

Legislative
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STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

SECOND REPORT 2021

2nd Session, 42nd Parliament
70 Elizabeth II

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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 "Aris Babikian".

Aris Babikian, MPP
Chair of the Committee

Queen's Park
November 2021

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS
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2nd 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

- 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 supervised the regulations review.

INTRODUCTION: SCOPE OF THIS REPORT AND THE COMMITTEE'S MANDATE

The Standing Committee on Regulations and Private Bills presents this report on regulations filed under Ontario statutes during the period January 1 to June 30, 2020 (O. Regs. 1/20 – 342/20).

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

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 111(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 reports 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 2020.

REGULATIONS REPORTED

Following our initial review of the 342 regulations filed in the first six months of 2020, we wrote to six ministries to inquire about fifteen regulations. After considering the ministries' responses, we decided to report two regulations under the Committee's second guideline. The second guideline reads:

- (ii) 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 Education

O. Reg. 261/20 amending O. Reg. 137/15 (General) made under the Childcare and Early Years Act, 2014

<p style="text-align: center;">Issue</p>

<p>Was the required public notice provided with respect to the regulation?</p>
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Section 84 of the *Child Care and Early Years Act, 2014* (CCEYA) requires the Minister to publish notice of a proposed regulation on a government website (and in any other format the Minister considers advisable) and provide the public with a minimum of 45 days to submit comments on the proposed regulation. Section 84 further provides that the Minister may decide that the notice requirement should not apply in urgent situations or where the proposed regulation is of a minor or technical nature. In that case, the Minister must give notice to the public of this decision as soon as possible.

Our initial review did not reveal whether the Minister had given notice of the proposed regulation or notice of a decision that the notice requirement did not apply. This raised the possibility that the regulation had not been made “in strict accord with the statute conferring of power” (Committee Guideline ii).

Accordingly, the Committee asked the Ministry whether the notice requirements of s. 84 of the CCEYA had been satisfied with respect to the making of O. Reg. 261/20.

The Ministry noted in its response that O. Reg. 261/20 amended O. Reg. 137/15 in relation to the re-opening and safe operation of child care and early years programs following emergency closures due to the COVID-19 pandemic. In accordance with subsection 84(6) of the CCEYA, the Minister decided that, due to the urgency of the situation, public consultation requirements should not apply to the amending regulation. The Ministry also noted that notice of this decision had now been posted on the Ontario Regulatory Registry.

As the Ministry has now posted the required notice, the Committee is not making a recommendation.

Ministry of Health

O. Reg. 63/20 amending Regulation 965 of R.R.O. 1990 (Hospital Management) made under the Public Hospitals Act

<p style="text-align: center;">Issue</p>

<p>Was the regulation made by the proper authority?</p>

Section 32 of the *Public Hospitals Act* (PHA) assigns all regulation-making powers under the Act to the Minister of Health. Under s. 32(1), the Minister's power to make regulations is subject to the approval of the Lieutenant Governor in Council (LGIC).

As filed, it appeared that O. Reg. 63/20 had been made by the LGIC, not the Minister. Again, this indicated a possible violation of the Committee's second guideline.

We therefore asked the Ministry whether O. Reg. 63/20 had been made by the proper authority.

In its response to the Committee, the Ministry said that, in its view, O. Reg. 63/20 "was made in a manner which accords with the requirements of the parent statute." In particular, the Ministry explained that

pursuant to subsection 32(1) of the PHA, a regulation cannot be made without the approval of the LGIC. In the present instance, the Minister signed the regulation and put it forward for approval by the LGIC. We would submit that the signed recommendation of this regulation by the Minister, combined with its subsequent approval by the LGIC, fulfilled the PHA requirements in all important respects.

Despite the Ministry's explanation, it remains unclear whether the regulation was, in fact, made by the Minister, as required by the Act.

In our view, the regulation should clearly indicate that it has been made in the manner required by the PHA.

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 2020.

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

