

Legislative
Assembly
of Ontario



Assemblée
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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

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The Honourable Ted Arnott, 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.

Randy Hillier, MPP
Chair of the Committee

Queen's Park
October 2018

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

1st Session, 42nd Parliament

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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

- Eric Rennie, the Committee's Clerk, who performed the procedural and administrative duties necessary for the carrying out of our regulations mandate; and
- Monica Cop, Tamara Hauerstock, Andrew McNaught and Lauren Warner of the Legislative Research Service. Ms. Cop, Ms. Hauerstock and Ms. Warner performed the examination of the regulations covered in this report. Ms. Hauerstock acted as Counsel to the Committee and prepared a draft report for the Committee's consideration. Mr. McNaught oversaw the regulations review.

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 2017 (O. Regs. 257/17 – 594/17), in accordance with its terms of reference, as set out in the *Legislation Act, 2006* and the Standing Orders of the Legislative Assembly. In May 2018, the Committee reported on the regulations filed during the period January – June 2017.

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: 1998 – 2017

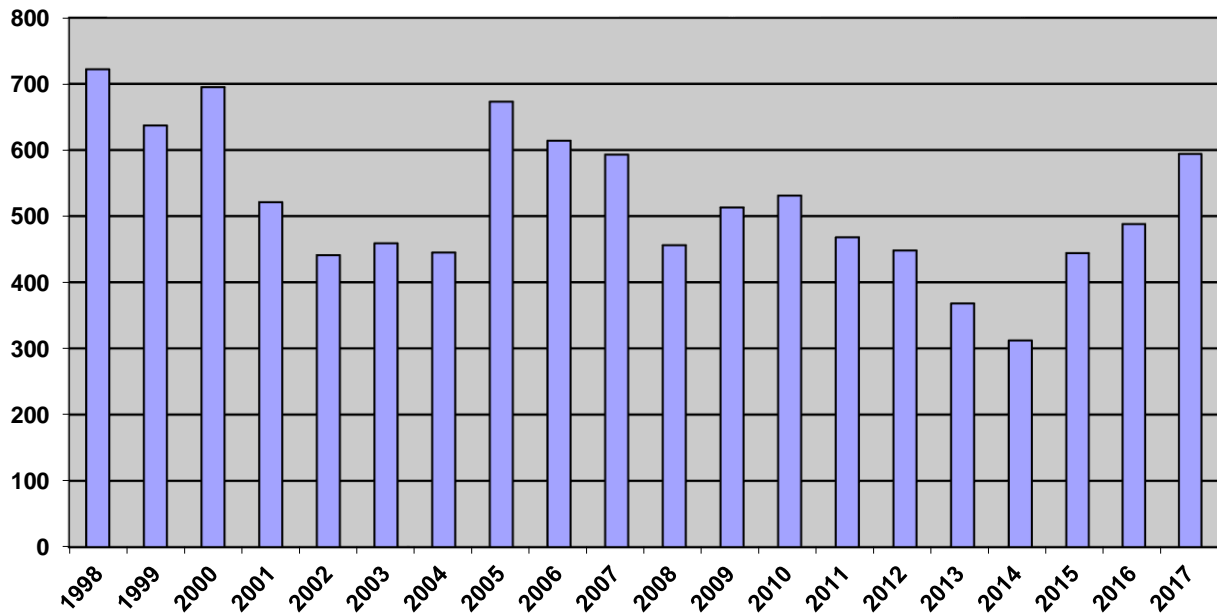
Number of Regulations Made

The graph on the following page indicates the number of regulations filed with the Registrar of Regulations from 1998 to 2017.¹ Over this 20-year period, the average number filed each year was 521.²

¹ The actual number of regulations filed in each year was as follows: **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); **2017** (594).

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 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: 1998 – 2017



The 594 regulations filed in 2017 were made under the authority of 153 Acts under the administration of 20 ministries and offices.³ Fourteen Acts generated at least 10 regulations each; these represented 47% of all regulations filed in 2017.

Appendix D lists the Acts under which at least 10 regulations were made in 2017. Appendix E sets out the ministries and offices responsible for regulations made in 2017 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

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 September 5, 2018.

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 September 5, 2018.

The tables below show the number of new, revoking and amending regulations made in the years 2008 to 2017, and the proportion they represent of all regulations made in a particular year.⁵

New Regulations: 2008 – 2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
New Regulations Filed	60	72	66	91	57	38	37	52	71	72
Total Regulations Filed	456	513	531	468	448	368	312	444	488	594
% of Total	13%	14%	12%	19%	13%	10%	12%	12%	15%	12%

Revoking Regulations: 2008 – 2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Revoking Regulations Filed	17	54	64	36	29	15	13	10	21	35
Total Regulations Filed	456	513	531	468	448	368	312	444	488	594
% of Total	4%	10%	12%	8%	6%	4%	4%	2%	4%	6%

Amending Regulations: 2008 – 2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Amending Regulations Filed	380	390	401	345	376	322	268	386	412	493
Total Regulations Filed	456	513	531	468	448	368	312	444	488	594
% of Total	83%	76%	76%	74%	84%	88%	86%	87%	84%	83%

⁵ In 2017, 6 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 600 regulations, representing 101% of the actual number of regulations filed in 2017.

Of the 72 new regulations made in 2017, 11 were made under a statute with no previous regulations.

New Regulations Made in 2017 Under Statutes with No Previous Regulations

Statute	O. Reg. No.	Title of Regulation
<i>Condominium Management Services Act, 2015</i>	123/17	General
<i>Condominium Management Services Act, 2015</i>	177/17	Designation of Administrative Authority
<i>Condominium Management Services Act, 2015</i>	178/17	Delegation of Regulation-Making Authority to the Minister
<i>Infrastructure for Jobs and Prosperity Act, 2015</i>	588/17	Asset Management Planning for Municipal Infrastructure
<i>Ontario Fair Hydro Plan Act, 2017</i>	195/17	Fair Adjustment Under Part II Of The Act
<i>Ontario Fair Hydro Plan Act, 2017</i>	196/17	Invoicing Requirements
<i>Ontario Fair Hydro Plan Act, 2017</i>	206/17	General
<i>Ontario Immigration Act, 2015</i>	421/17	Approvals Under the Ontario Immigrant Nominee Program and Other Matters
<i>Ontario Immigration Act, 2015</i>	422/17	General
<i>Reducing Regulatory Costs for Business Act, 2017</i>	491/17	General
<i>Reducing Regulatory Costs for Business Act, 2017</i>	567/17	Exemptions

REGULATIONS REPORTED

Following our initial review of the 338 regulations filed in the last six months of 2017, we wrote to five ministries to inquire about regulations made under ten Acts. After considering the responses to our inquiries, we have decided to report one regulation under Committee guideline (ii):

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

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

Ministry of Agriculture, Food and Rural Affairs

O. Reg. 542/17 made under the Farm Products Payments Act, amending O. Reg. 321/11 (Fees Payable to Boards)

Issue
Did the Act authorize the Lieutenant Governor in Council to make O. Reg. 542/17?

O. Reg. 321/11 sets the fees payable to the Livestock Financial Protection Board and the Grain Financial Protection Board on the sale of livestock and grain and regulates the payment of those fees. O. Reg. 542/17 revokes and substitutes the definition of livestock for the purpose of O. Reg. 321/11.

Although most regulation-making power under the *Farm Products Payments Act* is assigned to the Lieutenant Governor in Council, s. 8(2) of the Act provides that the Minister may make regulations relating to fees. As O. Reg. 542/17 was made by the Lieutenant Governor in Council, not the Minister, we asked the Ministry for an explanation.

The Ministry responded as follows:

Ontario Regulation 542/17 was made by the Lieutenant Governor in Council [the "LGIC"]. Ontario Regulation 321/11 was made by the Minister of Agriculture, Food and Rural Affairs [the "Minister"].

Given the foregoing, the Ministry of Agriculture, Food and Rural Affairs [the "Ministry"] agrees with your concern. A regulation made by the LGIC cannot amend a regulation made by the Minister. As such, Ontario Regulation 542/17 is not in conformity with Guideline (ii) of Standing Order 108(i) of the Legislative Assembly. . .

The Ministry will seek the requisite approvals to correct the situation.

As the Ministry has indicated that it will seek to correct the situation, the Committee is not making a recommendation.

UPDATE ON RESPONSES TO PREVIOUSLY REPORTED REGULATIONS

Second Report 2017

(Regulations Filed in the Last Six Months of 2016)

Ministry of the Environment, Conservation and Parks – O. Reg. 388/16 (Stewardship Ontario) made under the Waste Diversion Transition Act, 2016

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.” (emphasis added)

O. Reg. 388/16, however, provides for nine *elected* members and one appointed member of the board of Stewardship Ontario. The Committee therefore asked the Ministry whether there is statutory authority to make a regulation providing for the election of board members.

The Ministry replied that

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.

The Committee recommended that the Ministry amend O. Reg. 388/16 to remove references to the election of the board of directors of Stewardship Ontario and to elected members.

As of August 23, 2018, O. Reg. 388/16 had not been amended.

Ministry of Finance - O. Reg. 325/16 made under the Assessment Act, amending O. Reg. 282/98 (General)

Section 3 of O. Reg. 325/16 updates the reference to the “Ontario Living Legacy Land Use Strategy” in s. 25(3) of O. Reg. 282/98.

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

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.

The Committee recommended 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.

The Ministry advised the Committee that the outdated references to publications in paragraph 1 of subsection 25(2) have been corrected by O. Reg. 583/17, filed on December 21, 2017.

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

The Committee noted that O. Reg. 306/16 appeared to contain an inconsistency. Specifically, the regulation indicated that it was approved by the Minister on September 12, 2016, which is the day before the regulation was made by the Bereavement Authority of Ontario.

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

to address this, the Ministry . . . 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 committed to remake O. Reg. 306/16, the Committee did not make a recommendation.

O. Reg. 216/18, filed on April 6, 2018, revoked O. Reg. 306/16 and made a new Code of Ethics regulation.

Ministry of Government and Consumer Services - O. Reg. 444/16 made under the Registry Act, amending O. Reg. 427/99 (Registry Divisions)

As amended by O. Reg. 444/16, s. 2(1) of O. Reg. 427/99 contained references to clauses 4(2)(a) and (c) of the *Registry Act*. The Committee noted that 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.

In light of the Ministry's response, the Committee did not make a recommendation with respect to O. Reg. 444/16.

O. Reg. 89/18, filed on March 7, 2018, removed the references to repealed provisions of the *Registry Act*.

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)

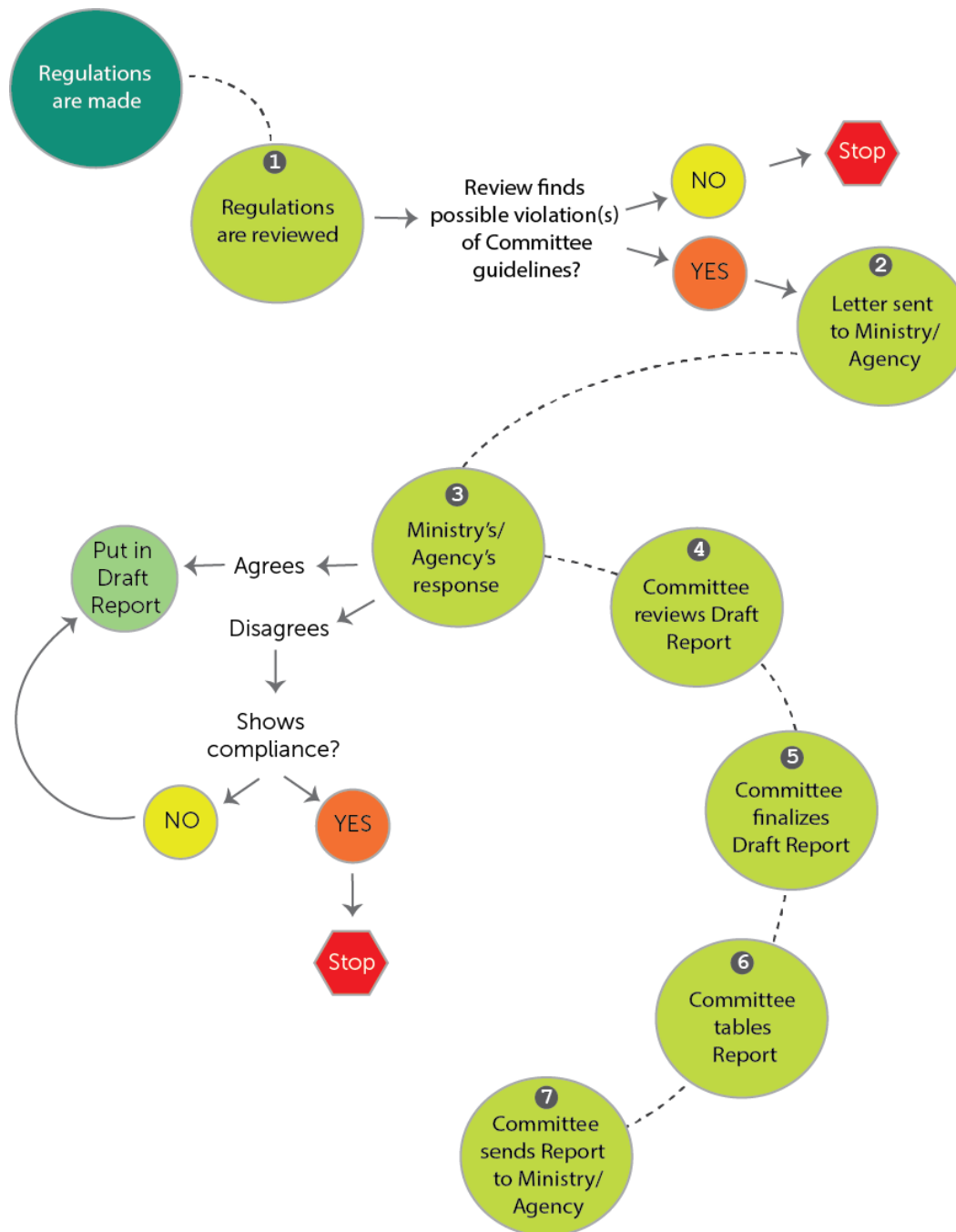
108 Within the first 10 Sessional days following the commencement of a Parliament, the membership of the following Standing Committees shall be appointed, on motion with notice, for the duration of the Parliament:

- 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 2017

Act	No. of Regulations
<i>Highway Traffic Act</i>	57
<i>Education Act</i>	51
<i>Environmental Protection Act</i>	21
<i>Municipal Act, 2001</i>	20
<i>Electricity Act, 1998</i>	19
<i>Health Protection and Promotion Act, 1990</i>	16
<i>Ontario Energy Board, 1998</i>	16
<i>Pension Benefits Act</i>	15
<i>Fish and Wildlife Conservation Act, 1997</i>	14
<i>City of Toronto Act, 2006</i>	11
<i>Climate Change Mitigation and Low-carbon Economy Act, 2016</i>	10
<i>Development Corporations Act</i>	10
<i>Employment Standards Act, 2000</i>	10
<i>Mining Act</i>	10

APPENDIX E

Ministries and Offices and the Number of Regulations Filed in 2017 for Which Each Was Responsible⁶

Ministry/Office	No. of Regulations
Transportation	65
Municipal Affairs and Housing	61
Health and Long-Term Care	59
Energy, Northern Development and Mines	58
Finance	54
Education	54
Environment, Conservation and Parks	46
Government and Consumer Services	36
Natural Resources and Forestry	30
Labour	28
Attorney General	26
Children, Community and Social Services	17
Economic Development, Job Creation and Trade	15
Agriculture, Food and Rural Affairs	15
Training, Colleges and Universities	11
Treasury Board Secretariat	9
Office of Francophone Affairs	4
Community Safety and Correctional Services	3
Infrastructure	2
Tourism, Culture and Sport	1

⁶ 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 September 5, 2018. The number of regulations for which each Ministry or Office is responsible is derived from the table entitled *Public statutes and ministers responsible* on the Ontario.ca website, at <https://www.ontario.ca/laws/public-statutes-and-ministers-responsible>, accessed in August 2018. Reference was also made to Order in Council 987/2018 to determine current ministerial responsibilities.