

SUBMISSIONS TO -

Metropolitan Toronto Executive Committee

RE-

Emergency Proposals

FROM -

Canadian Civil Liberties Association

per A. Alan Borovoy

General Counsel

Toronto, Ontario

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In the light of existing legislation and the common law defence of necessity, it is not at all clear whether additional emergency powers are really needed. But to whatever extent the adoption of such measures can be justified at the local level, they would fall within the provincial rather than the municipal domain. In the first place, the contemplated emergencies could well effect contiguously located municipalities. In the second place, the resulting civil liberties issues are sufficiently central as to transcend municipal concerns.

But, to be arguably acceptable even at the provincial level, such measures would require much more narrow circumscription. Indeed, they would have to be confined to what is necessary for the purposes of rescue and evacuation. It would constitute, therefore, a gratuitous affront to civil liberties for this municipality to enact such powers to deal with what the Emergency Planning Guide calls "social unrest, subversive activity, (and) organized illegal activism". It is difficult to fathom the basis upon which Metro officials would seek additional powers for purposes so unrelated to municipal functions. In any event, beyond what already exists in the law, there simply is no demonstrated need for additional powers to quell social unrest. But, even if such a need were to be demonstrated at some point, the responsibility to legislate would more properly lie with another jurisdiction, probably at the federal level. Unfortunately, the emergency proposals before this Executive are sufficiently vague and open-ended as to violate both of the foregoing criteria - they exceed valid municipal concerns and they endanger civil liberties.

Despite the amendment recommended by the Legislation and Licensing Committee, such misgivings must arise in connection with the proposed enabling power to enter private property without warrant. It is not clear whether the specific sets of circumstances following the words "and where the purpose of entry is" limit or extend the powers which are set out earlier. In the event that these circumstances could be read as providing additional powers rather than qualifications on the earlier ones, the section would be perilously wide. Quite apart from the various rescue and emergency related operations, it might allow an official to enter private property without warrant "for the purpose of exercising powers conferred upon him by a by-law enacted pursuant to this section or by any statute". To what extent might the underlined portion permit this power to be used to enforce statutes completely unrelated to the

emergency, such as the liquor or game laws? In the opinion of the Canadian Civil Liberties Association, therefore, this power should be either deleted or at least subjected to a limited set of specified local purposes as outlined above.

Another of the proposed statutory enactments would permit Metro to pass by-laws "for requiring citizens to render assistance to Metropolitan officials" in dealing with any such declared emergencies. There is no indication as to the breadth or limits of this proposed power. What might Metro officials require citizens to do? Might people be required, for example, to risk their property, their assets, or even their lives or limbs? The open-endedness of this proposed power impels the Canadian Civil Liberties Association to recommend that it be either deleted or at least subjected to precise restrictions.

In view of the foregoing at least, it is misleading to suggest, as the Legal Department's November 5th memorandum does, that the proposed new amendments "do not involve any powers of arrest or confiscation of private property". To the extent that a citizen resisted an official's warrantless attempt to enter his property or disobeyed an order to provide assistance, such citizen would be committing an offence which does not now exist in the law. Presumably, such a violation would be punishable by a fine and/or imprisonment. Unavoidably, therefore, new powers of arrest and confiscation of property are very much part of the proposals before this Executive.

As far as the draft by-law is concerned, we consider the proposed definition of "emergency" to be as vague as the term it is supposed to define. We cannot appreciate why the word "disaster" or the words "other situations of crisis" are any more clear than the word "emergency". The by-law might just as well have provided that an emergency is an emergency or it is anything that the Metro Council says it is. What is needed at a minimum is a clarification of the kind of circumstances which are contemplated. Nor would such clarification be provided by simply referring to the many possible causes of an emergency. Even at that, the draft by-law is not content to limit itself to the specified causes. It would include any "other cause". It is not clear that the words "other cause" will necessarily be limited to the generic category of circumstances which precedes it in the definition. To whatever extent the definition continues to contain some reference to the causes of the apprehended emergencies, amendments should be adopted to contain an exhaustive list or, at the very least, some reference to "other similar causes".

The draft by-law contains another disquieting departure from democratic procedure - the powers it would repose in the Chief of Police to act as the chief operations officer for the handling of the contemplated emergencies. To whatever extent there is a case for the exercise of special powers during such circumstances, we believe that the persons who exercise them should occupy positions which involve far greater accountability to the electorate - the Metro Chairman or designated members of the Metro Council.

The particular risks which flow from the exercise of such emergency powers impel consideration of a special safeguard. To whatever extent such legislation can be justified at all, the enabling statutes and any resulting by-law should be amended to contain an explicit direction that the powers at issue must be construed as limited to what is necessary for rescue and evacuation purposes. At the very least, this might help to catch any remaining ambiguities.

On the basis of all the foregoing, the Canadian Civil Liberties Association believes these emergency proposals, at best, are seriously defective. It would be appropriate, therefore, to abandon them, to refer the entire matter to the provincial authorities, or at least to defer action until more suitable proposals could be prepared. For these latter purposes, we summarize as follows the amendments which we consider minimally necessary to this questionable exercise.

1. Remove the proposed enabling power to enter property without warrant or at least restrict to rescue and evacuation purposes the grounds upon which it might be exercised.
2. Remove, or at least impose precise limits on, the proposed enabling power wherein Metro officials might require citizens to render certain forms of assistance.
3. Tighten the definition of "emergency" so as to
 - a) clarify the kind of circumstances which are contemplated and
 - b) restrict the causes to the specified ones or, at the very least, provide that other similar causes would be necessary.
4. Replace the Chief of Police as chief operations officer by the Metro Chairman or designated members of the Metro Council.
5. Include in the enabling statute and proposed by-law a direction that all of the provisions are to be construed so as to limit the powers and functions to evacuation and rescue operations.