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**Official Report
of Debates
(Hansard)**

Wednesday 15 May 2013

**Journal
des débats
(Hansard)**

Mercredi 15 mai 2013

**Standing Committee on
General Government**

Ambulance Amendment Act
(Air Ambulances), 2013

**Comité permanent des
affaires gouvernementales**

Loi de 2013 modifiant
la Loi sur les ambulances
(services d'ambulance aériens)

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 15 May 2013

Mercredi 15 mai 2013

The committee met at 1603 in room 228.

**AMBULANCE AMENDMENT ACT
(AIR AMBULANCES), 2013
LOI DE 2013 MODIFIANT
LA LOI SUR LES AMBULANCES
(SERVICES D'AMBULANCE AÉRIENS)**

Consideration of the following bill:

Bill 11, An Act to amend the Ambulance Act with respect to air ambulance services / Projet de loi 11, Loi modifiant la Loi sur les ambulances en ce qui concerne les services d'ambulance aériens.

The Chair (Mr. Bas Balkissoon): We'll call to order the meeting of the Standing Committee on General Government. We're going to be dealing with Bill 11, An Act to amend the Ambulance Act with respect to air ambulance services.

**OFFICE OF THE AUDITOR GENERAL
OF ONTARIO**

The Chair (Mr. Bas Balkissoon): Our first presenter is the Office of the Auditor General: Mr. Peall.

Mr. Gary Peall: Thank you, Mr. Chair.

The Chair (Mr. Bas Balkissoon): Just before we get started, you have five minutes for a presentation and then we'll rotate questions, 10 minutes per party.

Mr. Gary Peall: Fair enough. Thank you.

Good afternoon. For those of you who haven't met me, I'm Gary Peall, the Acting Auditor General. I'm pleased to have the opportunity to discuss with the committee Bill 11, An Act to amend the Ambulance Act with respect to air ambulance services. With me is my acting deputy, Susan Klein, who also directed the audit of Ornge.

As you well know, our audit of Ornge, which was tabled in March of last year, found that ministry oversight of Ornge was inadequate. The ministry was not obtaining sufficient information to monitor how well Ornge was doing the job. As well, the ministry didn't adequately oversee Ornge's procurement practices and its inner-company arrangements with management and the board to ensure that they were following appropriate public sector business practices.

While Ornge indicated that its structure was necessary for legal, tax and other business reasons, it also had the

effect of denying access to various transactions and agreements we wished to review—ultimately, a loss of transparency.

With a view to getting better information for ensuring that the amount paid for air ambulance and related services is reasonable for the level of service provided, one of my office's recommendations was that the Ministry of Health and Long-Term Care should either consider renegotiating Ornge's performance agreement or develop an alternative mechanism to ensure that the public's interest in Ontario air ambulance is being protected.

I note that the ministry has already revised its performance agreement with Ornge. It has also overseen a number of staff changes and operational reforms that should further help address the issues we identified. This bill may be viewed as a further response to that recommendation.

From our perspective, it is crucial that there be an effective oversight of organizations entrusted to deliver vital services. I remind this committee that the role and size of these organizations and the number of dollars they administer are all too critical to be left to chance or indifference.

For oversight to be effective, there needs to be an assessment of the organization's governance practices. If boards are performing their oversight role effectively, ministry oversight can be tailored accordingly.

Effective oversight should also include determining what performance information is needed, ensuring those responsible for oversight have the training they need to critically review the information they get and periodically obtaining assurance on the reliability of the information they're getting, such as through site visits to observe operations and service delivery or through audit. In short, passive supervision should give way to active and energetic oversight. The greater the perceived risk, the more energetic the oversight.

Robust complaint and whistle-blowing processes also assist with providing information for good governance. These processes can take many forms.

Overall, I'm encouraged by the actions taken so far to address the concerns raised by my office during that audit.

Thank you, and I'd be happy to respond to any questions you may have.

The Chair (Mr. Bas Balkissoon): Thank you. We'll start with the Conservative Party.

Mr. Frank Klees: Thank you, Chair. Auditor General, you're intimately familiar with this file, and one of the concerns that was expressed by the Auditor General in his report was the lack of co-operation from Ornge.

I would like you to just comment at the outset about the difference between having a performance agreement that requires certain standards to be met, having a piece of legislation such as Bill 11 before us, and the degree to which this Bill 11 now and the amended performance agreement would have made any difference in the challenge that you had to get the information that you needed. What is it that has changed between the amended performance agreement and Bill 11 that would make it easier for you to get the information that you needed to do your report?

Mr. Gary Peall: In the first instance, we wouldn't have had easier access. If people choose not to co-operate—you can't legislate good behaviour or morality, so that's an issue.

But in terms of what Bill 11 allows and what the performance agreement allows, at least we have—the more action you can take if you're not getting the answers you expect to get. If you lose confidence in a board, if a board isn't co-operating with you, isn't providing you the information you need, you have an easier way—and as I understand it, through this bill, much like a hospital situation, where, if the funding ministry loses confidence in the board's ability to oversee the operations, to co-operate fully, to be fully transparent about what they're doing and how they're doing it and how well they're performing, they have an opportunity to, fairly quickly, take that board over and put someone in who can actually do what the ministry wants done.

1610

Mr. Frank Klees: I've heard that said by the minister. I don't see how Bill 11 or the amended performance agreement provide any more ability for the ministry to take that action. There were all kinds of mechanisms in the previous performance agreement that allowed the ministry to move in—and as simple as saying, "Look, if you don't comply, we're going to cut off your funding." The very threat of that is going to get any agency or any facility's attention.

My concern about this is that we now have a bill that represents to create more opportunities for the ministry to act, but I'm afraid that what we've got here is more smoke and mirrors.

I was hoping that you as the Auditor General would be able to point me to something in Bill 11 that is different from the previous legislation or performance agreement that would actually give you, as the Auditor General, additional authority. Can you point me to anything in Bill 11 that would do that?

Mr. Gary Peall: No. As drafted, it's not giving us any more authority. Typically we have the authority, in most cases. What happened in Ornge's case is, they created organizations that fell outside our authority and actually fell outside the performance agreement. That was the first fundamental flaw, and that's what created the gap in our

ability to get information. I don't know that Bill 11 fully addresses that aspect of it, but certainly that would be critical to be able to—the ministry should have control over a funded agency's ability to create other agencies that can obfuscate and make less transparent what it's doing. So if you can create things so that you can't access that kind of information—that shouldn't be happening.

Mr. Frank Klees: Thank you. You've confirmed for me what, certainly, our analysis is of this bill.

I'd like to move to the issue of whistle-blowing. At the end of the day, the reason that we were able to at least start to uncover what was going on at Ornge was not because of the Ministry of Health's oversight, because your report made it very clear that the Ministry of Health failed miserably in their oversight responsibility; it was because of whistle-blowers within the organization. They came forward at great risk. In fact, there are people today who have lost their jobs. There are individuals who will never again be the same because of the stress that they experienced because they chose to come forward, and felt compelled to.

The whistle-blowing protection that now is heralded by the minister as being new and should be giving some comfort to employees of Ornge—I'm going to read section 7.7(1)(a). It refers here to the fact that:

"No person shall retaliate against another person, whether by action or omission, or threaten to do so because,

"(a) anything has been disclosed to an inspector, investigator or special investigator in connection with a designated air ambulance service...;" or

"(b) anything has been disclosed to the ministry in connection with a designated air ambulance service...."

Here is my question: This whistle-blower protection is limited to an employee disclosing information to a very limited group of individuals. For example, it doesn't include us, as members of the Legislature here. It doesn't include anyone outside of this well-defined group of individuals.

The truth of the matter is that people went to people within the ministry and were ignored under the previous set of circumstances. They went to their superiors and were ignored. We heard through testimony that people went to a director on the board of directors and were ignored.

I'd like your opinion as to the clause here that deals with whistle-blowing, and whether, in your opinion, there should be a broader definition of "whistle-blowing" and the kind of protection that employees could expect to have.

Mr. Gary Peall: It's always a delicate balance in terms of creating a system that removes the fear of coming forward, protects their identity and protects their future, and allows them to speak freely about what their concerns are. Expanding it beyond the people who are directly involved with the organization—I'm not sure how much they need protection for writing us, the Ombudsman or a member. If any citizen or employee of an organization has a concern that something they see

just isn't right, they are completely free to come to us; we're certainly there with all the legislative protections to keep what they give us confidential and to protect them.

Outside of that realm, I don't know that we necessarily need additional protections, but this at least gives more protection than, I guess, had been clear to anyone before. Whether it would encourage more people to come forward who were afraid to in the past, I don't know.

Mr. Frank Klees: We'll be making some suggestions in terms of amendments that would include your office—the Auditor General—and the Ombudsman. I think people need to have the freedom to come forward to a third party rather than someone within the organization—

The Chair (Mr. Bas Balkissoon): You have one minute.

Mr. Frank Klees: My question, very simply, is this: Should an amendment be accepted to this legislation that would include the Auditor General's office? Is that something that your office would be able to accommodate, or do you feel, administratively, that it's better directed to the Ombudsman or another office?

Mr. Gary Peall: Our legislation is really geared less to a complaint-driven kind of system. We obviously take complaints and I think people are, under the existing legislation, free to do that. I don't need any additional legislation from any particular part of government or any particular act to allow people to come forward to us. I would say that's probably true of some of the other officers as well. I don't need a change to this act to accommodate that. We take complaints routinely. We're often copied on complaints that—

The Chair (Mr. Bas Balkissoon): Thank you very much.

Mr. Gary Peall: Sorry.

Mr. Frank Klees: Thank you.

The Chair (Mr. Bas Balkissoon): We have to move to the third party. Ms. Gélinas?

M^{me} France Gélinas: Although I was very interested in your answer—long time no see—I will continue on whistle-blowers for one second. The whistle-blower protection that we have now is very restrictive as to who you can complain to, but at the end of the day, the whistle-blower could still lose their job. They could still be without pay and end up having to fight their employer in court to get their job back based on those protections. It's not exactly a position of power. Once you don't have a job and don't have money, how do you go to court?

My question to you is: I realize there's a balance between the two, but is the scenario I've just put forward pretty close to what could happen?

Mr. Gary Peall: I guess it's possible. Like I say, you want a system that will protect them and allow them to speak freely, so if the committee and the government—or at least the Legislature—felt that there was a need to further protect them, I'm comfortable with that.

M^{me} France Gélinas: Okay. There is a provision in the bill that allows the ministry to change the letters patent of an agency. Have you seen this elsewhere?

Mr. Gary Peall: I can't think of an example off the top of my head. I can't say that it's never happened. It's possible, but I can't think of one.

M^{me} France Gélinas: You can't think of one?

Mr. Gary Peall: No.

M^{me} France Gélinas: Neither can I.

You know that when a ministry—we'll take the Ministry of Health—funds an agency, sure, they have the performance agreement in front of them, but they also have other power, the power of persuasion, with the fact that they hold the purse strings. In this particular case, do you see any evidence that the Ministry of Health used that power to get Ornge to change anything?

1620

Mr. Gary Peall: I guess the short answer is no, in the sense that we still concluded that the oversight and the actions taken on what information was obtained weren't sufficient.

M^{me} France Gélinas: So they already had powers that they didn't use. Now they're asking for powers that, frankly, I have never seen in any other health care transfer payment agency. I've never seen where the ministry would have unilateral access to your letters patent and could change them. They had powers that they didn't use, and now they want more power. I see a bit of a dichotomy in there. The bill as we see now, with the extra power, is only good if the government decides to use those powers.

Interjection.

M^{me} France Gélinas: You have to speak.

Mr. Gary Peall: True.

M^{me} France Gélinas: I got you, but—

Mr. Gary Peall: People need to do their jobs.

M^{me} France Gélinas: People need to do their jobs. You made it clear that if an agency wants to hide things, as Ornge wanted to hide things from you, there is basically not a whole lot you can do, but if the government decides not to do their job, then there is not much that a bill like this would do.

Mr. Gary Peall: True. Like I say, you can't legislate people doing their jobs effectively. They have to take action on the information they get or don't get. If they aren't getting everything they expect to get, and they've made their expectations clear, there's a responsibility to respond accordingly. While they may not have had all the tools in place—they did have to do some legal manoeuvres to take back control of Ornge—they did have a funding hammer that they could have used. It is an essential service, so it's not like you could just withdraw funding. But you did have the moral suasion, as you point out, to try and influence. Certainly, I'd have a deep concern if I'm dealing with board members or senior members of management that are not being all that cooperative and not giving the information you need.

M^{me} France Gélinas: If the need to control that agency is such that we need a bill like this, then would you say that the powers that we will give the government for that particular agency—that identical powers should be given to the government for every health care agency?

Why are we doing this to Ornge but not to mental health agencies, to community health centres, to everybody else that has a board of directors, receives transfer payments from the ministry and does an essential health care service? Apparently, we need all those extra powers for the ministry to do its job with air ambulance; doesn't the ministry need the same tools to do its job with every other health care agency?

Mr. Gary Peall: It's a fair point. In my opening remarks, I tried to suggest that what all ministries need to do is look at what arrangements they have in place and have some confidence that if the governing boards of each of those agencies that they're funding aren't doing their job, or have confidence that they are doing their job, then that can influence how much actual oversight they need and how in depth they have to get. If they're getting good information, if there's no hesitation in giving anything they want and there's full transparency around their actions, their salaries, all the rest of it, there's really not as much concern or risk in the eyes of the people who are charged with overseeing them. For me, it's more trying to tailor it to the situation and the circumstances you've got.

In this particular case, I guess we're trying to treat them more like hospitals so that if you run into a similar situation—and I guess we're talking mostly about that because of their size, as much as anything. Most of the hospitals are pretty big businesses. This was a fairly big business, and given how much funding and how important the services are, you want to have a fair bit of control, since ultimately the minister is accountable for how those services are delivered.

M^{me} France Gélinas: Given the people who were at Ornge and given, I would say, the lack of action from the ministry with the power they had, do you figure if Bill 11 had been in place, things would have turned out any differently than what they ended up turning out like?

Mr. Gary Peall: It's difficult to speculate. They would have perhaps been able to act more quickly, if there was a will to act, with this act in place.

M^{me} France Gélinas: If there's a will to act—I think that says it all. Thank you.

The Chair (Mr. Bas Balkissoon): Thank you. We'll go to the government side. Ms. Jaczek.

Ms. Helena Jaczek: Good to see you again, Gary and Susan.

Mr. Gary Peall: Likewise.

Ms. Helena Jaczek: We spend most Wednesdays together. Of course, you've been listening to the testimony, as we on public accounts have as well. I think you would agree that we've heard that Ornge was a very unique situation. There was stonewalling of attempts to obtain information. I think we have come to the conclusion, those of us on public accounts, that essentially this was a rogue agency where the board of directors had ignored their fiduciary responsibility.

In that light, we do have a unique situation. We have, of course, your special report that is dated March 2012. We know from the Minister of Health and Long-Term

Care that when she first heard of the Auditor General's concerns and those of the forensic audit team that went in, she took immediate action at that time to initiate the OPP investigation as well as, in fact, the bill that we see in front of us.

I would say that this was clearly an attempt to create opportunities, in the event of a similar situation occurring in air ambulance, that there would be some powers that the minister would have, such as appointing members of the board, appointing a supervisor. Would you agree that this seems to be, in terms of timeliness, a response to the issues raised in your special report of March 2012?

Mr. Gary Peall: Yes, and as I said in my opening remarks, it does address one of the recommendations, or at least part of it. The additional provisions in the performance agreement, the greater specificity around the performance information that's required from Ornge—all of that speaks to trying to tighten that recommendation up.

This is another piece. If it's viewed much as a hospital would be, then this legislation is consistent, at least in part, with that. It would give a minister more obvious control of a circumstance and would hopefully prevent at least some of what Ornge did.

Ms. Helena Jaczek: In terms of when you were trying to obtain information, was the issue of federal incorporation raised with you by Ornge, to say that therefore you had no jurisdiction?

Mr. Gary Peall: Not really. I think it was more the agencies that were created off of Ornge. We had access to anything that the performance agreement was signed under. So any of the organizations that were under Ornge that were funded by the government, we had access to. It was the ones that were created as private companies that we did not have access to.

Ms. Helena Jaczek: You've alluded to the fact that there's a parallel here. We've heard in public accounts, from Ministry of Health and Long-Term Care legal counsel, that Bill 11 is essentially modelled on the Public Hospitals Act—some provisions in there in terms of substantial transfer of resources from the province to public hospitals—and therefore a lot of these provisions are similar. Do you see that? I mean, that's legislation again that you have no doubt audited public hospitals with. Do you think that that's a useful thing to do? This is a \$150-million service, very important to the residents of Ontario. Do you think this is at least creating some parallel legislation?

1630

Mr. Gary Peall: Well, yes, it is creating some parallel legislation. I know in the past the Ministry of Health and Long-Term Care has had to put a supervisor in to help bring a hospital back under financial strength and sustainability. They do run into trouble from time to time, so it's proven to be a useful tool in the past, where those things happened, maybe even despite the best efforts of the board that was in place at the time. It's probably prudent in an organization that is providing services very

much similar to a hospital that you have a similar kind of hammer.

Ms. Helena Jaczek: So if you are to go back, maybe in five years, and audit Ornge again, would—

Mr. Gary Peall: Please, no.

Ms. Helena Jaczek: If you were to find an issue that was of some concern, then communication to the ministry, something like appointing a supervisor, might be a useful provision?

Mr. Gary Peall: Yes.

Ms. Helena Jaczek: Is there anything else in Bill 11—and I think Mr. Klees was getting at this earlier. Would you have any suggestions for us to improve this bill?

Mr. Gary Peall: Not really. It doesn't really impact our office at all. We'll still have most of the same access rights, and we'll still be able to play the role that we do now if people have complaints about any part of government service or a service provider. On this particular bill, I don't have any concrete suggestions, no.

Ms. Helena Jaczek: That's all my questions, unless either of my colleagues—

The Chair (Mr. Bas Balkissoon): Ms. Cansfield?

Mrs. Donna H. Cansfield: Thank you. I just had one question. Every ministry has an internal audit system, so how did that internal audit system not pick this issue up?

Mr. Gary Peall: There's probably a long answer to that. It's a good question. There was an audit done that was actually contracted for by the ministry's internal audit service and a firm did it on their behalf. While there were some issues with that audit, it did raise some concerns, or red flags, as we've referred to in the public accounts committee hearings. Those weren't dealt with as promptly as they needed to be as well, so there was an arrangement to have an audit go in.

As I said in my opening remarks, that's one of the things that—ministries overseeing funded agencies should have that tool available to them. It's not just enough to get information from an agency and critically review it, assuming you understand what you're reviewing. You have to have some confidence that information is reliable. There are aspects of their operation that you won't necessarily get insight into from the information you're getting. So you need some eyes and ears to go in and try to collect that.

It's hard to do effective oversight from a desk. You need to be out there. It's just like if we tried to do our audits from a desk, we wouldn't get very far. You need to be out, talking to the people who deliver the services, to really find out what's happening.

That's the value in internal audit as well. In this case, it did provide some value. It probably could have provided more value. But it is a part of the accountability relationship you'd want to have and use when you see the risks warranted.

Mrs. Donna H. Cansfield: Would you say, then, that the scope of the audit would be really important, for example, having a forensic audit be even built into the bill? Or would you just say it's a given? Because I

presume the audit would have to have a scope around it, in terms of its mandate or whatever it's been given.

Mr. Gary Peall: Yes, in internal audits, it will do whatever scope the users want it to do. If the ministry has specific concerns or it has specific doubts around information it's getting, or an aspect of the operation, it can scope it any way it likes. It can be as broad or as narrow.

Mrs. Donna H. Cansfield: Then, in that case, the audit is triggered by something that doesn't feel right as opposed to just part of a regular transparency, accountability and oversight procedure.

Mr. Gary Peall: It can be both.

Mrs. Donna H. Cansfield: It can be both.

Mr. Gary Peall: It can be both. I'm just saying that it is a tool you can use when you spot things going wrong as well. A lot of what internal audit does can be cyclical, but to make the best use of their resources, they're trying to do their own risk assessments as well. They take all the information they're getting from people within the ministry to say, "Okay. Where are the risks out there? Where should we be putting our time and effort?"

It's exactly the same way we approach our work. There are an awful lot of things to potentially audit each year out there, and we have to be fairly selective about it. So we look at the risks and—

Mrs. Donna H. Cansfield: My last question, then: Is an internal audit sort of too close to the forest as opposed to the external, which would give a broader overview?

Mr. Gary Peall: The biggest difference is, an internal audit reports through to management, so as long as management does its job faithfully and professionally, that whole system can work.

Ministries have corporate audit committees. They're made up mostly of inside people—mostly assistant deputy ministers, I think. Then there's the corporate audit committee, which is deputy ministers. So there is some independent oversight provided by that kind of reporting relationship, but it's not quite the same as having none of those people as your bosses. I have that luxury of saying, "I don't have to report to you. I don't have to do what you tell me to do."

Mrs. Donna H. Cansfield: Thank you very much.

The Chair (Mr. Bas Balkissoon): Mr. Peall, thank you very much. Thank you for taking the time to be here with us.

Mr. Gary Peall: Thank you very much.

OFFICE OF THE OMBUDSMAN OF ONTARIO

The Chair (Mr. Bas Balkissoon): We'll now move to our next deputant, the Office of the Ombudsman. Mr. Marin.

[*Inaudible*] to the subcommittee members that there's a request to film the proceedings.

Mr. Frank Klees: As long as we get royalties.

The Chair (Mr. Bas Balkissoon): Okay. You want to be the chief star?

Okay, you have five minutes to present, and then we'll go to questions, 10 minutes per party.

Mr. André Marin: Thank you, Mr. Chair and members of the committee. Debate over extending the Ontario Ombudsman's mandate over the broader public sector has been raging since 1975, the very first year of the creation of the office. It has been 38 years of unfinished business. Broader public sector exclusion wasn't by design but, rather, a character flaw in the Ombudsman Act.

In 1979, a few years into the job, Ontario's first Ombudsman, appointed by Premier Bill Davis, produced a blueprint on what worked, what didn't and what should be fixed. On page 383 of this blueprint, Ombudsman Maloney said, "It is my considered view that the Ombudsman's jurisdiction should similarly be extended to include such organizations as hospitals, universities, boards of education, nursing homes and other such bodies financed in whole, or in substantial part, with public funds." I'm sure if Ornge existed back then, he would have added that to the list as well.

Successive Ombudsmen, right up to me, have made the same point, but there has been little political appetite to go there. Debate, however, is not abating. It is getting louder, more vigorous and picking up steam. Since 2005, there have been no less than 14 private members' bills, from all party members, proposing some extension of our mandate into a part of MUSH. Since 2005, there have been 106 petitions tabled in Parliament to extend Ombudsman oversight into the broader public sector. Today, this committee is uniquely placed to start fixing a 38-year character flaw in the Ombudsman Act and in related jurisdictions by amending Bill 11 so that it is under Ombudsman oversight. You can start making it right today.

The Ombudsman does not work for a public servant or a minister. You are my boss. I am the eyes and ears of the assembly—and, by extension, the public—in the corridors of power.

Now, what's wrong with Bill 11? Nothing and everything. It consists of an elaborate series of baby steps that will improve internal checks and balances—not a bad thing, but falling short of true oversight. We are ahead by a few yards but far from a touchdown. Some highlights include special investigators who can be appointed and report to the minister. The government may take over Ornge through supervisors if it really runs aground. Outside the bill, there is a patient advocate who reports to an Ornge vice-president, collecting compliments and dealing with complaints.

1640

These all fall into the nice-to-have internal mechanisms category. They are the gravy on the meat; the cherry on the sundae. These mechanisms cannot be confused with true, independent oversight. Everything proposed is tied to the bowels of Ornge or the ministry or the minister's office.

The Ombudsman is the Legislature's and the public's watchdog, not the ministry's pet. It is neither the gravy

on the meat nor the cherry on the sundae, but a vital component of government accountability in Ontario. Bill 11 is more inner sight than oversight. If the government believes it requires inner sight, then of course we have no objection to that. But what Ornge really requires is oversight: the ability to complain to an independent body that has the tools to investigate and, if necessary, report back to the Legislature and publicly on the issue, while making necessary recommendations. As Ontario's watchdog, we are the gold standard in keeping government maladministration at bay.

The Chair (Mr. Bas Balkissoon): You have one minute left.

Mr. André Marin: In this bill, oversight is nowhere to be found. I certainly don't need to remind committee members of Ornge's colossal failure to administer public resources with integrity in the public interest. Today I ask you to take the first step in fixing the MUSH character flaw in the legislation by making an amendment deeming a designated air ambulance provider as a government organization under the Ombudsman Act.

Mr. Frank Klees: He's done.

The Chair (Mr. Bas Balkissoon): We'll go to questions. The third party: Ms. Gélinas.

M^{me} France Gélinas: Thank you. Bienvenue.

Mr. André Marin: Merci.

M^{me} France Gélinas: I will start with a question on a letter that you wrote on March 1, addressed to the honourable Minister of Health, Christine Elliott and myself. Do you remember your letter?

Mr. André Marin: I do, yes.

M^{me} France Gélinas: My first question is: Did you ever get an answer to your letter?

Mr. André Marin: I received an answer this morning.

M^{me} France Gélinas: Oh, wow. Are you allowed to share with us what it says?

Mr. André Marin: I believe you're copied on that answer.

M^{me} France Gélinas: Okay.

Mr. André Marin: It's an elaborate letter. Essentially there are three or four pages to the letter laying out the mechanisms in Bill 11 and other internal mechanisms set out by Ornge without taking a position one way or another on Ombudsman oversight.

M^{me} France Gélinas: So the letter didn't finally convince you that they're going to grant your office oversight of Ornge?

Mr. André Marin: The letter is ambivalent. It doesn't say no; it doesn't say yes. It thanks me for raising concerns and lays out what is in Bill 11 and what's done by Ornge.

One of the concerns I have, of course, is, the patient advocate office, which is set up as kind of an office to placate Ombudsman oversight. Right now in Ontario there are 227 hospital sites. My understanding is that there could be upwards of 150 patient advocates. These offices were set up in June 2010 as a result of a legislative amendment.

These offices, many of which have been in operation for three years—I am not aware of any public reporting by any of those offices, let alone public reporting critical of their organization. They are inherently part of that organization. They don't have the independence. So when I'm told that patient advocates are the answer, I'm not saying that they are useless, but they are not an answer to oversight. They may be good to collect complaints, look at complaints and provide internal advice that is useful, but it is not oversight.

M^{me} France Gélinas: If we look at the 150 patient advocates that are within the 150 hospital corporations in Ontario—do you still get complaints to your office about hospitals, although they have patient advocates?

Mr. André Marin: Yes, we do, and every year we update it in our annual report. I don't have the exact figure right now—my deputy will look it up right now. We have many complaints regarding hospitals, regarding, actually, the operations of patient advocates as being biased and unhelpful to deal with hard-core issues. There are instances where they may be relevant, but to deal with the hard-core issues that have brought the Ornge issue to the public front—my view and the view of our office is that patient advocates are not a useful tool. Last year we received 383 complaints dealing with hospitals. We are the only jurisdiction in Canada where there's no Ombudsman oversight of hospitals either.

M^{me} France Gélinas: How about Ornge? Have you received any calls or complaints about Ornge?

Mr. André Marin: Over the years we've received 29 complaints concerning Ornge, including five from whistle-blowers. We've been unable to deal with those complaints. In some instances we've, when appropriate, referred them back to the ministry. We collaborate with the Auditor General as well. But we've been unable to get to the bottom of those complaints because of our lack of jurisdiction.

M^{me} France Gélinas: The 29: Can you give me an idea as to when you received them? In 2000? In 1995?

Mr. André Marin: My deputy will look that up, but I think it's since 2005.

Yes. From April 2005 to March 2006, two; 2006 to 2007, one; April 2008 to March 31, 2009, three; April 2011 to March 2012, 11; April 2012 to March 31, 2013, 12.

Dealing with whistle-blowers, the beauty about the Ombudsman Act is that it has built-in protection for whistle-blowers. Number one, we can statutorily guarantee the confidentiality of the complainants. Our records cannot be subpoenaed by the courts, for example. I'm immune from being compelled to testify and open up my files to the courts. It's protection like no other in our system.

Secondly, supposing the identity of the whistle-blower became known and reprisal action was taken, that would be viewed, in my opinion, as obstructing the Ombudsman in an investigation, and that is an offence, in our act, punishable by fine and imprisonment. So all this talk about protecting whistle-blowers—the beauty about the

Ombudsman Act from 1975 is that it has the absolute protection punishable by jail. We would investigate that and lay charges and prosecute it ourselves.

If you really, truly want to protect whistle-blowers, speaking to MPPs or to anybody else, for that matter, the solution is very simple: inclusion of Ornge in our mandate. It's as easy as that.

M^{me} France Gélinas: Has the ministry ever given you a full answer as to why they keep saying no? You have documented the number of private members' bills, petitions and complaints. The complaints against Ornge continue to come in although they have their new patient advocate, their new supervisor and all of this. Has the ministry ever articulated a good reason why not?

Mr. André Marin: Not beyond all those that are before you right now. There's no doubt, in my opinion as Ombudsman, that one of the issues that I see is that the office is independent. You can't control the office. The special investigators that can be appointed by the minister—what is the threshold task? What is the evidence that will be required before the minister makes a decision? Even then, when the appointment is made, the report is made to the minister. It's not public reporting.

All these measures, as I said, are more inner sight than oversight. They allow always the minister to be in a position of control. I'm not saying that's a bad thing. It's a good thing if you want to prevent the reoccurrence of a lot of things that we've seen in this file, but to call it the answer to oversight is questionable.

My other observation is that we oversee over 500 different bodies: quasi-judicial tribunals, agencies, boards, commissions and line ministries. We take 20,000 complaints a year; we operate a big machine. When I look at Ornge—600 people, \$150 million—relative to the rest of our caseload, I wouldn't think it would be a cause to request additional funding for our office. We could just absorb it as part of our machine.

1650

When I look at the amendments that are proposed, they are not inexpensive; they will cost money. The value in our office is that it operates independently. It's not afraid to ask, it cannot be controlled politically, and I can't see it as being a cause to increase the resources of our office, because of the size of the machinery we currently operate.

M^{me} France Gélinas: I want to come back to—you shared with us that of the 29 complaints you received, six were from whistle-blowers.

Mr. André Marin: Five, sorry.

M^{me} France Gélinas: Sorry, five. I take it that you followed Ornge. You saw that money was taken from the public side to the for-profit, that Mr. Mazza's compensation was in the \$1.4-million range. Without sharing with me things you're not allowed to share, are those the sorts of complaints that the whistle-blowers were bringing forward?

Mr. André Marin: Yes.

M^{me} France Gélinas: So exactly what the scandal ended up being.

Mr. André Marin: Well, as the Acting Auditor General said—

The Chair (Mr. Bas Balkissoon): You have one minute left.

Mr. André Marin:—there's a big difference between the work he does and the work we do. He is in charge of financial oversight—where the numbers go, value for money, that kind of thing—so he's not set up to take complaints. We are set up to take complaints. That's our business: complaints about maladministration. We don't review financial records; we review administrative decisions that are made with public funds. Administrative decisions, whether it's buying helicopters or not allowing complaints to go forward, censuring whistle-blowers: Those are all the kinds of things that clearly would fall within our mandate.

M^{me} France Gélinas: Okay, and I'd say I would agree with you that you are the ultimate whistle-blower protection. If somebody goes to you, they can feel safe. They don't need to hire a lawyer and they're not going to lose their job. Thank you.

The Chair (Mr. Bas Balkissoon): We'll move to the government side. Ms. Jaczek.

Ms. Helena Jaczek: Thank you, Mr. Marin, especially for your overview of the history in terms of the original Ombudsman Act. I think you said 1975. Since that time, we've had Conservative governments, we've had one NDP government and of course, now, the Liberal government. None of those has picked up on the suggestion to expand the powers of the Ombudsman to the MUSH sector. Is that correct?

Mr. André Marin: That's correct.

Ms. Helena Jaczek: During that time, no doubt—do you have any data related to complaints about the original air ambulance system in Ontario, prior to 2005?

Mr. André Marin: No, we don't.

Ms. Helena Jaczek: You don't. So you started collecting this—

Mr. André Marin: The practice in our office has historically been not to track complaints that were outside our jurisdiction. We decided in 2005 to track them whenever feasible so that we would have answers to questions by the public and from MPPs when the matter arose, but we did not keep statistics prior to 2005.

Ms. Helena Jaczek: When you first received complaints in 2005, how did you deal with them, the ones specifically related to this—well, Ornge, I guess, was established in 2005. How did you deal with those?

Mr. André Marin: Well, depending on the nature of complaints, what we do when we have non-jurisdictional complaints is we try to help complainants find their way to bodies that can investigate. What we do with those cases is counsel them, provide them with information as to where their complaints may be able to go, whether it's the ministry or to do some follow-up with the Auditor General's office, but basically, that's all we can do.

Ms. Helena Jaczek: And specifically in these 29, did you refer them to the Ministry of Health and Long-Term Care?

Interjection.

Ms. Helena Jaczek: I hope this isn't eating my time.

Ms. Barbara Finlay: Some of them would have been referred to the ministry—not all of them, but some people would have been referred to the ministry. Some people complained to us that they had been to the ministry and they didn't get a response to their complaint, or the response wasn't responsive to the issues that they had raised.

Ms. Helena Jaczek: If you had oversight, as you are asking for an amendment, clearly, to Bill 11, what would you do in the case of what is, after all, a very tiny number of complaints, 29 out of—I don't know, in the time span since 2005, you said 20,000, perhaps? Is that over that same time span that you received 29 related to Ornge, that you received 20,000?

Mr. André Marin: No; last year, we received over 20,000 complaints in one year.

Ms. Helena Jaczek: So it would be safe to say that, since 2005, you may have received up to 100,000 complaints, and this would be 29 of those?

Mr. André Marin: Yes. Our volume of cases increased 27% last year, and another 20-something per cent the year before, but I see your point. There have been tens of thousands of complaints, and only 29 dealing with Ornge. Often the result of all the complaints in an area as a result of this kind of case—there are two factors at play. One is that people know that we don't oversee Ornge, so they don't bother to complain, or there is a lack of confidence that anything will happen even if they complain. I take your point, but it also has to be measured with those two factors.

Ms. Helena Jaczek: In my opinion, people don't know what areas the Ombudsman has control over. I would be astonished if they did, but anyway, we'll leave that.

What would you have done differently, supposing that you had investigated complaint number one. You've heard about the stonewalling that the Auditor General received. What would have been different in your case, if you had been the one to respond?

Mr. André Marin: Well, it's an offence to stonewall. Lack of co-operation is an offence under the Ombudsman Act, punishable by fine or imprisonment, which is why we always receive stellar co-operation by the provincial government.

Ms. Helena Jaczek: If you receive the stonewalling—and, obviously, this is an offence—do you immediately report that to the ministry responsible for that agency?

Mr. André Marin: We go up the chain of command. When we feel that there is pushback, resistance or lack of co-operation, we simply make some calls. As soon as the matter goes up the chain, it hits somebody who is familiar with our act and the obligations under our act, and co-operation ensues. Co-operation is never an issue overseeing the provincial government—ever.

Ms. Helena Jaczek: I know hindsight is 20/20, but what you are trying to tell us is that if you'd been stonewalled, you would have gone through, as you say,

the chain of command—that there was the opportunity or the potential that individuals within the Ministry of Health and Long-Term Care would have been far quicker to move.

Mr. André Marin: Absolutely; I have absolutely no doubt. If you look at the experience of our office with the OLG, we did an investigation called A Game of Trust in 2007 where the OLG was reticent to accept our recommendations and the minister intervened very quickly and corrected the matter; whereas the Municipal Property Assessment Corp. is another example where the government imposed a two-year freeze to fix the issues raised in our report. I have no doubt in my mind that the government would have been very responsive.

Now, I'm not saying we would have prevented anything. I can't predict that we would have been the answer to all issues, but on that specific issue, there is no doubt in my mind that the government would have responded very quickly, because we act as a radar telling the minister, "Listen, there's a problem with this agency; it's gone off the tracks."

Ms. Helena Jaczek: So your experience has been that our government has been very responsive to you—

Mr. André Marin: Yes.

Ms. Helena Jaczek: —as soon as they are apprised of the fact.

Mr. André Marin: Absolutely.

Ms. Helena Jaczek: Now, you said, because of the small number of complaints, that this could easily be absorbed by your office given this volume, but I think you're really saying to us that your ambition would be to have this extended to the entire health sector. I mean, if it's in the amended Ambulance Act, which is modelled on the Public Hospitals Act, would you not logically—you've referred to the number of complaints you get from hospitals; supposing you were to extend your mandate to public hospitals, surely, then, that would have a major impact in terms of the need for staff, the size of your office, funding and so on.

Mr. André Marin: Your point is very good. It's very relevant that the logic that applies to Ornge applies to hospitals—no doubt about it. If the Ombudsman's office were to oversee hospitals in Ontario, it would be a measure that would require additional resources. Quebec's Ombudsman gained that jurisdiction a couple of years ago, and she added 40 staff members to her staff, but there was a negotiation with the Minister of Health in Quebec, and they transferred employees from the ministry to the Ombudsman's office and made it a cost-neutral exercise.

1700

Ms. Helena Jaczek: Would you keep the patient advocate system within the hospitals to deal with minor complaints, with compliments etc.?

Mr. André Marin: Absolutely. I think the patient advocate system is part of the inner workings to respond to complaints. The Ombudsman is always an office of last resort. If hospitals are prepared to set up patient advocates, I think that's a positive step. Anything to help resolve public complaints is a positive step.

Ms. Helena Jaczek: And you have no objection to what is currently within Bill 11. Your position is it needs an addition—

Mr. André Marin: Correct. There's absolutely nothing offensive in Bill 11. There's nothing wrong that I can see. My only point is that it's not an answer to the oversight challenges that Ornge has faced in the past.

Ms. Helena Jaczek: Thank you.

The Chair (Mr. Bas Balkissoon): You've got a minute left.

Mrs. Donna H. Cansfield: Thank you. Just looking at this from a slightly different perspective, if in fact you had had oversight and you might have been able to pick up on a couple of those complaints earlier, I guess the supposition is that you might have been able to avoid some of what we're now dealing with.

Mr. André Marin: Correct.

Mrs. Donna H. Cansfield: Thank you.

The Chair (Mr. Bas Balkissoon): Thank you. We'll move to the opposition. Mr. Klees?

Mr. Frank Klees: Thank you, Mr. Chair, and thank you, Mr. Marin, for being here. I want to express our appreciation to you and your staff for the work that you do. You've certainly been very co-operative and responsive every time we've contacted your office.

Mr. André Marin: Thank you.

Mr. Frank Klees: I just want to say at the outset that we will certainly be bringing forward an amendment to this bill to in fact give you the oversight over this organization. I've certainly seen enough, after some 60 witnesses now and the trail that we have at Ornge, to know that the oversight and, quite frankly, the authority of your office is necessary.

I think the line of questioning that Ms. Jaczek took with you certainly supports the fact that there should be no reason why you would not be given that oversight. To absorb 29—if that is an indication of what would happen on a go-forward basis—29 complaints to be absorbed into your organization would certainly not be a financial burden. In fact, I think we would probably have saved multi-millions of dollars had you had the oversight.

I'd like to ask you, are you familiar with the Ministry of Health's initiative to establish the air ambulance oversight program, which, according to the minister, is their response to an oversight mechanism within the Ministry of Health?

Mr. André Marin: It was mentioned in a letter I received this morning from the minister, but beyond that, no.

Mr. Frank Klees: Okay. The ministry took the initiative to create this new program. They hired an individual to oversee this specific program, who, in turn, hired six additional staff. Through questioning here last week of that new director of that program, we asked what experience he has in either air or land ambulance. He responded, "None."

He also confirmed that none of the six new staff that he hired to help him with his oversight responsibilities in this program have any experience in either air or land

ambulance. We—when I say “we,” some of us—at this table feel that it’s very difficult for someone to exercise oversight if they have no knowledge of the context of that very specialized function.

I’d like your opinion as to whether or not it is important, for someone who has oversight responsibility, that they would at least have some knowledge of the functions that they are overseeing?

Mr. André Marin: In regard to our office, we oversee over 500 different bodies, and I don’t consider myself an expert in 500 different bodies. We are experts at investigation, at getting to the bottom of things. We go where the expertise is. So when we conducted an investigation on newborn screening, for example—what do I know about newborn screening? I’m not an expert in the field. We had to go out, look at other jurisdictions, ramp up our knowledge, and then we apply common sense and reason and articulate it in a report. It was the same thing with Municipal Property Assessment Corp., where you’re talking about complex algorithms to calculate values of homes, or the OLG, based on statistical odds of winning lotteries.

These are all specialty areas where I knew very little at the beginning, but I’m supported by an office of 87 people. We go out and get our evidence. We apply it, just like a jury would in a case.

To come back to your question, I don’t think it’s necessary that the overseer have that particular expertise in the area. But the overseer has to have the proper investigative skills and resources to get out there and get the evidence. If you tell me there are only six people, and they’re working within an organization, my concern would be that they don’t have the independence and resources to go to the information. That would be my greater concern.

Mr. Frank Klees: Let’s take the MPAC example. If you were to do your investigation of MPAC and found that the individuals who had the responsibility to do the assessments knew nothing about the real estate market, had no concept of estimates, had no previous background or experience in terms of the various assessment methodologies, as the Ombudsman, I would expect that you may well point to that as one of the reasons that there’s a problem with the MPAC system.

Mr. André Marin: Precisely. You know, I think the word “oversight” can be misused, so I’m not sure if the people you’re referring to are people actually within the organization. To me, oversight is outside the organization. It has no connection to the organization. If you’re within the organization providing oversight, there’s a period where that oversight can really be an exercise in managerial supervision rather than oversight. Of course, you would need people within the organization to have those skill sets and knowledge. We did find at MPAC that there were big issues with the quality of the assessments; 40% of them were actually inaccurate because of the lack of professionalism in that organization at that time.

Mr. Frank Klees: Thank you for that, and that’s precisely the point I’m getting at. These people in the

ambulance oversight program have the responsibility to analyze the reports that are sent in to the ministry by Ornge. Without knowing anything about the air ambulance business or industry, how can they possibly determine whether or not the information that Ornge is submitting to them is credible? They don’t even know what questions to ask if, in fact, there seems to be an issue. That’s why I think it’s important that you have oversight responsibility because, sir, you will be the only person who will be able to tell us and get to the bottom of the lack of credibility that many of the functions within the Ministry of Health have. I would expect one of the things that you would want to ensure is that information that is flowing from Ornge is, in fact, credible, that we can rely on it so that then the Ministry of Health can take action on that. We don’t have that today.

Mr. André Marin: That’s correct.

Mr. Frank Klees: There are very complex reports that are coming to the Ministry of Health every day, and we have people who have no idea whether or not those reports are credible.

Could you give us an estimate, because I know this is always the pushback: Government and ministers don’t want to make you any more powerful; they see you as a threat. With regard to air ambulance, with regard to Ornge, what would the additional cost be to the government to give you that extended oversight over this organization?

Mr. André Marin: I don’t see that it would be any additional cost with regard to oversight. I cannot imagine that, dealing with 20,000 cases, adding 29 to the pot would require additional funding. I cannot see it at all. Plus, I would expect Ornge to be squeaky clean going forward, right?

Mr. Frank Klees: Well, all the more reason why I’d like you to be there.

Mr. André Marin: Yes.

1710

Mr. Frank Klees: I find it interesting, in that regard, that the number of complaints to you about Ornge has actually significantly increased within the last 18 months. Can you share with us what the nature of those complaints is?

The Chair (Mr. Bas Balkissoon): We have one minute left.

Mr. André Marin: The 11 complaints in the last year—three out of the 11 complaints received are whistle-blowers. Here are some areas: negative media reports about Ornge are accurate; in cases of non-emergency transfer, Ornge does not use its nurses or EMS staff to screen for infection control and instead has non-medical staff undergo three-week infection control training which, in the complainant’s view, is not sufficient; Ornge misappropriating government funds and providing substandard services by lowering qualifications for paramedics; creating a monopoly over medical air transport; improperly relocating a heliport location; and lack of ministry oversight.

Mr. Frank Klees: And these are all within the last 18 months.

Mr. André Marin: Yes.

Mr. Frank Klees: Chair, I'd like to ask, if the Ombudsman is willing, if you wouldn't mind providing us with a written report on that. I understand that you have privacy issues. We're not looking for any identification information. But it would be very helpful if you could provide the committee with that information so that we know what the issues are that are still very current at Ornge.

Mr. André Marin: Yes, I will speak to counsel within our office and see whether we could provide you with that information.

Mr. Frank Klees: Thank you very much.

The Chair (Mr. Bas Balkissoon): Thank you, Mr. Marin, for being here with us.

Mr. André Marin: Thank you.

MINISTRY OF HEALTH AND LONG-TERM CARE

The Chair (Mr. Bas Balkissoon): Our next deputant is the Ministry of Health and Long-Term Care.

Interjections.

The Chair (Mr. Bas Balkissoon): Are the bells going to ring? Is it going to be soon? We're just going to find out exactly what time it will take before we start. Just give me a second.

Interjections.

The Chair (Mr. Bas Balkissoon): We may get interrupted for a vote.

Mr. Paul Kaufman: Okay.

The Chair (Mr. Bas Balkissoon): If we do, we'll have to put you on hold and come back.

Mr. Paul Kaufman: Certainly.

The Chair (Mr. Bas Balkissoon): You have five minutes for a presentation, and then we'll go 10 minutes per party on questions. Are you Mr. Kaufman?

Mr. Paul Kaufman: Yes, I am.

The Chair (Mr. Bas Balkissoon): Okay. Just state your name for the record and go right ahead.

Mr. Paul Kaufman: My name is Paul Kaufman. Thank you, Mr. Chair. Good afternoon.

I'm a lawyer with the legal services branch at the Ministry of Health and Long-Term Care, and I'm here today to provide a brief technical overview of key features in Bill 11, the Ambulance Amendment Act (Air Ambulances), 2013. Following my presentation, I'm pleased to answer any technical questions you have about Bill 11.

Bill 11 is intended to provide the provincial government with powers for intervention in the public interest in relation to providers of air ambulance services in Ontario.

The legislation does not expressly mention Ornge, but Bill 11 would provide the province with accountability tools that it could use in connection with Ornge or any other designated entity that may provide air ambulance services in the province. Many of these tools are based on mechanisms that are currently in the Public Hospitals Act

and that the province can currently use in connection with public hospitals.

Specifically, Bill 11 would, if passed, give the government the following powers:

The Lieutenant Governor in Council would have the power to appoint one or more provincial representatives to the board of directors of a designated air ambulance service provider.

The Minister of Health and Long-Term Care could issue binding directives to designated air ambulance service providers where it's in the public interest to do so.

The Lieutenant Governor in Council could appoint a special investigator, where it's in the public interest to do so, with broad powers to report on the quality of the administration and management of a designated air ambulance service provider; the quality of the care and treatment provided by a service provider; the services provided by a designated service provider; or any other matter relating to a designated air ambulance service provider.

The Lieutenant Governor in Council could also appoint a supervisor for a designated air ambulance service provider, on the minister's recommendation, where it's in the public interest to do so. Generally, the minister would need to provide 14 days' notice to the board of the provider before recommending a supervisor appointment to cabinet. However, this could be abridged in urgent circumstances.

Bill 11 would further provide that the minister or the Lieutenant Governor in Council could consider any matter that they consider relevant in making a decision in the public interest. The bill would also provide for very specific matters that could be considered when making a public interest decision, including:

- the quality of the administration and management of a service provider;
- the proper management of the health care system in general;
- the availability of health care funding;
- the accessibility of air ambulance services in the province; and
- the quality of care and treatment provided by the service provider.

Bill 11 would also provide the Lieutenant Governor in Council with extensive regulation-making powers in connection with designated air ambulance service providers, including:

- the power to make regulations providing for provisions that would be deemed to be in an agreement between the government and a designated air ambulance service provider;
- setting performance standards and measures and requiring compliance with those standards and measures;
- respecting the content of the bylaws and letters patent of a designated air ambulance service provider; and
- generally relating to the governance and management of designated air ambulance service providers.

Bill 11 would also facilitate the continuance of Ornge as a provincial corporation. On this point, you should understand that it's legally possible for a corporation which has been incorporated under the laws of one jurisdiction to be "continued," which is the technical legal term, as if it had been incorporated under the laws of another jurisdiction.

A continued corporation retains its status as a legal person, its property and its liabilities. In order for this to happen, there must be enabling legislation in both the exporting jurisdiction, where the corporation was first established, and in the importing jurisdiction, where the corporation wishes to be continued.

Bill 11 contains wording that corresponds to the Canada Not-for-Profit Corporations Act and that would preserve the legal identity and liabilities of Ornge if it were to become provincially incorporated.

Finally, Bill 11 would protect whistle-blowers from retaliation for disclosures that are made to the ministry or to an investigator, inspector or special investigator under the Ambulance Act. Bill 11 would also introduce prohibitions against discouraging individuals from making disclosures to the ministry or inspectors, and prohibitions against encouraging individuals not to make such disclosures.

Thank you again for this opportunity to present to you. Now I'm happy to take your questions about Bill 11.

The Chair (Mr. Bas Balkissoon): Thank you. We will start with the government. Ms. Jaczek.

Ms. Helena Jaczek: Thank you for your presentation. I really will only have a couple of questions. Why was the Public Hospitals Act used as the model for this amendment to the Ambulance Act?

Mr. Paul Kaufman: The Public Hospitals Act framework is something that has been in place for a long time in Ontario, and it's familiar to health sector players in Ontario. It's also something that has been used effectively by the ministry and the Ontario government where there are significant issues at large public hospitals where action is needed by the provincial government, either to investigate what's going on or, if something untoward is found to be going on, to put a supervisor in place to temporarily take over the operations of the hospital.

Ms. Helena Jaczek: Why did you choose that statute? There presumably must have been some similarities in the service.

Mr. Paul Kaufman: Well, yes. Hospitals, like Ornge, provide essential health services. Ornge receives significant funding from the government, like public hospitals do. It is a corporation like most public hospitals are. So there were a lot of similarities between how Ornge operates, and in terms of the importance of the services that it provides in the health sector, and what is provided by hospitals.

1720

Ms. Helena Jaczek: This business of Ornge originally being federally incorporated and now there's a change, this continuance or whatever it is: Why is that necessary?

Mr. Paul Kaufman: That's necessary because there are constitutional limitations around what the Ontario

Legislature can do in connection with interfering with the governance and the overseeing of a corporation by its board where that corporation is federally incorporated. Because both the province and the federal government have legislated corporate law regimes, and because under our division-of-powers scheme in Canada, where legislative action by both levels of government comes into conflict, the federal government's legislative regime would trump in this case. The province couldn't, for example, pass legislation today that would displace Ornge's board's authority to give direction to the corporation because that would effectively be displacing the federal government's corporate law regime.

Ms. Helena Jaczek: So this is just in case something goes wrong in the future in terms that this is an independent board and therefore you require this.

Mr. Paul Kaufman: Yes. For example, if this bill were to pass as it's currently drafted and the government was to try to appoint a supervisor who would exercise the powers of a board, that would only be effective if Ornge was provincially incorporated.

Ms. Helena Jaczek: We have heard in public accounts that there are some hospitals which are federally incorporated. Is there any move to amend that, their status?

Mr. Paul Kaufman: Well, that would have to be a move, I think, that would be initiated by those hospitals because they are in control of their own corporate personality. The three, I think, that still exist plus the Salvation Army have existed for a long time and we can't legislate away their ability to incorporate federally. I don't know if there's been any specific discussions with them about having them become provincially incorporated.

Ms. Helena Jaczek: But of course, we fund them, right?

Mr. Paul Kaufman: Yes.

Ms. Helena Jaczek: Supposing something was to go wrong in one of those hospitals—a whistle-blower phoning or whatever—what would happen?

Mr. Paul Kaufman: Obviously, it's difficult to speculate without knowing exactly what was going wrong, but there are other mechanisms in the Public Hospitals Act that still could be used in connection with a federally incorporated hospital. For example, an investigator could be appointed who could make a report to the minister that could be made public that describes what the issue is, and that might create community pressure.

Ms. Helena Jaczek: So there are still provisions in the Public Hospitals Act that would allow for those activities—

Mr. Paul Kaufman: Yes.

Ms. Helena Jaczek:—which were not able to be used in the case of Ornge because, obviously, it wasn't the Public Hospitals Act, and the Ambulance Act didn't include the provisions that we're putting in with Bill 11.

Mr. Paul Kaufman: That's correct.

Ms. Helena Jaczek: Okay, thank you.

Well, I do have one question. Obviously you've heard the Ombudsman and his request for an amendment that

would allow him oversight. From a legal perspective, do you see any objection to that? Do you see any impediment to that kind of an amendment?

Mr. Paul Kaufman: As to whether or not there was an impediment to making that kind of amendment, I'd probably defer to the Chair and the Clerk, who would be more well versed in legislative process and how that could happen if another act was to be opened up. I think there are sometimes issues around going outside the scope of a current bill, but I think that's more the Clerk's province—

Ms. Helena Jaczek: You mean in relation to opening up the Ombudsman Act.

Mr. Paul Kaufman: Yes.

Ms. Helena Jaczek: I see. Put that aside for moment. But in terms of adding an amendment to this particular Bill 11—

Mr. Paul Kaufman: Would it create legal difficulties for the bill itself, do you mean?

Ms. Helena Jaczek: Yes.

Mr. Paul Kaufman: It wouldn't undermine, necessarily, any of the mechanisms that we have in place here. It would be a separate item.

Ms. Helena Jaczek: Within Bill 11 as it currently stands, we do have some whistle-blower protection initiatives. Could you just flesh those out for us and give us a little bit more on that?

Mr. Paul Kaufman: Sure. What would be the new section 7.7 of the Ambulance Act, if the bill were to be passed as it's currently drafted, would prevent retaliation against individuals who either make disclosures to regulatory overseers—that's inspectors, investigators or special investigators—or to the Ministry of Health and Long-Term Care, both in its regulatory and funding oversight capacity.

What retaliation means for the purposes of those sections is—it's a very general, broad definition so it can be read very broadly by a court if prosecution was ever to be brought under this provision. But it specifically includes dismissing staff members, disciplining staff, imposing penalties upon people or intimidating, coercing or harassing people.

There are also specific provisions for greater clarity to make sure that these are seen by courts to be within the scope of this protection that make it clear that individuals cannot discourage people from making reports to inspectors or the ministry and that you also can't reward people for not making reports.

Ms. Helena Jaczek: My colleague has one question.

Mrs. Donna H. Cansfield: Thank you. I just have a couple of questions. Around the incorporation—first of all, thank you for the overview, because it was excellent.

Mr. Paul Kaufman: Thank you.

Mrs. Donna H. Cansfield: In essence, you've got that the minister could appoint one or two representatives, but if you've got an incorporated board, once they're appointed, then they're responsible to the board, not to the minister. It's true of any board. So that's one.

The second is, when you say the Minister of Health and Long-Term Care could issue binding directives, are

you talking about ministerial directives? That's one question.

And then, it's interesting; there's lots of "coulds" but I don't see any triggers. You could do this or you could consider that, but what are the triggers that would say you should do this, you could, in fact, investigate?

And then I was just curious around the last—again, there could be a whistle-blower, there is protection, but there's nothing that speaks to any public accountability.

Now, in fairness, I have not read this act from one end to the other and memorized it; I'm just sort of curious about these questions.

Mr. Paul Kaufman: Certainly. I made some quick notes, but if I miss something, please let me know.

On the rights and responsibilities of board members, first, the default position in the act is that provincial board members would have the same rights and responsibilities as any other member of the board. However, there is an ability to actually vary those rights and responsibilities through regulations if it was seen to be a problem in a particular circumstance. So if provincially appointed board members weren't getting appropriate notice of meetings, for example, that's something that could be dealt with through regulations. Or if there were conflicts found that they were having difficulty navigating, that is something that could be dealt with through regulations.

On the directives, those would be ministerial directives. They would be made at the discretion of the minister, but the potential subject matter of those directives isn't circumscribed in the bill, so they could be very wide-ranging in terms of their subject matter.

Triggers—

Mrs. Donna H. Cansfield: Would they be made public?

Mr. Paul Kaufman: They could be made public, yes. Nothing prohibits it and there's no rule at law that I'm aware of that would prohibit it.

Mrs. Donna H. Cansfield: But there's nothing that says it would happen.

Mr. Paul Kaufman: That it must be made public?

Mrs. Donna H. Cansfield: Yes.

Mr. Paul Kaufman: No.

In terms of triggers, most of these powers are discretionary. The idea is that—I think the thinking was that we're basing a lot of this on the Public Hospitals Act and there aren't minimum thresholds you have to get to before you have a mandatory trigger to take action. There are requirements, in some cases, that actions that cabinet or the minister take have to be in the public interest. As I spoke to in my overview, public interest considerations that are valid considerations, specific ones, are set out in the bill. Also, any other broad matter or any other matter that the minister considers relevant could be taken into account in making those determinations. Ultimately, in terms of public accountability, the—

The Chair (Mr. Bas Balkissoon): Sorry, I have to interrupt right here. I sort of missed the one-minute mark, but time's up. We have to move to Mr. Klees.

Mr. Frank Klees: Thank you, Chair. Thank you, Mr. Kaufman. I'm going to ask you to help me clarify something with regard to the authority to exercise control or to appoint a supervisor at Ornge.

We had a memo here from Carole McKeogh, deputy director of the legal services branch at the ministry. You work with Ms. McKeogh, do you?

Mr. Paul Kaufman: Yes, I do.

Mr. Frank Klees: In that memo to us, which was in response to the authority to intervene, Ms. McKeogh made it very clear that Ornge is not an independent health facility for the purposes of the Independent Health Facilities Act—and we understand that. She also, however, went on to say that the Health Facilities Special Orders Act applies to health facilities which are defined to include ambulance services under the Ambulance Act, and Ornge is an ambulance service under the Ambulance Act, so it does come under the control of the Health Facilities Special Orders Act. Would you agree with that?
1730

Mr. Paul Kaufman: Yes, that's my understanding.

Mr. Frank Klees: I have here a copy of that act. I'm sure you're very familiar with it. Do you have a copy as well?

Mr. Paul Kaufman: I have a copy of it. I haven't worked extensively with it.

Mr. Frank Klees: Okay. I'm looking at "Purposes," which is under section 2, that sets out the purposes of the act. In 2.1, it states very clearly: "To enable the minister to act expeditiously to prevent, eliminate or reduce harm to any person, an adverse effect on the health of any person or impairment of the safety of any person caused or likely to be caused by the physical state of a health facility or the manner of operation of a health facility."

Paragraph 2 states: "To enable the minister to act expeditiously where the conduct of a licensee or of an officer or director of a corporate licensee affords reasonable grounds for belief that the health facility is not being or is not likely to be operated with competence, honesty, integrity and concern for the health and safety of persons served by the health facility."

The reason I wanted to read that into the record is that anyone's interpretation, I would think, of that last paragraph referring to questioning the competence, the honesty, the integrity of those responsible for operating Ornge certainly would have fallen under this category. Would you agree with that?

Mr. Paul Kaufman: Based on what I've heard publicly? Sure.

Mr. Frank Klees: So based on that, under the Health Facilities Special Orders Act, certainly the minister would have authority here.

Under section 7.1, it states as follows: "Where either the licence for a health facility is suspended under this act or the licensee of an ambulance service is required by order under this act to suspend the provision of ambulance services and the minister is of the opinion that the health facility should continue in operation in order to provide temporarily for the health and safety of per-

sons"—so the application to Ornge here would be to say, "This is an emergency service. We're not going to shut it down; it has to continue." It goes on to say that "the minister by a written order may take control of and operate the health facility for a period not exceeding six months." The application here to Ornge would be that certainly the minister would have, under this act, the authority to take over Ornge and its operations for at least a period of six months. Would you agree with that?

Mr. Paul Kaufman: No, I wouldn't.

Mr. Frank Klees: Why not?

Mr. Paul Kaufman: Because subsection 7(1) of the Health Facilities Special Orders Act, which provides—it's all premised on a health facilities licence having already been suspended under the act, and the power—

Mr. Frank Klees: Yes. She has the right to do that, and she would have the right to suspend the licence of Ornge.

Mr. Paul Kaufman: But I believe the right to suspend a licence only comes up where there's a risk to health and safety under subsection 3(1) of the act.

Mr. Frank Klees: No, I don't think so.

Mr. Paul Kaufman: On my read, that's how it works.

Mr. Frank Klees: And the interpretation, based on what we had as evidence, some 45 incidents reported to the coroner of lives being put in danger: Are you suggesting that that would not fall into this category?

The Chair (Mr. Bas Balkissoon): I would like to interrupt. The bells are ringing and we have to go for a vote. The only problem we face is, if we're not back with enough time to continue, we have to end at 6, and Mr. Kaufman would have to come back at the next meeting of the committee.

Ms. Gélinas, you have a question?

M^{me} France Gélinas: It doesn't take me eight minutes to walk down there. I don't think it will take any of us eight minutes. How about we go for another five and let Frank finish?

Mr. Frank Klees: Thank you.

The Chair (Mr. Bas Balkissoon): Okay. Carry on.

Mr. Frank Klees: My point simply is that knowing what we know about what was going on at Ornge, clearly the minister, under this act, would have had the authority to step in and say, "Look, you're putting lives at risk. We have heard enough. We're suspending your licence, and I'm going to ensure that the service continues, because this is an emergency service." Would you not agree with that?

Mr. Paul Kaufman: I can't speak to what specific facts, at a specific time, may have been put before the minister and might have informed a decision to take action under this act or not.

Mr. Frank Klees: Okay. The next paragraph, section 1.1, states, again, very clearly that "the Minister by a written order, may, rather than taking control of and operating the ambulance service under subsection (1), select a person, who holds a certificate under section 8 of the Ambulance Act, to manage, operate and administer

the ambulance service....” That sounds like a supervisor to me.

Mr. Paul Kaufman: Again—pardon me. Did I cut you off? Okay.

Mr. Frank Klees: My point is this: Based on what this act tells us, the minister had the authority, under the Health Facilities Special Orders Act, to intervene, to suspend a licence, to continue to operate it and to appoint a supervisor. The authority was there, and what we have here in Bill 11 is simply a duplication of that.

What we don’t understand at this committee is why, first of all, the minister didn’t assume that authority, and why, when we asked Ms. McKeogh for her assessment of whether or not the Health Facilities Special Orders Act applies to Ornge, she failed to mention either of those sections in the act. Would you have an explanation for us?

Mr. Paul Kaufman: As to why those weren’t mentioned in what Ms. McKeogh gave you, or as to having the power to appoint a supervisor is different from what’s in the Health Facilities Special Orders Act?

Mr. Frank Klees: Why Ms. McKeogh would not have fully disclosed this information to the committee.

Mr. Paul Kaufman: I don’t believe that she failed to fully disclose any relevant information to the committee. My understanding is, and I don’t know exactly what opinion—what was requested of her by the committee. However, if the opinion she was providing was relating solely to governance issues, then the power to appoint someone to temporarily run Ornge would not have been relevant, because, again, a licence can only be suspended where there’s a risk to health and safety.

Mr. Frank Klees: Look, it wasn’t solely for governance issues. The purpose of the act is stated very clearly, and that is “that the health facility is not being or is not likely to be operated with competence, honesty, integrity and concern for the health and safety of persons served by the health facility.” Clearly, Ornge falls into that category.

Mr. Paul Kaufman: But a purpose clause only generally frames the specific contents of the bill. It doesn’t, in and of itself, give you a legal basis upon which specific action can be taken. It has to be tied to specific sections of the bill.

Mr. Frank Klees: And that’s why I referred to the other sections of this act, which are very specific as well, in terms of the conditions under which the licence of Ornge could be suspended, under which supervisors could be appointed.

The point simply is that we have a piece of legislation here that very clearly gives the minister the authority to intervene at Ornge, to take over the licence, to appoint a supervisor, and we continue to be told by the minister, and now today by you, in questioning from Ms. Jaczek, that that authority wasn’t there.

The Chair (Mr. Bas Balkissoon): I will have to interrupt. Time’s up. We just have questions from Ms. Gélinas, so we’ll do that after the vote. Hopefully, we

have 10 minutes before 6 p.m. Mr. Kaufman, if you can just hold on until we return.

Mr. Paul Kaufman: Certainly.

The Chair (Mr. Bas Balkissoon): We’re recessed.

The committee recessed from 1739 to 1750.

The Chair (Mr. Bas Balkissoon): We will reconvene. Ms. Gélinas?

M^{me} France Gélinas: I thought I would make a joke and say I have no questions. I brought you all back here for nothing.

Actually, I do have a few questions, Chair. My first one is, this discretionary power respecting the content of the bylaws in the letters patent: Do you know if this is part of the hospital act that the minister can change letters patent?

Mr. Paul Kaufman: Not letters patent, but cabinet can set rules regarding hospital bylaws.

M^{me} France Gélinas: Okay, but not letters patent.

Mr. Paul Kaufman: That’s right.

M^{me} France Gélinas: Where does this idea come from that you would need to change the letters patent?

Mr. Paul Kaufman: I believe it was a response to the convoluted corporate structure at Ornge. The corporate governance had gotten out of control. The letters patent are effectively the constitutional document of a corporation’s corporate governance structure. If there were potential problems in the future in that area, this power might be potentially relevant.

M^{me} France Gélinas: Okay. Can you see that, given that so much of Bill 11 mimics what’s in the hospital act and now you’re adding to Bill 11 the discretionary power of the minister to change letters patent, this sets a precedent that could then be applied to the hospital act? If we do it in this bill, what keeps us from changing the hospital act, or any other, for that matter?

Mr. Paul Kaufman: Just to clarify one thing, it’s cabinet’s power, not the minister’s. But you’re the Legislature; you can do it in the Public Hospitals Act whether or not it’s done in this bill. It doesn’t set a binding precedent, but I guess I take your point that it would be a policy precedent.

M^{me} France Gélinas: It would be a precedent and make a lot of people nervous. Right now, you realize that we have hospitals that are incorporated at the federal level, which means that the minister cannot appoint a supervisor to those hospitals if she saw fit. Since she has been the minister, she has made use of that power for a good reason. If those good reasons were to happen in the hospitals that are incorporated at the federal level, she would not have that power, would she?

Mr. Paul Kaufman: No.

M^{me} France Gélinas: Does that worry you?

Mr. Paul Kaufman: There are other tools in the Public Hospitals Act that we could use, including investigators, having inspectors go in and do inspections, and using funding levers. Does it worry me? It’s a limitation on our ability to respond to things.

M^{me} France G elinas: But yet there is nothing in place right now to have those hospitals change? You've already answered that question.

Mr. Paul Kaufman: I'm not aware of anything. I can't speak exhaustively to what the ministry may or may not be doing in other areas.

M^{me} France G elinas: Okay. One of the requests we had made the first time this bill came around was freedom of access of information—that air ambulance should be covered by FIPPA. Why is it not in the bill?

Mr. Paul Kaufman: I believe the government is moving forward to do that by regulation, which is the usual way that new institutions are brought under FIPPA. A draft regulation to do that was posted, and I think the government has publicly expressed its intent to bring Ornge under FIPPA.

M^{me} France G elinas: Okay. Do you know if they're working on it right now and where they are in the process of changing the regulations?

Mr. Paul Kaufman: I believe that's very close to being finalized. It's definitely something that has been moved forward very recently.

M^{me} France G elinas: It will be ready shortly?

Mr. Paul Kaufman: That's my understanding, subject to—of course, it's a regulation so it needs approval from cabinet and the Lieutenant Governor before it could become law.

M^{me} France G elinas: Any idea when it will be ready enough that it could be presented to cabinet?

Mr. Paul Kaufman: I need to be very careful about cabinet confidentiality, but I expect that that could be done very quickly.

M^{me} France G elinas: Very soon?

Mr. Paul Kaufman: Yes.

M^{me} France G elinas: Okay. The bill gives the minister a whole bunch of new powers that mimic the hospital act but goes beyond what we have in the hospital act—about an agency that has been under the microscope for two years non-stop. There are lots of other agencies of the Ministry of Health out there that have not been under the microscope for the last year and a half. What are we doing with them?

Mr. Paul Kaufman: Well, if you look at different slices of the health care sector, we have different powers that are sometimes tailored towards the dynamics in those health care sectors. With boards of health, the minister and the Chief Medical Officer of Health have remedial and oversight powers that they can use in connection with boards of health that are tailored to dealing with public health risks, for example. With CCACs, there are existing powers to appoint a supervisor.

In other sectors, there may be the ability to revoke licences or to take other types of action, or to use funding levers to bring entities into compliance.

M^{me} France G elinas: Okay. If there's a willingness of the ministry to do it, they work.

In Bill 11, you bring in whistle-blower protection. You've heard what I've said to the AG. Right now, the

whistle-blower protection that you have means that you could still lose your job; you could still lose your income; you will bring your employer to court. You're a lawyer. I think sometimes things are slow here, but we're bullet speed compared to the courts. So years later, this bill would allow you to gain your job back—is that a pretty accurate description of what will happen to a whistle-blower?

Mr. Paul Kaufman: I'd just note that the act would create an offence if you were to retaliate against a whistle-blower. An individual wouldn't need to pay the legal costs of taking action under the proposed whistle-blower protections; that would be a prosecution brought forward by the government. The individual wouldn't be out of pocket, while those legal proceedings were going on, for the legal costs of launching those proceedings. But I appreciate the other points that you make.

M^{me} France G elinas: The other points that I make: You're without an income, you're without a job, for the time that those proceedings take—

Mr. Paul Kaufman: If you were fired. But retaliation against whistle-blowers doesn't necessarily always mean firing someone. In some cases, it can be other types of less severe action, so I don't know—

M^{me} France G elinas: I'll put you in contact with some of the whistle-blowers at Ornge who are presently unemployed. It happens.

What the Ombudsman has put forward is really—he is the ultimate whistle-blower protection. You call the Ombudsman; they will do a third-party-independent investigation, and you are at no threat of losing your job. Why was that not looked at as a whistle-blower protection?

Mr. Paul Kaufman: To be honest, my involvement in this bill has been drafting it based on the policy that was set by the ministry, and I can't speak to why the policy direction is what it is in that regard.

M^{me} France G elinas: Okay. Do you agree that the Ombudsman gives whistle-blower protection?

Mr. Paul Kaufman: Well, I think the Ombudsman's position was that the individuals could make anonymous complaints to the Ombudsman. Nothing in this bill would preclude anonymous complaints being made to the ministry and the accountability and oversight tools in this bill being used by the ministry in connection with an anonymous complaint.

M^{me} France G elinas: You didn't answer my question.

Mr. Paul Kaufman: Sorry, I—

M^{me} France G elinas: My question is, do you agree that the Ombudsman provides whistle-blower protection?

Mr. Paul Kaufman: I don't know that the Ombudsman Act specifically provides whistle-blower protection in the form that's typically used legally—

The Chair (Mr. Bas Balkissoon): You have a minute left.

Mr. Paul Kaufman: —in terms of being able to prosecute retaliation against people who are whistle-blowers.

M^{me} France Gélinas: So you disagree with what the Ombudsman said today?

Mr. Paul Kaufman: I think the Ombudsman wasn't taking a literal legal read on the term "whistle-blower protection" in the sense that I'm speaking about it. I think he was talking about the ability of his office to take action when people make disclosures to him. I agree that when people make disclosures to the Ombudsman, he can look into matters and, if it's an anonymous complaint, they wouldn't be known.

M^{me} France Gélinas: Do you know why there was no policy direction to include Ombudsman oversight of Ornge?

Mr. Paul Kaufman: No.

M^{me} France Gélinas: This was never brought up?

Mr. Paul Kaufman: I wasn't involved in the policy development discussions that led to this bill, so I don't know if it was brought up or not.

M^{me} France Gélinas: Okay. Thank you.

The Chair (Mr. Bas Balkissoon): Thank you, Mr. Kaufman. Thank you for coming in and for being here.

Committee, before we adjourn, we don't have any further directions on this bill and we don't have dates left on the calendar until we come back in September. I'm just making you aware of that.

Committee is adjourned, and we'll now convene as a subcommittee.

The committee adjourned at 1800.

CONTENTS

Wednesday 15 May 2013

| | |
|--|-------|
| Ambulance Amendment Act (Air Ambulances), 2013, Bill 11, Ms. Matthews / Loi de 2013 modifiant la Loi sur les ambulances (services d'ambulance aériens), projet de loi 11, Mme Matthews | G-201 |
| Office of the Auditor General of Ontario | G-201 |
| Mr. Gary Peall | |
| Office of the Ombudsman of Ontario | G-205 |
| Mr. André Marin | |
| Ms. Barbara Finlay | |
| Ministry of Health and Long-Term Care | G-211 |
| Mr. Paul Kaufman | |

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