

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

## SECOND REPORT 2017

2<sup>nd</sup> Session, 41<sup>st</sup> Parliament  
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de l'Ontario

The Honourable Dave Levac, MPP  
Speaker of the Legislative Assembly

Sir,

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

Ted McMeekin, MPP  
Chair of the Committee

Queen's Park  
December 2017

**STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS  
MEMBERSHIP LIST**

2<sup>nd</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
- Tamara Hauerstock and Andrew McNaught of the Legislative Research Service. Ms. Hauerstock acted as Counsel to the Committee, performed the examination of the regulations covered in this report and 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 2016 (O. Regs. 252/16 – 491/16), 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 2017 the Committee presented its report on the regulations filed during the period January – June 2016.

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: 1997 – 2016**

### **Number of Regulations Made**

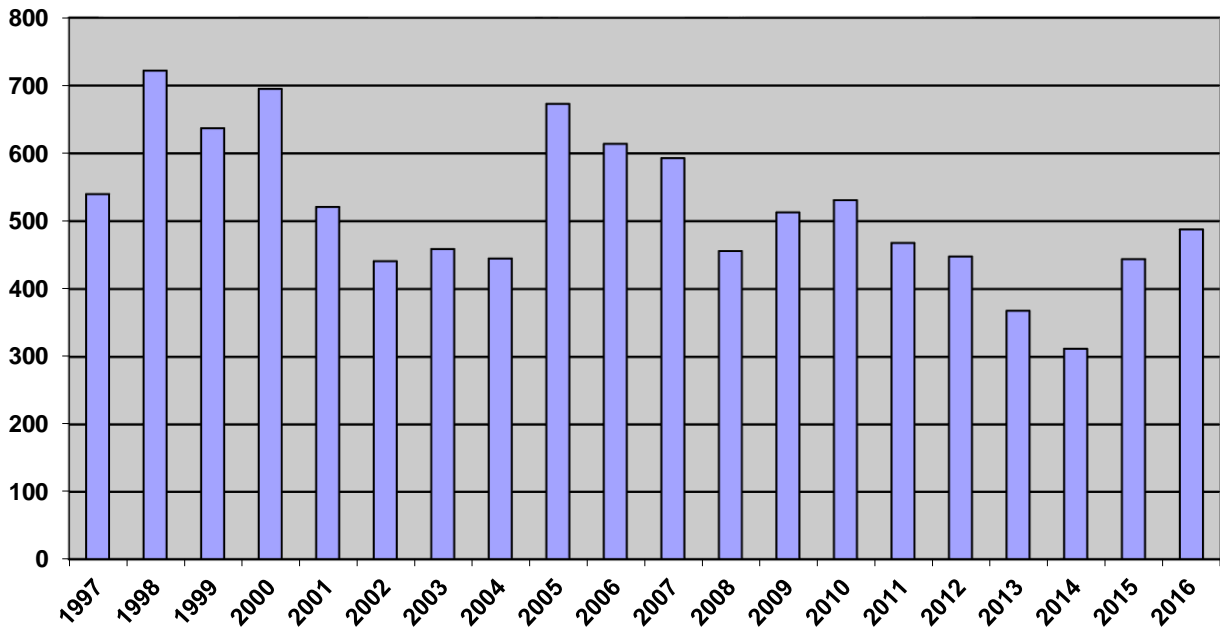
The graph on the following page indicates the number of regulations filed with the Registrar of Regulations from 1997 to 2016.<sup>1</sup> Over this 20-year period, the average number filed each year was 518.<sup>2</sup>

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<sup>1</sup> The actual number of regulations filed in each year was as follows: **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); **2016** (488).

<sup>2</sup> 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 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

### Total Regulations Filed: 1997 – 2016



The 488 regulations filed in 2016 were made under the authority of 133 Acts under the administration of 22 ministries and offices.<sup>3</sup> Seven Acts generated at least 10 regulations each; these represented 36% of all regulations filed in 2016.

Appendix D lists the Acts under which at least 10 regulations were made in 2016. Appendix E sets out the ministries and offices responsible for regulations made in 2016 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.<sup>4</sup>

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apply to sector X.” (Source: Email communication from Office of Legislative Counsel to Committee counsel, March 6, 2008.)

<sup>3</sup> 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 May 8, 2017.

<sup>4</sup> 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 May 8, 2017.



The tables below show the number of new, revoking and amending regulations made in the years 2007 to 2016, and the proportion they represent of all regulations made in a particular year.<sup>5</sup>

### New Regulations: 2007 – 2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
New Regulations Filed	135	60	72	66	91	57	38	37	52	71
Total Regulations Filed	593	456	513	531	468	448	368	312	444	488
% of Total	23%	13%	14%	12%	19%	13%	10%	12%	12%	15%

### Revoking Regulations: 2007 – 2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Revoking Regulations Filed	26	17	54	64	36	29	15	13	10	21
Total Regulations Filed	593	456	513	531	468	448	368	312	444	488
% of Total	4%	4%	10%	12%	8%	6%	4%	4%	2%	4%

### Amending Regulations: 2007 – 2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Amending Regulations Filed	432	380	390	401	345	376	322	268	386	412
Total Regulations Filed	593	456	513	531	468	448	368	312	444	488
% of Total	73%	83%	76%	76%	74%	84%	88%	86%	87%	84%

<sup>5</sup> In 2016, 16 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 is a total of 504 regulations, representing 103% of the actual number of regulations filed in 2016.

Of the 71 new regulations made in 2016, 22 were made under a statute with no previous regulations.

### New Regulations Made in 2016 Under Statutes with No Previous Regulations

Statute	O. Reg. No.	Title of Regulation
<i>Broader Public Sector Executive Compensation Act, 2014</i>	304/16	Executive Compensation Framework
<i>Climate Change Mitigation and Low-carbon Economy Act, 2016</i>	143/16	Quantification, Reporting and Verification of Greenhouse Gas Emissions
<i>Climate Change Mitigation and Low-carbon Economy Act, 2016</i>	144/16	The Cap and Trade Program
<i>Forfeited Corporate Property Act, 2015</i>	420/16	Fees
<i>Healthy Menu Choices Act, 2015</i>	50/16	General
<i>Horse Racing Licence Act, 2015</i>	61/16	General
<i>Investment Management Corporation of Ontario Act, 2015</i>	251/16	Prescribed Persons and Entities – Subsections 9(3) and 17(2) of the Act
<i>Invasive Species Act, 2015</i>	354/16	General
<i>Ontario Rebate for Electricity Consumers Act, 2016</i>	363/16	General
<i>Ontario Rebate for Electricity Consumers Act, 2016</i>	364/16	Invoicing Requirements
<i>Pooled Registered Pension Plans Act, 2015</i>	359/16	General

<b>Statute</b>	<b>O. Reg. No.</b>	<b>Title of Regulation</b>
<i>Quality of Care Information Protection Act, 2016</i>	483/16	Definitions
<i>Quality of Care Information Protection Act, 2016</i>	482/16	General
<i>Registered Human Resources Professionals Act, 2013</i>	55/16	Designations and Initials
<i>Safeguarding our Communities Act (Patch for Patch Return Policy), 2015</i>	305/16	General
<i>Waste Diversion Transition Act, 2016</i>	386/16	Blue Box Waste
<i>Waste Diversion Transition Act, 2016</i>	387/16	Municipal Hazardous or Special Waste
<i>Waste Diversion Transition Act, 2016</i>	388/16	Stewardship Ontario
<i>Waste Diversion Transition Act, 2016</i>	389/16	Waste Electrical and Electronic Equipment
<i>Waste Diversion Transition Act, 2016</i>	390/16	Used Tires
<i>Waste Diversion Transition Act, 2016</i>	395/16	Revoking Various Regulations Made Under the <i>Waste Diversion Act, 2002</i>
<i>Waste Diversion Transition Act, 2016</i>	396/16	Revoking O. Reg. 84/03 (Used Tires) Made under the <i>Waste Diversion Act, 2002</i>

## REGULATIONS REPORTED

Following our initial review of the 237 regulations filed in the last six months of 2016, we wrote to seven ministries to inquire about 11 regulations. After considering the responses to our inquiries, we have decided to report four regulations under two Committee guidelines:

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

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

Regulations are reported under the Ministry responsible. 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 the Environment and Climate Change

*O. Reg. 388/16 (Stewardship Ontario) made under the Waste Diversion Transition Act, 2016*

Issue
Does the Act, which refers to the appointment of a board of directors, authorize a regulation providing for members of a board to be elected?

O. Reg. 388/16 provides that the board of Stewardship Ontario is to be composed of nine elected members and one appointed member. The enabling provision, s. 73(1)(e) of the *Waste Diversion Transition Act, 2016*, permits regulations to be made

governing the composition and appointment of the board of directors of an industry funding organization.

As the Act provides for the appointment, not the election, of members of the board of industry funding organizations, we asked the Ministry whether there is statutory authority to make a regulation providing for the election of board members.

The Ministry responded as follows:

The word “appointment” usually refers to the manner in which the required number of members is selected from each class. “Appointment” can be read broadly to include any manner of selection – whether by appointment, by election or *ex officio* by virtue of holding another office.

We note that election and appointment are generally used in Ontario statutes as distinct means of selecting the members of a board.<sup>6</sup>

Moreover, the identical concern was raised by the Committee with respect to O. Reg. 33/08, which set out the composition of Stewardship Ontario under the current act's predecessor, the *Waste Diversion Act, 2002*. In its *First Report 2010*, the Committee recommended that O. Reg. 33/08 be amended to remove references to the election of the board of directors of Stewardship Ontario and to elected members.<sup>7</sup>

#### **Recommendation**

**The Committee recommends that the Minister of the Environment and Climate Change amend O. Reg. 388/16 to remove references to the election of the board of directors of Stewardship Ontario and to elected members.**

### **Ministry of Finance**

*O. Reg. 325/16 made under the Assessment Act, amending O. Reg. 282/98 (General)*

#### **Issue**

Several documents are incorporated by reference into O. Reg. 282/98. Are these documents readily available to the public?

Section 3 of O. Reg. 325/16 amends the reference to the "Ontario Living Legacy Land Use Strategy" in s. 25(3) of O. Reg. 282/98. Section 25 relates to the determination of conservation land.

Subsection 62(4) of the *Legislation Act, 2006* requires that when a document is incorporated by reference, the Minister responsible for the administration of the Act under which the regulation is made shall take steps to ensure that the document is readily available to the public and that earlier versions of it continue to be readily accessible.

We asked the Ministry whether the "Ontario Living Legacy Land Use Strategy" is readily available to the public as required by s. 62(4) of the *Legislation Act, 2006*. We also asked whether the other documents incorporated by reference in s. 25 of O. Reg. 282/98 are readily available to the public as required.

<sup>6</sup> See, for example, *Business Corporations Act*, RSO 1990, c. B.16, s. 119(9); *Education Act*, RSO 1990, c. E.2, s. 58.1(2)(r).

<sup>7</sup> Standing Committee on Regulations and Private Bills, *First Report 2010*, 39<sup>th</sup> Parl., 2<sup>nd</sup> sess., p. 7.

The Ministry responded that

all of the documents referred to in section 25 of O. Reg. 282/98 are available to the public at the Ministry's office or at the websites specified . . .

However, the Ministry also said that in administering the Conservation Land Tax Incentive Program, the Ministry refers to the "updated 2014 versions" of the documents referenced in par. 1 of s. 25(2) of the regulation. In other words, the Ministry is using documents different from those incorporated by reference in the regulation.

In the Committee's view, a regulation must incorporate by reference the relevant version of a document.

#### **Recommendation**

**The Committee recommends that the Minister of Finance amend paragraph 1 of s. 25(2) of O. Reg. 282/98 to incorporate by reference the versions of the documents that are used by the Ministry in administering the Conservation Land Tax Incentive Program.**

### **Ministry of Government and Consumer Services**

*O. Reg. 306/16 (Code of Ethics) made under the Funeral, Burial and Cremation Services Act, 2002*

#### **Issue**

The regulation indicates that it was made on September 13, 2016 and approved on the previous day, September 12, 2016. Does the ordering of the dates affect the validity of the regulation?

O. Reg. 306/16 appears to contain an inconsistency. It indicates that it was approved by the Minister on September 12, 2016, which is the day before it was made by the Bereavement Authority of Ontario.

The Ministry's view is that O. Reg. 306/16 is valid, having been duly made, and having been approved by the Minister. Nonetheless, the Ministry acknowledged the potential for confusion:

We understand that the ordering of the dates on which the Regulation was made and approved may cast doubt on the validity of the Regulation. To address this, the Ministry of Government and Consumer Services . . . plans to work with the Bereavement Authority of Ontario ("BAO") to remake the Regulation at the

same time as the BAO makes a regulation respecting discipline and appeal committees, which are necessary to enforce the Code of Ethics. Consultations are planned for summer 2017 with a view to finalizing the regulations in fall 2017.

As the Ministry has committed to remake O. Reg. 306/16, the Committee is not making a recommendation. The Ministry will be requested to inform the Committee when O. Reg. 306/16 is remade.

*O. Reg. 444/16 made under the Registry Act, amending O. Reg. 427/99 (Registry Divisions)*

**Issue**

The regulation includes references to repealed provisions of the *Registry Act*. Should the regulation be amended to remove these references?

As amended by O. Reg. 444/16, s. 2(1) of O. Reg. 427/99 contains references to clauses 4(2)(a) and (c) of the *Registry Act*. O. Reg. 444/16 was filed after these clauses were repealed on September 1, 2016.

The Ministry explained the reference to repealed provisions as follows:

We agree with your analysis that subsection 2(1) of O. Reg. 427/99 should be amended to remove reference to clauses 4(2)(a) and 4(2)(c). We also noted that s. 2(4) of O. Reg. 427/99 references clause 4(2)(b) of the *Registry Act*, which was also repealed on September 1, 2016. Subsection 2(4) of O. Reg. 427/99 should also be amended to remove this reference.

The Regulatory Services Branch of the Ministry of Government and Consumer Services is currently working on a project which involves proposed amendments to various regulations under the *Registry Act* and *Land Titles Act*. It is anticipated that the amendments to O. Reg. 427/99 to remove references to the repealed clauses can be included in this project. The anticipated completion date would be the end of 2017 to beginning of 2018.

As the Ministry has committed to address the issue raised by the Committee, the Committee is not making a recommendation with respect to O. Reg. 444/16. The Ministry will be requested to inform the Committee when the amendment is made.

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

### **First Report 2017 (Regulations Filed in the First Six Months of 2016)**

*Ministry of Education – O. Reg. 226/16, amending O. Reg. 138/15 (Funding, Cost Sharing and Financial Assistance) made under the Child Care and Early Years Act, 2014*

The Committee inquired whether either notice of a proposed regulation or notice of a decision not to consult had been given as required. The Ministry replied that

    this amendment relied on subsection 84(6) of the CCEYA, as it was a technical amendment only. . . . However . . . there was no corresponding notice of the change posted as required by subsection 84(6). This oversight has been brought to the attention of the Ministry and will be corrected as soon as possible.

As the Ministry had committed to correcting this oversight, the Committee did not make a recommendation with respect to O. Reg. 226/16; however, the Committee asked the Ministry to describe the steps that had been or would be taken with respect to the matters described in the Ministry's reply. The Ministry has indicated that a response to the Committee's follow-up inquiry is forthcoming.

*Ministry of Municipal Affairs – O. Reg. 114/16 (Zoning Order – Protection of Public Health and Safety – Toronto Hospital Heliports) made under the Planning Act*

The Committee inquired whether public notice of O. Reg. 114/16 had been given as required. The Ministry replied that

    through inadvertence, notice as required by s. 47(5) of the *Planning Act* was not given in respect of O. Reg. 114/16.

    Internal processes are currently being put into place in order to ensure that notice of future orders are given in accordance with the requirements of s. 47(5) of the *Planning Act*.

    In addition, steps are being taken to give proper notice in respect of O. Reg. 114/16 . . .

In light of the corrective steps the Ministry was taking, the Committee did not make a recommendation with respect to O. Reg. 114/16; however, the Committee asked the Ministry to describe the steps that had been or would be taken with respect to the matters described in its reply.



By letter dated April 6, 2017, the Ministry replied that

the Ministry has revised its internal operating procedures to ensure that all requirements under section 47 of the *Planning Act* are adhered to. In addition, a resource document that staff use to process planning applications is being amended to clearly outline all notice requirements.

Notice of O. Reg. 114/16 was given in the Toronto Star and Toronto L'Express on Tuesday January 17, 2017. Both are newspapers of general circulation located in the geographic area to which the order applies.

## **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

<b>Standing Order Considered:</b>	(ii) Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties.
<b>Recommendation made by Committee:</b>	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> .

The Committee requested an update on the status of the Ministry's response to its recommendations. The Ministry responded that

a new regulation was filed on November 3, 2016 as O. Reg. 356/16 . . . in response to the recommendation. The new regulation revoked O. Reg. 136/15 and included a line in the regulation for the signature of the Minister of Health and Long-Term Care. The content of the regulation remains the same . . .

## 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

<b>Standing Orders Considered:</b>	(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.
<b>Recommendations made by Committee:</b>	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.

The Committee requested an update on the status of the Ministry's response to its recommendations. The Ministry responded that

the government recently introduced Bill 59, the *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2016* which, among other things, proposes to amend the CDSSA to eliminate the registration requirement for individual collectors . . . . If the bill passes, the elimination of the individual collector registration requirement would, in turn, render unnecessary a requirement that individual collectors maintain records and provide them to the Registrar upon request because collection agencies would fulfil that record-keeping function. If the bill passes, the ministry would then remove any remaining obligations currently in the regulations on individual collectors to maintain records and provide them to the Registrar upon request . . .

As a response to [Committee] Recommendation 2, the bill proposes to repeal subsection 30(2) of the CDSSA, thereby establishing a single set of requirements with regard to trust accounts as set out in subsection 17(2) of the CDSSA's regulation.

Bill 59 received Royal Assent on April 13, 2017. The provisions mentioned in the Ministry's letter have not been proclaimed into force.

**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.

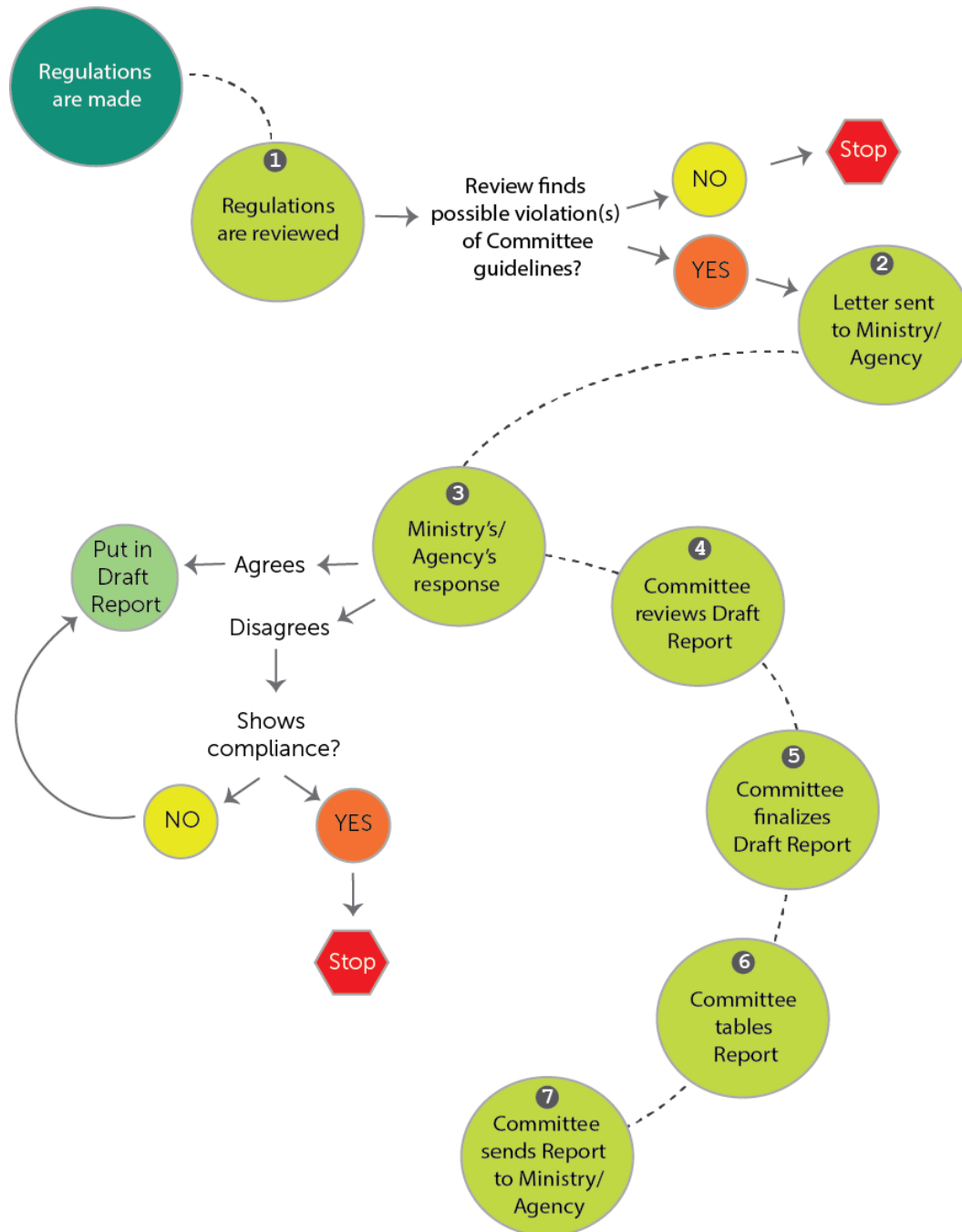
**APPENDIX B**

## 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 D**Acts Under Whose Authority Ten or More Regulations Were  
Filed in 2016

<b>Act</b>	<b>No. of Regulations</b>
<i>Highway Traffic Act</i>	61
<i>Education Act</i>	49
<i>Municipal Act, 2001</i>	20
<i>Planning Act</i>	16
<i>Fish and Wildlife Conservation Act</i>	12
<i>Environmental Protection Act</i>	10
<i>Insurance Act</i>	10

## APPENDIX E

### Ministries and Offices and the Number of Regulations Filed in 2016 for Which Each Was Responsible

Ministry/Office	No. of Regulations
Transportation	72
Education	55
Finance	53
Municipal Affairs	49
Attorney General	46
Government and Consumer Services	32
Environment and Climate Change	30
Health and Long-Term Care	26
Natural Resources and Forestry	21
Labour	20
Energy	19
Community and Social Services	13
Treasury Board Secretariat	11
Housing	8
Northern Development and Mines	8
Advanced Education and Skills Development	7
Community Safety and Correctional Services	6
Agriculture, Food and Rural Affairs	5
Children and Youth Services	2
Infrastructure	2
Office of Francophone Affairs	2
Accessibility Directorate	1