



Executive Council Office
PO Box 2703, Whitehorse, Yukon Y1A 2C6

March 8, 2021

Liz Hanson
Chair, Special Committee on Civil Emergency Legislation
Yukon Legislative Assembly
P.O. Box 2703, Whitehorse, YT Y1A 2C6

Dear Liz Hanson,

Thank you for your January 19, 2021 letter. Enclosed is Executive Council Office's response to the Special Committee on Civil Emergency Legislation.

1. How was the Executive Council Office hindered or helped by Yukon's Civil Emergency Measures Act when attempting to maintain the safety and wellness of Yukoners during an emergency?

CEMA is an act of paramountcy. As such, it overrides virtually all other Yukon legislation. This paramountcy, paired with the broad authority granted to the Minister during a state of emergency, provides government with the authority and flexibility necessary to respond to emergencies in a timely way. The declaration of a state of emergency under CEMA allows the Minister, by Ministerial Order, to:

- require specific actions deemed necessary to preserve public health but that are not otherwise contemplated or authorized in another Act (e.g. 14-day self-isolation, mandatory masks, limited capacity in bars, restaurants,), and
- require specific things be done (or not done, as the case may be), despite that other Yukon legislation requires that that thing be done (e.g. permitting societies to meet virtually despite a requirement in the Societies Act, 2002, for in-person meetings).

One objective of Yukon's emergency response is good coordination and partnership between Yukon and other governments. Section 4 of the Act allows for coordination with other

governments in carrying-out an emergency plan. This section is helpful in coordinating responses and sharing resources and programs when timelines and resources are limited.

Coordination and partnership between Yukon and Canada played a role in some aspects of pandemic response. For example:

- Yukon set up the self-isolation facility (SIF) and the Public Health Agency of Canada (PHAC) asked to be able to use it if it needed it. People who were required to self-isolate because of Yukon's laws and did not have sufficient self-isolation plans (either through their company or could not safely isolate at home) were covered for their SIF stay by Yukon funding. People who had to quarantine at the SIF because of requirements in Canada's laws were covered by Canada.
- Yukon asked Canada Border Services Agency (CBSA) to assist with communications to travellers entering Yukon at Beaver Creek, Fraser and Pleasant Camp (Little Gold did not open in the 2020 season).
- The negotiation and deployment of both the Canada Emergency Response Benefit (CERB) and the Northern Supports packages from the federal government required strong intergovernmental engagement. Intergovernmental Relations (IGR) represented Yukon and, in partnership with other departments, positioned Yukon for success in the programs.

Another objective of Yukon's emergency response is timely, transparent and effective communications with the general public and stakeholders including industry, communities and visitors to the territory. Strategic communications focus on raising awareness and supporting informed decision-making as it relates to the public health emergency and for specific economic and social supports made available throughout the pandemic response.

Although not explicitly referenced in the Act, the activation of the Government of Yukon's Emergency Coordination Plan and the Pandemic Co-ordination Plan results in the formation of a Pandemic Communications Sub-Committee that reports to the Executive Committee on Pandemic Preparedness. The sub-committee works to ensure there is sufficient communications capacity and timely, effective communications to stakeholders and the public. It is co-chaired by the departments of Community Services, Health and Social Services and the Executive Council Office.

2. Have ministerial orders relating to the Executive Council Office been used under Yukon's Civil Emergency Measures Act, and if so, how?

ECO did not require Ministerial Orders under CEMA. However, IGR was consulted on orders impacting the Yukon border and provided guidance about the interaction between Yukon's orders and the federal government's orders relating to the Canadian border and about exemptions to self-isolation requirements (ex. travel bubble with BC, Northwest Territories and Nunavut).

3. Are there any aspects of the current legislation that may have prevented the Executive Council Office from reacting as it would have liked during an emergency?

No, the Act did not prevent ECO from responding as needed.

4. From the Executive Council Office's perspective, are there currently any gaps in the legislation?

Nature and Duration of Emergency

The declaring a state of emergency under CEMA is a blunt tool and one that is well suited to managing localized and time limited emergencies. Yukon is either in a state of emergency, with the accompanying broad powers, or it is not. CEMA does not contemplate a middle ground where only some exceptional powers are provided, while others are restricted. A more nuanced legislative framework may allow government to respond to a variety emergencies of in a more proportional way. A more nuanced legislative framework may also be better suited to managing on-going emergencies and territory-wide emergencies of extended duration.

Emergency Provisions in Yukon First Nation Self-Government Agreements

Eleven of Yukon's First Nations have Self-Government Agreements (SGAs), which include provisions related to the powers of their governments during emergencies. Specifically, these First Nations governments can make laws of a local or private nature on Settlement Land to control or prohibit activities that may constitute a danger to public health or a threat to public order, peace or safety. The SGAs also provide the Yukon government (YG) with the ability to address emergencies, both on and off Settlement Land, including using its authority under CEMA.

When a Self-Governing Yukon First Nation (SGYFN) passes a law that is within its legal jurisdiction, the Yukon law of general application covering the same matter (including CEMA) no longer applies. As such, depending on the subject matter, it is possible that orders made by First Nations under their emergency legislation could displace orders made by YG under CEMA (and in fact, the Ministerial Orders made in relation to the COVID-19 pandemic expressly stated that they were not intended to affect the rights arising from the Self-Government Agreements). While not necessarily problematic, this could potentially result in confusion and/or conflicting orders on and off Settlement Lands, and/or on the Settlement Lands of different SGYFNs. To help mitigate against this, coordination and communication between YG and SGYFNs regarding each party's emergency legislation, plans and orders should be improved, both in the development and implementation stages and with respect to prevention, response and recovery. This should include clarifying roles and responsibilities e.g. with respect to enforcement and the prosecution of offences and distinguishing between real and perceived authority. Beyond that, SGYFNs have expressed interest in having CEMA amended to reflect their authority to enact emergency legislation, although the substance of such amendments has not yet been discussed.

Although not specific to CEMA, another topic requiring clarification is the application of the *Canadian Charter of Rights and Freedoms* to legislation developed by SGYFNs; a case involving this question is currently before the Yukon Court of Appeal. The resolution of this case may have implications for the interaction of CEMA and emergency legislation passed by First Nations, or the enforcement and/or prosecution of offences under such legislation.

Prevalence and federal legislation

There were questions about the hierarchy and supremacy of overlapping orders from Canada and Yukon, particularly in relation to borders and conditions for admission into Yukon. Navigating the varying legislative frameworks in other jurisdictions and managing areas of overlap was challenging at times. For example, the permissible nature of the initial federal border order which was written as “you may only come into Canada if...” compared to the prohibitive nature of Yukon’s border order which was written as “you may not enter Yukon unless...” created interpretation and communication challenges. While this is primarily a legal interpretation issue, a stronger advance consultation, coordination and overall understanding of how Yukon’s orders overlay with federal orders and federal jurisdiction would be beneficial when considering and reviewing Yukon orders.

Communications and Consultation with First Nations

Throughout the COVID-19 pandemic, staff from Aboriginal Relations and Community Services have been in regular contact with First Nations to share information, hear and relay concerns to YG decision-makers and facilitate discussions with emergency management personnel and political leaders. One of the main concerns First Nations have expressed is that YG has not always done an adequate job of consulting or communicating with their governments prior to making Orders under CEMA or taking other management actions (e.g. allowing for and approving Alternate Self-Isolation Plans). In many cases, YG’s approach resulted in additional resources being required to address First Nations’ concerns and misunderstandings. Another prevalent concern has been with regard to the sharing of information by YG (for example, with respect to the intended destination of travelers entering the territory and steps being taken by YG to ensure compliance with CEMA Orders). Additionally, First Nations have expressed concern about their capacity to continue to engage in meaningful consultations with YG when their staff have been redeployed to respond to an emergency.

In examining CEMA, thought could be given to how communications and consultation with First Nations governments might be improved, including establishing clear expectations for collaboration and communication upfront, establishing formal and informal communications channels and assigning these responsibilities within YG. This could include identifying when advance consultation with First Nations governments is required and when communication of a YG decision after the fact would be appropriate. Additionally, although an Order was (and could again be) made under CEMA allowing Deputy Ministers to temporarily suspend timelines established in Yukon legislation, including those related to consultation with First Nations, YG could also consider engaging Canada on the same topic with respect to Federal legislation (including the *Yukon Environmental and Socio-economic Assessment Act*).

5. Does the Executive Council Office have any suggestions for improvements to Yukon's Civil Emergency Measures Act? Please provide details and examples.

ECO is not the department primarily responsible for emergency response or the legislation governing emergency response. As such, ECO does not have the subject matter expertise or in-depth working knowledge of the legislation to comment on improvements.

A comprehensive review of CEMA, in the context of the broader pandemic response and sustained public health emergencies, should be undertaken prior to considering amendments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen J. Mills".

Stephen J. Mills
Deputy Minister, ECO