel had to make it clear that if they wanted legal advice from legislative counsel, legislative counsel was going to bill, and it wasn't part of the job description of legislative counsel. You go to research or you go hire a lawyer like other people do.

But it was an incredible exercise to observe, and the competition to get to the head of the line in terms of that bill was incredible. Of course, what has happened to Bill 138? It is in legislative orbit. The trajectory is that centrifugal effect where it gets further and further away from earth until it finally ends up disappearing in the black hole where so many silly bills end up, including, sadly, a whole bunch of private members' public business, sometimes good legislation from all three caucuses.

So what happened to Bill 138? Was the Premier sincere about it? What we discovered well into the preparation of 138 was that the Ministry of the Attorney General had already prepared an emergency management bill. It was a ruse, a scam. We've been had. We've been toyed with. We've been played with. We were being teased. I was pretty cynical about the process from the get-go so I didn't really feel as if my goat had been gotten, but the poor government members have been taken to the cleaners on it. Bill 138 is still there. Maybe it has become 137 by now; maybe 139. I don't know.

But, then, what do you get served up? There was some significant criticism. You see, one of the things that I pleaded with the government about was to hold off on 138 until the SARS reports came out—SARS 1 and SARS 2. Then, if I recall, it was somewhat gratuitously that Mr. Justice Campbell, who conducted the SARS inquiry, made some commentary about Bill 138 and expressed some concerns. But what does the government do? Does it incorporate the SARS recommendations into its emergency management bill—many of those recommendations echoed by people like ONA and OPSEU; not all of them but many of them? No.

Emergency management—one can never say it often enough—is all about what's there on the ground in municipalities across Ontario. It's not about what happens here at Queen's Park, by any stretch of the imagination. For firefighters, it doesn't matter whether one building is on fire or 100 buildings are on fire; they respond as best they can. A hundred buildings doesn't make it an emergency different than one building, and again the argument around extraordinary powers just boggles the mind.

No firefighter that I'm aware of has ever not entered a building to save a life for fear of being sued for trespass. What a silly proposition. No cop has ever failed to rescue a person in distress for fear of being charged with damage to property by kicking down a door. They conduct themselves rigorously when it comes to arresting crooks because they don't want the charge to be blown away by defence arguments around charter violations, but when it comes to saving lives, no cop that I'm aware of has ever said, "Oh, I'm not sure whether the law permits me to go here or do this to save a person's life." The fact is that in our system we don't punish people even if they do infringe on—what's the phrase?—the de minimis principle, amongst other things. Nobody is going to be charged with mischief to private property for kicking down the door to save somebody from being burned or being drowned—nobody. Nobody is going to get sued. If they sue you, you might end up with a court reluctantly giving the old British halfpenny award to the successful purported victim. The interesting thing was that none of these powers seemed to be critical in the context of what happens in Ontario today—I'm talking about 1 through 14. Then we've got the strange stuff around procurement and a lack of clarification.

Every one of the NDP motions was in response to submissions specifically made by ONA and OPSEU. As a matter of fact, we don't sit down and write these amendments; the legislative counsel writes them. None

of us sits down at our personal computer and writes legislation; we'd be fools if we tried. But legislative counsel, in our case, simply got told to respond to: "Here are the submissions made by ONA. Here are the submissions made by OPSEU." Bulleted 1, 2, 3, 4, and 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, or whatever it was—those are the amendments.

I feel badly for those folks. Their members care about caring for people. You know that; nobody's going to dispute that. I suspect that in the government ranks there was some sympathy for the positions they put forward. I suspect that very, very strongly, because all of you know these people in your own lives, in your own communities. You've seen them work. Mr. Leal has made comment about his own fire services. He couldn't contain his praise yesterday when he had his fire chief here, not inappropriately.

You know these people. You know that they've got important things to say and important things to contribute. In your hearts, you know that one of the solutions to emergency management is ensuring an ongoing communication and a protocol between workers and their employers; you know that in your hearts. Some of the amendments tried to make sure that the law said that as well.

I suppose I don't fault any of you individually, because just like none of us sits down and types out amendments to legislation, when you're in government and you're sitting on committee, it's a serious career-limiting move to vote against the government frequently. You can do it once in a while and maybe just get chastised. If you do it more than once in a while, you'll lose your position as parliamentary assistant or as Chair of a committee. Do it a lot and you'll probably ensure your longevity here at Queen's Park, but you won't improve rapport with the Premier's office and you might have to go to the opposition House leader's office to find out when votes are being held, because your government will try to squeeze you out. But you can't keep a good woman or man down, can you?

So I find this a regrettable thing; I really do. I know what the government is trying to do. I can read legislation; I can analyze it. I've used the talents of the resources available to us in terms of the Legislative Assembly staff in that regard as much as we're entitled to, so I know what the government's trying to do. I think it misses the mark. I really do. The debate around emergency management should have been about how well small- and smaller- and smallest-town Ontario is equipped.

We know Toronto's got a huge firefighting service. They've got machinery and equipment and gadgetry and high-tech stuff—I shouldn't be presumptuous. They've got it, I was going to say, "coming out of their ears," but I'm sure even they would argue that they don't have enough. But if you go down to places like Thorold or Capreol—up to places like Capreol, down to places like Thorold, or to places like where you come from, Mrs. Van Bommel, or the communities around Peterborough, the small-town, central Ontario communities, they don't have those resources. They've got to beg, borrow and steal. Firefighters still do what they're called upon to do, but they don't do it as safely for themselves and they certainly don't do it as effectively. As I say, a mini-crisis in one of those communities puts them behind the eight ball in terms of taxes for a fiscal year, if not more. It whacks households immediately. They haven't got the scale to spread it out like big-city Ontario.

1150

So it seems to me that the regrettable thing is that the discussion should have been very much focused on the ability of all the residents of Ontario to have available to them the optimal—and I don't know what the optimal is. I don't know whether it's 100% capacity. We talked about that with fire chiefs yesterday. I don't know whether it's 100% capacity, because 100% capacity for the worst-case scenario means you're maintaining pretty high levels of resources with only a marginal likelihood of ever using them at any given point in time.

But I do know this. You were on city council, Mr. Balkissoon; you were on city council, Mr. Berardinetti; you were, Mr. Leal; and you were, Ms. Van Bommel. I was, too—small-town Ontario. I suppose the only differences are the scale between Welland and Toronto, the number of zeroes after the annual budget.

Mr. Berardinetti: Scarborough.

Mr. Kormos: Scarborough. But at the end of the day—

Mr. Berardinetti: We started small in Scarborough.

Mr. Kormos: How many people in Scarborough? How many hundreds of thousands of people in Scarborough?

Mr. Berardinetti: Half a million.

Mr. Kormos: Yes, half a million. You thought you were small-town Ontario. No, no. Small-town Ontario is when everybody knows you.

That's what the debate should have been about. I have regard for the people who were called upon to draft this. I sense very much that the Attorney General draft bill that was revealed, that was discovered during those Bill 138 hearings, still forms the gist of this bill. I just don't think it does the trick. Again, we missed an opportunity to accommodate ONA and OPSEU. I don't think there's anything wrong with accommodating people. I'm an easygoing guy; you folks know that. I don't think there's anything wrong with accommodating people. We should have accommodated ONA and OPSEU. Maybe not to the final submission, but we had a chance to do it. We had a chance to bring them into the loop and to put it in the legislation. I know Mr. Balkissoon may well say, "We've got a good rapport with these unions, and we're going to work with them." No, they'd have loved to have seen that in the bill; you know that.

I tell you, I'm not going to be supporting this bill at committee. I'm not going to be supporting its return to the House. I think there is more work that has to be done. I think we should sit down with this bill and reconsider some of the amendments that were denied.

The Chair: Any further debate?
Mr. Kormos: Recorded vote.
The Chair: Shall the title of the bill carry?

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Kormos.

The Chair: Shall Bill 56 carry?
Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: Carried.
Shall I report the bill, as amended, to the House?
Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: It's carried.
That concludes our business for this meeting. This committee is adjourned.
The committee adjourned at 1155.

CONTENTS

Thursday 1 June 2006

STANDING COMMITTEE ON JUSTICE POLICY

Chair / Président
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Vice-Chair / Vice-Présidente
Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

Mr. Bas Balkissoon (Scarborough–Rouge River L)
Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)
Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)
Mrs. Christine Elliott (Whitby–Ajax PC)
Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot L)
Mr. David Orazietti (Sault Ste. Marie L)
Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

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