

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.

Logan Kanapathi, MPP

Logan Kanapathi, MPP
Chair of the Committee

Queen's Park
April 2021

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS
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1st Session, 42nd Parliament

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- Isaiah Thorning, 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 Legislative Research. Ms. Hauerstock performed the examination of the regulations covered in this report, 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

This report covers the 475 regulations filed under Ontario statutes in 2019.

The report is presented in accordance with the Committee's terms of reference, which are set out in the *Legislation Act, 2006*, and in the Standing Orders of the Legislative Assembly.

Section 33 of the Act (Appendix A to this report) 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 111(i) (Appendix B to this report) 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: 2000–2019

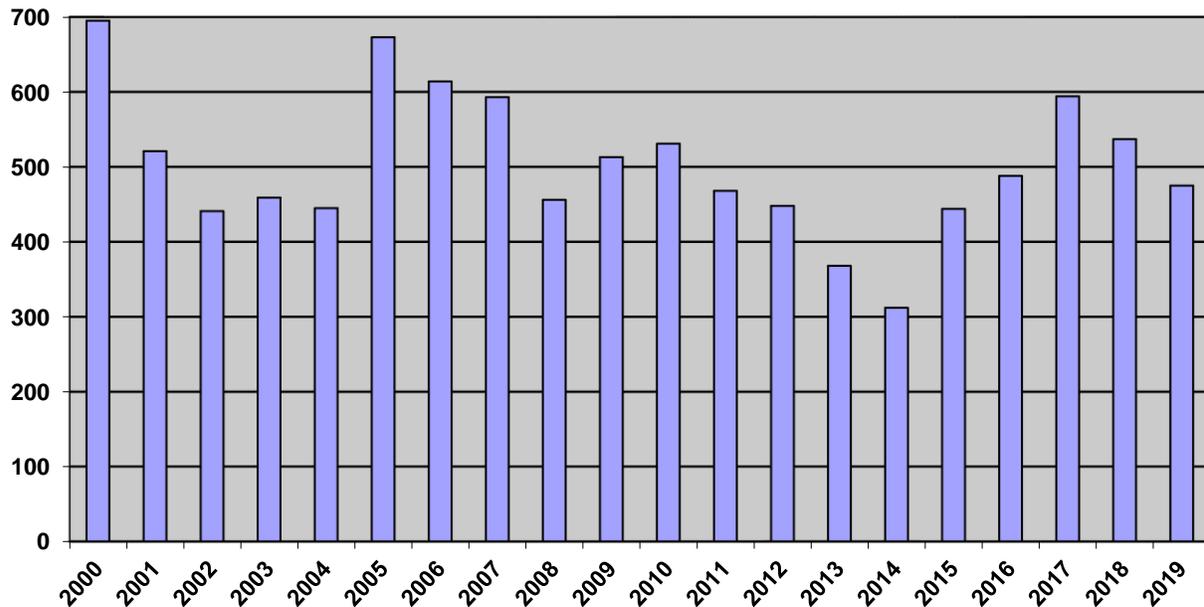
Number of Regulations Made

The graph on the following page indicates the number of regulations filed with the Registrar of Regulations from 2000 to 2019.¹ Over this 20-year period, the average number filed each year was 504.²

¹ The actual number of regulations filed in each year was as follows: **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); **2018** (537); **2019** (475).

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

Total Regulations Filed: 2000–2019



The 475 regulations filed in 2019 were made under the authority of 142 Acts, under the administration of 20 ministries and offices.³ Eight Acts generated at least 10 regulations each; these represented 39% of all regulations filed in 2019.

Appendix D lists the Acts under which at least 10 regulations were made in 2019. Appendix E sets out the ministries and offices responsible for regulations made in 2019 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

³ The list of Ministries used for this calculation is found on the Ontario.ca website at *Ministries*, <https://www.ontario.ca/page/ministries>, accessed November 19, 2020.

⁴ These descriptions are based on information found on the Ontario.ca website at *e-Laws definitions: A collection of terms used on e-Laws and their definitions*, <http://www.ontario.ca/laws/e-laws-definitions>, accessed November 25, 2020.

The tables below show the number of new, revoking, and amending regulations made in the years 2010 to 2019, and the proportion they represent of all regulations made in a particular year.⁵

New Regulations: 2010–2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
New Regulations Filed	66	91	57	38	37	52	71	72	116	59
Total Regulations Filed	531	468	448	368	312	444	488	594	537	475
% of Total	12%	19%	13%	10%	12%	12%	15%	12%	22%	12%

Revoking Regulations: 2010–2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Revoking Regulations Filed	64	36	29	15	13	10	21	35	28	20
Total Regulations Filed	531	468	448	368	312	444	488	594	537	475
% of Total	12%	8%	6%	4%	4%	2%	4%	6%	5%	4%

Amending Regulations: 2010–2019

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Amending Regulations Filed	401	345	376	322	268	386	412	493	405	399
Total Regulations Filed	531	468	448	368	312	444	488	594	537	475
% of Total	76%	74%	84%	88%	86%	87%	84%	83%	75%	84%

⁵ In 2019, 3 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.

Of the 59 new regulations made in 2019, 16 were made under a statute with no previous regulations.

New Regulations Made in 2019 Under Statutes with No Previous Regulations

Statute	O. Reg. No.	Title of Regulation
<i>Connecting Care Act, 2019</i>	376/19	Additional Objects of the Agency
<i>Connecting Care Act, 2019</i>	390/19	Prescribed Organization
<i>Crown Liability and Proceedings Act, 2019</i>	210/19	Garnishment
<i>Education Quality and Accountability Office Act, 1996</i>	272/19	Objects of the Office
<i>Federal Carbon Tax Transparency Act, 2019</i>	275/19	General
<i>Financial Services Regulatory Authority of Ontario Act, 2016</i>	165/19	Additional Object
<i>Financial Services Tribunal Act, 2017</i>	144/19	Assessments
<i>Hydro One Accountability Act, 2018</i>	54/19	Compensation Disclosure
<i>Missing Persons Act, 2018</i>	182/19	General
<i>Provincial Animal Welfare Services Act, 2019</i>	443/19	Disclosure of Personal Information
<i>Provincial Animal Welfare Services Act, 2019</i>	444/19	Standards of Care and Administrative Requirements
<i>Provincial Animal Welfare Services Act, 2019</i>	445/19	Code of Conduct
<i>Provincial Animal Welfare Services Act, 2019</i>	447/19	Ministerial Prescriptions

Statute	O. Reg. No.	Title of Regulation
<i>Provincial Animal Welfare Services Act, 2019</i>	448/19	Exemptions
<i>Rowan's Law (Concussion Safety), 2018</i>	161/19	General
<i>Tribunal Adjudicative Records Act, 2019</i>	211/19	General

REGULATION REPORTED

Following our initial review of the 475 regulations filed in 2019, we wrote to seven ministries to inquire about 17 regulations made under 10 Acts. After considering the responses to our inquiries, we decided to report one regulation under Committee guideline (ii):

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

Regulations are reported under the Ministry responsible. As a general rule, our comments and recommendations relate to specific provisions of a regulation, rather than to the regulation as a whole.

Ministry of the Environment, Conservation and Parks

O. Reg. 406/19 (On-Site and Excess Soil Management) under the Environmental Protection Act

Issue

Does the *Environmental Protection Act* authorize a regulation granting provincial officers the power to issue orders specifying alternate conditions that apply to excess soil?

For the purposes of Part V (Waste Management) of the *Environmental Protection Act* (the EPA), s. 3(1) of O. Reg. 406/19 (On-Site and Excess Soil Management) designates excess soil as “waste.” Under s. 3(2), excess soil is deemed not to be waste if certain criteria are met. In addition, where a criterion listed in s. 3(2) ceases to be satisfied, a provincial officer has authority under s. 3(4) (by order made under s. 157 of the EPA) to specify a new criterion that applies, “instead of the criterion that is not being satisfied.”

Section 157 of the EPA authorizes provincial officers to issue orders when a person is believed to be in contravention of, among other things, a provision of the Act or the regulations. Subsection 157(3) describes directions the orders may set out, such as directions relating to achieving compliance with a condition or preventing the continuation or repetition of a contravention.

Our review did not locate explicit authority in the Act to make regulations authorizing a provincial officer to make the type of order set out in s. 3(4) of the Regulation; namely, an order specifying criteria different from those prescribed by s. 3(2).

We therefore asked the Ministry about the statutory authority for s. 3(4) of the Regulation.

In its response, the Ministry noted generally that

the provisions of the Regulation also rely on subsection 176(4) of the EPA which sets out the regulation-making authority provisions relating to Part V. Further, clause 176 (1)(g) authorizes regulations to be made “governing the disposal of soil, rock or related material from property.” Finally, clause 175.1 (1)(b) sets out a broad regulating-making authority authorizing regulations prohibiting, regulating or controlling the transfer, storage or disposal of any waste.

With respect to the issuance of orders under s. 157 of the EPA, the Ministry replied that “the inclusion of subsections 3(3) to 3(5) in the Regulation . . . is intended to address the practical difficulties associated with the way in which the waste designation operates.”

The Ministry further explained that

the provisions in the Regulation dealing with section 157 provincial officer’s orders merely ensure that the waste designation includes some practical flexibility to achieve compliance with the Regulation. Clause 157(3)(a) of the EPA authorizes a provincial officer’s order to include directions aimed at achieving compliance. Subsections 3(3) to 3(5) of the Regulation were included so that a provincial officer would not need to require the removal of the excess soil from a reuse site or that the reuse site operator apply for an ECA [environmental compliance approval] in every instance where there is a failure to comply with subsection 3(2) of the Regulation due to the application of the waste designation. The provisions in the Regulation give the provincial officer the authority to specify in an order alternative conditions that will ensure the excess soil can be safely reused at the site and not be designated a waste, thereby ensuring compliance with subsection 3(2).

In short, the Ministry submits that the regulation-making powers set out in ss. 175.1, 176(g), and 176(4) of the EPA, when read in conjunction with the power to issue orders under s. 157(3)(a), are sufficient authority for s. 3(4) of the Regulation.

The Committee remains of the view, however, that there needs to be more explicit regulation-making power in the Act to support a regulation that gives provincial officers broad discretion to specify criteria, other than what has already been prescribed.

Moreover, while the Ministry has explained the policy basis for s. 3(4), we note that the Committee's terms of reference expressly exclude any consideration of "the merits of the policy or objectives to be effected by the regulations or enabling Acts."

Recommendation

The Committee recommends that the Ministry of the Environment, Conservation and Parks take the steps necessary to amend the *Environmental Protection Act* to provide authority for the type of orders contemplated by s. 3(4) of O. Reg. 406/19.

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 111(i)

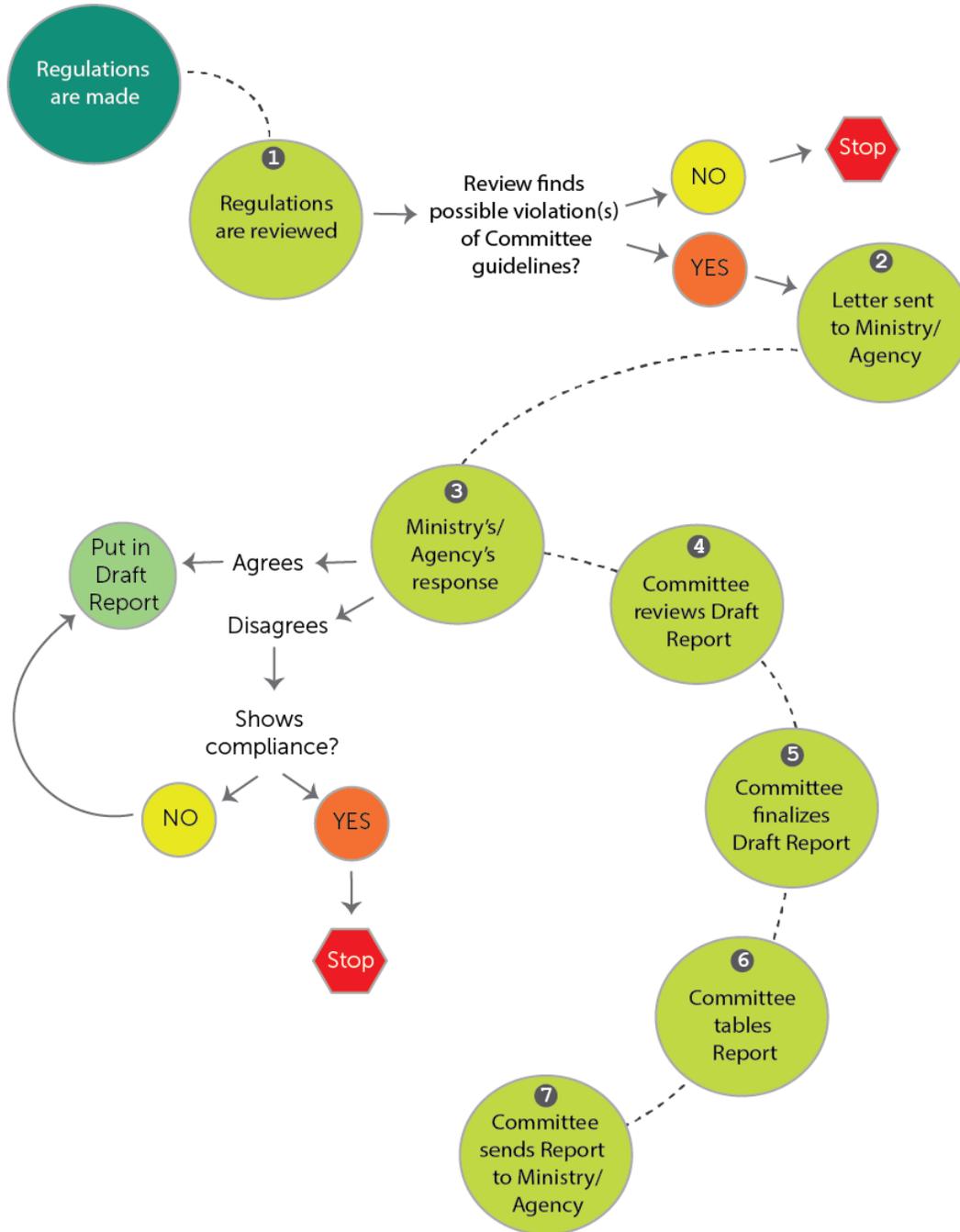
111 Within the first 10 Sessional days following the commencement of a Parliament, the membership of the following Standing Committees shall be appointed, on motion with notice, for the duration of the Parliament:

- 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 2019**

Act	No. of Regulations
<i>Highway Traffic Act</i>	59
<i>Education Act</i>	28
<i>Pension Benefits Act</i>	25
<i>Insurance Act</i>	20
<i>Planning Act</i>	18
<i>Environmental Protection Act</i>	16
<i>Occupational Health and Safety Act</i>	11
<i>Public Service of Ontario Act, 2006</i>	10

APPENDIX E

Ministries and Offices and the Number of Regulations Filed in 2019 for Which Each Was Responsible⁶

Ministry/Office	No. of Regulations
Finance	78
Transportation	67
Attorney General	50
Health	40
Municipal Affairs and Housing	39
Education	34
Environment, Conservation and Parks	28
Energy, Northern Development and Mines	26
Labour, Training and Skills Development	25
Government and Consumer Services	24
Solicitor General	18
Agriculture, Food and Rural Affairs	14
Treasury Board Secretariat	11
Children, Community and Social Services	8
Natural Resources and Forestry	4
Colleges and Universities	3
Francophone Affairs	2
Long-Term Care	2
Economic Development, Job Creation and Trade	1
Heritage, Sport, Tourism and Culture Industries	1

⁶ The list of Ministries used for this table is found on the Ontario.ca website at *Ministries* at <https://www.ontario.ca/page/ministries>, accessed November 19, 2020. 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 November 2020.