

Legislative
Assembly of
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Assemblée
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l'Ontario

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

THIRD REPORT 2016

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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 entitled "Third Report 2016" and commends it to the House.

Ted McMeekin, MPP
Chair of the Committee

Queen's Park
November 2016

**STANDING COMMITTEE ON REGULATIONS AND PRIVATE
BILLS**

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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
- Monica Cop, Erin Fowler, Tamara Hauerstock, Andrew McNaught and Heather Webb of the Legislative Research Service who acted as Counsel to the Committee and who performed the examination of the regulations covered in this report. Ms. Hauerstock prepared a draft report for the Committee's consideration; Mr. McNaught oversaw the regulations review.

INTRODUCTION: SCOPE OF THIS REPORT AND THE COMMITTEE'S MANDATE

The Committee presents this report on regulations filed under Ontario statutes during the period July to December 2015 (O. Regs. 187/15 – 444/15), in accordance with its terms of reference, as set out in the *Legislation Act, 2006* and the Standing Orders of the Legislative Assembly. In April 2016, the Committee filed its report on the regulations filed during the period January – June 2015. Since that report was prepared in the course of 2015, it did not include two sections usually included in the Committee's reports: statistical information on the regulations filed in 2015 and an update on responses to regulations previously reported. The present report includes these two sections.

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: 1996 – 2015

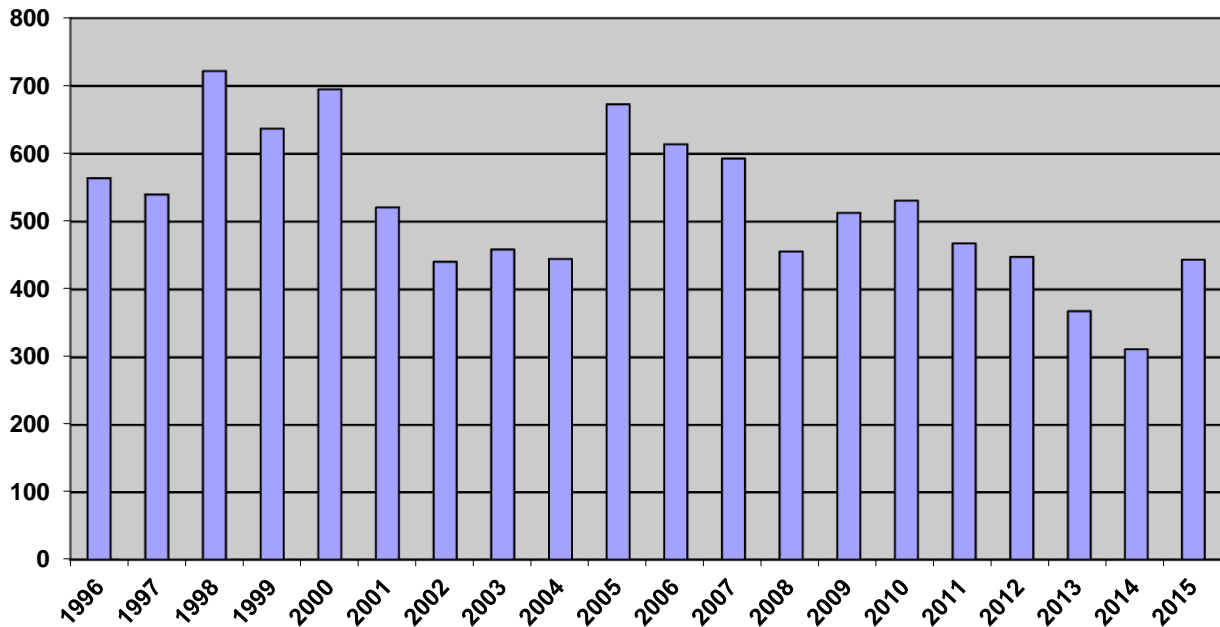
Number of Regulations Made

The graph on the following page indicates the number of regulations filed with the Registrar of Regulations from 1996 to 2015.¹ Over this 20-year period, the average number filed each year was 522.²

¹ The actual number of regulations filed in each year was as follows: **1996** (564); **1997** (540); **1998** (722); **1999** (637); **2000** (695); **2001** (521); **2002** (441); **2003** (459); **2004** (446); **2005** (673); **2006** (614); **2007** (593); **2008** (456); **2009** (513); **2010** (531); **2011** (468); **2012** (448); **2013** (368); **2014** (312); 2015 (444).

² The Office of Legislative Counsel has observed that “the ‘number’ of regulations applying to a given business sector (sector X) may not be indicative of how regulated the sector is. One could argue that a single 100-page regulation governing ‘sector X’ regulates sector X much more than 20 two-page regulations relating to sector X in which each of the 20 regulations regulates a separate topic. . . . The decision as to whether to draft one long regulation or several shorter ones is made by legislative counsel working together with the relevant ministry, taking into account various factors including the best

Total Regulations Filed: 1996 – 2015



The 444 regulations filed in 2015 were made under the authority of 126 Acts under the administration of 20 ministries and offices.³ Nine Acts generated at least 10 regulations each; these represented 43% of all regulations filed in 2015.

Appendix D lists the Acts under which at least 10 regulations were made in 2015. Appendix E sets out the ministries and offices responsible for regulations made in 2015 and the number falling under each ministry or office.

New, Revoking and Amending Regulations

Generally speaking, a regulation falls into one of the following three categories:

- *New*
- *Amending* adds, removes or substitutes text in a pre-existing or “parent” regulation.
- *Revoking* revokes an existing regulation.⁴

way to give the public easy access to the laws of Ontario. Consequently, if you are attempting to determine how regulated sector X is, you must analyze the substance of the regulations that apply to sector X rather than counting the numbers of regulations that apply to sector X.” (Source: Email communication from Office of Legislative Counsel to Committee counsel, March 6, 2008.)

³ The list of Ministries used for this calculation is found on the webpage entitled *Ministries*, on the Ontario.ca website, at <https://www.ontario.ca/page/ministries>, accessed August 4, 2016.

⁴ These descriptions are based on information found on the webpage entitled *e-Laws definitions: A collection of terms used on e-Laws and their definitions*, on the Ontario.ca website, at <http://www.ontario.ca/laws/e-laws-definitions>, accessed August 9, 2016.

The tables below show the number of new, revoking and amending regulations made in the years 2006 to 2015, and the proportion they represent of all regulations made in a particular year.⁵

New Regulations: 2006 – 2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
New Regulations Filed	134	135	60	72	66	91	57	38	37	52
Total Regulations Filed	614	593	456	513	531	468	448	368	312	444
% of Total	22%	23%	13%	14%	12%	19%	13%	10%	12%	12%

Revoking Regulations: 2006 – 2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Revoking Regulations Filed	21	26	17	54	64	36	29	15	13	10
Total Regulations Filed	614	593	456	513	531	468	448	368	312	444
% of Total	3%	4%	4%	10%	12%	8%	6%	4%	4%	2%

Amending Regulations: 2006 – 2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Amending Regulations Filed	459	432	380	390	401	345	376	322	268	386
Total Regulations Filed	614	593	456	513	531	468	448	368	312	444
% of Total	75%	73%	83%	76%	76%	74%	84%	88%	86%	87%

⁵ In 2015, four regulations were identified as both New and Revoking regulations by the Registrar of Regulations; accordingly, these regulations are identified as both “New” and “Revoking” in the tables. As a result, when the numbers noted in the tables above are combined, there are a total of 448 regulations, representing 101% of the actual number of regulations filed in 2015.

Of the 52 new regulations made in 2015, eleven were made under a statute with no previous regulations.⁶

New Regulations Made in 2015 Under Statutes with No Previous Regulations

Statute	O. Reg. No.	Title of Regulation
<i>Child Care and Early Years Act, 2014</i>	137/15	General
<i>Child Care and Early Years Act, 2014</i>	138/15	Funding, Cost Sharing and Financial Assistance
<i>Electronic Cigarettes Act, 2015</i>	337/15	General
<i>Highway 407 East Act, 2012</i>	175/15	Tolls
<i>Highway 407 East Act, 2012</i>	176/15	Disclosure of Personal Information
<i>Highway 407 East Act, 2012</i>	246/15	General
<i>Ontario Mortgage and Housing Corporation Act</i>	10/15	Prescribed Housing Programs – Subsection 6.2(2) of the Act
<i>Security for Electricity Generating Facilities and Nuclear Facilities Act, 2014</i>	112/15	General
<i>Ticket Speculation Act</i>	151/15	Exemptions
<i>Trillium Trust Act, 2014</i>	53/15	General
<i>Voluntary Blood Donations Act, 2014</i>	27/15	Exemptions

⁶ This number includes the four regulations identified as both New and Revoking regulations by the Registrar of Regulations.

REGULATIONS REPORTED

Following our initial review of the 258 regulations filed in the last six months of 2015, we wrote to three ministries to inquire about six regulations. After considering the responses to our inquiries, we have decided to report one regulation under one Committee guideline:

- *Guideline 3: Regulations should be expressed in precise and unambiguous language.*

In our reports, regulations are reported under the Ministry 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 TRANSPORTATION

O. Reg. 419/15 (Definitions of Commercial Motor Vehicle and Tow Truck) made under the Highway Traffic Act

Issue

The regulation defines “commercial motor vehicle” and “tow truck” for the purposes of prescribed sections of the *Highway Traffic Act*. Does the complex structure of the definitions obscure the meaning of the terms they are defining?

In defining the terms “commercial motor vehicle” and “tow truck,” O. Reg. 419/15 uses multiple exclusions and references to definitions in other provisions of the regulation and the *Highway Traffic Act*.

For example, s. 2(1) of the regulation provides that, for the purposes of listed sections of the Act, the definition of “commercial motor vehicle” is the definition set out in s. 3 of the regulation. This provision is immediately modified by s. 2(2), which states that despite s. 2(1) and s. 3(1)(b) of the regulation, the definition of “commercial motor vehicle” in s. 190 of the Act (one of the listed sections) is not the s. 3 definition; rather, it is the s. 3 definition, but excluding a tow truck as defined in s. 4 of the regulation (which itself is subject to exclusions).

Section 3 then sets out a multi-part definition of “commercial motor vehicle” for the purposes of the 20 sections of the Act listed in s. 2(1). Under s. 3(1), “commercial motor vehicle” means the vehicles described in paragraphs (a) to (c) of the subsection; however, the vehicles described in these paragraphs are then made subject to exceptions; that is, they do not include a vehicle “excluded” by one or more of subsections 3(2), (3) or (4).

Similarly, s. 4(1) prescribes a multi-part definition of “tow truck” for the purpose of the definition of “commercial motor vehicle” in s. 3(1)(b) of the regulation (and for the purpose of s. 171 of the Act). This definition includes references to other terms defined in the Act and in the *Off-Road Vehicles Act*, and is subject to four exclusions listed in s. 4(2) of the regulation.

In response to our letter, the Ministry explained that

the structure of this regulation is designed to replace provisions previously found in section 16 of the *Highway Traffic Act* that were repealed in Bill 15, the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014*. The extensive definition of commercial motor vehicle in the regulation is intended to describe all of the classes of commercial motor vehicles, formerly identified in section 16 of the Act, that are required to participate in the Ministry of Transportation's Commercial Vehicle Operator's registration (CVOR) Certificate program. The structure of the regulation is partially due to the sequence and design of those provisions of the Act that were repealed, and which the regulation seeks to replace.

The Ministry also noted that the regulation establishes tow trucks as a new class of CVOR vehicle, and that each requirement of the CVOR program has "its own scope of application and its own series of exceptions and exemptions specific to tow trucks."

The Ministry further explained that the regulation is a technical one specific to a particular industry:

This industry has been governed by the same CVOR provisions in the Act that have now been moved into this regulation so the persons affected by the regulation are already familiar with its requirements. The tow truck industry has been consulted on these new requirements and the ministry continues to meet with them to clarify the new requirements applicable to their vehicles. As a result, it is our view that this is one of those technical regulations that may seem complex but is understood by the persons affected by it given that they have been governed by the same requirements under section 16 of the Act.

Though the Ministry has indicated that the requirements embodied by the regulation are understood by the persons affected by it, the regulation is complex and difficult for a reader to decipher.

The Committee recognizes that O. Reg. 419/15 reflects language and requirements carried over from the Act and that, in the Ministry's view, it is understood by the persons affected by it. Accordingly, the Committee has decided not to make any recommendations with respect to this regulation.

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

**Second Report 2016
(Regulations Filed in the First Six Months of 2015)**

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

Ministry of Health and Long-Term Care

Standing Order Considered:	(ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
Recommendation made by Committee:	The Committee recommended that the Ministry of Health and Long-Term Care remake the regulation in the manner required by the <i>Ambulance Act</i> .
Current status:	As of September 22, 2016, no amendment had been made to O. Reg. 136/15.

**First Report 2016
(Regulations Filed in 2014)**

**O. Reg. 309/14 amending Regulation 74 (General) of R.R.O. 1990 made
under the *Collection Agencies Act* (now the *Collection and Debt Settlement
Services Act*)**

Ministry of Government and Consumer Services

Standing Orders Considered:	(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.
Recommendations made by Committee:	The Committee recommended that the Ministry of Government and Consumer Services take steps to amend the <i>Collection and Debt Settlement Services Act</i> to authorize regulations requiring collectors to keep records and provide them to the Registrar upon request. The Committee also recommended that the Ministry amend s. 30(2) of the <i>Collection and Debt Settlement Services Act</i> or s. 17(2) of Regulation 74, or both, to establish one set of requirements with regard to trust accounts.
Current status:	As of September 22, 2016, no relevant amendments had been made to Regulation 74 or to the <i>Collection and Debt Settlement Services Act</i> .

**First Report 2015
(Regulations Filed in 2013)**

O. Reg. 288/13 amending O. Reg. 221/11 (Extended Day and Third Party Programs) made under the *Education Act*

Ministry of Education

Standing Order Considered:	(ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
Recommendation made by Committee:	The Committee recommended that the Ministry of Education make every effort going forward to adhere to the procedural requirements when establishing regulations. The Committee also recommended that the Ministry remake s. 1 of O. Reg. 288/13, which, by oversight, was made by the Minister instead of the Lieutenant Governor in Council.
Current status:	The recommendation was adopted. (See s. 1 of O. Reg. 363/15, revoking and substituting s. 1(2.1) of O. Reg. 221/11, in force November 30, 2015. Subsequently, s. 1(2.1) was revoked and substituted by s. 1 of O. Reg. 129/16.)

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)

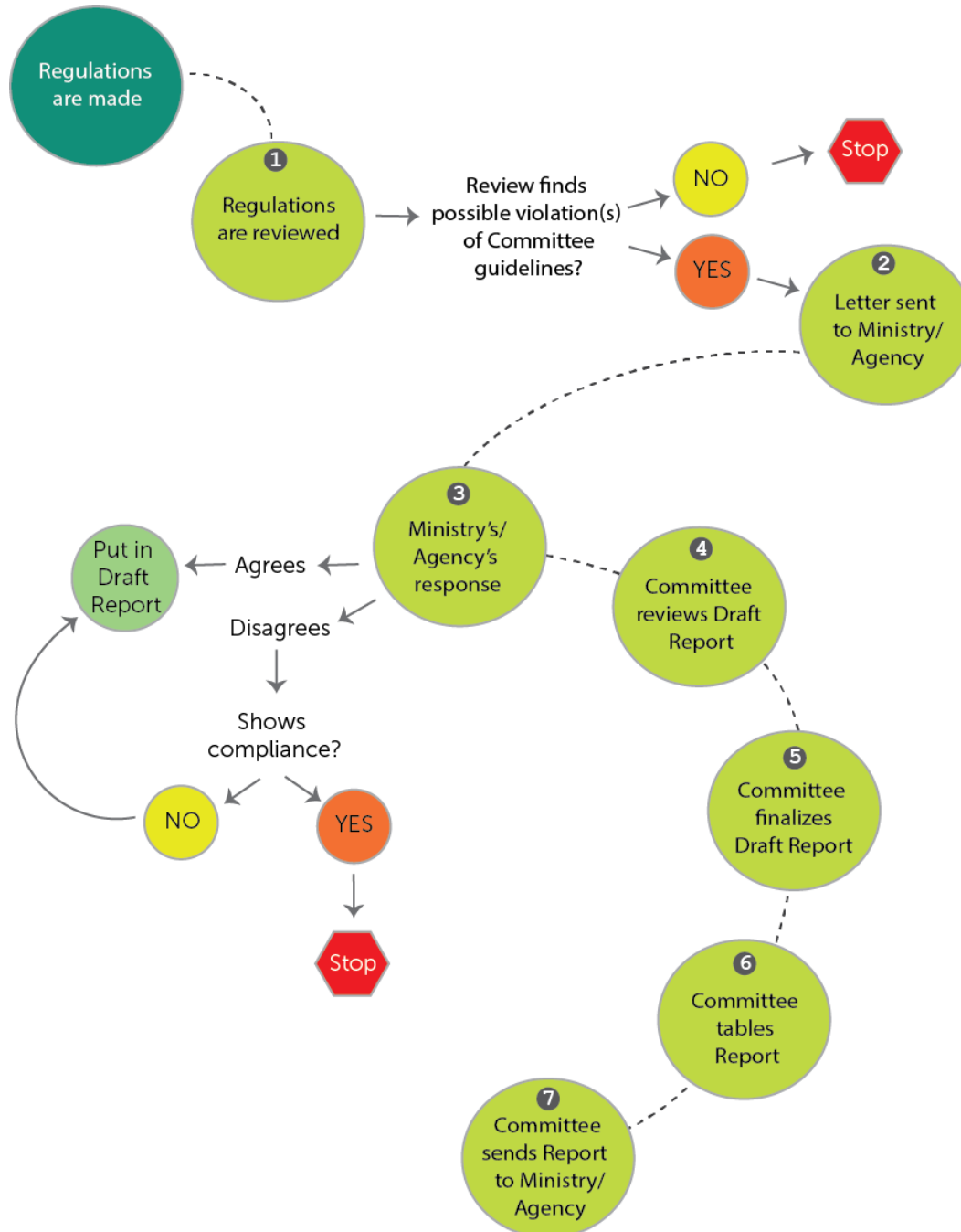
108 Within the first 10 Sessional days following the commencement of a Parliament, the membership of the following Standing Committees shall be appointed, on motion with notice, for the duration of the Parliament:

- 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



APPENDIX DActs Under Whose Authority Ten or More Regulations Were
Filed in 2015

Act	No. of Regulations
<i>Highway Traffic Act</i>	83
<i>Education Act</i>	20
<i>Pension Benefits Act</i>	15
<i>Farm Products Marketing Act</i>	13
<i>Municipal Act, 2001</i>	13
<i>Planning Act</i>	13
<i>Environmental Protection Act</i>	11
<i>Local Roads Boards Act</i>	11
<i>Health Insurance Act</i>	10

APPENDIX E

Ministries and Offices and the Number of Regulations Filed in 2015 for Which Each Was Responsible

Ministry/Office	No. of Regulations
Transportation	100
Municipal Affairs	42
Health and Long-Term Care	45
Finance	43
Attorney General	35
Government and Consumer Services	29
Education	27
Environment and Climate Change	23
Agriculture, Food and Rural Affairs	19
Labour	15
Energy	14
Community and Social Services	13
Natural Resources and Forestry	10
Treasury Board Secretariat	8
Advanced Education and Skills Development	5
Community Safety and Correctional Services	4
Housing	4
Office of Francophone Affairs	3
Northern Development and Mines	3
Economic Development and Growth	2