

Legislative
Assembly
of Ontario



Assemblée
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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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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
May 2018

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

3rd Session, 41st Parliament

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- Christopher Tyrell, the Committee's Clerk, who performed the procedural and administrative duties necessary for the carrying out of our regulations mandate;
- Tamara Hauerstock of the Legislative Research Service, who acted as Counsel to the Committee, performed the examination of the regulations and prepared a draft report for the Committee's consideration; and Andrew McNaught of the Legislative Research Service, who 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 January to June 2017 (O. Regs. 1/17 – 256/17), 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 (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) (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

End-of-year statistical information on regulations, including a graph showing the number of regulations made annually over the past 20 years and tables showing the number of regulations made by type (new, amending or revoking), will be provided in the Standing Committee’s report on regulations made in the last six months of 2017.

REGULATIONS REPORTED

Following our initial review of the 256 regulations filed in the first six months of 2017, we wrote to seven ministries to inquire about 12 regulations. After considering the responses to our inquiries, we have decided to report five regulations under the Committee’s second guideline, which reads:

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

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 Agriculture, Food and Rural Affairs

O. Reg. 201/17 amending Regulation 369 of R.R.O. 1990 (General) made under the Farm Implements Act

Issue

The regulation incorporates by reference several outside documents as amended from time to time; however the *Farm Implements Act* does not specifically authorize rolling incorporation of documents into regulations. Is the regulation in compliance with the requirements of s. 62(3) of the *Legislation Act, 2006*?

O. Reg. 201/17 incorporates by reference technical safety standards produced by the Canadian Standards Association, the International Organization for Standardization and the Society of Automotive Engineers. These standards are incorporated as they are “amended from time to time.”

The authority for this amendment is s. 35(r) of the *Farm Implements Act*, which authorizes the Ministry to make regulations

adopting by reference, in whole or in part, with such changes as the Director considers necessary, any code or standard.

However, s. 62(3) of the *Legislation Act, 2006* generally requires static incorporation of documents by reference (i.e., incorporating a specific version of a document at a defined date). This requirement applies to every Act and regulation unless a contrary intention appears or its application would give a term or provision a meaning that is inconsistent with the overall legislative context.

We did not locate authority in the *Farm Implements Act* for rolling (i.e., non-static) incorporation of documents into regulations, and asked the Ministry whether the requirements of s. 62(3) of the *Legislation Act, 2006* had been met.

According to the Ministry, “it would be inconsistent with the *Farm Implements Act* to bar the adoption of technical safety standards on a rolling basis.” More specifically, the Ministry explained that

safety standards for farm implement performance are an important component of the *Farm Implements Act*. These technical safety standards are intended to evolve as manufacturing processes and technology advances. It seems therefore implicit that if the regulations chose to defer to industry standards

by incorporating those standards by reference, the Legislature would have intended the regulations to also incorporate any future changes to those standards, as they evolve over time. Furthermore the Director appointed under the Act is responsible for promoting compliance with the prescribed safety standards for farm implement performance (s.4(4) of the Act). In addition the Director is empowered to conduct research related to farm implement safety (s. 4(5)(c) of the Act). This research often involves participating in national and international working groups which maintain and amend the industry standards. It would be inconsistent with the Act to create the specific role for the Director around safety standards, but then fail to allow the Director to track and enforce updated standards as they are developed.

Conclusion

The Committee also had the opportunity to hear from Ministry officials in person. Given the explanation provided by the Ministry by letter and in person, the Committee is satisfied, and is not making a recommendation with respect to O. Reg. 201/17 amending Regulation 369 of R.R.O. 1990 (General).

Ministry of Natural Resources and Forestry

O. Reg. 209/17 amending O. Reg. 315/07 (Designation of Conservation Reserves) and O. Reg. 210/17 amending O. Reg. 316/07 (Designation and Classification of Provincial Parks) made under the Provincial Parks and Conservation Reserves Act, 2006

O. Reg. 102/17 amending O. Reg. 670/98 (Open Seasons – Wildlife) and O. Reg. 211/17 amending O. Reg. 663/98 (Area Descriptions) made under the Fish and Wildlife Conservation Act, 1997

Issue
Was public notice of the regulations given as required by the <i>Environmental Bill of Rights, 1993</i> ?

Environmental Bill of Rights Notice Requirements

Section 16 of the *Environmental Bill of Rights, 1993* (EBR) requires public notice of proposed regulations that could have a significant effect on the environment. Once a decision is made to implement a proposed regulation, the Minister must give public notice of the decision (EBR, s. 36).

This notice requirement does not apply to a regulation

- that is “predominantly financial or administrative in nature” (EBR, s. 16(2)), or
- which has environmentally significant aspects that have been considered in a public participation process under another Act that is “substantially equivalent” to the process required under the EBR (EBR, s. 30).

Notice of a decision to invoke the “substantially equivalent” exception must be given to the public and to the Environmental Commissioner as soon as reasonably possible.

As the *Provincial Parks and Conservation Reserves Act, 2006* (PPCRA) and the *Fish and Wildlife Conservation Act, 1997* (FWCA) are prescribed for the purposes of s. 16 of the EBR, we asked the Ministry whether the EBR’s public notice requirements had been met with respect to the above-noted regulations.

Reliance on Financial or Administrative in Nature Exception

The Ministry replied that many of the amendments made by O. Regs. 209/17 and 210/17 under the PPCRA were minor, noting that

there were four name changes to conservation reserves and three name changes for provincial parks . . . Amendments also corrected errors in the spelling of the names of several provincial parks and digital mapping improvements have resulted in adjusted boundaries to protected spaces.

The Ministry stated that these types of amendments should be considered predominantly administrative in nature and fell within the s. 16(2) exception to the EBR’s notice requirement.

With respect to O. Reg. 102/17 and part of O. Reg. 211/17, both under the FWCA, the Ministry explained that the amendments — deferring implementation of a change and correcting a numbering error — were predominantly administrative in nature and subject to the 16(2) exception.

Reliance on Substantially Equivalent Process Exception

With respect to the regulations made under the PPCRA, the Ministry identified four amendments — one made by O. Reg. 209/17 and three by O. Reg. 210/17 — that were environmentally significant but fell within the s. 30 “substantially equivalent” process exception to the EBR’s notice requirement. These amendments amended provincial park and conservation reserve boundaries and, in one case, created a new provincial park. In its reply, the Ministry indicated the substantially equivalent process relied upon for each exception.

The Ministry further identified an amendment made by O. Reg. 211/17 under the FWCA that involved switching areas within the existing boundaries of a provincial park to ensure clearer hunting boundaries. In its reply, the Ministry indicated the substantially equivalent process relied upon for the exception; however, the

Ministry also explained that notice of the decision to rely on s. 30 ought to have been given for each of the identified environmentally significant amendments and that posting of the exception notices is pending.

Notice of Decision to Implement Required

The Ministry said that notice of decision to implement a proposed regulation ought to have been given with respect to one of the amendments made by O. Reg. 210/17, increasing the size of a provincial park. The Ministry indicated that posting of the notice is pending.

Conclusion

The Ministry concluded that

with respect to six amendments . . . that were environmentally significant the post-approval notices under EBR sections 30 and 36 should have been completed in a more timely fashion. With respect to those six post-approval notices, MNRF is working to ensure that they are completed as soon as possible.

Given the Ministry's commitment to provide the required notices, the Committee is not making a recommendation with respect to O. Regs. 209/17, 210/17, 102/17 and 211/17.

UPDATE ON RESPONSES TO REGULATIONS PREVIOUSLY REPORTED BY THE STANDING COMMITTEE

An update on responses to regulations flagged in previous reports will be provided in the Standing Committee's report on regulations made in the last six months of 2017.

APPENDIX ASection 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

