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Wednesday 16 October 2002

**Journal
des débats
(Hansard)**

Mercredi 16 octobre 2002

**Standing committee on
general government**

Emergency Readiness Act, 2002

**Comité permanent des
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 16 October 2002

Mercredi 16 octobre 2002

The committee met at 1540 in committee room 1.

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.

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

To refresh everyone's memory, we had stood down three sections. When those are done, I will apprise the committee members that legislative counsel has discovered two errors, and we will be seeking unanimous consent to reopen two of the schedules to simply reflect on the need to make those changes there.

The first section was in section 4. It would have been on your replacement amendments package, marked as replacement number 1. Mr Wood?

Mr Bob Wood (London West): 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 a person's right of appeal under section 39 of the Municipal Freedom of Information and Protection of Privacy Act with respect to a record described in this section.”

If it's open to comment, a concern was raised about an earlier subsection. It was much more general and there were significant concerns as to whether or not it accomplished what it was attempting to accomplish. This one, I think, is focused and does not detract from what is in the act and will, in fact, achieve the concerns of the Information and Privacy Commissioner, who I believe has approved this. Am I right?

Mr Jay Lipman: Yes.

Mr Wood: Yes, she agrees with us, so I think that repairs a potential defect that was identified.

Mr Peter Kormos (Niagara Centre): I want to make this clear that everybody's concerned when one restricts access via the FOI, but it's my understanding of this that this is designed to protect anyone from FOIing information that would facilitate the implementation of creating

an emergency. It would secure information from being divulged that could be used to create a hazard, a crisis. It would protect the municipality from being required to disclose sensitive information that would expose vulnerabilities. I just want to understand clearly.

Mr Wood: Let's invite leg counsel to comment on that, and then I'll give you my take on it. You have the floor.

The Chair: Could you introduce yourself first, for the purposes of Hansard?

Mr Lipman: I'm Jay Lipman from the Ministry of Public Safety and Security. Yes, that is the purpose of this amendment: to protect the public disclosure of sensitive, security-type information.

Mr Kormos: I listened carefully and read carefully subsection (8), which reaffirms the right of appeal under section 39. Does that mean that a person then could appeal a determination by a counsel that certain information would not be disclosed because it would constitute a security risk?

Mr Lipman: Yes, that's correct.

Mr Kormos: I think this is my final question: in the course of an appeal, I could call upon the municipality to establish to the satisfaction of those authorities that this indeed was bona fide security information?

Mr Lipman: Yes, that's correct.

The Chair: Any further discussion? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It is carried.

Mr Wood, just before we move on, I believe that you had read the similar motion into the record at our last meeting. I wonder if you could just formally indicate that it's withdrawn.

Mr Wood: Yes, I would like to withdraw the similar motion made some days ago.

The Chair: Thank you. In fact, while we're on that subject, I don't recall whether you read the other.

Mr Wood: I haven't read it yet.

The Chair: No, last week, the other two amendments that are subject to review today.

Mr Wood: Yes, I believe it was.

The Chair: On the chance that it was read into the record, why don't you just withdraw all of the outstanding amendments carried over from the last meeting?

Mr Wood: Yes, my understanding is there are only two.

The Chair: Two, yes.

Mr Wood: I'd like to withdraw both outstanding amendments from last week.

The Chair: Thank you very much. That takes us now to ask about section 4, as amended. Shall it carry? Section 4, as amended, is carried.

That takes us to section 7.

Mr Wood: I move that section 5.1 of the Emergency Plans Act, as set out in section 7 of the bill, be amended by adding the following subsections:

"Confidentiality of third party information

"(3) A head of an institution, as defined in the 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 (2); and

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

"Application of Freedom of Information and Protection of Privacy Act

"(4) Nothing in this section affects a person's right of appeal under section 50 of the Freedom of Information and Protection of Privacy Act with respect to a record described in this section."

This, of course, is parallel to the new motion we just moved.

The Chair: Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It is carried.

Shall section 7, as amended, carry? It is carried.

Mr Wood: I am about to ask for unanimous consent to move two new motions, the particulars of which have been supplied—

The Chair: Hold on, Mr Wood. We're getting a little ahead of ourselves here because we still have the new section 16.1, which was—

Mr Wood: Mr Levac has moved that, I think, and read that into the record.

Clerk of the Committee (Ms Tonia Grannum): I don't think he read that into the record.

Mr Wood: If he didn't, maybe we'd better invite Mr Colle to do so.

The Chair: Are we proceeding with it, or was that the subject of the discussion that was taking place before the meeting started?

Mr Wood: We had agreed that it could be put forward. My understanding from Mr Colle, which you may wish to correct or update, is that you would like this voted on.

Mr Mike Colle (Eglinton-Lawrence): Yes. My understanding is that the intention of Mr Levac is to continue dialogue with the minister and the parliamentary assistant in terms of the spirit of the amendment be incorporated in ongoing final disposition of this legislation and its intent, to incorporate some of the sentiment and some of the objects Mr Levac tried to attain by putting in this amendment.

Mr Wood: Do you want me to put on the record our position, which might assist you in determining what you want to do?

Mr Colle: Yes, would you, please?

Mr Wood: Then you can decide where you want to go from there.

Mr Colle: Right. If I could just clarify: we have this Liberal motion that has been discussed with staff and with the minister by Mr Levac. I think he's willing to withdraw this amendment on the basis that there is an undertaking by the parliamentary assistant to continue this dialogue, trying to reach the goals that Mr Levac

tried to accomplish through his motion. In a nutshell, if we can get on the record that there is an intention and undertaking to continue this dialogue with Mr Levac, I'll be more than happy to withdraw the Liberal motion.

1550

Mr Wood: This is a motion that in substance would provide for political input at the MPP level and political oversight of activities of the government with respect to anti-terrorist activities, and it would put that right in the statute. We support the idea of political input and political oversight. We do not think that's best done by way of putting it in the statute. We would like to observe that whatever mechanism is developed to achieve that can't involve politicians in police operations. That's a caution we put forward so that everyone understands that whatever this mechanism is, it can't get elected people involved in actual police operations.

Having said all that, we think the idea is a sound one. We would invite Mr Levac and all others interested to make suggestions to the ministry as to how that might be accomplished, because it is the kind of thing that is done in other jurisdictions. I think there are good reasons why it should be done. We support the principles of input and oversight that are set out in the motion, but we disagree with the particular way of accomplishing that.

Mr Colle: That's fine.

The Chair: Since it was not formally read into the record but now we have the respective positions in Hansard, perhaps we could move on to the other two amendments we have to deal with as a result of some drafting errors.

I first have to ask for unanimous consent to reopen sections 2 and 4 of the schedule.

Mr Colle: So moved.

The Chair: Any dissent? It's agreed.

Mr Wood, could I get you to read the first of them, please?

Mr Wood: I move that subsections 2(1) and (2) of the Declarations of Death Act, 2001, as set out in the motion to section 2 of the schedule to the bill that was carried by the standing committee on general government on October 7, 2002, be struck out and the following substituted:

“Order re declaration of death

“(1) An interested person may apply to the Superior Court of Justice, 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 not given by or to an insurer, shall be given as provided by the rules of court.”

We'd be pleased to offer explanation, if explanation is desired.

Mr Kormos: How could we have missed that, Mr Wood?

Mr Wood: I know that in his long practice of law Mr Kormos never had to redraft a document, and we further know that he will offer free advice to our drafters.

Mr Kormos: Free advice is usually worth just about as much as you pay for it.

Mr Wood: Be sure your insurance is paid before you offer it.

Mr Kormos: I'm embarrassed. I'm deadly serious, and I say this in particular to the government members on this committee, those of you who from time to time may be inclined to dismiss the committee process for even the most innocuous types of legislation, and this again is an illustration. Granted, it wasn't any of us, but the fact that it was in committee made sure the bill was done right at the end of the day. There were some other modest amendments that may constitute mere tinkering, but we've done our best, perhaps our incompetent best, to improve a bill that had undergone the rigours of trained drafters. The committee is incredibly important.

The other day I was in the regs committee. Apparently from time to time the regs committee has to confront numerous oversights in the drafting of regulations; they do a cleanup en masse. Again it illustrates how even the most competent of staff in terms of drafters, with all the resources—and, granted, they probably deserve more to do their job the way we demand of them. But that illustrates how important a committee is. So when my colleagues scorn opposition requests for committee hearings and suggest, “But everybody agrees with the proposition,” that may well be, but here we've done a little bit to make the bill better. Undoubtedly some judge down the road is going to point out a serious oversight of ours because some sharp lawyer—not a pettifogger, mind you, but simply a competent counsel—is going to find perhaps—I do want to ask, though: what do the civil rules of procedure provide for notice?

Mr Wood: I think I had better refer that to counsel, who may or may not be able to help us on this.

Mr William Bromm: Under the current rules of civil procedure, it's a 10-day notice period for an application to court.

Mr Kormos: Here I am. You're calling upon me to support something that gives a greater period of notice. I appreciate it's “by or to an insurer.” So in the one case they might feel aggrieved by the longer period of notice, if it's by them, because notice usually impacts upon the respondent more than on the applicant. Why are we giving a different period when it deals with an insurer than with any other party?

Mr Bromm: Because the 30-day period this statute would provide for is already provided for under the provisions of the Insurance Act. In order to provide consistency between the two statutes, there is a determination to provide for the 30-day period, whereas the other statutes that have applications for declaration, such as under the Marriage Act, stick to the rules of civil procedure. So this is just maintaining the consistent standard that already exists for similar applications.

Mr Kormos: So insurance companies get break after break after break. I understand.

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

Shall section 2 of the schedule, as amended, carry? It is carried.

Mr Wood: I move that clause 4(5)(b) of the Declarations of Death Act, 2001, as set out in the motion to section 4 of the schedule to the bill that was carried by the standing committee on general government on October 7, 2002, be struck out and the following substituted:

“(b) if not given by or to an insurer, shall be given as provided by the rules of court.”

The Chair: Any discussion?

Mr Kormos: I trust that is, again, consistent with the earlier section that was amended that deals with the differentiation between insurer and any other party.

Mr Bromm: Yes.

Mr Wood: I might say, in response to what Mr Kormos said about the committee process earlier, that I am confident that not only the contributions of the government members on this bill and the other bill that was dealt with earlier but of the opposition members will indeed commend the committee process to all members of the House. I think the point Mr Kormos made is not an insignificant one. If we don't follow good process, we don't get as good results as we might. So I don't want to leave that point entirely without making reference to it. I think there is an important principle involved in that. While the general public does not follow the process of this place, it does make a difference in terms of the result they get. I know the positive spirit shown by all members is going to commend this process to all members of the House.

The Chair: Further discussion? Seeing none, I'll put the question. All those in favour? Opposed? It is carried.

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

Shall Bill 148, as amended, carry? It is carried.

Shall I report the bill, as amended, to the House?

Mr Kormos: Chair, one moment, please. On that question, may I?

The Chair: You may.

Mr Kormos: Mr Gilchrist and I are being so cordial to each other.

The Chair: The Chair must always be neutral.

Mr Kormos: I am disinclined to support the return of this bill to the House. My concern is that the committee hasn't done its work. I'm not about to debate amendments that have been put forward and defeated, but I cannot support returning this bill to the House when this bill does not contain, for instance, a requirement that the parties to an emergency response—for instance, police officers, firefighters and medical personnel—be consulted in the process. I'm reluctant to refer this bill back to the House when it does not incorporate some already well-established standards, like the standards for firefighter response that have been argued and advocated for by the Ontario Professional Fire Fighters Association, not only the membership but the leadership.

So I want to tell you that I am disinclined and will not be supporting the referral of this bill back to the House in its present state. I understand the purpose of the bill. I have no quarrel with the intent of the bill. But it is my view and submission that the bill is incomplete and that this committee should wrestle with this bill yet further so that once again it can be meaningful not just in spirit but in terms of its impact. I would ask for a recorded vote.

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

The question before us is, shall I report the bill, as amended, to the House?

Ayes

Colle, Gill, McDonald, Stewart, Wood.

Nays

Kormos.

The Chair: I shall report the bill, as amended, to the House.

This being the end of our deliberations on Bill 148, this committee stands adjourned.

Mr Wood: Did we get the title of the bill in there?

The Chair: We already dealt with the title.

Mr Wood: It was done last week, was it?

The Chair: It was last week.

Clerk of the Committee: And the long title too.

The Chair: The committee stands adjourned.

The committee adjourned at 1601.

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