



BRITISH  
COLUMBIA

# Prepared and Resilient

*A discussion paper on the legislative framework for emergency management in British Columbia*

JANUARY 2016



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# Message from the Minister

As Minister of State for Emergency Preparedness, I am pleased to announce the release of *Prepared and Resilient: A Discussion Paper on the Legislative Framework for Emergency Management in British Columbia*. This document is intended to support a consultation that will engage stakeholders in a dialogue about emergency management legislation in British Columbia.

When we think about being prepared for an emergency or disaster I think it is fair to say that legislation is not top of mind. Nevertheless, we must recognize that the coordination and synergies of emergency management experts in this province—whether at the local or provincial level—starts with understanding and fulfilling key emergency management responsibilities and having the appropriate authority to take the right actions at the right time when faced with an emergency or disaster. That's where legislation comes in: to establish the legal framework for a prepared and resilient British Columbia.

The *Emergency Program Act* is the key piece of legislation for emergency management in British Columbia. The Act, which was introduced in 1993, sets out roles and responsibilities for local authorities and the provincial government in preparing for, responding to and recovering from emergencies and disasters. The Act also sets out the authority for local government or the province to declare a state of emergency and to use emergency powers to protect the health, safety or welfare of people and to limit damage to property.

A key challenge with the Act and its regulations—and a principal reason for this consultation and engagement—is that while best practices in the field of emergency management in B.C. and elsewhere have evolved significantly over the past two decades, the *Emergency Program Act* has remained largely unchanged since its introduction and has never been the subject of a full and open review as proposed herein. The time has therefore come for us to examine the Act to ensure it provides the solid legal foundation we need here in B.C. to meet whatever challenges may come our way, be they small scale emergencies contained at the local level or catastrophic events affecting a region or even possibly the entire province.

This consultation acknowledges recent changes some other Canadian jurisdictions have made to modernize their emergency management laws. The engagement has also been shaped by findings and recommendations of the 2014 earthquake preparedness reports of the Auditor General and Henry Renteria, the former head of California's Office of Emergency Services who consulted with stakeholders on earthquake preparedness issues and priorities.

Ultimately, though, it is the input and feedback that we receive from interested British Columbians on the challenges and proposals outlined herein that will best inform the development of any changes to the law. It is my hope that this consultation will engage British Columbians in a dialogue so that together we can create legislation that supports a prepared and resilient B.C.

Sincerely,



Honourable Naomi Yamamoto  
Minister of State for Emergency Preparedness

# Executive Summary

The Premier's mandate letter to Minister of State for Emergency Preparedness Naomi Yamamoto directs the Minister to lead a review of the *Emergency Program Act* (Act) to ensure the legislation is up to date and effective in managing the impacts of emergencies in British Columbia, providing a report back to Cabinet Committee on Secure Tomorrow on or before March 31, 2016.

This engagement is intended to be a key component of the review of the legislation. It highlights several key challenges in the Act and seeks input from stakeholders on proposals for possible legislative changes so that government may better understand what improvements if any may be needed to ensure the Act is up to date and effective.

The specific examples of challenges presented in this consultation fall into one of the following three discussion areas, with each including proposals for possible changes to the Act for consideration and input of stakeholders:

## A. Modernizing fundamental concepts and structure of the Act:

1. Phases of emergency management (prevention, preparedness, response and recovery);
2. Definition of emergency and disaster; and
3. Definition of local authority.

## B. Clarifying roles and responsibilities:

4. Emergency Management BC;
5. Provincial emergency planning, response and recovery responsibilities;
6. Ministerial authority to direct emergency planning; and
7. Provincial authority for private sector and non-government agencies.

## C. Supporting emergency response and recovery:

8. Shared responsibilities for emergency response;
9. State of Emergency;
10. Evacuation orders; and
11. Employment protection.

Stakeholder input on the identified challenges and discussion questions may be submitted to [citizenengagement@gov.bc.ca](mailto:citizenengagement@gov.bc.ca) by Feb. 19, 2016. In order to promote the transparency of the review and engagement process, submissions received from stakeholders who Minister Yamamoto invited to provide input may be posted to Emergency Management BC's website. Submissions from members of the public posted to the website forum will be reviewed and incorporated into the review process along with the other stakeholder submissions.

# Context of a Review of the *Emergency Program Act*

## OVERVIEW OF THE LEGISLATIVE FRAMEWORK

The *Emergency Program Act* provides the legislative framework for the management of disasters and emergencies within British Columbia. This framework defines responsibilities of local authorities, provincial ministries and crown corporations along with the responsibility for the Province's emergency management program. It requires local authorities, ministries, crown corporations, and government agencies to develop plans and programs to prepare and respond to emergencies and disasters in the Province. It also provides local authorities, the Minister responsible for the Act, and the Lieutenant Governor in Council, with the ability to declare a state of emergency in order to access the extraordinary powers required to co-ordinate emergency responses.

Supporting the *Emergency Program Act* are three regulations made under the authority of the statute:

- ▶ *Emergency Program Management Regulation* identifies duties and responsibilities of provincial ministries and government corporations in relation to specific hazards and generally in the event of an emergency;
- ▶ *Local Authority Emergency Management Regulation* outlines roles and responsibilities of Local Authorities; and
- ▶ *Compensation and Disaster Financial Assistance Regulation* establishes the framework for the provisions of disaster financial assistance.

## WHY REVIEW THE ACT?

The time is ripe to review the *Emergency Program Act* to ensure it is effective in supporting the management of emergencies in British Columbia. The current iteration of the *Emergency Program Act* dates back to 1993 and has been subject to a small number of limited amendments since then. Over the last two decades various events and operational responses have prompted the provincial government and other partners in emergency management to consider and revise operational practices and procedures.

A further factor contributing factor are the 2014 reports of the Office of the Auditor General and Henry Renteria on earthquake preparedness. These reports further highlighted where changes may be necessary to improve the preparedness of British Columbians in relation to the possible occurrence of a catastrophic event.

Finally, the Premier's July 30, 2015 mandate letter to Minister Yamamoto directs the Minister to lead a review of the Act to ensure the legislation is up to date and effective in managing the impacts of emergencies in British Columbia and reporting back to Cabinet Committee on Secure Tomorrow on or before March 31, 2016. This consultation is intended as a key step in achieving a review as envisioned in the mandate letter by engaging stakeholders in a discussion about what improvements if any may be needed to ensure the Act is up to date and effective.

## SCOPE OF REVIEW

This engagement identifies 3 main challenges in the Act and broken out into the following discussion areas:

- A. Modernizing fundamental concepts and structure of the Act**
- B. Clarifying roles and responsibilities**
- C. Supporting emergency response and recovery**

The list of challenges and examples presented for discussion and consideration are focussed on the Act and not the regulations. However, this does not preclude comments and input on any of the regulations as potential changes to the Act could also have implications for matters set out under the regulations.

Finally, the discussions presented here are not intended to be an exhaustive list. It is hoped that the items raised here will generate thought and discussion that will result in a broad range of items for government to consider.

## OVERVIEW OF REVIEW PROCESS

Minister Yamamoto sent letters to key stakeholders on the release date of this engagement to invite them to provide submissions on the challenges and proposals outlined herein. In order to promote the transparency of the review and engagement process, submissions received from stakeholders who received invitations may be posted to Emergency Management BC's website. A list of these stakeholders is also provided on the website.

Other interested stakeholders, including members of the public, may also make submissions.

Any submissions received from individuals or organizations who did not receive invitation letters from Minister Yamamoto will also be reviewed and incorporated into the review process; these submissions will be collected via the EMBC website forum.

Submissions will be received up to Feb. 19, 2016, at 4 p.m. At the closing of the consultation period, all submissions will be reviewed and analyzed for themes and suggestions that can be compiled and presented by Minister Yamamoto to the Cabinet Committee on Secure Tomorrow on or before March 31, 2016, in accordance with the Minister's mandate letter.

# Challenges and Proposals

## Discussion Area A: Modernizing fundamental concepts and structure of the Act

### Discussion 1: The phases of emergency management

#### Background:

Emergency management is a universal term for the systems and processes used for preventing or reducing the impacts of disasters on communities. Emergency management is conceptualized in four phases: prevention/mitigation, preparedness, response and recovery.

This phased approach is an internationally recognized standard for defining and understanding different aspects of emergency management and is integral to the systems and processes in BC that local authorities and government use to minimize vulnerability to hazards and for coping with disasters. For example, over the last two decades local authority and government emergency plans, which are a central feature of the *Emergency Program Act*, have come to be understood as plans related to preparedness for, prevention and mitigation of, response to and recovery from an emergency and its effects.

#### Challenge in the current legislative framework:

While the *Emergency Program Act* references aspects of the phased approach to emergency management, it is important that the terms prevention, preparedness, response and recovery are used consistently throughout the legislation. Consideration should be given to structuring the Act

to reflect the distinct subject matter of the phases whereby separate parts are established for each phase, with powers and duties for local authorities and the provincial government set out in each part.

The Act's current name should also better reflect the emergency management focus of the act. The current name reflects the role of the Provincial Emergency Program, which has been superseded by Emergency Management BC. See Discussion Area B, Discussion 4. As well, "emergency program" is not defined and, while the term "program" is used in numerous sections in the Act, it may be unclear in some sections as to what this term means in relation to the phases of emergency management.

A further consideration is the definition of "local authority emergency plan" and "provincial emergency plan". These definitions do not currently emphasize that emergency planning involves all phases of emergency management.

#### Relevant sections in the legislation:

- ▶ Title of the Act
- ▶ Part 1—Definitions and Application
- ▶ Part 2—Administration
- ▶ Part 3—Emergencies, Disasters and Declared Emergencies

**Proposal:**

Consideration should be given to the following potential changes to the Act:

- 1.** Renaming it the *Emergency Management Act*.
- 2.** Restructuring the Act so that it contains parts reflecting the phases of emergency management (i.e. a part dedicated to preparedness, a part dedicated to response etc.)
- 3.** Removing the term “emergency program” and references to “program” or “programs” throughout.
- 4.** Defining an “emergency plan” as a plan under the Act to prepare for, prevent, mitigate against, respond to and recover from an emergency and its effects.

**Discussion 2:  
Definition of “emergency”****Background:**

A definition of an “emergency” is essential to emergency management legislation. In the *Emergency Program Act*, the term “emergency” gives meaning to other important concepts such as emergency plans, emergency programs, emergency measures, and states of emergency.

The current definition of emergency in the Act provides that it is a “present or imminent event or circumstance that is caused by accident, fire, explosion, technical failure or the forces of nature …”. A “disaster”, on the other hand, is a subset of an emergency. The Act defines a disaster as a calamity that is caused by accident, fire, explosion or technical failure or by the forces of nature and has resulted in serious harm to people or widespread damage to property.

**Challenge in the current legislative framework:**

BC’s legislation limits the definition of an emergency to a specific set of causes, which raises a question as to whether some events or circumstances may fall outside the scope of the Act. Similar legislation in other provincial jurisdictions generally uses broader language that puts an emphasis on defining an emergency based on what could or does result from an event, situation, or condition. Many other jurisdictions have also included damage to the environment in the definition of emergency.

**Relevant sections in the legislation:**

- ▶ Section 1 of the *Emergency Program Act*

**Proposal:**

1. Consider removing the potential causes in the definition of 'emergency' and clarify that an emergency includes a disaster. The following definitions from other Canadian jurisdictions may be a helpful guide in revising the definition of 'emergency' in BC:
  - Manitoba's *Emergency Measures Act* defines 'emergency' as follows:

*"a present or imminent situation or condition that requires prompt action to prevent or limit (a) the loss of life; or (b) harm or damage to the safety, health or welfare of people; or (c) damage to property or the environment"*
  - Alberta's *Emergency Management Act* defines 'emergency' as follows:

*"an event that requires prompt co-ordination of action or special regulation of persons or property to protect the safety, health or welfare of people or to limit damage to property"*
  - Ontario's *Emergency Management and Civil Protection Act* defines emergency as follows:

*"a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise"*
2. Consider including damage to the environment in the definition of emergency.

**Additional information for consideration:**

- ▶ Manitoba's *Emergency Measures Act*:  
<https://web2.gov.mb.ca/laws/statutes/ccsm/eo8oe.php>
- ▶ Alberta's *Emergency Management Act*:  
<http://www.qp.alberta.ca/documents/Acts/Eo6P8.pdf>
- ▶ Ontario's *Emergency Management and Civil Protection Act*:  
<http://www.ontario.ca/laws/statute/9oe09>
- ▶ Nova Scotia's *Emergency Management Act*:  
<http://nslegislature.ca/legc/>

## Discussion 3: Definition of “local authority”

### Background:

Four treaties have been ratified to date under the BC Treaty Process with the Maa-Nulth First Nations, Tsawwassen First Nation, Tla’amin Nation, and Yale First Nation. In addition, a treaty was implemented outside of the treaty process with the Nisga’a in 2000.

All of the modern treaties implemented or ratified provide that Treaty First Nations and the Nisga'a Lisims Government have the “rights, powers, duties and obligations of a local authority under federal and provincial law in respect of emergency preparedness and emergency measures” on Treaty Lands. This includes specific law making authority in relation to emergency preparedness and emergency measures, as well as authority to declare a state of local emergency and exercise the powers of a local authority in accordance with federal and provincial laws in respect of emergency measures.

### Challenge in the current legislative framework:

The *Emergency Program Act* defines a ‘local authority’ as one of the following:

- ▶ A municipality
- ▶ Regional district
- ▶ National park subject to an agreement between the province and the government of Canada

The definition does not currently include Treaty First Nations or the Nisga'a Lisims Government. As the Treaty First Nations have the status of local authorities for the purposes of the *Emergency Program Act*, consideration needs to be given to modernizing the definition of ‘local authority’ in the Act to ensure proper alignment with the provisions

of the treaties. This change will further reinforce the continued coordination of activities and shared responsibilities between the provincial government, Treaty First Nation governments, local governments, and other institutions to work together to mitigate, prepare for, respond to and recover from disasters.

### Relevant sections in the legislation:

- ▶ Sections 1, 5, 6, 8, 10, 12, 13, 14, 15, 18, 19 of the *Emergency Program Act*
- ▶ Local Authority Emergency Management Regulation
- ▶ Compensation and Disaster Financial Assistance Regulation

### Proposal:

1. Consider changing the definition of ‘local authority’ to include Treaty First Nations, including the Nisga'a Lisims Government.
  - Consider the impact of this proposal in relation to all provisions in the Act that are applied to local authorities.
  - This proposal is subject to provincial government consultation with the Treaty First Nations and the Nisga'a Lisims Government in accordance with treaty obligations.

### Additional information for consideration:

#### BC Treaties:

- ▶ Under the BC Treaty Process:  
<http://www.bctreaty.net/files/treaties-and-agreements-in-principle.php>
- ▶ Nisga'a Final Agreement:  
<http://www.nnkn.ca/files/u28/nis-eng.pdf>

## Discussion Area B: Clarifying roles and responsibilities

### Discussion 4: Emergency Management BC

#### Background:

Emergency management requires cross-agency, cross-government and inter-jurisdictional coordination and integration to ensure effective delivery of emergency management services.

Emergency Management British Columbia (EMBC) was established in 2006 to take on the responsibilities of its predecessor, the Provincial Emergency Program (PEP), and to take on the role as the lead coordinating agency in the provincial government for all emergency management activities.

EMBC provides executive coordination, strategic planning, and multi-agency facilitation and strives to develop effective working relationships in an increasingly complex emergency management environment. EMBC works with local governments, First Nations, federal departments, industry, non-government organizations and volunteers to support the emergency management phases of mitigation/ prevention, preparedness, response and recovery. Additionally, EMBC engages provincial, national and international partners to enhance collective emergency preparedness.

#### Challenge in the current legislative framework:

The *Emergency Program Act* does not currently reference Emergency Management BC. Instead, the Act continues to reference the Provincial Emergency Program.

#### Relevant sections in the legislation:

- ▶ Section 2 of the *Emergency Program Act*
- ▶ Section 2 of the Emergency Program Management Regulation

#### Proposal:

1. Establish Emergency Management BC in legislation and remove references to the Provincial Emergency Program.
2. Clarify the responsibilities of the director of EMBC to include the following:
  - Lead the coordination of all provincial government emergency management activities,
  - Provide advice and assistance to other authorities—provincial and local authorities—in their emergency management responsibilities,
  - Establish and maintain a provincial emergency management system to standardize provincial emergency response activities, and
  - Reduce risk by promoting and supporting emergency preparedness, prevention and mitigation, response and recovery initiatives.

#### Additional information for consideration:

- ▶ EMBC website:  
<http://www.embc.gov.bc.ca/index.htm>
- ▶ EMBC's strategic plan:  
<http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/embc-strategic-plan.pdf>

## Discussion 5: Assigning provincial emergency planning, response, and recovery responsibilities

### Background:

Under section 4(1) of the *Emergency Program Act*, the Minister responsible for the Act is required to prepare provincial emergency plans respecting preparation for, response to and recovery from emergencies and disasters.

The Act also provides authority under section 28(2) (a) for the Lieutenant Governor in Council (LGIC) to assign responsibilities to ministries, boards, commissions or government corporations or agencies for the preparation and implementation of emergency plans, including arrangements to deal with emergencies and disasters.

The Emergency Program Management Regulation contains requirements for ministers and government corporations to develop emergency plans. The responsibility for ministers to make provincial emergency plans for specific hazards is assigned in Schedule 1 of the Regulation. Schedule 2 of the regulation sets out duties of ministers and government corporations in the event of an emergency.

### Challenge in the current legislative framework:

The Ministerial responsibility under the Act for preparing provincial emergency plans and the LGIC authority to assign responsibility for provincial emergency plans requires clarification. The Minister responsible for the Act does not prepare all provincial emergency plans respecting preparation for, response to and recovery from emergencies and disasters. This responsibility is distributed across government ministries and agencies, a process that

is more accurately reflected in schedule 1 of the EPM Regulation.

However, the feasibility of assigning emergency planning and other duties by way of regulation is questionable. Emergency management practices have evolved considerably over the last two decades and will continue to do so. The process of updating and changing provincial emergency responsibilities through amendments to a regulation can be cumbersome and not well suited to responding to changes in the dynamic emergency management environment.

A further matter in the context of provincial emergency management responsibilities is the extent to which the legislative framework should capture public organizations such as school boards and health authorities, which do not fall under the definition of Government Corporation. Henry Renteria acknowledged concerns of many stakeholders respecting emergency management plans and capacities across specific sectors (p. 19). While other public bodies with various degrees of independence from government engage with government ministries in emergency planning processes, the question of government's responsibility to ensure coordination of planning, response and recovery duties when and where necessary should be considered.

### Relevant sections in the legislation:

- ▶ Sections 4 and 28 of the *Emergency Program Act*
- ▶ See the *Emergency Program Management Regulation*

**Proposal:**

- 1.** Consider removing the current scheme from the Act whereby the Lieutenant Governor in Council (LGIC) assigns emergency planning, response and recovery duties by regulation and provide for the following in the Act:
  - An authority for the minister responsible for the Act to require other ministers, after consulting with them, to prepare emergency plans in relation to specified hazards.
  - An authority for the Minister responsible for the Act to require, after consultation, that a minister, government corporation, or other prescribed public bodies prepare emergency plans in relation to carrying out specific emergency response and recovery duties.
- 2.** In order to support the proposed changes outlined above, other amendments would be required, including the following:
  - Define 'hazard' as something that may cause, or contribute substantially to the cause of, an emergency.
  - Move the existing requirements in section 3 of the Emergency Program Management Regulation respecting emergency planning to the Act.
  - Provide an LGIC regulation creating the authority to prescribe public bodies for the purposes of the Act.

**Additional information for consideration:**

- ▶ Henry Renteria's 2014 report on B.C. Earthquake Preparedness:

[http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/renteria\\_eq\\_consultation\\_report\\_2014.pdf](http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/renteria_eq_consultation_report_2014.pdf)

## Discussion 6: Ministerial authority to direct emergency planning

### Background:

Effective emergency planning is essential to emergency management. In B.C., local governments lead the initial response to emergencies and disasters in their communities and, as required under the Act, they prepare emergency plans and maintain an emergency management organization to ensure the safety of citizens when a situation escalates beyond the first responder level.

Under section 4(2)(f) of the Act, the Minister has the authority to review and recommend changes to a local emergency plan. Currently, Emergency Management BC works with its partners in local governments to provide advice and guidance on the development of local emergency plans.

### Challenge in the current legislative framework:

While the Minister has authority under the Act to review and recommend changes to a local emergency plan, the minister does not have authority to require that a local authority make changes to their plans in situations where a cooperative approach has not been productive to address a significant issue with a plan.

Most other jurisdictions in Canada provide the Minister responsible with authority to review and, if necessary, require changes to emergency plans. Manitoba has a clear and comprehensive scheme

under section 8 of that province's Act for the Minister to require revisions to local authority emergency plans as well as those across the provincial government. Ontario's Act provides authority for the Minister to set standards for plans under section 14 of that province's Act. Section 9 of Alberta's Act provides that the Minister responsible may "review and approve or require the modification of provincial and emergency plans and programs".

Henry Renteria referenced the expectation many stakeholders in British Columbia have with respect to provincial government leadership in setting standards respecting emergency plans and programs. Specifically, he stated that Emergency Management BC must "provide more clarity regarding the expectations of local authorities in the area of emergency management" in support of his recommendation that EMBC's authority be augmented to set minimum standards for emergency management programs.

### Relevant sections in the legislation:

- ▶ Section 4 of the *Emergency Program Act*

**Proposal:**

1. Consider the addition of authority to provide that the Minister responsible for the Act may make an order requiring a local authority to change its local emergency plan where the minister has reviewed the plan and recommended modifications.
  - The authority should only be available to the Minister after the Minister has recommended modifications to an emergency plan and this authority should parallel the authority of the Minister to require revisions/changes to provincial emergency plans established by other ministries, government corporations and other agencies.

**Additional information for consideration:**

- ▶ Alberta's *Emergency Management Act*:  
[http://www.qp.alberta.ca/documents/Acts/  
Eo6P8.pdf](http://www.qp.alberta.ca/documents/Acts/Eo6P8.pdf)
- ▶ Manitoba's *Emergency Measures Act*:  
[https://web2.gov.mb.ca/laws/statutes/ccsm/  
eo8oe.php](https://web2.gov.mb.ca/laws/statutes/ccsm/eo8oe.php)
- ▶ Ontario's *Emergency Management and Civil Protection Act*:  
<http://www.ontario.ca/laws/statute/90eo9>
- ▶ Henry Renteria's 2014 report on B.C. Earthquake Preparedness:  
[http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/renteria\\_eq\\_consultation\\_report\\_2014.pdf](http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/renteria_eq_consultation_report_2014.pdf)

**Discussion 7:****Private sector and non-government agencies****Background:**

It is vital that critical infrastructure function through an emergency—a community's ability to respond and recover from a disaster requires restoration of and access to water, food, electricity, communications and other critical infrastructure.

In his 2014 *British Columbia Earthquake Preparedness: Consultation Report*, Henry Renteria wrote that entities such as private sector organizations and NGOs have a responsibility to those that depend on their services, particularly those organizations that provide critical goods and services, which, if disrupted or destroyed, would have a serious impact on the health, safety, security or economic well-being of citizens.

While Renteria's report acknowledges the efforts to date of Emergency Management BC to work with critical infrastructure (CI) partners through the establishment of a cross sector CI Steering Committee, he recommended the following key action to enhance the engagement of private sector and non-government organizations in emergency management as well support province-wide risk analysis:

*"As a backdrop to voluntary engagement, the provincial and federal government must mandate appropriate private sector preparedness, including sharing of CI information and engagement in joint planning with emergency management organizations"* (p. 28).

Private sector and non-governmental emergency management responsibilities is an emergent topic in other provincial jurisdictions. For example, in 2013, Manitoba introduced changes to its *Emergency Measures Act* to require private sector critical service

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providers to prepare business continuity plans, as well as authority for the minister responsible to order these providers to take required measures during a state of emergency, including the implementation of any part of a business continuity plan.

### Challenge in the current legislative framework:

In BC, the *Emergency Program Act* provides some specific powers during a state of emergency to local authorities and government in relation to the restoration of essential facilities and the distribution of essential supplies.

However, the Act does not set out responsibilities of private sector and non-government organizations respecting planning for and the prevention/mitigation of emergencies, nor any requirements for owners of critical infrastructure assets to provide information about their assets or their emergency plans regarding those assets.

### Relevant sections in the legislation:

- ▶ Sections 5, 10 and 13 of the *Emergency Program Act*

### Proposal:

1. Consider changes to the *Emergency Program Act* similar to Manitoba's to define "critical services" and require providers of these services to undertake business continuity planning as prescribed by regulation.
  - Manitoba's Act requires that critical service providers submit business continuity plans to the co-ordinator of the province's Emergency Measures Organization for review and approval.

2. Consider an authority to require owners of critical infrastructure assets to provide information about these assets as prescribed by regulation for the purposes of supporting efficient and effective emergency planning, prevention/mitigation, response and recovery.

- Any change to the legislation in this regard would need to be supported by a definition of "critical infrastructure assets"; outline how such information would be provided; and provide for the confidentiality of the information.
- Henry Renteria referred to "critical infrastructure" as "those physical and information technology facilities, networks, services and assets, which, if disrupted or destroyed, would have a serious impact on the health, safety, security, or economic well-being of Canadians or the effective functioning of governments in Canada" (p. 26).

### Additional information for consideration:

- ▶ Henry Renteria's 2014 report on B.C. Earthquake Preparedness:  
[http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/renteria\\_eq\\_consultation\\_report\\_2014.pdf](http://www2.gov.bc.ca/assets/gov/public-safety-and-emergency-services/emergency-preparedness-response-recovery/embc/renteria_eq_consultation_report_2014.pdf)
- ▶ Manitoba's *Emergency Measures Act*:  
<http://web2.gov.mb.ca/laws/statutes/ccsm/eo8oe.php>

## Discussion Area C:

### Supporting emergency response and recovery

#### Discussion 8: Shared responsibility for emergency response

##### Background:

The *Emergency Program Act* provides that local authorities and the provincial government are to prepare emergency plans and implement them when “an emergency exists or appears imminent or a disaster has occurred or threatens.”

Section 7 of the Act provides that the Minister or designated person in a provincial emergency plan may cause the plan to be implemented if, in the opinion of the Minister or the designated person, an emergency exists or appears imminent. Section 8 provides that a local authority or a person designated in the local authority’s local emergency plan may cause the plan to be implemented if, in the opinion of the local authority or the designated person, an emergency exists or appears to exist.

The *Emergency Program Management Regulation* sets out that provincial emergency plans may include plans and procedures to assist local authorities with response and recovery from emergencies that “are of such magnitude that the local authorities are incapable of effectively responding to and recovering from them.”

##### Challenge in the current legislative framework:

A key aspect of emergency management is the sharing of responsibilities between local authorities and the province. In general, provincial government policy is that a local authority is responsible for planning for and responding to any emergency in its jurisdictional area with local resources and resources available to them through mutual aid/assistance agreements. This approach acknowledges that a

local authority’s knowledge about its community—its people, history, risks, vulnerabilities, operational requirements and services—is critical to planning for, responding to and recovering from emergencies.

The province provides advice and support to the local authority responding to an emergency. Where the scope of an emergency exceeds a local authority’s resources, the province coordinates the provision of provincial resources to assist the local authority. In some cases, the provincial government has statutory obligations with respect to emergencies. For example, when it comes to wildfires under the Wildfire Act that do not affect developed areas, the provincial government responds, not local authorities.

While this ‘shared responsibility’ framework to emergency response is generally understood and accepted by stakeholders, it is not reflected in the Act. One consequence of this, in combination with the current scheme in the legislative framework for assigning provincial emergency responsibilities, is that from time to time confusion may result as to whether a local authority or the province should be implementing emergency plans in certain circumstances. Such confusion can undermine the coordinated and collaborative approaches essential for effective emergency management.

##### Relevant sections in the legislation:

- ▶ Sections 7 and 8 of the *Emergency Program Act*
- ▶ Section 3 of the *Emergency Program Management Regulation*

## Proposal:

- 1.** Consider the addition of provisions in the Act that set out the following in respect of local authorities:

  - Establish that a local authority is responsible for:
    - Assessing the threat to health, safety, or welfare of people or damage to property and the environment posed by an emergency;
    - Assessing the resources required to respond to and recover from the emergency; and
    - Implementing its local emergency plan and using local authority resources to respond to and recover from the emergency.
  - Provide that a local authority may implement one or more provisions of its local emergency plan in relation to responding to and recovering from an emergency if:
    - If the local authority is of the opinion that an emergency exists or is imminent in the local authority's jurisdictional area; the local authority has declared a state of emergency; or a provincial state of emergency has been declared.
- 2.** Consider the addition of provisions in the Act that set out the following in respect of the provincial government:

  - A Minister (or designate) is responsible for implementing one or more provisions of the Minister's provincial emergency plan to provide provincial assistance and support to a local authority's response to and recovery from an emergency if the following occur:
    - The scale of the emergency exceeds the response and recovery resources of the local authority and/or
    - The Minister is required under provincial law to provide provincial resources for emergency response and recovery.
  - Emergency Management BC is responsible for:
    - Communicating with a local authority in relation to an emergency within the jurisdictional area of the local authority, which includes:
      - Monitoring the needs of a local authority in responding to and recovering from emergencies;
      - Providing advice when necessary to local authorities responding to and recovering from emergencies; and
      - Communicating and providing advice when necessary to a Minister in relation to an emergency in the jurisdictional area of a local authority.

## Discussion 9: State of emergency

### Background:

The *Emergency Program Act* authorizes both local authorities and the province to declare a state of emergency. Once a state of emergency is declared, the level of government making the declaration may do “all acts and implement all procedures” that it considers necessary to prevent, respond to or alleviate the effects of an emergency or disaster, including one or more of the following:

- ▶ Acquire or use any land or personal property considered necessary;
- ▶ Authorize or require any person to render assistance of type the person is qualified to provide or that otherwise is or may be required;
- ▶ Authorize the entry into any building or on any land, without warrant;
- ▶ Cause the demolition or removal of any trees, structures or crops if the demolition or removal is considered necessary; and
- ▶ Procure, fix prices for or ration food, clothing, fuel, equipment, medical supplies, or other essential supplies.

### Challenge in the current legislative framework:

The authority for a local government or the province to undertake “all acts and implement all procedures” it considers necessary to address an emergency or disaster is a very broad and sweeping power. While legislation in most other Canadian jurisdictions provides a similar approach to the declaration of emergencies and the exercise of emergency powers as BC’s Act, Ontario’s Emergency Management and Civil Protection Act notably establishes criteria to guide when a state of emergency should be

declared, as well as criteria for the making of orders during declared emergencies.

The emergency powers in the *Emergency Program Act* are generally consistent with those powers provided in similar legislation in other Canadian jurisdictions; however, some jurisdictions have recently included additional powers. Ontario’s legislation provides authority to require a person to collect, use or disclose information and this authority is contingent on the information collected only being used for the purpose of preventing, responding to or alleviating the effects of an emergency. Other BC legislation aimed at addressing specific emergency situations, such as the Public Health Act, also contains a similar general emergency power to collect, use and disclose information.

### Relevant sections in the legislation:

- ▶ Sections, 9 to 15 of the *Emergency Program Act*

### Proposal:

1. Consider the addition of criteria or a test to guide local authorities or the provincial government in the declaration of a state of emergency and the making of orders during a declared emergency.
  - For example, criteria could include that a head of a local authority or the Minister responsible for the Act must believe that the declaration of a state of emergency is required because the use of one or more emergency powers under the Act is necessary and essential to protect the health, safety or welfare of persons or to limit damage to property.

2. Consider the addition of emergency powers not currently provided under section 10 of the *Emergency Program Act*. Some additional emergency powers that should be considered are as follows:
  - Authority to collect, use or disclose information during a state of emergency that could not otherwise be collected, used or disclosed under any enactment.
    - Consideration must be given to including limits on any additional power respecting the collection, use and disclosure of information during an emergency. For example, in Ontario the information must only be collected, used or disclosed for the purpose of preventing, responding to or alleviating the effects of an emergency and for no other purpose.
  - Authority to fast track the accreditation of medical or other essential personnel from other Canadian jurisdictions who may arrive to provide assistance during a state of emergency.
  - A further potential emergency power to be considered is the authority for a local authority or the province to vary a licence, permit or other authorization the local authority or province, as applicable, has issued under an enactment.

#### Additional information for consideration:

- ▶ Ontario's *Emergency Management and Civil Protection Act*: <http://www.ontario.ca/laws/statute/9oeo9>
- ▶ BC's *Public Health Act*: [http://www.bclaws.ca/civix/document/id/complete/statreg/08028\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/08028_01)

## Discussion 10: Evacuation orders

### Background:

The current Act provides authority for local authorities or the government to declare a state of emergency. A 'state of emergency', once declared, authorizes the local or authority or the Minister to undertake acts and procedures to prevent, respond to or alleviate the effects of an emergency or a disaster, which includes ordering the evacuation of persons from an area that may be affected by the emergency or disaster.

### Challenge in the current legislative framework:

While the Act provides authority for local governments or the Minister to make an evacuation order and "cause the evacuation" of people from an affected area, it says little of anything about how such an order is to be understood and carried out to ensure people are out of harm's way. There is currently no authority under the Act or in other legislation to compel competent adults to leave their private property after an evacuation order is made—emergency responders warn people of the imminent risks of remaining in an area subject to evacuation, but ultimately rely on people to voluntary evacuate.

While leaving one's property in a very short period of time leading up to or following an emergency or disaster is extremely difficult to do, it is important to understand that an individual's decision not to heed an evacuation order can have serious implications not only for themselves, but also other people in the affected area. There have been numerous instances in Canadian jurisdictions and elsewhere where persons who refuse to evacuate require subsequent rescue, creating additional and unnecessary risk to themselves and emergency response personnel,

who are extremely burdened in times of crisis providing round-the-clock assistance to ensure the safety of the public.

The issue of enforcing evacuation orders has emerged as a recent topic of discussion in numerous Canadian jurisdictions. Manitoba became the first jurisdiction in Canada to address the issue in legislation, with amendments to its *Emergency Measures Act* in 2013. The changes provide authority to the police to apprehend any person who refuses to comply with an evacuation order issued under a declared state of emergency for the purpose of taking the person to a place of safety, as well as an ability to recover the costs of relocating the person.

As evacuation orders are rare and, when they do occur, are followed by the vast majority of people in an affected area, changes such as those introduced in Manitoba are intended to provide further support to voluntary evacuations by encouraging people to recognize the serious and grave nature of an evacuation order and to voluntarily comply with directions to leave their property without delay.

#### Relevant sections in the legislation:

- ▶ Sections 9, 10, 12 and 13 of the *Emergency Program Act*

#### Proposal:

1. Consider adding authority for police to apprehend any person who refuses to comply with an evacuation order issued under a declared state of emergency for the purpose of taking the person to a place of safety similar to sections 18.1 to 18.3 of the Manitoba *Emergency Measures Act*.
  - As part of this proposal, also consider the following supporting provisions:
    - Providing police with a right of entry and use of reasonable force to enforce an evacuation order;
    - Limiting the period of apprehension to be no longer than reasonably required to take a person to a place of safety; and
    - Authority for the province (in a state of provincial emergency) or a local authority (in a state of local emergency) to order a person who was apprehended to pay the costs incurred by police in taking the action to enforce the evacuation order.

#### Additional information for consideration:

- ▶ Manitoba's *Emergency Measures Act*:  
<https://web2.gov.mb.ca/laws/statutes/ccsm/eo8oe.php>

## Discussion 11: Employment protection

### Background:

The *Emergency Program Act* provides authority in a state of emergency for a local authority or the provincial government to require a person to provide emergency assistance that the person is qualified to provide or may be required in order to prevent, respond to or alleviate the effects of an emergency or disaster.

The Act also provides (under section 25) that where a person is ordered to provide assistance under a state of emergency, that person's employment may not be terminated because of their being required to provide assistance.

### Challenge in the current legislative framework:

A person who is ordered to provide assistance under a state of emergency is providing a civic service similar to jury duty; however, the Act currently does not provide a similar level of employment protection.

The scope of protection under s. 25 of the Act also appears to be specifically limited to a person who has been the subject of an order requiring the person to provide assistance in a declared state of emergency and, as such, does not appear to apply to a person who acts voluntarily (i.e. not under an order) or who acts in an emergency for which no state of emergency or local emergency has been declared.

### Relevant sections in the legislation:

- ▶ Section 10(1)(e) and section 25 of the *Emergency Program Act*

### Proposal:

1. Consider whether employment protection should be limited only to the duration of a state of emergency or whether the protection should extend to cover, for example, travel to and from the emergency or a time period after an emergency if the person is still required to provide assistance.
  - A further consideration here could include situations where a person is recovering from illness or injury as a result of providing assistance during an emergency.
  - Consideration should also be given to whether volunteers or other persons who assist in responding to and recovering from an emergency or disaster are entitled to employment protection in circumstances where they have not been ordered to provide assistance.
2. Consider expanding the protection against loss of employment in section 25 of the Act to include the same protections as those provided for a person on jury duty under section 56 of the *Employment Standards Act*.
  - This would add protection for employment benefits and benefits based on seniority, as well as provide that a person who is providing assistance is deemed to be on leave and must not be terminated as a result of being required to provide assistance or because the person is absent or unable to perform employment duties while on deemed leave.

### Additional information for consideration:

- ▶ BC's *Employment Standards Act*:  
[http://www.bclaws.ca/civix/document/id/complete/statreg/96113\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96113_01)

## Conclusion

In order to solidify and maintain cooperative and effective approaches to emergency management in British Columbia, partners across the emergency management spectrum in British Columbia and the citizens of this province must engage in thoughtful and meaningful discussions so that we are ready when challenged by known and emergent threats to public safety. This consultation and engagement is but one of many steps we are taking together to ensure we are prepared and resilient.

Submissions may be made on the contents herein on or before Feb. 19, 2016. At the closing of the consultation period, all submissions will be reviewed and analyzed for themes and suggestions that can be compiled and presented by Minister Yamamoto to the Cabinet Committee on Secure Tomorrow on or before March 31, 2016, in accordance with the Minister's mandate letter.

Thank you to all who took time to consider this document's contents and submit feedback.



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