

Legislative  
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Assemblée  
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# STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

SECOND REPORT 2016

1<sup>st</sup> Session, 41<sup>st</sup> Parliament  
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The Honourable Dave Levac, MPP  
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Regulations and Private Bills has the honour to present its Report and commends it to the House.

Indira Naidoo-Harris, MPP  
Chair of the Committee

Queen's Park  
April 2016



# STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

## MEMBERSHIP LIST

1<sup>st</sup> Session, 41<sup>st</sup> Parliament

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## ACKNOWLEDGEMENTS

The Committee wishes to express its appreciation to all of the legislative staff who assisted us in our work. In particular, we wish to thank

- Christopher Tyrell, the Committee's Clerk, who performed the procedural and administrative duties necessary for the carrying out of our regulations mandate; and
- Erin Fowler, Tamara Hauerstock, Michael Huynh, Andrew McNaught and Heather Webb of the Legislative Research Service who acted as Counsel to the Committee and performed the examination of the 186 regulations covered in this report. Ms. Hauerstock prepared a draft report for the Committee's consideration; Mr. McNaught oversaw the regulations review.



## INTRODUCTION

The Committee presents this report on regulations filed under Ontario statutes during the period January 1 to June 30, 2015, in accordance with its terms of reference, as set out in the *Legislation Act, 2006* and the Standing Orders of the Legislative Assembly.

Section 33 of the Act (see Appendix A) requires the Committee to examine the regulations made under Ontario statutes, and provides that all regulations stand permanently referred to the Committee. In conducting its examination, the Committee is directed to consider “the scope and method of the exercise of delegated legislative power,” but not “the merits of the policy or objectives to be effected by the regulations or enabling Acts.” The Committee is required, from time to time, to report its observations, opinions and recommendations to the Assembly.

Standing Order 108(i) (see Appendix B) sets out nine guidelines the Committee is to apply when conducting its review. Guideline 2, for example, provides that there should be statutory authority to make a regulation. The Standing Order also stipulates that the Committee may not report a regulation to the Assembly without first affording the ministry or agency concerned “an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency sees fit.”

The Committee’s process for reviewing regulations and preparing its Report is set out in Appendix C.

## STATISTICS

The Standing Committee’s Reports usually contain the following statistical information on regulations:

- a graph showing the number of regulations made annually over the past 20 years;
- tables showing the number of regulations made by type (new, amending or revoking);
- a list of new regulations made under statutes with no previous regulations;
- a list of Acts under which at least 10 regulations were made in a calendar year; and
- a list of the Ministries and Offices and the number of regulations filed in a year for which each is responsible.

Full-year statistics will be provided in the Report of the Standing Committee on regulations made in the last six months of 2015.

## REGULATIONS REPORTED

Following our initial review of the 186 regulations filed in the first six months of 2015, we wrote to six ministries to inquire about six regulations. After considering the responses to our inquiries, we have decided to **report two regulations under one Committee guideline:**

- *Guideline 2: Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.*

Regulations are reported under the Ministry or Office responsible for the regulation being reported. It should be noted that our comments and recommendations relate to specific provisions of a regulation, rather than to the regulation as a whole.

## MINISTRY OF HEALTH AND LONG-TERM CARE

*O. Reg. 136/15 (Designated Air Ambulance Service Providers) made under the Ambulance Act*

Issue
Was the Regulation made by the Minister as required by the Act?

Section 22(1)(b.1) of the Act provides that, subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations

designating persons for the purpose of clause (a) of the definition of “designated air ambulance service provider” in subsection 1(1).

O. Reg. 136/15, which designates persons for the purpose of the definition, was made by the Lieutenant Governor in Council, not the Minister. We asked the Ministry whether O. Reg. 136/15 was made as required.

In response to our inquiry, the Ministry noted that a regulation made by the Lieutenant Governor in Council or made by the Minister on approval of the Lieutenant Governor in Council must follow the same practice. The Ministry indicated that O. Reg. 136/15 was attached to an Order in Council “signed by both the Minister and the Lieutenant Governor at the time that the regulation was filed with the Registrar of Regulations.”

The Ministry stated that it will work with the Office of Legislative Counsel to ensure that future regulations that are made by the Minister with the approval of the Lieutenant Governor in Council so indicate.

In our view, the regulation ought to have been made in the manner required by the *Ambulance Act*. While the Order in Council attached to Regulation 136/15

shows that the Minister recommended the regulation, the regulation was not made by the Minister as required by the Act.

#### **Recommendation**

**The Committee recommends that the Minister of Health and Long-Term Care remake O. Reg. 136/15 in the manner required by the *Ambulance Act*.**

## **TREASURY BOARD SECRETARIAT**

*O. Reg. 143/15 (General) made under the Government Advertising Act, 2004*

#### **Issue**

Is the regulation-making power to exempt “items from preliminary review” sufficiently broad to exempt most types of advertisements from preliminary review?

Section 2 of the *Government Advertising Act, 2004* requires the head of a government office to give a copy of an advertisement to the Office of the Auditor General (OAG) for preliminary review. Under s. 2(1), this requirement

applies with respect to any advertisement that a government office proposes to pay to have,

- (a) published in a newspaper or magazine;
- (b) displayed on a billboard or as a public transit advertisement;
- (c) displayed digitally in a prescribed form or manner; or
- (d) broadcast on radio or television, or in a cinema.

Section 12(1)(a.3) of the Act authorizes the making of regulations exempting “items from preliminary review.” Under this authority, s. 1 of O. Reg. 143/15 creates the following exemption:

An item to which section 2 of the Act applies is exempt from preliminary review if it is an item other than an advertisement that a government

office proposes to pay to have broadcast on television or in a cinema.

In effect, the regulation appears to exempt whole classes of advertisements (clauses (a), (b) and (c) of s. 2(1) of the Act) from preliminary review. We asked the Treasury Board Secretariat (TBS) whether the regulation-making authority in s. 12(1)(a.3) to exempt “items” is sufficiently broad to do this.

TBS responded by noting that the regulation simply creates an exemption from the first stage of a two-stage review process; it does not create a full exemption from review. (The Act provides for a final review.) The authority to create an exemption from preliminary review, TBS said, is clear when one looks at its main purpose. That purpose is

to ensure that a government office does not expend significant amounts of public money on an item before receiving an indication from the Office of the Auditor General . . . that the item is likely to meet the Act’s standards.

According to TBS, it is not necessary that all items be reviewed twice “by rote” in order to meet this regulatory objective. Advertisements that are to be published in newspapers, displayed on billboards, or displayed digitally fall into this category. Accordingly, the regulation exempts these items from the first stage of the review process. However, for cost control purposes, it is necessary to ensure that the early versions of broadcast advertisements are reviewed before significant production costs are incurred. Accordingly, the regulation does not exempt broadcast advertisements from the first stage of the preliminary review process.

In our view, it remains unclear whether the Legislature intended that the regulation-making powers would be used to exempt whole classes of items required by statute to undergo a preliminary review.

## **UPDATE ON RESPONSES TO REGULATIONS PREVIOUSLY REPORTED BY THE STANDING COMMITTEE**

The Standing Committee’s Reports usually contain an update on responses to regulations reported in previous Reports. This information will be provided in the Report of the Standing Committee on regulations made in the last six months of 2015.

## APPENDIX A

### Section 33 of the *Legislation Act, 2006*

**33. (1)** At the commencement of each session of the Legislature, a standing committee of the Assembly shall be appointed under this section with authority to sit during the session.

**(2)** Every regulation stands permanently referred to the standing committee for the purposes of subsection (3).

**(3)** The standing committee shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling Acts, and shall deal with such other matters as are referred to it by the Assembly.

**(4)** The standing committee may examine any member of the Executive Council or any public servant designated by the member respecting any regulation made under an Act that is under his or her administration.

**(5)** The standing committee shall, from time to time, report to the Assembly its observations, opinions and recommendations.

## APPENDIX B

### Standing Order 108(i)

**108** Within the first 10 Sessional days following the commencement of a Parliament, the membership of the following Standing Committees shall be appointed, on motion with notice, for the duration of the Parliament:

- i. Standing Committee on Regulations and Private Bills . . . to be the Committee provided for by section 33 of Part III (Regulations) of the *Legislation Act, 2006*, and having the terms of reference as set out in that section, namely: to be the Committee to which all regulations stand permanently referred; and to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, but in so doing regard shall be had to the following guidelines:
  - (i) Regulations should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute;
  - (ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties;
  - (iii) Regulations should be expressed in precise and unambiguous language;
  - (iv) Regulations should not have retrospective effect unless clearly authorized by statute;
  - (v) Regulations should not exclude the jurisdiction of the courts;
  - (vi) Regulations should not impose a fine, imprisonment or other penalty;
  - (vii) Regulations should not shift the onus of proof of innocence to a person accused of an offence;
  - (viii) Regulations should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee, or the like); and
  - (ix) General powers should not be used to establish a judicial tribunal or an administrative tribunal,

and, the Committee shall from time to time report to the House its observations, opinions and recommendations as required by section 33 of Part III (Regulations) of the *Legislation Act, 2006*, but before drawing the attention of the House to a regulation or other statutory instrument the Committee shall afford the ministry or agency concerned an opportunity to furnish orally or in writing to the Committee such explanation as the ministry or agency thinks fit.

## APPENDIX C

### Committee's Process for the Review of Regulations

