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Monday 7 October 2002

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Lundi 7 octobre 2002

Standing committee on general government

Emergency Readiness Act, 2002

Comité permanent des affaires gouvernementales

Loi de 2002
sur l'état de préparation
aux situations d'urgence

Chair: Steve Gilchrist
Clerk: Tonia Grannum

Président : Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 7 October 2002

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Lundi 7 octobre 2002

The committee met at 1554 in committee room 1.

SUBCOMMITTEE REPORT

The Chair (Mr Steve Gilchrist): Good afternoon. I call the standing committee on general government to order for the purpose of dealing with Bill 148, An Act to provide for declarations of death in certain circumstances and to amend the Emergency Plans Act.

The first order of business will be the report of subcommittee.

Mr Norm Miller (Parry Sound-Muskoka): I'd like to move the subcommittee report.

Your subcommittee met on Monday, September 30, 2002, to consider the method of proceeding on Bill 148, An Act to provide for declarations of death in certain circumstances and to amend the Emergency Plans Act:

(1) That the committee meet on Monday, October 7, 2002, to hold public hearings on Bill 148, An Act to provide for declarations of death in certain circumstances and to amend the Emergency Plans Act.

(2) That clause-by-clause consideration of Bill 148 commence no later than 5 pm on Monday, October 7, 2002.

(3) That amendments to Bill 148 be received by the clerk of the committee by Friday, October 4, 2002, at 5 pm.

(4) That advertisements be placed on the OntParl channel and the Legislative Assembly Web site and a press release be distributed to English and French papers across the province. The clerk of the committee is authorized to place the ads immediately.

(5) That the caucus offices of the three parties provide the clerk of the committee with lists of witnesses to be scheduled for public hearings on Bill 148 by Friday, October 4, 2002, at 3 pm. The clerk is authorized to start scheduling witnesses as soon as lists are received. If there are more witnesses wishing to appear than time is available, the clerk will consult with the Chair who will make decisions regarding scheduling.

(6) That witnesses on Bill 148 be given a deadline of Friday, October 4, 2002, at 3 pm to request to appear before the committee.

(7) That the deadline for written submissions on Bill 148 be Friday, October 4, 2002, at 5 pm.

(8) That witnesses be offered 10 minutes in which to make their presentations on Bill 148.

(9) That there be a maximum of one hour debate split equally between the recognized parties.

(10) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Further debate?

Mr Dave Levac (Brant): I would move an amendment to the report, that in section (3) we strike out "Friday, October 4, 2002, at 5 pm" and replace it with "Monday, October 7, 2002, at 11" in order to receive a motion that was late.

The Chair: Further debate?

Mr Peter Kormos (Niagara Centre): I'm inclined to indicate that I'm going to agree with the amendment. However, I feel compelled to vote against the report because it was premised on us starting at 3:30. It's nobody's fault we didn't start at 3:30. We're required, on the basis of the report, to go to clause-by-clause at 5. That means somebody who went to great trouble to come here is going to get squeezed out.

The Chair: Seeing no further debate, I'll first put the question on the amendment proposed by Mr Levac. All those in favour?

Mr Kormos: Recorded vote.

The Chair: Mr Kormos has asked for a recorded vote.

Ayes

Colle, Dunlop, Levac, Miller, Stewart, Wood.

Nays

Kormos.

The Chair: That is carried. When I mentioned that was the first order of business, it should actually have been the second. Our first order of business should be to welcome Ms Tonia Grannum as the new clerk of the committee.

Applause.

Mr Levac: Let the record show applause.

The Chair: Yes. I'm sure most members of the committee have served with Tonia and I'm sure we will be ably served by her in this committee. Welcome aboard.

EMERGENCY READINESS ACT, 2002

LOI DE 2002 SUR L'ÉTAT DE PRÉPARATION AUX SITUATIONS D'URGENCE

Consideration of Bill 148, An Act to provide for declarations of death in certain circumstances and to amend the Emergency Plans Act / Projet de loi 148, Loi prévoyant la déclaration de décès dans certaines circonstances et modifiant la Loi sur les mesures d'urgence.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair: The first deputation will be from the Ontario Professional Fire Fighters Association. I wonder if they'd come forward to the witness table. Good afternoon. I'll just remind you that you have 10 minutes for your presentation. If you'd be kind enough to introduce yourself for the purpose of Hansard.

Mr Ron Gorrie: My name is Ron Gorrie and I'm privileged to be the executive vice-president of the Ontario Professional Fire Fighters Association. Thank you for the opportunity to present the position of the 9,000 professional career firefighters in the province of Ontario.

I wish to state that, as an association, we support the concept of Bill 148 but believe there are some amendments that are required that would strengthen and enhance the concepts put forth by the government.

In announcing the legislation, Minister Turnbull outlined some of the stakeholders involved with delivering emergency services. The members of the Ontario Professional Fire Fighters Association would ask that all stakeholders, as referred to by then Minister Turnbull, be involved in the formulation of emergency plans and that the legislation would make such participation mandatory. All too often the front-line worker is forgotten when plans are being formulated with respect to emergency situations.

1600

The government's press release of December 6, 2001, which is under tab 1, makes many statements regarding the provisions and protections offered by the legislation, and I would like to offer a few briefs comments with respect to those.

The press release speaks to consistent standards. The Ontario Professional Fire Fighters Association welcomes a province-wide standard on emergency response and commends the government for adopting such foresight in emergency situations. We do ask though, what standard or standards will be adopted? It's very important to have the correct ones in place.

We believe such standards would have to address the necessary requirements for incident command, communications and response capabilities. These requirements exist already in the form of statutes and standards internationally recognized and developed by the National Fire Protection Association.

We strongly urge the government to adopt and mandate these scientifically based standards created by all stakeholders. These stakeholders include fire chiefs, municipal managers, industry experts, manufacturers, firefighters and many others. NFPA standards, as you're well aware, affect the everyday lives of Ontarians: electrical codes, sprinkler systems, building construction materials and methodologies. It would be the next logical step for the province of Ontario to incorporate NFPA standards respecting emergency responses.

Lists are addressed in the document released in December, and we would further respectfully suggest a simple identification of risks and potential dangers. The creation of a list of responses is not enough. As front-line emergency personnel, my members know the great value of correcting risks that can be corrected in advance of an emergency and the comparative little value of simply having a list of hazards and lists of responses thought to be appropriate. Furthermore, to have a list or directory of those who are called upon in the event of an emergency is of very little value when those on the list are not there when called upon.

Once more, having a list of hazards and responses is not very useful when there are not the resources to put a plan into operation. Responses require that personnel are actually available and not counted twice or three times when they occupy multiple positions of responsibility.

We would respectfully request that when resources are listed as existing, there be a mandated verification process to ensure that they do indeed exist. Most importantly, there must be an obligation on municipalities to produce their plans on emergency situations.

The press release speaks of the suspension of laws. As emergency responders, the members of the Ontario Professional Fire Fighters Association deal with emergencies each and every day. We are compelled to ask of this committee as to the level of emergency situation that would trigger such suspension of laws. Obviously, the situation should be seriously grave in order to trigger and should be better defined in the legislation.

Plans for buildings were mentioned in the press release. This already happens to a much lesser level to fire plans in large buildings. We in the Ontario fire service can testify to the frustration in discovering out-of-date plans, no plans or no building officials available. We would suggest that the legislation make compulsory the development of plans, the maintenance of those plans and the availability of personnel to assist with implementing those plans.

Generally, we suggest amendments that would mandate testing on a full-scale basis of emergency plans once every three years. Mandatory testing of plans would ensure proper evaluation of risk, ensure a plan's appropriateness and, finally, ensure that resources counted upon in a plan are in fact available to be used in the event of an emergency.

Once a risk has been identified, it must be evaluated in a very realistic fashion. The resources required to minimize and correct the risk can then be assigned. If it is

determined that the resources needed are overwhelmed, then it is incumbent on the provincial government to increase resource availability in advance of a disaster. We all know too well the effectiveness of post-disaster legislation and post-disaster resource allocation.

We suggest amendments to call upon funding from the provincial government for a number of reasons. If costs are left as the responsibility of municipal government, then it may happen that necessary planning does not take place due to budget restraints. If costs are left in the municipality's hands, then funds are likely to be stripped from already emaciated emergency response budgets. If costs are left in the hands of municipal government, as time goes on and tax increases are flatlined by municipal councils, the plans made today are not likely to be updated and resources required are also likely to be reduced.

These are the submissions of the Ontario Professional Fire Fighters' Association and are respectfully submitted. We urge that the amendments go forth to enhance public safety.

The Chair: That gives us time for one question. We'll follow the normal rotation pattern and start with Mr Levac.

Mr Levac: Thank you very much for your presentation. I appreciate the work of the professional firefighters in public safety and also in suppression, because sometimes that gets forgotten. That seems to be part of the crux of the problem, and that is, municipalities have been downloaded and there have been various budget constraints. It seems that we're finding more and more communities that are on a list of communities being watched by the fire marshal because of their lack of ability to provide proper service or standards.

A very blunt, quick question: do we need more money from the provincial government for those municipalities to provide that safety and security for our citizens?

Mr Gorrie: A very blunt, quick answer: yes.

The Chair: Actually, that will leave time for a quick one, Mr Kormos; about a minute or a minute and a half.

Mr Kormos: It will be oh so fast and that's oh so rare.

I'm well aware of the firefighters and their struggle with the government to establish universal standards in terms of response time and adequate staffing in response. You're familiar with that. There are scientific studies that come out of the United States, and there's a distinction between rural areas and urban areas.

Would you briefly recite those response times and adequacy of staffing and indicate whether or not the inclusion of those as a minimum standard would have a positive effect on emergency response?

Mr Gorrie: They would have a dramatic effect on emergency response.

NFPA standard 1710 addresses career fire departments—the emergency response times are included and the number of people required on scene in the event of a residential house fire—and further goes on to address that municipal governments are compelled, in order to achieve that standard, to account for more and more personnel as the situation evolves or as a building is decided to be more than a 2,000-square-foot residential house fire. The response times are four minutes for the first arriving company to arrive on scene and eight minutes for all assigned companies to arrive on scene, 90% of the time.

NFPA standard 1720 speaks to areas that are rural or volunteer departments. The components in 1720 do not have a time frame with respect to arriving on scene. It simply says that once you have sufficient manpower—I believe it's four—on scene in order to conduct an interior fire attack, then such attack must occur within four minutes of the four people arriving on scene.

Standards 1710 and 1720 would go a long way in protecting the residents of the province. They would then be able to measure and know what's available for their protection. Without those standards in place, people in Ontario have no idea what they have. Very recently, the residents of Sudbury were shown at an inquest in Sudbury that they believed they would have four people arriving on scene at a fire, when in fact there was one professional firefighter arriving on scene. This was despite their beliefs for many years.

The Chair: Thank you very much for your comments. We appreciate your coming forward.

I'm afraid we've run out of time, Mr Wood. You'll have to hold your question for the next presenter.

CANADIAN CENTRE FOR EMERGENCY PREPAREDNESS

The Chair: That presentation will be from the Canadian Centre for Emergency Preparedness.

Welcome to the committee. Again, just a reminder: we have 10 minutes for your presentation and any questions.

Mr Adrian Gordon: Thank you for the opportunity of giving this presentation. I'd like to take probably a little less than 10 minutes. I would like to start with a brief introduction, first of all, to the Canadian Centre for Emergency Preparedness, to put into some perspective what I am going to say.

CCEP is an independent, not-for-profit organization that advocates and promotes disaster management principles and practices. Our audience includes individuals, communities and organizations in both government and the private sector. Our advocacy aims to reduce the risk, impact and cost of natural, human-induced and technological disasters. Our objectives are to increase awareness of the growing risks and changing nature of disasters, to promote the need for sound disaster management principles and practices and to disseminate information on the availability of professional expertise and resources, including technology. We're the presenters of the annual World Conference on Disaster Management, which is one of the largest events of its kind in the world, here in Toronto.

1610

Secondly, in my introduction I'd like to mention the traditional process of disaster management or emergency

preparedness. There are basically four steps which you may be aware of. Firstly, mitigation or prevention; secondly, preparedness; thirdly, response; and fourthly, recovery. I must emphasize that the first two, mitigation and preparedness, are a hard sell in normal times, and I will come back to that point in a moment.

Thirdly, the changing nature of both natural and human-induced disasters: We are all aware of the risk of terrorism and I need speak no more on that particular topic. However, I would like to draw attention to global climate change, and in the notes that you have a copy of I have provided a quote from Munich Re, the world's largest reinsurers and their annual report of the year 2000, and secondly, from the Canadian Red Cross, in which both emphasize the growing risk and cost of natural disasters.

I'd like to comment for a moment on the situation of emergency preparedness in Ontario, principally prior to the introduction of the proposed bill and prior to September 11. Ontario is still one of three provinces that does not mandate its municipalities to maintain an emergency plan. In 1999 the government carried out a survey which indicated that 86% of municipalities actually had a plan, but the survey further showed that only 43% had provided any training within the last three years to personnel who had some responsibility for putting those plans in action. Furthermore, only 23% of municipalities had tested their plan within that same period of time, three years. We accept that this is not representative of emergency preparedness in our major cities.

In January 2001 we wrote to the Premier to express our concern with the state of municipal emergency preparedness in the province. Recent emergencies such as the 1998 ice storm, Walkerton, the Toronto snow storm, a series of hazmat incidents—chemical spills and such—and the impact of September 11 clearly showed that emergency preparedness in Ontario was not what it should be.

For years, successive governments had failed to allocate adequate funding and resources for emergency preparedness, which severely constrained the province's ability to respond effectively to widespread disasters. I would have to add here that a similar situation exists in the private sector.

I now turn to our comments on the proposed bill. We strongly support the introduction of the proposed amendments and we have three basic comments.

The bill requires municipalities, ministers of the crown and others to put in place and maintain an emergency management program, and I emphasize the word "program." This, in our opinion, is one of the most important requirements and illustrates the vision and the attention that have been given in drafting the bill. In the private sector, as well as the public, it is not uncommon for organizations to have plans that may satisfy the requirements of regulators, auditors, clients and stakeholders who demand that emergency preparedness plans are put in place and maintained but which, in effect, are little more than binders on a shelf. Bill 148 clearly spells out what an emergency program shall consist of.

Risk assessment is an essential step that ensures that plans are to be based on a clear understanding of the risks involved. This may seem an obvious step but is one that is frequently bypassed or ignored.

Training: I have mentioned it already.

Exercising: we believe that a plan that is not exercised or tested on a regular basis—and we maintain a minimum of once a year—is really no plan at all.

Public education: it's a welcome inclusion. Few Canadians are aware that under Canada's national support plan we are all individually expected to look after ourselves for the first 72 hours during any major disaster.

My second point: the bill gives Emergency Management Ontario the authority to monitor, coordinate and assist in the setting up of these plans.

Third, it requires that a municipal plan shall conform to the next level up.

In conclusion, the Canadian Centre for Emergency Preparedness supports the provisions of the bill, which addresses the inadequacy of the province's emergency preparedness prior to September 11 last year. However, I would like to close by summarizing two of our concerns.

The first is long-term political commitment. I mentioned earlier that mitigation and preparedness are commonly given little attention and even ignored in normal times. It is essential that Emergency Management Ontario be provided with the necessary funding and resources to be able to effectively manage this program. Our concern is that when the perceived level of risk and threats to our way of life declines, funding may be reduced to meet other needs. Were it not for the attacks of September 11, it is highly likely that Canada's largest province would still not be adequately prepared for disasters yet to come.

Our second concern: the focus of emergency preparedness in the province must be based on an all-hazards approach. Public attention is still largely focused on terrorism, which is only a part of the risks we must deal with. The evidence is clear that the threat of both natural and human-induced disasters is increasing, and the potential losses in terms of lives lost or damaged and to the economy must be reflected in our disaster management strategy. I would clarify here that we do not agree with a one-plan-meets-all approach. It is rather the strategy that I'm talking about.

Mr Chairman, members, thank you for the opportunity of giving this presentation.

The Chair: You've used up your time almost to the second. Thank you very much for coming before us here this afternoon. We appreciate your comments.

CITY OF TIMMINS

The Chair: Our next presentation will be from the city of Timmins. Good afternoon and welcome to the committee. If you could, introduce yourself for the purpose of Hansard.

Mr Lester Cudmore: My name is Lester Cudmore. I'm the planning manager for the city of Timmins for

emergencies. I'd like to take a different approach for my talk this afternoon; that is, I'd like to deal with some actual facts, things that have happened in our community, around our community, and show that these are necessary amendments and changes to the Emergency Planning Act that have to go forward. By stalling and waiting, we are endangering a lot of the public. We have to address the issues.

First off, I'd just like to say that my background is that I have 37 years in emergency services. I have 20 years as a volunteer firefighter, so I know and appreciate that side. I have 16 years in the career side. I've been in small business. I have 15 years in industry, and I was also an industrial fire chief and loss control manager. So I understand what's going on in the province and I think I can speak to it.

Our city covers 1,235 square miles. We also have a contract or an agreement with the OPP to assist them in any emergencies along district 15. I've gone as far as 102 miles to an emergency where a train was on its side and fuel oil was running into one of our rivers.

1620

We do what we have to do to protect northern Ontario. As you're all aware, northern Ontario is a resource area. It goes from mining to lumbering; very little manufacturing. But the weather is severe. For those who don't know, we had our first snowstorm in Cochrane last evening and they did close down part of Cochrane. Visibility was nil and the highways were closed. So we are subjected to Mother Nature at all times.

First off, we had emergencies in the city of Timmins in 1960 and 1962. We had floods. It was pretty quiet until 1986, when we dumped 30,000 to 40,000 litres of gasoline down the street. It ran down the sewers, blew up a number of houses, and we found that our emergency plan wasn't very adequate. In fact, it wasn't much good for anything. But we learned fast and we addressed the emergency plans immediately. We didn't go quite far enough, but at least we got something going.

From that time on we just kept going on into incidents—a train derailment in a small community outside the city of Timmins. We have had aviation fuel spilt, caustic soda. We had a large number of train cars on their sides. TransCanada Pipeline had all kinds of pipe on the cars. That was a real eye-opener. I went down there to assist a small community that had absolutely nothing—no plan, nothing, and they were dealing with this particular disaster. There were pipes lifted into high-tension lines. There were people falling into caustic—it blew the top off a truck. Nothing taken away from the small community, but there was nothing there, OK? You've got to remember that a lot of Ontario is in that position, and we have to address that. That's what these amendments are going to do, and I think it's important.

In 1996 we had a major flood in the city of Timmins and it was devastating. One thing about the city of Timmins, if it's not April 1 when we throw gasoline into the sewers, it's the May 24 weekend when we'll have floods or forest fires, when there's nobody in town. That's an important issue that we have to address, because your emergency plans have to address everything. It doesn't matter; if I'm an emergency planning coordinator or a manager, the plan has to take over and I have to be able to pick up that plan and run with it. I should be able to take that plan and never have walked in the community and be able to handle that disaster.

I like to reflect back to when I was a young man in 1974 going into industry. To become a supervisor, I worked for an American company. They'd take you and put you up in the Northwest Territories; you ran into a snowstorm and you had to operate a mine. That company had the plans together. That company had everything there. You could run that mine if you knew how to read and knew how to delegate. That's what emergency planning is all about. It's a team. It's not the fire service, it's not the police service, it's not any one unit. It's a large composite of different organizations. We've worked with Northern Development and Mines, the Ministry of Natural Resources, the Ministry of the Environment, and the list goes on. We've worked with all these government agencies, and it works well. But you have to have something mandated in the system. There are priorities in all municipalities and unless you have that mandated, we fall behind.

We, as the city of Timmins, do our emergency plan every year. I'm not going to go through a lot of the different emergencies we've had, but last year alone, for example, I assisted Black River-Matheson. In one bad storm we had nine transport trucks collide. Highway 101 shut down, and we had hazardous chemicals on the highway. We went down and helped them, as neighbours, because they did not have anything in place.

We enacted our emergency plan three times last year, once with a flood, once with an emergency forest fire. Also, the city of Timmins is a receiving centre for the James Bay coast. That means that any disaster that happens on the James Bay coast, the people will come down to the city of Timmins and we'll look after them.

That's one thing you have to realize: you can practise all you want, but once you bring the whole picture in and you start dealing with people, and you have to house them, you have to have their medication and everything else, that's where the big picture comes in. We can't lose sight for single organizations; we have to go into that big picture. I think that's what is being brought out now, the big picture. We have to really, really focus on that.

We've had situations where we didn't have enough food up the coast. I had to work with another group to facilitate planes and send food and clothing up the James Bay coast to another receiving centre that couldn't handle it because they didn't have enough food in the town.

I talked to one small community along Highway 11 and asked them what they would do if they had an emergency. The comment was, "We'd take our boats and go up the river." They'd be up the river without a paddle, because where do you go once you're up the river and you can't come out?

That's all across the province, and that's why there is so much concern. That's why I joined the committee, to

make sure the Emergency Plans Act was changed and the amendments were brought forward.

With that, I just ask that we bring this forward as soon as possible, get the training out, do the identification in the communities, and do all those good things that will protect our public.

The Chair: Thank you very much. Again, unless there is about a 30-second question or comment, I appreciate very much your making a presentation before us here today.

Mr Gilles Bisson (Timmins-James Bay): Just for the record, to show to your team and all of the community, on the evacuation of the James Bay coast during the flood: an excellent job. There was not a complaint from anybody from the coast; there was not a complaint from the community. It showed what happens when people come together. Lester, as one of the leaders on that, you did a good job. Thanks.

Mr Cudmore: Thank you, Gilles.

The Chair: Thank you again for coming before us here today.

MINISTRY OF PUBLIC SAFETY AND SECURITY

The Chair: Our next presentation will be from the Ministry of Public Safety and Security. It's good to see you back again. Thank you very much for coming forward.

Dr James Young: Good afternoon. I'm Dr James Young. I'm the Commissioner of Public Security for the province of Ontario. I'd like to talk briefly about the act and the amendments and how they came to be.

In the spring of 2000, following the successful completion of our Y2K remediation, the government of Ontario initiated an extensive review of the state of emergency management in Ontario. To do this comparison, we looked at other jurisdictions in Canada; we looked at the 10 largest American states; we looked at Australia, New Zealand and the United Kingdom. The review, with its recommendations for Ontario's shortcomings, was completed just prior to September 11 of last year.

Following the unfortunate and catastrophic events in the United States, our recommendations were updated based on some of the early lessons from the American experience. Consequently, during the past year, the government of Ontario has taken a range of steps to improve public safety and has adopted a much more proactive approach to emergency management at the municipal and the provincial levels. And it's very important to note that it's consistent with international best practices.

One of the fundamentals of this enhanced approach is the recognition that effective management of emergencies, for all types, requires coordinated, co-operative action on the part of multiple agencies. The key objective then is to reduce, minimize or eliminate where practical isolated, disconnected actions, and to ensure that our preparedness and response stages are well coordinated, and also to incorporate mitigation and recovery into the overall process of emergency management in Ontario.

Contrary to popular perception, Ontario has a wide range of potential risks. With 12 million people, and seven million of them in the Golden Horseshoe, Ontario has the largest and most concentrated population in Canada. We have a concentration of major rail lines, major highways, and major airports. In recent times, greater than 60% of Canada's road and rail accidents have been in Ontario—the road and rail accidents that involve hazardous products.

We're the largest nuclear jurisdiction in North America, and we have 21 large nuclear reactors. We have greater than 50% of Canada's chemical industry, and we have an extensive but unfortunately aging infrastructure as well. We also live in a complex, technological, social environment. We average greater than 20 tornados every year in Ontario, we have floods, we have problems with forest fires, and we have earthquakes every year. These risk factors do not make Ontario an unsafe place in which to live relative to comparable jurisdictions, but they do create an environment where the public interest requires a more proactive approach to emergency management on the part of all governments, on the part of business and the industrial sector, and on the part of private individuals.

1630

Therefore, with these principles in mind, a new Emergency Management Act, contained within the Emergency Readiness Act, is designed to increase the safety of Ontarians by creating more resilient communities.

I'd be happy to answer any questions.

The Chair: Thank you very much. We'll start with the government members.

Mr Bob Wood (London West): No questions.

Mr Mike Colle (Eglinton-Lawrence): Dr Young, I have a short question. In view of what happened on September 11, one of the things that seemed to be problematic was the radio communication between firefighters and emergency response personnel. They had the first attack on the World Trade Center—1993, I think it was—and then they were supposed to update the radio communication. I guess you obviously looked at that in terms of Ontario's possible scenarios. What's the status and are we protected from that?

Dr Young: That's a very good question. It's a very complex issue. There are a number of issues interrelated in regard to the question. The first is the communication within a city core and within big buildings. This has been a problem in large cities throughout the world. As you know, cellphones and communications don't work terribly well in big buildings. There's a lot of work going on, a lot of study, and we're paying attention to that. Fire departments and police departments like Toronto are working to improve that situation.

The second issue in regard to that is the compatibility of the ability to communicate between police and fire and between provincial organizations such as the Ontario

Provincial Police, the ministries of government, the ambulance service and police and fire. We're currently surveying the province. There's a new system being rolled out by the province right now that will link all the provincial ministries and the OPP. We're intending to build bridges between that system and municipal systems in order to facilitate that kind of communication.

Part of the problem one runs into when something happens at this point is that many cities have recently bought communication systems for police or fire or both, and those may or may not be instantly compatible with the province's systems. The system the province is building will be available to everyone, but it's going to take time for them to migrate over because they've already spent money in the recent past. It's an issue we're taking very seriously. We are looking at it, and it is one of the big lessons.

The other thing I'd say on communication is that communication has to exist at a personal level between firefighters, police officers, ambulance people and the leaders of those people. We can improve, are improving and are working very hard in that regard in Ontario. Just this morning I opened the conference for the CBRN teams and stressed that very communication. Those teams are made up of fire, police, medical personnel etc.

The Chair: Brief question, Mr Levac.

Mr Levac: Your building is the headquarters for the coordinated efforts of emergency response and it's on the 19th floor, I believe it is.

Dr Young: That's our secret location, that's right.

Mr Levac: OK, that's fine. Nothing goes outside of this room anyway. Nobody is paying attention.

I have mentioned in one of my deputations that I thought it was not quite appropriate to have a location there. I understand there is some work being done. Could you fill us in on that?

Dr Young: Certainly. Like New York, which had their emergency centre in the World Trade Center, it occurs to us after September 11 that the 19th floor of a downtown high-rise is probably not the best place. It seemed like a good idea when the space was available at the time and we could convert it for low cost.

We're working right now with the federal government and we're hoping to move to a location and to co-locate with the federal government. In the interim, until that's been done, we have created a backup emergency centre in a different part of the city in an undisclosed location. So we've taken an interim step as well, but we are really looking forward to co-locating with the federal government, in the near future, we hope.

Mr Kormos: I'm advised there are fire services across the province that are continuing to raise complaints even about newly purchased communications systems in terms of their adequacy and simply not working. Can you confirm whether or not that's the case?

Dr Young: I can't confirm with certainty, because we're beginning that work and I have someone working on it. The history, from my own experience over the years in this area in the province, is that communication, because of the geography of Ontario, has always been a serious problem. Certainly I'm familiar with the problems the OPP has had over the years in trying to build a system, and that's one of the reasons the new telecom system is being built. So we are looking at it. We're surveying it, and when the provincial system is fully up and running, any municipality will be able to buy that service and buy into that system. In fact, given the events of September, our hope is that more and more will buy in, and that system should be robust enough to overcome many of those difficulties.

The Chair: Loath as I am to ever enter into the debate, I'd simply leave you with a question. I hope coordination between emergency service agencies, not just within any one, is something else you'll be looking at, because we certainly are aware that that's a problem here in Toronto and in many other communities across the province.

Dr Young: It's a major priority, Mr Gilchrist, for us to make sure that all of the agencies—they're training together, they're setting common standards. There have been multiple meetings at all levels of the province and municipalities to work together, because that was a large problem in New York as well.

The Chair: Thank you very much. We appreciate your comments here today.

ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

The Chair: Our last presentation will be from the Ontario Association of Police Services Boards. Good afternoon and welcome to the committee. Perhaps you can just introduce yourselves for the purpose of Hansard.

Mr Chris Moran: Chair Gilchrist, Vice-Chair Miller, members of the standing committee, my name is Chris Moran and I am the president of the Ontario Association of Police Services Boards. I have with me Mrs Barbara Hume-Wright, who is our executive director. Our association is known as the OAPSB, just to make it a little shorter.

I am also the chair of the Bradford West Gwillimbury/Innisfil Police Services Board, which is the South Simcoe Police Service. We are a not-for-profit organization, funded through membership fees paid by police services boards that support the OAPSB's pursuit of excellence in civilian police governance. The association has been in existence for over 40 years and it represents the section 31 and section 10 boards defined under the Police Services Act. We have well over 120 member boards from across the province, representing services as small as Blind River, as large as the Toronto Police Service and almost everything in between.

As I am sure you are all aware, police services boards are responsible for the provision of police services and for law enforcement and crime prevention in the municipalities they serve and, as such, each board must ensure their community is policed adequately and that any and all police standards issued by the Ministry of Public

Safety and Security are complied with. Police services have a very important role to play in responding to emergency situations, along with other first responders.

Adequacy standards of the Police Services Act require the police chief to prepare an emergency plan for the service to outline procedures to be followed in the event of any emergency. The Ministry of Public Safety and Security is also in the process of developing guidelines for police services boards and police chiefs to follow in the event of a terrorist incident. As you can see, there is a direct relationship between what is expected of a municipality in this proposed legislation and how it will impact the police service in terms of resource requirements in conjunction with other legislation.

1640

On behalf of the OAPSB and its members, I appreciate this opportunity to make a presentation to the standing committee on Bill 148, An Act to provide for declarations of death in certain circumstances and to amend the Emergency Plans Act.

The Association recognizes that this legislation speaks to the requirement for all municipalities to have an emergency management program that consists of four parts: an emergency plan; training programs; exercises for employees; and public education—and anything else of course that may be determined by regulation. The municipality must, in developing its emergency plan, identify any potential risks to public safety, including particular facilities or parts of infrastructure.

The OAPSB strongly supports the need for an emergency management program. This is important for the safety and security of our communities and that of our police officers and other first responders to emergency situations. Having a plan, training for the plan and carrying out exercises under the plan would all work well together to help ensure we are prepared for any emergency. But we do note that the legislation requires all municipalities to develop such plans and then requires that all area municipal plans conform with the upper-tier emergency plans. This will create unnecessary duplication, and I would encourage the committee to consider some flexibility that would enable municipalities and emergency services to work collaboratively together to develop emergency management programs on a scale and size appropriate to their particular situation. In this scenario, the plans would require a mechanism to permit escalation of a response from local, to regional, to provincial and then to the federal level, if necessary.

As an example, it might be possible, based on the risk assessment in a county, for there to be one plan at the county level in which all area municipalities participate, with a coordinated emergency services plan and response that escalates, depending on the location, type and scale of the emergency. Whether prescriptive or flexible, either approach has its difficulties with coordination of services between police, fire, public works, hydro, gas and any other of the various agencies, difficulties that we hope would be addressed as the emergency plans are tested, and through practice.

However, a less prescriptive approach that encourages and supports collaboration and cooperation would be preferable. It would enable efficiencies in training, in carrying out exercises and in developing public education materials and programs. It would also provide a wider resource base for the sharing and deployment of specialized equipment. It might also make the job that Emergency Management Ontario has to undertake easier in assisting in the development of and ensuring the coordination of municipal plans as there would likely be fewer plans.

The proposed legislation requires mandatory training programs within the context of every municipal emergency management program. As first responders, this requirement is critical to the safety of our police officers and ultimately the community, but we must consider the most effective and efficient approach, which would be something on a much wider scale than municipality-by-municipality or service-by-service. The legislation should be flexible enough to ensure that collaboration and contracting for training is possible. It may even be the preferred method, as the opportunity for training with colleagues from neighbouring services may in fact result in better coordination and cooperation at the time of an emergency.

The committee should also be aware that police services already have significant mandatory training requirements for a wide range of other activities, and while training is vital for the protection and safety of our officers and the community, any new mandatory training must be considered within the context of all the other mandatory training faced by police services today. Training takes considerable time and money from a police services budget.

The OAPSB also has concerns about the requirement for every municipality to have a public education program and would suggest that if municipalities are allowed to group together in one plan, they can share a public education plan as well. General emergency preparedness information might be better developed and supplied through Emergency Management Ontario and circulated and promoted at both the provincial and local levels.

The OAPSB would encourage a consultative approach on the development of any regulations that may come forward. This would include, of course, all representatives from first responders and municipalities.

This legislation has a provision for the Lieutenant Governor in Council to designate a municipality to address a specific type of emergency in its emergency plan. If this provision is applied, it should also require that the province provide the necessary resources to the municipality and its emergency services to develop or amend the plan as well as support its implementation.

The legislation also provides for the Lieutenant Governor in Council to temporarily suspend legislative provisions if an emergency exists. The OAPSB supports this provision if it would facilitate the quick response to an emergency situation.

The Declarations of Death Act, 2001, is attached to the Emergency Response Act as a schedule. This legislation allows an interested party to apply to a court for a declaration of death for someone who has disappeared in circumstances of peril. The OAPSB understands why such an amendment is being proposed, but there could be significant resource implications on police services that may receive many FOI requests from parties seeking documentation to support a court application. The possibility of these requests should be kept in mind, and the committee and the ministry should consider how best to manage the massive amount of documentation that might be expected following a major emergency.

The association would be remiss if we did not also provide brief comment on the increasing responsibilities being placed upon police services and the commensurate increase in required funding from the property tax base. This is yet one more area where the province is looking to its municipal partners and their agencies, boards and commissions to take on a greater role. It is imperative that the province provide adequate funding to support those requirements.

When considering this legislation, the OAPSB has done a scan of some of the other initiatives of the government that relate directly to this legislation. This includes the expanded role of Emergency Management Ontario and the need to ensure it is adequately resourced to be able to fulfill its expanded mandate. We suggest that doubling that budget that's already inadequate may not be enough. The need for expanded training capacity should be done through the Ontario Police College, and there's a need for the addition of curriculum to address the training requirements of this legislation. This approach would be the most cost effective for ensuring police services are adequately trained.

The appropriate coordination, role and training of volunteers: the Ministry of Safety and Security recently announced the CERV program and modest funding to support municipal involvement in training volunteer emergency response teams, about which we have some reservations.

Finally, we note the relationship of this legislation to the work the government is trying to carry out on counter-terrorism through the development of guidelines and in agreements and protocols with the two senior levels of government, as well as protocols with other jurisdictions outside Ontario.

I would like to close by stating as clearly as possible that the OAPSB fully supports the intent of this legislation. Planning and preparedness in the event of an emergency is already a required activity of the police chief and the police services board, and it is critical to the safety and security of our communities. In making this presentation, it is our desire to encourage the government to find the most cost-effective and efficient means to that end.

On behalf of the OAPSB, I would like to thank you once again for allowing me to make this presentation.

The Chair: Thank you very much for coming before us. That has used up just over 10 minutes, but we very much appreciate your comments.

With that, members of the committee, we could either engage in up to 10 minutes of debate or we could move into clause-by-clause and say all the same debate in that process. I see Mr Kormos nodding his head. The latter is fine? Then let's start with clause-by-clause, if we may. You should all have your package of amendments. We'll insert the one the Liberals delivered this morning. It will be after page 5.

As the first order of business, are there any amendments or comments to sections 1 through 3? Seeing none, I'll put the question. Shall sections 1 through 3 carry? Sections 1 through 3 are carried.

1650

Mr Kormos: On a point of order, Chair: Did you really want to do that in view of the amendments the government has filed with respect to the schedule?

The Chair: I said section. The schedule is after we debate the actual sections of the bill.

Mr Kormos: Yes, but if you take a look at section 1, we've enacted the schedule as set out and amended.

The Chair: That's the normal process we would follow, Mr Kormos, since the whole bill is not voted on until the end, in theory. As you go through section by section, we would be making an amendment even to that.

Mr Kormos: I understand. I'm just suggesting that if you pass section 1, "The Declarations of Death Act, 2001, as set out in the schedule, is hereby enacted," in other words, enacted as unamended. I'm suggesting to you that it might be logical to go to it. I'm not averse to going to that. You've got amendments to it, but far be it from me—

The Chair: I think you've got a valid point, Mr Kormos. I think the flip side to the argument is that when the committee, exercising its power, amends the anticipated schedule, it is just as changed. However, I'm in the hands of the committee, as you know.

Mr Kormos: I made it on a point of order, so that's already been dealt with.

The Chair: The Chair has already indicated how he would likely decide such an intervention, but I'm in the hands of the committee. If you would prefer to go to section 1, page 6 would be the first amendment to that schedule. I'm looking at Mr Wood.

Mr Wood: I'd like to proceed on the basis that all the amendments will be considered. I would have thought, actually, and maybe I'm wrong, that the schedule would be dealt with as a separate section. It's going to incorporate whatever we pass as a schedule when we get to that.

Mr Kormos: It's these damn lawyers, Chair. Already you've got two different perspectives.

The Chair: I'm surprised I haven't heard a third opinion already.

Mr Kormos: You've got litigation already.

Mr Wood: We're not going to seek a third opinion.

Mr Kormos: Whatever. I just draw that to your attention. Please, do what you've got to do.

The Chair: Certainly precedent would dictate that we pursue it from front to back. Again I would remind all members of the committee that it is within their purview to change anything, quite frankly, any number of times as we go through. The committee has that power.

Mr Levac: A question for either the lawyers or anyone, legal counsel: approaching it either way, would it affect the outcome of what we're seeking to do, which is to amend the act?

The Chair: Loath as I am to suggest that if Mr Kormos was the only one taking a contrary position, the math would tend to suggest it would have the same outcome. I'm looking at both sides. Having heard a consensus of opinion on this change, is there a different consensus of opinion looking at the proposed amendment in the schedules, starting at schedule 1?

Seeing none, I think it would probably be clearer to folks if we simply proceed along our normal path here. Having dealt with sections 1 through 3, I will now invite—

Mr Wood: We have engaged lawyers to study the Liberal amendment. When we get to that, I'm going to have to ask that the matter be stood down, that we stand down the amendment so it can be taken under advisement, and that we reconvene the committee on the next scheduled date for consideration of this amendment for exactly the reason Mr Kormos pointed out a couple of minutes ago. When you get lawyers working on it, it takes time.

I just wanted to let the committee know that. I think we should get as far as we can today. I gather the Liberal amendment would be dealt with at the end, that it would be dealt with after we've dealt with the various—

The Chair: Normally, it would be dealt with in sequence as we propose, to go through the sections.

Mr Wood: But it seeks to add a section, does it not?

Clerk of the Committee (Ms Tonia Grannum): It will be dealt with after page 5 in the package of amendments, before the amendments to the schedule, though.

The Chair: Let me then, in light of that, suggest that perhaps we could start with all the schedules and then come back.

Mr Wood: Perhaps I could suggest this. The Liberal amendment stands on its own. Either we take it or we don't. Am I right in that? We can pass the rest of it and say, "OK, we're going to put that one over till the next day." Do I correctly understand the amendment?

The Chair: It does not delete or amend any existing section in the act, if that's your question.

Mr Wood: If we had unanimous consent, we could deal with all of the rest of it and leave that open so that we can either accept, amend or reject it at our next meeting. If that would achieve unanimous agreement, we could deal with the rest of this and have this done one way or the other with the exception of the Liberal amendment.

Mr Levac: I'm OK with that.

Mr Wood: If we have unanimous consent for that, we can agree to do everything with the exception of the Liberal amendment, which we need further time to consider.

The Chair: Do we have unanimous agreement for that?

Mr Levac: I'm all right with it.

The Chair: Mr Kormos?

Mr Kormos: I'm standing mute.

Mr Wood: You could abstain if you want, Peter. It's a well-established precedent.

The Chair: Given that we seem to have a new consensus forming, let's go back to—

Mr Kormos: On a point of order: In schedule 1, the Declaration of Death Act, I want people to be very cautious, because the subsection applies if an applicant has not heard of or from the individual since the disappearance. I don't want anybody to reach the conclusion that John Snobelen has died. He's simply not been around for a while.

Mr Wood: It's a matter that would have to be established in court. I for one won't comment on it.

Mr Kormos: He hasn't been heard from in a long time.

The Chair: That will now take us to section 4 of the bill.

Mr Wood: I move that section 2.1 of the Emergency Plans Act, as set out in section 4 of the bill, be amended by adding the following subsections:

"Confidentiality for defence reasons

"(4) Subject to subsection (5), a head of an institution, as defined in the Municipal Freedom of Information and Protection of Privacy Act, may refuse under that Act to disclose a record if,

"(a) the record contains information required for the identification and assessment activities under subsection (3); and

"(b) its disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism.

"Same

"(5) A head of an institution, as defined in the Municipal Freedom of Information and Protection of Privacy Act, shall not disclose a record described in subsection (4),

"(a) if the institution is a municipality and the head of the institution is not the council of the municipality, without the prior approval of the council of the municipality;

"(b) if the institution is a board, commission or body of a municipality, without the prior approval of the council of the municipality or, if it is a board, commission or body of two or more municipalities, without the prior approval of the councils of those municipalities.

"Confidentiality of third party information

"(6) A head of an institution, as defined in the Municipal Freedom of Information and Protection of Privacy Act, shall not, under that act, disclose a record that,

"(a) contains information required for the identification and assessment activities under subsection (3); and

"(b) reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly.

"Meetings closed to public

"(7) The council of a municipality shall close to the public a meeting or part of a meeting if the subject matter being considered is the council's approval for the purpose of subsection (5).

"Application of Municipal Freedom of Information and Protection of Privacy Act

"(8) Nothing in this section affects the application of the Municipal Freedom of Information and Protection of Privacy Act to a record described in this section."

The Chair: Any debate?

Mr Kormos: I really would like some explanation. I note subsection (8), "Nothing in this section affects the application," but almost everything in the section affects the application. So I'm wondering why that is there, other than to reinforce that the exemptions from the freedom of information act are only those exemptions listed. I am concerned about the language in subsection 8 because it appears, at the very least, redundant. Everything in the section affects the application, yet subsection 8 said nothing in this section affects the application.

Mr Wood: I'd better seek advice. I think I know the answer, but in case I am wrong—

Mr Kormos: I just find that problematic in terms of language.

Mr Wood: Why don't I seek advice here?

Mr Kormos: By all means.

Mr Wood: I can give my explanation, but it may be wrong, so we'll see what theirs is. You have the floor.

Mr Jay Lipman: My name is Jay Lipman. I'm a lawyer at the Ministry of Public Safety. We did consider this, that it sounds a little bit redundant, but certainly the intention was only to clarify that it's merely these sections, but no other sections or jurisdiction of the IPC or a person's ability to an appeal or request decision—none of that is affected by these sections.

Mr Kormos: My concern is that a litigator is going to say—especially when you see the sequence of the subsection, in the order that they're taken, and the wrap-up subsection says, "Nothing in this section affects the application of the Municipal Freedom of Information and Protection of Privacy Act." So I am saying this is interesting because of its forerunners in this succession of subsections, but it wraps up in subsection 8 by saying nothing affects. I'm saying this is weird in that—I'm contemplating an argument—having said all that, it means nothing because subsection 8 means this.

1700

Mr Wood: Would you feel any better—this may be a bad idea that you can refute in a moment—about "except as set out in this section, nothing affects."

Mr Kormos: We have all seen language to that effect in statutes. I'm asking why wasn't that "but for the preceding subsections, nothing else in this section affects." Is that what was intended in the drafting? Is this novel? I don't mean creative drafting, but novel in terms of not being based on the sort of drafting Mr Wood speaks to.

Mr Lipman: I think it is a drafting issue. I think it is to-the-point drafting, that you don't need to have those opening words, perhaps.

Mr Wood: How distressed would you be if they weren't in?

Mr Lipman: My only concern is that we discussed this particular subsection with the Information and Privacy Commissioner and actually spent quite a bit of time with them figuring out the language in this section.

The Chair: I'm in the hands of the committee. It would seem to me, if a reminder is necessary, that it is a question of satisfying the members of this committee—no other body—with the legitimacy of any proposed amendments. If you believe it adds clarity to the amendment, I think that should be guiding your decision.

Mr Levac: This is from a non-lawyer. I am reading this as if you're saying that it doesn't matter what is in this bill, it's not going to stop you from applying for a privacy record. It doesn't mean you're going to get it; it just means it's not going to stop you from applying. If you apply and it contravenes one of these things, you're just not going to get the information you have asked for. Does that make sense?

Mr Lipman: That's correct, yes.

The Chair: Would it follow that the word "prevents" would be a more appropriate and clearer word than "affects"? "Nothing prevents the application." I'm in the same boat as Mr Wood.

Mr Wood: If we had strong support from all sides of the committee, I would have some interest in—

Mr Kormos: Strong support for what? I'm going to vote against the amendment. It isn't just my academic interest.

Mr Wood: There could be some force to the proposition of saying "except as set out in this section," etc, which addresses your concern, I think.

Mr Kormos: At the end of the day I have to live with what legislative counsel or drafters of any sort write. I don't know if you want to defer this amendment. I don't know if you're that interested in looking at it again.

Mr Wood: I would not dismiss the point being raised. On the other hand, I guess if we had unanimous consent we could put this over along with the Liberal one. If there is unanimous consent, just so the committee understands what I have in mind, I would be prepared to put this with the Liberal amendment. Let them take a look at the concerns that have been raised, then you can give a more considered response to the concerns and perhaps consult with the Information and Privacy Commissioner.

The Chair: Fair enough. Do we have unanimous agreement to defer this amendment? Agreed. That will take us to section 5, an NDP amendment.

Mr Kormos: I should indicate that although the amendment was submitted as written, as a result of my discussions with Mr Wood, speaking as I understood on behalf of the government caucus here, indicating that the

amendment would not have support as written but would have support if changed to read, instead of "every three years," "every year," thus implying every year, and to delete the offence or penalty section. With permission, this being my motion, notwithstanding that notice wasn't given, and I should indicate that this communication would only commence at the beginning—

The Chair: We'll simply ask, is there unanimous agreement to allow an amended amendment to be presented?

Mr Levac: Just a clarification: did you say that in subsection (6) it is every three years?

Mr Kormos: No, every year.

Mr Levac: Every year instead of three?

Mr Kormos: Instead of as written, every three years.

Mr Levac: I'm for that, and that we remove the offence section altogether.

Mr Kormos: Remove subsection (6).

Mr Levac: There are no offences for not complying.

Mr Kormos: Correct.

Mr Levac: That's to obtain support in your discussions.

Mr Kormos: That's an effort to obtain support. That was what was put to me, and who am I to argue with the might of a majority government?

Mr Levac: I can agree to one. I will voice a little concern about the fact that "offence" is removed, simply because there are many opportunities in here for all the things municipalities are supposed to be doing, but there doesn't seem to be any teeth in it saying that once they haven't done it—

The Chair: We don't really have an amendment on the floor right now. I'd simply pose the question, do we have unanimous agreement to let Mr Kormos pose his amended amendment?

Mr Levac: Agreed.

The Chair: It is agreed.

Mr Kormos: I move that section 5 of the bill be amended by adding the following subsection:

"(3) Section 3 of the act is amended by adding the following subsections:

"Training and exercises

"(5) Every municipality shall conduct training programs and exercises to ensure the readiness of employees of the municipality and other persons to act under the emergency plan.

"Review of plan

"(6) Every municipality shall review and, if necessary, revise its emergency plan every year."

That, ladies and gentlemen, is the complete motion.

The Chair: Do you wish to speak to your motion?

Mr Kormos: If I may, it's pretty obvious there's consensus about the requirement for municipalities to conduct training programs and exercises to ensure readiness. Three years, as first proposed, as compared to one year in fact is being generous to the municipalities in view of the costs they would suffer by virtue of an annual review, noting that an annual review, having to be done every 12 months and the inevitable costs associated with that, may mean a more superficial review than would otherwise be undergone. That's the risk. That's the danger in reducing it to one year. There's a strong interest in more frequent reviews because a lot can happen in 12 months in the course of a municipality's life in terms of what's happening in that municipality or what's going on in terms of staffing, be it firefighters, police officers, emergency medical personnel etc.

In the interest of getting this amendment passed, I'm prepared to compromise. You folks know my history. I've always been eager to compromise in an effort to resolve a conflict, and once again I display that spirit of compromise. The absence of a penalty—to be fair, one has here an obligation without a consequence for nonperforming it, but for the fact that in my view, even though there isn't a provincial offence-type penalty, it would still support, let's say, an injunction, a process in court to compel a municipality to comply. I could anticipate, let's say, a firefighting service, a police service, an ambulance service or other groups bringing it. It still has some strength.

The other consideration: when you're fining a municipality, as compared to fining individuals, you're fining the taxpayers for what would be the malfeasance of its council or other personalities. It's no skin of their noses because the taxpayer picks up the tab, which we've seen a great deal of lately, haven't we, at Queen's Park. I'm not sure how strong a deterrent it necessarily is. I'm prepared to live without the penalty section because it's the corporation of the municipality of X, Y or Z that would pay the fine, if a fine were imposed. One can only hope that serious effect will be given to training programs and exercises, that they be meaningful ones rather than cursory, superficial ones simply to comply with the annual requirement.

Mr Levac: I don't want to spend a lot of time on this, other than to say that over the last few months there's been a lot of attention paid to training and programs, exercises for emergency response. Of the people I've been in concert with, almost to the number all have indicated the costs to the municipalities for these exercises and the expectation of standards. I would voice my concern that, as of yet, we have not seen regulations, we have not seen government monies. We have seen a tremendous number of people indicate that this does cost a lot of money, and where it comes from is concerning me. I just don't know that one year, each year, as I've seen them happen—it was about five years in a cycle where my community that I represent did a county-wide emergency practice. This exercise was absolutely breathtaking. They had co-operation from three municipalities, one reservation, and private industry ranging from CN Rail to Esso's storage tanks, and hospitals and everything. When I found out what the bill was, I was blown away. I need to say that I have to enforce strongly that when we do these things, we have to encourage participation of all levels of government to kick in.

1710

The second thing is the offence end of it. I will still mention that I am concerned about it because of just the

practicality of sending a message loud and clear: "If you don't comply"—what? There's a big question mark at the end of this. Because there's a question mark at the end, you may get some tests. I don't agree that tests should be made on these types of activities.

So do we ask municipalities nicely? Do we gently nudge them and say, "Come on, you guys; where are your plans? Let me take a look. You know that we're watching"? We've seen an example of what's happening. We had a municipality just recently that was told, "We're watching; we're working with you." We ended up with deaths. So we need to have something happen for the sake of making sure that when this does happen, we have some kind of carrot-and-stick attitude.

But I will support it under the fact that we are talking about providing some teeth to something that was already in existence. This already existed. There was an expectation, but we knew, through research, that 90% of the municipalities were complying. They had a plan. But then we find out that only 78% were practising the plan, and there were no repercussions for not doing so.

I'm concerned about it; I'm just voicing it here.

Mr Wood: I'll speak last.

The Chair: That would be you now, because you're the only one on the speakers' list.

Mr Wood: I think Mr Kormos—

The Chair: I think he's waived off.

Mr Wood: What I wanted to do was respond to a few of the issues raised. I think the annual reviews, if done properly, can accomplish more than the triannual reviews will accomplish.

Mr Kormos has raised a concern, which is valid if they do it wrong. But if they do it right, I think we'll get more out of the annual reviews than we would out of the three-year reviews. If that proves incorrect, we can always change the requirement later. But I think the right place to start, probably, is the one year.

Secondly, the issue of how to make sure the municipalities comply: we consider compliance as important as anyone else does. We think there are probably better ways than an offence section to do it. We think we can use diplomatic and, if necessary, firm methods of persuasion to make sure municipalities do this. We do urge the proposition. We've first got to say what's got to be done to have an effective emergency plan for every municipality in Ontario. Then we have to look at some of the ways that you actually do it and how you fund it.

My last comment does relate to that. Those who feel they need help should make their case. But I would suggest it would be a mistake for the committee not to first do what has to be done. We'll then work our way through exactly how that can be accomplished.

So the bottom line is, I think the amendment put forward—in other words, the revised version of the original motion—is a good one, and we're going to support it.

The Chair: Seeing no further comment, I'll put the question. All those in favour of Mr Kormos's amendment? Opposed? It's carried.

Shall section 5, as amended, carry? Carried.

Any comments or amendments to section 6? Seeing none, shall section 6 carry? It is carried.

Section 7: Mr Wood.

Mr Wood: I'm not certain—

Mr Kormos: If I may, Chair—

The Chair: I'm just wondering, Mr Kormos, before we get through any long debate, have you read subsection (4) at the bottom?

Mr Kormos: Yes, quite right. This is the parallel amendment I was speaking to.

The Chair: Should we stand this one down as well?

Mr Wood: I haven't got to the right page yet.

The Chair: Page 3.

Mr Wood: Thank you. That's probably one reason I'm not following what you're saying. I want to look at this again. I think your point's well taken, but I want to make sure I agree with that.

Mr Lipman: It's the same language.

Mr Wood: I would suggest, if we have unanimous consent, that we might stand down consideration of section 7 and proposed amendments to the next meeting of the committee.

The Chair: Is there unanimous agreement we do that? There is indeed.

The next amendment is page 4.

Mr Kormos: I move that section 8 of the bill be struck out and the following substituted:

"8. Subsection 6(2) of the act, as amended by the Statutes of Ontario, 1999, chapter 12, schedule P, section 4, is repealed and the following substituted:

"Training and exercises

"(2) Every minister of the crown described in clause (1)(a) and every agency, board, commission or other branch of government described in clause (1)(b) shall conduct training programs and exercises to ensure the readiness of crown employees and other persons to act under their emergency plans.

"Review of plan

(3) Every minister of the crown described in clause (1)(a) and every agency, board, commission or other branch of government described in clause (1)(b) shall review and, if necessary, revise its emergency plan every three years.

"Offence

"(4) A minister of the crown described in clause (1)(a), in his or her capacity as representative of the crown in right of Ontario, and an agency, board, commission or other branch of government described in clause (1)(b) that fails to comply with subsections (1) or (3) is guilty of an offence."

I would seek permission of this committee to vary this motion, notwithstanding that notice hadn't been given, to delete "every three years" in subsection (3) and change that to "every year" and to delete subsection (4), the penalty or offence section. I move it as altered or varied, subject to permission of the committee.

The Chair: Do we have unanimous agreement to allow Mr Kormos to vary his amendment? It's agreed.

We are debating the amended amendment. Has everyone got the changes? Three years is changed to one and subsection (4) is deleted.

Mr Kormos: I make this to make it consistent with the earlier motion that had first required reviews every three years and was varied to require them every year, and similarly to delete the penalty section. It was an effort to ensure that the amendment has passage, that there's some review, and the government indicated it would support the motion, which constitutes the amendment, if it were altered as I've altered it. I think any argument in support of it is similar to the arguments made on motion number 2.

Mr Wood: My comments are the same as my last comments, which I won't repeat.

Mr Kormos: Please.

Mr Wood: On the other hand, now that you ask—

Mr Levac: I'll be very quick with the question, and that is to Mr Kormos. Was this section created because you found that the rest of the bill did not take into consideration these employees and the minister of the crown?

Mr Kormos: The sense was that there should be parallel requirements to provide as complete a coverage of institutions, agencies etc as possible and that what's good for the goose is good for the gander. If municipalities are doing it, they'd have similar review obligations, and then the respective ministries should as well.

Mr Levac: The reason I brought up the question is that I didn't know whether or not they were separate entities when they reside inside the municipality. If the ministry is in the municipality, would they not comply to their municipal plan?

Mr Kormos: I don't understand how the municipality would have prima facie jurisdiction over them as compared to—

Mr Levac: I guess maybe that's the question. They're not under the jurisdiction of an emergency plan?

Mr Wood: Uncharacteristically, I would agree with Mr Kormos on that point.

Mr Kormos: You're coming around, Bob.

Mr Wood: You're agreeing with me too. My understanding would be similar to his.

Mr Levac: OK. I just put that out there, but can I get an interpretation from people who are putting this plan together, please?

The Chair: Let's invite Dr Young back up.

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Dr Young: We're talking about two different things here. The municipalities do the plan for the municipalities. The provincial plans are the ministries' plans of how they will run the ministries and carry out and coordinate what they do. So they're two different and distinct sets of plans.

Provincial infrastructure may not be the same as municipal infrastructure as well. It's running a parallel thing for the job that the ministries have to do instead. It's just a completely separate—

Mr Levac: I appreciate the clarification. It was my silly curiosity.

The Chair: Any further debate? Seeing none, we'll put the question on Mr Kormos's amendment.

All those in favour? Opposed? It is carried.

Shall section 8, as amended, carry? Carried.

Shall sections 9 through 15 carry? Carried.

Section 16: Mr Kormos.

Mr Kormos: I move that section 14 of the Emergency Plans Act, as set out in section 16 of the bill, be amended by adding the following subsection:

"Emergency response standards

"(1.1) The chief, Emergency Management Ontario shall set emergency response standards for emergency plans, based on consultations held with the persons or organizations that the chief considers appropriate including,

"(a) employees of municipalities, crown employees and other persons who are responsible for the provision of necessary services in emergency response and recovery activities;

"(b) the associations or unions that represent the employees and other persons described in clause (a);

"(c) the fire marshal; and

"(d) municipalities."

I think it's important that you outline the scope or range of consultations that the chief, Emergency Management Ontario should be conducting. If you're going to build efficient, effective plans—it doesn't suggest that he's bound by the input provided by these players; the list is merely illustrative but ensures that none of those players are exempted. This is a guideline. It codifies a guideline for the chief, Emergency Management Ontario in terms of effective consultations, but it certainly creates an obligation to consult fire marshals; to consult, for instance, the Police Association of Ontario. If I read the newspapers right, it has been made that much easier because the OPP joined this association, which will create some interesting debates around some other issues that they've been in conflict about, ones that I will enjoy all the more. But you've got the Police Association of Ontario; you've got professional firefighters' associations; you similarly have ambulance workers, etc.

Again, this doesn't obligate the chief, Emergency Management Ontario to comply with their requests or their guidance—part of me wishes it did—but it certainly ensures that they're in the consultation loop. I think that's sound and healthy and reasonable and withstands any possible criticism that people might try to levy against them.

Mr Wood: Time will tell on that point.

Mr Levac: Just for my purposes, for clarification, I hope I'm reading this right. Section 14 is amended. Section 14 says, "The Solicitor General may make regulations setting standards for the development and implementation of emergency management programs"—am I reading the right section? Am I on the right one? So we're removing, Mr Kormos—

Mr Kormos: No, adding.

Mr Levac: OK, so we're adding. So that is maintained, that "the Solicitor General may make regulations"?

Mr Kormos: May make, yes.

Mr Levac: OK. So that section stays, and then we move to the next section. What you're adding is that the chief, Emergency Management Ontario is responsible, then, for taking whatever the Solicitor General may make, in consultation with these other groups. No? OK. Help me.

Mr Kormos: The "may" is with respect to the Solicitor General. In other words, the Lieutenant Governor in Council may make regulations. There's no compulsion on the government to make regulations that set the standards, but the chief, Emergency Management Ontario shall create emergency response standards. Those emergency response standards don't have the same impact or clout as regulations made by the Solicitor General, but what we've done here is create a clear succession of obligations. In other words, the chief of Emergency Management Ontario has to create standards after these consultations. I think that's a very positive thing. The government then has to decide whether or not it incorporates those standards into its regulations, but by virtue of those being done, I think we have a guarantee that the government of the day will have a reference point for the standards that they may contemplate by regulation.

Mr Levac: Is that within the job description that presently exists with this new position?

Mr Kormos: It may or may not be, but it puts it in the statute in terms of what his obligations are.

Mr Wood: The government does not support this amendment. We feel that this bill should deal with emergency management standards only, not standards for first responders. That is not to say that some or all of the ideas in this amendment may not have merit, but we feel that it is not appropriately put into this bill.

Mr Kormos: Asking for a recorded vote.

Ayes

Kormos, Levac.

Nays

Miller, Munro, Stewart, Wood.

The Chair: The amendment fails.

Shall section 16 carry? All those in favour? Opposed? It's carried.

Shall sections 17 and 18 carry? Carried.

Shall section 1 of the schedule carry? Carried.

Section 2 of the schedule.

Mr Wood: I move that section 2 of the Declarations of Death Act, 2001, as set out in the schedule of the bill, be struck out and the following substituted:

"Order re declaration of death

"2. (1) An interested person may apply to the Superior Court of Ontario, with notice to any other interested persons of whom the applicant is aware, for an order under subsection (3).

"Notice

"(2) Notice under subsection (1),

"(a) if given by or to an insurer, shall be given at least 30 days before the application to court is made;

"(b) if given by or to a person other than an insurer, shall be given as provided by the rules of court.

"Power of court

"(3) The court may make an order declaring that an individual has died if the court is satisfied that either subsection (4) or (5) applies.

"Disappearance in circumstances of peril

"(4) This subsection applies if,

"(a) the individual has disappeared in circumstances of peril;

"(b) the applicant has not heard of or from the individual since the disappearance;

"(c) to the applicant's knowledge, after making reasonable inquiries, no other person has heard of or from the individual since the disappearance;

"(d) the applicant has no reason to believe that the individual is alive; and

"(e) there is sufficient evidence to find that the individual is dead.

"Seven-year absence

"(5) This subsection applies if,

"(a) the individual has been absent for at least seven years;

"(b) the applicant has not heard of or from the individual during the seven-year period;

"(c) to the applicant's knowledge, after making reasonable inquiries, no other person has heard of or from the individual during the seven-year period;

"(d) the applicant has no reason to believe that the individual is alive; and

"(e) there is sufficient evidence to find that the individual is dead.

"Scope of order

"(6) The declaration of death applies for all purposes unless the court,

"(a) determines that it should apply only for certain purposes; and

"(b) specifies those purposes in the order.

"Same

"(7) The declaration of death is not binding on an interested person who did not have notice of the application.

"Date of death

"(8) The order shall state the date of death, which shall be,

"(a) the date upon which the evidence suggests the person died, if subsection (4) applies; or

"(b) the date of the application, if subsection (5) applies.

"Same

"(9) The order may state a date of death other than that required by subsection (8) if the court is of the opinion that it would be just to do so in the circumstances and that it would not cause inconvenience or hardship to any of the interested persons.

"Order as evidence

"(10) Despite any other act, the order or a copy certified by the court is proof of the individual's death for the purposes for which it applies under subsection (6)."

The Chair: Debate?

Mr Kormos: I tried to compare this to the original. Subsection (1) is no significant alteration of—

Mr Wood: I haven't done this comparison. We had better seek advice.

Mr Kormos: After making reasonable inquiries in both subsections (4) and (5), and I have got subsection (8), can you point out in case I missed anything where the other significant—Mr Wood did compare the two; he just forgot. He's had so much work since the time he compared the two.

1730

Mr Wood: I would confess not to have done the detailed comparison that Mr Kormos did.

Mr Kormos: Help us with that, would you please.

Mr William Bromm: There are actually five key changes to the section that I can take you through. The first key change appears actually in subsection (2) of the section, and it has to do with the notice period. In the current wording of the legislation before the amendment it simply says that notice has to be provided. In the new wording, subsection (2) says that notice has to be provided if it's by or to an insurer on 30 days' notice; if it's by or to anyone else other than any insurer it's on 10 days' notice.

Mr Kormos: The rules of the court is 10 days?

Mr Bromm: The rules of the court is 10 days. It's being changed here because under the Insurance Act, which has provisions already respecting similar applications, there's a 30-day notice period. It was considered unfair to then shorten that period to 10 days from 30 days.

Mr Wood: For the purpose of the record, this motion is being made to replace all of section 2 to address several concerns that were raised by the Canadian Life and Health Insurance Association about the current wording of the section. The motion will make five key clarifications regarding: (1) notice, (2) obligation to look for evidence, (3) evidence of death, (4) legal effect of order, and (5) date of death.

Mr Kormos: So this is designed to accommodate private insurance companies?

Mr Wood: Who serve the public well, no doubt.

Mr Kormos: You may regret those words in due course, Mr Wood.

Mr Wood: If they don't, they're subject to suit.

Mr Kormos: I understand.

The Chair: Thank you. Further debate?

Mr Kormos: Mr Wood, I trust that the conditions in (4) and (5) are conjunctive rather than exegetical.

Mr Wood: You're going to have to define the second word. I don't know what that means. I know what conjunctive means.

Mr Kormos: I'm sure counsel will advise us.

Mr Wood: On the other hand, if he can answer that question, I defer to him.

Mr Bromm: You have to satisfy all of the conditions set out in both subsections (4) or (5), depending on which one you're applying.

Mr Kormos: So indeed they are conjunctive rather than exegetical? That wasn't that difficult, Mr Wood.

Mr Wood: I could have figured out whether or not they were conjunctive. I didn't know what other word meant.

The Chair: All right. Seek definition later, now that we've all been challenged to get our thesaurus out. Any further debate?

Seeing none, I'll put the question. All those in favour? Opposed? The amendment is carried.

Shall section 2 of the schedule, as amended, carry? Carried.

Shall section 3 carry? Carried.

Section 4: Mr Wood.

Mr Wood: I move that section 4 of the Declarations of Death Act, 2001, as set out in the schedule of the bill, be struck out and the following substituted:

"Motion to amend, confirm or revoke order

"4(1) An interested person may, with notice to any other interested persons of whom the person making the motion is aware, move for an order amending, confirming or revoking an order made under section 2 if the person making the motion did not have notice of the application to make the order.

"Same

"(2) An interested person may, with leave of the court and with notice to any other interested persons of whom the person making the motion is aware, move for an order amending, confirming or revoking an order made under section 2 if new evidence or a change in circumstances justify reconsidering the matter.

"Amendment re scope

"(3) An interested person may, with leave of the court and with notice to any other interested persons of whom the person making the motion is aware, move for an order modifying the scope of an order made under section 2.

"Motion re order under this section

"(4) An interested person may also make a motion under subsection (1), (2) or (3) in respect of an order previously made under this section.

"Notice

"(5) Notice under subsection (1), (2) or (3),

"(a) if given by or to an insurer, shall be given at least 30 days before the motion is made;

"(b) if given by or to a person other than an insurer, shall be given as provided by the rules of court.

"Power of court

"(6) The court may make an order confirming, amending or revoking the order and subsections 2(3), (4), (5), (6), (7), (8), (9) and (10) and section 3 apply, with necessary modifications, to an order made under this section.

"Preservation or return of property

"(7) If the court amends or revokes the order, it may also make any order it considers appropriate for the

preservation or return of property, including an order under subsection 6(3).

"References to s. 2 orders

(8) A reference in another section of this act or in any other act to an order made under section 2 shall be deemed to include an order made under this section.

Maybe I should attempt a brief explanation of this, if desired.

Mr Kormos: Maybe if I put this question, you can incorporate your response. I'm interested in subsection (3) of the amendment because I take a look at section 2, even as amended, and the order the court can make is that an individual has died.

Mr Wood: A little more than that.

Mr Kormos: When subsection (3) talks about "modifying the scope of an order made under section 2"—

Mr Wood: It can make more. It can say when they died, for example.

Mr Kormos: Let's be careful, because I saw the sections. You have two conditions, "the date upon which the evidence suggests," and "the date of the application," if (4) or if (5) applies, depending upon which one applies. I'm sorry, you are either appealing the order—but the scope of the order is you are dead and you either died on "the date of the application, if subsection (5) applies," or you're dead and "the date upon which the evidence," which the court infers you died on the basis of evidence, in subsection (4). So I'm still concerned about the scope of the order. Somebody's only dead from the neck up? I'm concerned about that one.

Mr Wood: I think the scope relates to date of death.

Mr Bromm: The section on amendment of scope actually refers back to subsection 2(6). If you look in 2(6), it says that a "declaration of death applies for all purposes unless the court … determines that it should apply only for certain purposes; and … specifies those purposes in the order." So under the current state of the law, you have to apply for a declaration of death for a variety of purposes. One would be to finalize an estate. One would be to remarry. Another would be to claim the proceeds of an insurance policy.

Those are all dealt with under separate statutes. What the scope of the order could be is to say you can use this order for all three of those or you can use it for only one. What might subsequently happen in section 4 in the subsection you're referring to is a person who went to court to get an order to collect insurance monies may subsequently want to remarry, and if the order of the court at the time said you can you use this order only for the purposes of insurance, they would have to go back to court under section 4 to vary the scope to also allow them to remarry.

Mr Kormos: That begs this question. Could you take a look at subs (4) and (5), which are the two really key subsections in section 2? The final observation has to be "there is sufficient evidence to find that the individual is dead"—in both cases. So I'm troubled by your contemplation of a restricted order. I'm trying very hard because there is still, although this makes accessing this presumption of death or declaration of death easier—and we don't quarrel with that. We indicated that from the get-go when this bill was introduced. That's a pretty serious conclusion, to conclude that somebody is dead. I can't for the life of me contemplate—my spouse would have me declared dead for the purpose of probating a will, but not for the purpose of remarrying? That's a little peculiar because the standard is still pretty high. It's not just loosey-goosey. It's not like the mythology, "If somebody disappears for seven years, we can assume they're dead." That was the urban mythology around that. The standard was even, historically, much higher than that.

I'm troubled by varying the scope. I hear what you're saying here and now. The legislation doesn't say that. Do you know what I mean? "Scope" is a new word in the Declarations of Death Act. I'm really concerned, because it doesn't say "can modify the order as with"—to be fair, scope is the subheading, but that's not the operative part of the statute. Wow. I still find that really troublesome.

Mr Wood: I would have thought the wording of section 2 would satisfy what you just said. They can amend, confirm or revoke. Is there anything you would like to do that isn't covered by that?

Mr Kormos: I appreciate that "scope" refers to the little subtitle. I'm sure there's a more correct name for that, in the subsection. For an order modifying the scope, clearly you want to restrict it to subsection (6), which is what you're suggesting and I don't quarrel with that nor do I find that bizarre, in any event. Does the legislation not want to be more specific? The scope of an order as determined by subsection (6)? Do you know what I'm saying?

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Mr Wood: It's very difficult. I think my answer applies as well as yours. They might make an order as of the time of the order, then evidence comes forward as to when they actually died, which might have some implications. Would that not be a modification of the scope of the order?

Mr Bromm: It wouldn't be a modification of the scope. It would be a modification of the order, but that would be done under a different subsection of section 4.

If you look at section 4, there are two subsections which deal with changes to an order. There is a subsection to amend, vary or revoke, and you could amend the order by changing the date of death. Then there's the subsection dealing with amending the scope, which has to do with the purposes with which you can apply the declaration of death that you have.

Mr Wood: Could I ask this question? Is there anything in the original order that couldn't be changed under these sections?

Mr Bromm: No.

Mr Wood: Does that not satisfy your concern?

Mr Kormos: Give me an example that isn't nonsensical, that isn't overly reaching as to subsection (3), where an interested party may seek to alter the scope. For

instance, if I'm an insurer, I'm an interested party, and if a court then ruled my insurance client dead in the broadest sense—

Mr Wood: Dead for all purposes.

Mr Kormos: Yes, dead for all purposes—that would impact on me. It would be to my detriment if I was going to fight payment on the insurance policy. Because if I didn't get notice, I could move to set aside otherwise, right?

Mr Bromm: Yes.

Mr Kormos: I don't have to modify it. If it was a mere issue of my not getting notice of a hearing, I could have it set aside. I don't even have to seek leave any more, as I recall the amendment. It eliminated the leave-seeking provision.

Here it is, some court has declared my client dead for all purposes. I go, an interested party, with notice, and move for an order modifying the scope. Is this an appeal section? Is this what this amounts to?

Mr Wood: No.

Mr Kormos: Do you see how it troubles me? Give me an illustration. Give me a "for example," because I can't think of one.

Mr Bromm: The best example very similar to the situation you're envisioning is a circumstance in which someone has decided to go seek a declaration of death because they want to finalize an estate or because they want to remarry, and at the time they brought that application, they were not aware of the existence of an insurance policy. Therefore, when they went to court and got the order, they didn't know there was an insurance policy and did not provide notice to any insurance company, and they got their order. The order would specify that it applies for all purposes other than insurance.

You subsequently discover there's an insurance policy and, rather than recommencing the proceeding in its entirety all over again, you simply make a motion under this section to amend the scope. You provide notice to the insurer, the court hears the matter in a simplified procedure, and the scope is then amended so you can collect the proceeds of the insurance.

Mr Kormos: Fair enough. I accept that reasoning. But then I go back—mind you, we've already passed this amendment, subsection (6), remember, and the default judgment, if you will—if we can look at it that way—is the broadest-based one. It doesn't say, "a court shall specify the purposes for which"—the declaration of death applies for the purposes specified, unless the court—do you know what I mean?

Mr Bromm: Yes.

Mr Kormos: It's the other way around. So your argument about the application of subsection (3), to me, subject to this dialogue going any further, would be more appropriate if the default judgment were flipped; in other words, if the default judgment were the specified purpose. It can only be a specified purpose, because that takes the judge to the next stage, and the court has to consider whether you go beyond that. "OK, I'm going to grant the declaration of death for the purpose of resolving an estate but for no other reasons, because that's all we're interested in right now." If that were the way it worked—the other way around—this would make more sense. Does that make any sense to you?

Mr Bromm: Actually, no, because the whole policy intention behind introducing the legislation is to create a single procedure through which you can get a single declaration of death good for all purposes, and that's the default position: that it is good for all purposes.

If you wanted to go to your position, we simply wouldn't have this legislation; we would go with the current status of the law, which is that you apply to the court for single orders for single purposes and never have an all-inclusive order.

So the default position is necessary to achieve the government's policy intention.

Mr Wood: It comes back to your initial comment: either you're dead or you aren't.

Mr Kormos: That's right. But then I'm concerned about this. I don't like this amendment, because it seems to me, then, that it will work usually in the one direction; it'll work in the case where a broad-based declaration of death has been declared, which is the general interest being served by the bill. By and large we want declarations of death that say, "You're dead. End of story," because we don't want people to have to nitpick. But that's when you're going to get the nitpicking, with any number of interested parties, be it a sibling in a will who wasn't named in the will who doesn't want to see the will probated, right, or an insurance company etc. No, I don't like subsection 4(3).

Mr Wood: Time may reassure you, but I mean—

Mr Kormos: Well, I may not live that long.

Mr Wood: Well, you may be the subject of the litigation.

Mr Bromm: If it provides any comfort at all, this is not unique legislation. It's based on the uniform declaration of death act, which has been in existence in Canada since 1974, and it exists in five other jurisdictions in Canada. They all have the same wording, and the case law hasn't revealed the kinds of difficulties that you're contemplating.

Mr Kormos: Fair enough.

The Chair: I'll now put the question. All those in favour of the amendment? Opposed? It is carried.

Shall section 4, as amended, carry? It is carried.

Section 5? Mr Wood.

Mr Wood: I move that section 5 of the Declarations of Death Act, 2001, as set out in the schedule to the bill, be amended by striking out "under subsection 4(1)" at the end and substituting "under section 4."

The Chair: Any debate? Seeing none, I'll put the question.

All those in favour? Opposed? It is carried.

Shall section 5, as amended, carry? It is carried.

Shall section 6 carry? It is carried.

Section 6.1, a new section. Mr Wood.

Mr Wood: I move that the Declarations of Death Act, 2001, as set out in the schedule to the bill, be amended by adding the following section:

"Payment, distribution under order discharges duty

"6.1 A payment of money or distribution of property made pursuant to an order made under this act discharges the person who made the payment or distribution to the extent of the amount paid or the value of the property distributed."

The Chair: Any debate?

Mr Levac: Could I hear the rationale, please?

Mr Wood: Let me take a crack at it, which may be—maybe I'd better let you go first; then I'll take a crack at it.

Mr Bromm: It's basically an amendment to mirror what exists under the current provisions of the Insurance Act. What that section says is, if someone goes to court and has someone declared dead and collects money on an insurance policy, the insurer who pays out the money is therefore protected from any subsequent claims by a person who comes along and says, "I should have gotten that money," or a creditor of the deceased person who comes along and says, "You should have paid me that money, not the beneficiary."

So the insurer, once they pay out to the beneficiary under the policy, cannot be sued in court for the amount that they've paid out. It doesn't mean the people can't go and sue the person who got the money, but they cannot sue the insurer.

Mr Wood: Could I have a little blurb?

The Chair: Sure, please.

Mr Wood: The Canadian Life and Health Insurance Association was concerned that the same protection was not provided by the Declarations of Death Act, 2001. The failure to incorporate this protection in the Declarations of Death Act was a technical oversight and exposed the insurance industry to liability claims that they would not otherwise be exposed to. Such a result was not intended. The motion corrects this oversight by mirroring the liability protection of the Insurance Act. The provision will also protect other financial institutions who make payments under financial instruments pursuant to a declaration of death as well as executors who distribute property following a declaration.

I would add that this mirrors how the probate law generally works. There's a similar protection given to financial institutions, executors and so on. So it's consistent with the general law.

Mr Levac: I guess my mind works in a different way, because I'm not a lawyer. Does this mean, then, that if the person who does the paying out, that's who we're talking about, does so under an order, it can only be done in a way that the order prescribes, meaning that they can't do anything fraudulently, they can't do anything hanky-panky, so that prevents them from coming back and getting to them?

Mr Bromm: Yes, they have to pay under the order and they have to pay to the designated beneficiary in the insurance policy.

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Mr Levac: Therefore, because that has to be followed explicitly, there can't be any kind of game-playing done that would allow that person to do something and then this order would say, "But you can't come back and get me."

Mr Bromm: This would not protect any fraudulent conveyance of funds or a fraudulent conveyance of property. It only protects things that are done legitimately under the court order.

Mr Levac: Thank you.

Mr Kormos: All of us have to be very conscious of the fact that this legislation, while convenient, has—although it would be in the most extreme circumstances—serious shortcomings. I think of a context during the last century, World War I and World War II. Although not that many Canadians died in the Korean War, we had, for instance, armed forces personnel missing in action, presumed dead, with all sorts of possible scenarios flowing from that without the prospect of that person being de facto dead, but satisfaction, although the time frames are pretty exhaustive.

Don't forget to take a look at section 6 that we just passed that talks about the presumption of a legitimate distribution of estate, then the person who owns that money that was improperly distributed having to make application to the court. There's that minutiae, that teeny bit of a downside. When the court makes that artificial declaration that you're dead, for the purpose of other people's interests and your own, you're dead.

Did I tell you about the time the Toronto-Dominion Bank, those thieves—because you've got to be careful. I had a bank account at Toronto-Dominion Bank here in Toronto that I had from my student days, and I just kept it. There it was; I figured it was money in the bank—savings. Sure enough, around eight years later I show up, and I owed them money because they had nickel-and-dimed every penny of it. People have got to be careful. They can't just disappear for seven years. The banks are the worst because banks will rob you blind. Talk about biker clubs ripping people off. We should have special squads to arrest bank CEOs. That's just what I would mention to people as a caveat, about disappearing and not keeping contact with the thieving banks like the Toronto-Dominion.

The Chair: Thank you. I'll now put the question. All those in favour of Mr Wood's amendment? Opposed? It's carried. The section is carried.

Shall sections 7 and 8 carry? Carried.

Section 9: Mr Wood.

Mr Wood: I move that subsection 203(2) of the Insurance Act, as set out in section 9 of the schedule to the bill, be struck out and the following substituted:

"Order under Declarations of Death Act, 2001

"(2) Despite sections 208 and 209, an order made under the Declarations of Death Act, 2001, that declares that an individual has died is sufficient evidence of death for the purpose of clause (1)(a) if the insurer had notice of the application."

The Chair: Any debate?

Mr Kormos: I'm going to need some help with this. You might want to talk about the amendment in the context of section 9.

Mr Wood: Let me make an attempt.

Mr Kormos: Just so we understand.

Mr Wood: This is a technical change to make the wording of section 9 consistent with that used in section 2 of the act.

Mr Kormos: OK, but then help us with section 9 in general, although it's not the amendment itself—

Mr Wood: I will defer to our expert here, who will assist us.

Mr Bromm: Without section 9, an individual who got an order under this legislation could not use it to collect insurance monies because the Insurance Act has the specific procedure you have to follow to collect on an insurance policy in the event that a person's body has not been identified. This amends it and says, "If you have an order under this act, it applies for the Insurance Act purposes," and you avoid two procedures.

Mr Kormos: It relieves you of a higher standard that's in the Insurance Act?

Mr Bromm: No. When we met with the insurance company, they were very comfortable that the standards are consistent in the two pieces of legislation, but what it avoids is the strict wording of the Insurance Act that requires you to make the application under that act.

The Chair: There being no further debate, I'll put the question. All those in favour? Opposed? The amendment is carried.

Shall section 9, as amended, carry? It's carried.

Shall sections 10 through 13 carry? Carried.

Mr Kormos: Whoa.

The Chair: I already carried. All those in favour?

Mr Kormos: Whoa, whoa. I appreciate "shall it carry"—

The Chair: We are coming back again. You know that.

Mr Kormos: Whoa, whoa.

The Chair: The specific section?

Mr Kormos: Yes, section 10, which is section 9 of the Marriage Act. Again, just so we understand, a very brief synopsis explaining this section.

Mr Bromm: It's the same rationale as the Insurance Act. The Marriage Act has the unique procedure in it to get an order that would allow you to remarry. This simply says that you do not have to go through that unique procedure.

Mr Kormos: Thank you.

Interjection.

The Chair: No, that's fine. We'll go through it again.

Shall sections 10 through 13 carry? Carried.

Shall the long title of the bill carry? Carried.

I would ask the last two questions because we have deferred two amendments—three, I guess, technically speaking. I would propose to committee that due to the fact there's an order of the House that prevents committees sitting on this Wednesday—Thanksgiving is next Monday—the next earliest day would be October 16. Is the committee in agreement that we will reconvene?

Mr Kormos: Perhaps to adjourn this to October 16, with the understanding that it can be addressed prior to that, if there's a space.

The Chair: I'm amenable to that. If you, speaking particularly as a House leader as well, would be prepared to allow the committee some other time outside of routine sitting times, I—

Mr Kormos: No, no. I'm not suggesting that. I'm saying, if we can squeeze it in—

The Chair: That is the next sitting day of the committee though.

Interjections.

Mr Kormos: Jeez, I've got this horrible conflict. I'm double-booked.

Mr Wood: On the other hand, if we have an earlier meeting, I think Mr Kormos's suggestion is well taken.

Mr Kormos: We could maybe do it at 6 am some day.

The Chair: OK. So we have unanimous agreement, October 16, or earlier, if that can be facilitated. The committee stands adjourned until that time.

The committee adjourned at 1757.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président
Mr Steve Gilchrist (Scarborough East / -Est PC)

Vice-Chair / Vice-Président
Mr Norm Miller (Parry Sound-Muskoka PC)

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Mr Dave Levac (Brant L)
Mr Norm Miller (Parry Sound-Muskoka PC)
Mr R. Gary Stewart (Peterborough PC)

Substitutions / Membres remplaçants
Mr Peter Kormos (Niagara Centre / -Centre ND)
Mrs Julia Munro (York North / -Nord PC)
Mr Bob Wood (London West / -Ouest PC)

Also taking part / Autres participants et participantes
Mr Gilles Bisson (Timmins-James Bay / Timmins-Baie James ND)
Mr Jay Lipman, counsel, Ministry of Public Safety and Security
Mr William Bromm, counsel, Ministry of the Attorney General

Clerk / Greffière
Ms Tonia Grannum

Staff / Personnel
Ms Susan Klein, legislative counsel