

Bill 56

*Emergency Management
Statute Law Amendment Act*

Ministry of Community Safety and
Correctional Services

May 11, 2006

Context

- On December 15, 2005, the government introduced Bill 56, the *Emergency Management Statute Law Amendment Act*. The Bill received Second Reading on March 29, April 6 & 10, 2006 and was carried on division April 25.
- If passed, the Bill would address gaps in provincial legislation related to emergency management.
 - The 2003 SARS and power outage emergencies raised a number of concerns about Ontario's ability to deal with emergencies. Following these emergencies, a review of Ontario's emergency powers legislation was initiated.
 - This review demonstrated that Ontario's legislation was inadequate in comparison to other jurisdictions. The federal government and all provinces and territories, except for Ontario, have comprehensive emergency management legislation.

Background - Bill 138

- On June 29, 2004 the Legislative Assembly referred the development of emergency powers legislation to the Standing Committee on Justice Policy.
- The Committee held public hearings in August and October 2004.
- The Committee's work culminated in a draft statute (Bill 138), which was tabled on November 1, 2004.
- Bill 138 was not returned for second reading and on December 15, 2005 the government introduced Bill 56.
- Bill 56 includes, in addition to the provisions of the original Bill 138, a number of amendments.

Balance between powers and accountability

- The Bill respects civil rights through provisions that make the government accountable for its actions.
- The central theme of Bill 56 is achieving a balance between extraordinary powers to make emergency orders and the safeguards or accountability framework governing the exercise of the powers.
- The Bill contains a comparatively long list of powers (e.g., evacuation, controlling travel, establishing facilities and requisitioning property) but also contains extensive safeguards and accountability mechanisms.
 - For example, all emergency orders must be consistent with the *Canadian Charter of Rights and Freedoms* and must be carried out in a manner that limits their intrusiveness.

Declaration & termination of an emergency

- Declarations of provincial emergencies are made by Cabinet, but may be made by the Premier in urgent circumstances (s. 7.0.1(1)).
- The Bill establishes a fairly strict test for making a declaration (s. 7.0.1(3)).
- The central concept in the test is that the emergency cannot be effectively addressed using the resources normally available to government.
- Declarations cannot extend for more than 14 days, unless renewed (s. 7.0.9(1)).

Declaration & termination of an emergency (cont'd)

- Cabinet can renew a declaration only once, for a further 14-day period (s. 7.0.9(2)).
- Thereafter, only the Legislative Assembly can continue the declaration. Renewals by the Assembly can be for a maximum of 28 days, but there is no limitation on how many renewals may be made (s. 7.0.9(3)).
- The Assembly can also disallow a declaration of emergency at any time (s. 7.0.11(1)).

Emergency Powers

- The Bill sets out a list of powers that can only be exercised in a declared emergency (s. 7.0.2(4)).
- The listed powers in the Bill are generally consistent with the listed powers that occur in emergency legislation in other jurisdictions.
- Orders can be made in respect of 14 distinct areas, including the following:
 - Evacuation, controlling travel, establishing facilities, requisitioning property, price fixing and authorized service.

Emergency Powers (cont'd)

- As with emergency declarations, the Bill contains fairly strict tests relating to the exercise of emergency powers. The tests include a purpose for which the orders can be made, criteria that must be met and limitations on the making of each order.
- The order-making power is conferred on Cabinet. Cabinet may delegate the power to a Minister or to the Commissioner of Emergency Management (CEM) (s. 7.0.3).
- If delegated to the CEM, CEM orders can only be in force for a maximum of two days, unless confirmed before then (s. 7.0.9(2)).

Primacy of emergency orders

- Bill 56 provides that emergency orders prevail over any statute (s. 7.0.6(1)).
- The one exception is the *Occupational Health and Safety Act* (OHSA). OHSA sets out the rights and duties for all parties in the workplace; its main purpose is to protect workers against health and safety hazards on the job.
- Section 7.0.6(5) specifically provides that OHSA and regulations made under it prevail over the Bill or an order made under it.

Job Protection

- Job protection is a key element of this legislation.
- An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position because of an emergency declared under the Bill and because of:
 - An order that applies to him or her made under the *Emergency Management Act*.
 - An order that applies to him or her made under the *Health Protection and Promotion Act*.
 - He or she is needed to provide care or assistance to certain family members as identified in the Bill.
 - Such other grounds as may be set out in regulation.

Protection from Liability

- Bill 56 contains the usual provision that protects government and municipal officials from personal liability for acts carried out in good faith, while the right to sue the Crown or a municipality is preserved (s. 11).
- In addition, the Bill extends immunity from personal liability to any person, acting in good faith, pursuant to an emergency order.

Enforcement of Orders

- Bill 56 contains significant penalties for failing to comply with an order or obstructing a person in carrying out an order (s. 7.0.13).
- Bill 56 also contains an additional enforcement mechanism to enforce emergency orders through the civil courts. Similar provisions occur in other major provincial legislation, such as the *Health Protection and Promotion Act* (s. 7.0.7).

Reporting Requirements

- Bill 56 expressly requires the Premier or a delegated Minister to report to the public during the emergency. (s. 7.0.8)
- In addition, the Bill requires that the Premier table a report on the emergency in the Legislative Assembly within 120 days of the termination of the emergency (s. 7.0.12).
- The report must specifically address any emergency orders made and provide a justification for those orders.