

Legislative
Assembly
of Ontario



Assemblée
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de l'Ontario

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.

A handwritten signature in black ink, appearing to read "Kaleed Rasheed".

Kaleed Rasheed, MPP
Chair of the Committee

Queen's Park
March 2019

STANDING COMMITTEE ON REGULATIONS AND PRIVATE
BILLS

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- Eric Rennie, 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 2018 (O. Regs. 1/18 – 385/18), 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 2018.

REGULATION REPORTED

Following our initial review of the 385 regulations filed in the first six months of 2018, we wrote to three ministries to inquire about three regulations. After considering the responses to our inquiries, we have decided to report one regulation 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 Transportation

O. Reg. 334/18 amending O. Reg. 287/08 (Conduct Review Programs) made under the Highway Traffic Act

Issue

The regulation sets out requirements and standards to be met by ignition interlock devices; however the *Highway Traffic Act* no longer specifically authorizes regulations imposing such requirements and standards. Is the regulation authorized under the *Highway Traffic Act*?

Section 4 of O. Reg. 334/18 revokes and substitutes s. 12 of the parent regulation, O. Reg. 287/08. Section 12 sets out the requirements that must be met by an ignition interlock device, including the adoption by reference of standards set out in a document published by the United States National Highway Traffic Safety Administration.

An ignition interlock device is an in-car alcohol breath screening device that prevents a vehicle from being started if it detects a blood alcohol concentration over a pre-set limit.¹

At the time O. Reg. 334/18 was made, the *Highway Traffic Act* contained statutory authority for a regulation prescribing requirements to be met by an ignition interlock device in s. 41.2(16)(b), (18), and (19), which provided as follows:

(16) The Lieutenant Governor in Council may make regulations,

...

(b) respecting the standards governing the installation, operation and maintenance of approved ignition interlock devices for the purposes of this section and Part III.1 of the *Civil Remedies Act, 2001* and requiring persons authorized under subsection (14) to comply with those standards;

...

(18) A regulation under clause (16) (b) may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in

¹ Ministry of Transportation, "Ignition Interlock Program."

Council considers necessary, any code, standard, protocol, procedure or policy, and may require compliance with any code, standard, protocol, procedure or policy.

(19) The power to adopt by reference and require compliance with a code, standard, protocol, procedure or policy in subsection (18) includes the power to adopt a code, standard, protocol, procedure or policy as it may be amended from time to time.

These regulation-making powers have since been repealed by s. 7 of the *Transportation Statute Law Amendment Act, 2015*, S.O. 2015, c. 14, which was proclaimed in force on July 1, 2018.

Section 55 of the *Legislation Act, 2006* provides that

if a provision of an Act under which a regulation is made is repealed and not replaced, the regulation ceases to have effect, subject to section 51 and subsection 59 (3).

In light of the repeal of s. 41.2(16)(b), (18), and (19), and in light of s. 55 of the *Legislation Act, 2006*, we asked the Ministry whether there is currently statutory authority for s. 12 of O. Reg. 287/08.

The Ministry replied as follows:

Our view is that subsections 57(3) and (4) of the Act authorize the establishment of ignition interlock conduct review programs and the making of regulations governing those programs. This is in part due to the amendments made to section 57 in the same statute that included the repeal of section 41.2 of the Act . . .

Prior to the repeal of section 41.2 of the Act, ignition interlock programs were authorized under both of sections 41.2 and 57. At that time there were also two regulations governing interlock programs, O. Reg. 251/02 (now revoked) and O. Reg. 287/08. While only section 57 and O. Reg. 287/08 now remain, we believe that section 57 is sufficient to govern those programs, including establishing requirements for the ignition interlock devices.

We note that subsection 57(1) of the *Highway Traffic Act* provides for regulations establishing conduct review programs. Subsection 57(3) specifies that such programs may consist of or include, among other things, “the required installation and use of a device in a motor vehicle, such as an ignition interlock device.”

Paragraph 57(4)(d) of the *Highway Traffic Act* authorizes a regulation to “establish and govern interlock programs.”

Although the Ministry has made the case that there is authority to make regulations governing conduct review programs, the Committee’s view is that the *Highway Traffic Act* no longer provides specific authority for the regulation of standards governing the installation, operation and maintenance of approved ignition interlock devices. Recently repealed provisions of the *Highway Traffic Act* specifically authorized regulations setting out those standards.

Recommendation

The Committee recommends that the Ministry of Transportation take steps to bring forward a Bill to amend the *Highway Traffic Act* to provide specific authority for s. 12 of O. Reg. 287/08.

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 2018.

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

