

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

## **FIRST REPORT 2022**

2<sup>nd</sup> Session, 42<sup>nd</sup> 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.

Aris Babikian, MPP  
Chair of the Committee

Queen's Park  
April 2022



STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS  
MEMBERSHIP LIST

2<sup>nd</sup> Session, 42<sup>nd</sup> Parliament

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STEPHEN CRAWFORD, MICHAEL MANTHA, and RANDY PETTAPIECE served as substitute members of the committee.

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Clerk of the Committee

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#### ACKNOWLEDGEMENTS

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**

This report covers the 449 regulations filed under Ontario statutes during the period July 1 to December 31, 2020 (O. Regs. 343/20 - 791/20).

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) 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 reports is set out in Appendix C.

## **STATISTICS: 2001–2020**

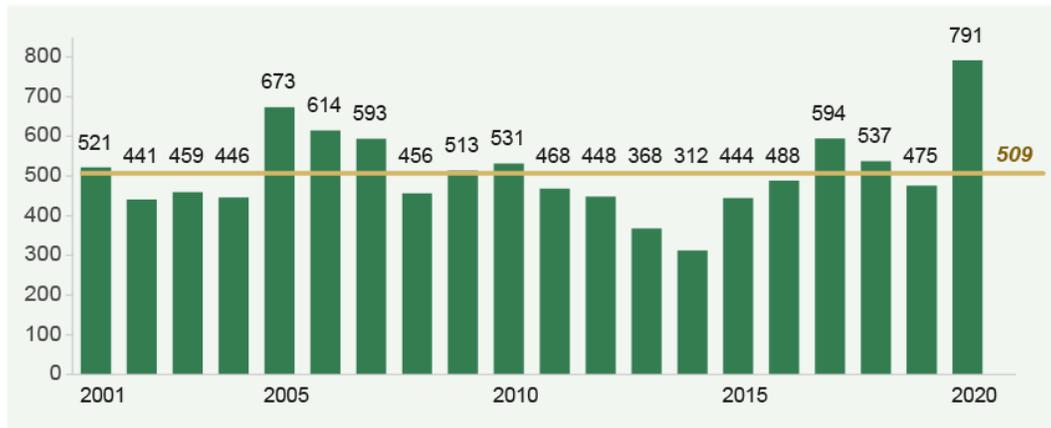
### **Number of Regulations Filed**

The graph on the following page indicates the number of regulations filed with the Registrar of Regulations from 2001 to 2020. Over this 20-year period, the average number filed each year was 509.<sup>1</sup>

### **Total Regulations Filed: 2001-2020**

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<sup>1</sup> 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.)



The 791 regulations filed in 2020 were made under the authority of 155 Acts, under the administration of 21 ministries and one associate ministry.<sup>2</sup> Eleven Acts generated at least 10 regulations each; these represented 55% of all regulations filed in 2020.

Appendix D lists the Acts under which at least 10 regulations were filed in 2020. Appendix E sets out the ministries and associate ministries responsible for regulations filed in 2020 and the number falling under each ministry or associate ministry.

## 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 a pre-existing or “parent” regulation.<sup>3</sup>

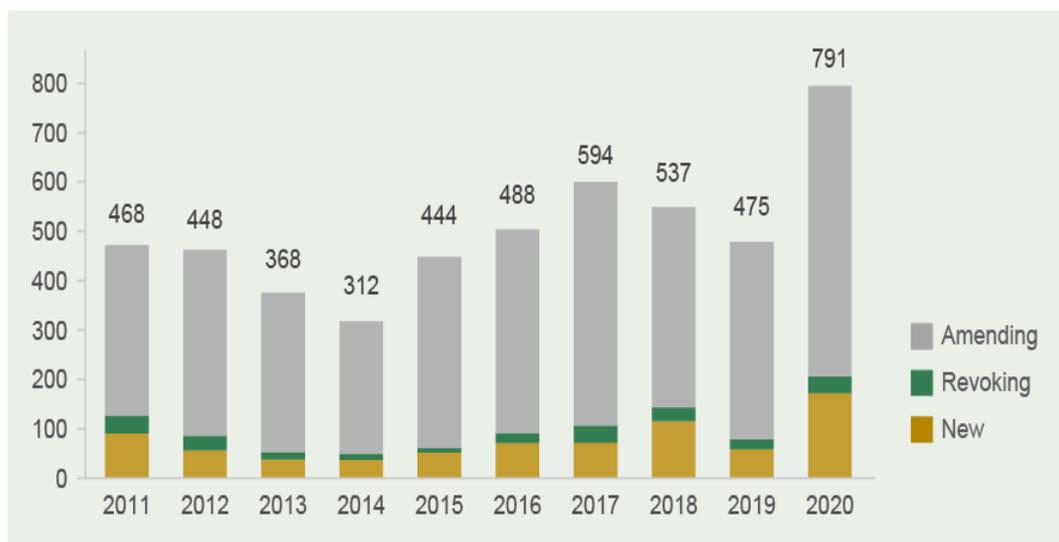
The tables below show the number of new, revoking, and amending regulations filed in the years 2011 to 2020, and the proportion they represent of all regulations filed in a particular year.<sup>4</sup>

<sup>2</sup> The list of Ministries used for this calculation is found on the Ontario.ca website at *Ministries*, <https://www.ontario.ca/page/ministries>, accessed March 17, 2022.

<sup>3</sup> 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 March 30, 2022.

<sup>4</sup> In 2020, 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.

### New, Revoking, and Amending Regulations Filed: 2011–2020



### New, Revoking, and Amending Regulations Filed: 2011–2020

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
<b>New</b>	91	57	38	37	52	71	72	116	59	172
% of total	19%	13%	10%	12%	12%	15%	12%	22%	12%	22%
<b>Revoking</b>	36	29	15	13	10	21	35	28	20	34
% of total	8%	6%	4%	4%	2%	4%	6%	5%	4%	4%
<b>Amending</b>	345	376	322	268	386	412	493	405	399	588
% of total	74%	84%	88%	86%	87%	84%	83%	75%	84%	74%
<b>Total</b>	<b>468</b>	<b>448</b>	<b>368</b>	<b>312</b>	<b>444</b>	<b>488</b>	<b>594</b>	<b>537</b>	<b>475</b>	<b>791</b>

Of the 172 new regulations filed in 2020, 60 were made under a statute with no previous regulations.

## New Regulations Filed in 2020 Under Statutes with No Previous Regulations

Statute	O. Reg. No. and Title of Regulation
<i>Burden Reduction Reporting Act, 2014</i>	O. Reg. 292/20 Annual Report
<i>Class Proceedings Act, 1992</i>	O. Reg. 497/20 General O. Reg. 498/20 Subrogated Claims
<i>Commercial Tenancies Act</i>	O. Reg. 763/20 Non-Enforcement Period - Prescribed Tenancies
<i>Modernizing Ontario for People and Businesses Act, 2020</i>	O. Reg. 555/20 General O. Reg. 556/20 Exemptions
<i>New Home Construction Licensing Act, 2017</i>	O. Reg. 624/20 Regulatory Authority - Designation and Delegated Provisions O. Reg. 625/20 Delegation of Regulation-Making Authorities O. Reg. 626/20 General O. Reg. 628/20 Regulatory Authority - Compensation Disclosure O. Reg. 629/20 Addenda to Agreements Between Vendors and Purchasers O. Reg. 630/20 Transitional Matters O. Reg. 631/20 Applications for Licences
<i>Protecting a Sustainable Public Sector for Future Generations Act, 2019</i>	O. Reg. 658/20 Moderation Periods Under Subsection 9(5) of the Act O. Reg. 659/20 Exemptions Under Section 27 of the Act
<i>Reopening Ontario (A Flexible Response to COVID-19) Act, 2020</i>	O. Reg. 73/20 Limitation Periods O. Reg. 74/20 Work Redeployment for Certain Health Services Providers O. Reg. 75/20 Drinking Water Systems and Sewage Works O. Reg. 76/20 Electronic Service O. Reg. 77/20 Work Deployment Measures in Long-Term Care Homes O. Reg. 80/20 Electricity Price for RPP Consumers O. Reg. 82/20 Rules for Areas in Shutdown Zone and at Step 1 O. Reg. 95/20 Streamlining Requirements for Long-Term Care Homes

Statute	O. Reg. No. and Title of Regulation
	<p>O. Reg. 98/20 Prohibition on Certain Persons Charging Unconscionable Prices for Sales of Necessary Goods</p> <p>O. Reg. 114/20 Enforcement of Orders</p> <p>O. Reg. 116/20 Work Deployment Measures for Boards of Health</p> <p>O. Reg. 118/20 Work Deployment Measures in Retirement Homes</p> <p>O. Reg. 121/20 Service Agencies Providing Services and Supports to Adults with Developmental Disabilities and Service Providers Providing Intervenor Services</p> <p>O. Reg. 129/20 Signatures in Wills and Powers of Attorney</p> <p>O. Reg. 132/20 Use of Force and Firearms in Policing Services</p> <p>O. Reg. 141/20 Temporary Health or Residential Facilities</p> <p>O. Reg. 145/20 Work Deployment Measures for Service Agencies Providing Violence Against Women Residential Services and Crisis Line Services</p> <p>O. Reg. 146/20 Limiting Work to a Single Long-Term Care Home</p> <p>O. Reg. 154/20 Work Deployment Measures for District Social Services Administration Boards</p> <p>O. Reg. 156/20 Deployment of Employees of Service Provider Organizations</p> <p>O. Reg. 157/20 Work Deployment Measures for Municipalities</p> <p>O. Reg. 158/20 Limiting Work to A Single Retirement Home</p> <p>O. Reg. 163/20 Work Deployment Measures for Mental Health and Addictions Agencies</p> <p>O. Reg. 177/20 Congregate Care Settings</p> <p>O. Reg. 190/20 Access to Personal Health Information by Means of the Electronic Health Record</p> <p>O. Reg. 192/20 Certain Persons Enabled to Issue Medical Certificates of Death</p> <p>O. Reg. 193/20 Hospital Credentialing Processes</p> <p>O. Reg. 195/20 Treatment of Temporary Covid-</p>

Statute	O. Reg. No. and Title of Regulation
	19 Related Payments to Employees O. Reg. 205/20 Education Sector O. Reg. 210/20 Management of Long-Term Care Homes in Outbreak O. Reg. 240/20 Management of Retirement Homes in Outbreak O. Reg. 241/20 Special Rules Re Temporary Pandemic Pay O. Reg. 263/20 Rules for Areas in Step 2 O. Reg. 345/20 Patios O. Reg. 363/20 Steps of Reopening O. Reg. 364/20 Rules for Areas at Step 3 and at the Roadmap Exit Step O. Reg. 458/20 Extensions of Orders
<i>Security from Trespass and Protecting Food Safety Act, 2020</i>	O. Reg. 701/20 General
<i>Soldiers' Aid Commission Act, 2020</i>	O. Reg. 703/20 General
<i>Special Investigations Unit Act, 2019</i>	O. Reg. 660/20 General Matters Under the Authority of The Minister O. Reg. 665/20 General Matters Under the Authority of the Lieutenant Governor in Council
<i>Supply Chain Management Act (Government, Broader Public Sector and Health Sector Entities), 2019</i>	O. Reg. 91/20 Health Sector Entities O. Reg. 92/20 Coronavirus (Covid-19) Response and Recovery O. Reg. 612/20 Centralized Supply Chain Ontario
<i>Supporting Local Restaurants Act, 2020</i>	O. Reg. 748/20 General

## REGULATIONS REPORTED

Following our initial review of the 449 regulations filed in the second six months of 2020, we wrote to six ministries to inquire about eight regulations made under six Acts. After considering the responses to our inquiries, we decided to report one regulation 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 Agriculture, Food and Rural Affairs

*O. Reg. 723/20, amending Regulation 55 of R.R.O. 1990 (Weighing of Carcasses) under the Beef Cattle Marketing Act*

#### Issue

Does the *Beef Cattle Marketing Act* authorize a regulation to incorporate by reference a document prepared by a private, not-for-profit corporation on a rolling basis?

O. Reg. 723/20 amends the definitions of "beef carcass" and "veal carcass" in its parent regulation, Regulation 55 (Weighing of Carcasses).

Prior to these amendments, the definitions in Regulation 55 referred to the meanings found in federal regulations.

As amended by O. Reg. 723/20, the definitions refer to the *Beef, Bison and Veal Carcass Grade Requirements* (the Grades Document) prepared by a private, not-for-profit corporation, as follows:

"beef carcass" has the same meaning as in the document entitled "Beef, Bison and Veal Carcass Grade Requirements" prepared by the Canadian Beef Grading Agency and published on its website, as that document exists from time to time.

"veal carcass" has the same meaning as in the document entitled "Beef, Bison and Veal Carcass Grade Requirements" prepared by the Canadian Beef Grading Agency and published on its website, as that document exists from time to time.

Upon reviewing these definitions, we noted that, by referencing the Grades Document as it "exists from time to time," it appears the intent of the regulation is to prescribe definitions that are based on "rolling incorporation." Section 62(3) of the *Legislation Act, 2006*, however, provides that incorporation of a document by reference is "a reference to it as it read when the provision containing the

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reference was most recently enacted, made or amended” (i.e., “static incorporation”).

We therefore asked the Ministry whether the definitions in Regulation 55, as amended, are consistent with the *Legislation Act, 2006*.

In its response, the Ministry noted that the rule on static incorporation does not apply where a contrary intention appears, or the application would give a term or provision a meaning that is inconsistent with the context. In the case of the *Beef Cattle Marketing Act*, the Ministry said that it would be inconsistent with the Act to bar the use of the Grades Document to define a beef carcass and a veal carcass:

[The] adoption of the Grades Document ensures that what are considered beef carcasses and veal carcasses under the Act is consistent in Ontario based on industry standards. The Grades Document is intended to evolve as industry standards evolve. It seems therefore implicit that if the regulations chose to defer to industry standards for the definition of these carcasses 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.

The Ministry also pointed out that it could have amended Regulation 55 to incorporate the federal *Safe Food for Canadians Regulation*, which, in turn, incorporates the Grades Document on a rolling incorporation basis. The authority to incorporate other Canadian legislation into an Ontario statute or regulation stems from s. 60 of the *Legislation Act, 2006*, which provides that, “a reference in an Act or regulation to a provision of an Act or regulation of Canada or of another province or territory of Canada is a reference to the provision . . . as amended, re-enacted or remade.” [Emphasis added]

If the Ministry had elected to amend Regulation 55 in this way, the Grades Document (as it exists from time to time) could have been incorporated into the regulation indirectly, through the federal regulation.

As explained by the Ministry, however:

while this would have been expressly authorized under s. 60 of the *Legislation Act, 2006*, it would have resulted in a multi-layer nested incorporation, and would have been unduly confusing for the reader.

The Ministry also referenced the Standing Committee’s First Report 2018, which included a discussion of rolling incorporation in connection with a regulation made under the *Farm Implements Act*. In that instance, the Standing Committee stated that

given the explanation provided by the Ministry by letter and in person, the Committee is satisfied, and is not making a recommendation.

While the Ministry has emphasized the advantages of rolling incorporation with respect to Regulation 55, the Committee’s view is that the authority to make regulations providing for the rolling incorporation of documents (as opposed to other legislation) should be unequivocal. That authority is not found in the *Beef*

*Cattle Marketing Act*. Under the Act, only the Minister has authority to make, and therefore amend, regulations with respect to the weighing of cattle. As amended by O. Reg. 723/20, however, Regulation 55 has the effect of enabling a private corporation, by way of a document that it prepares and publishes, to modify the meaning of the regulation. This is not expressly authorized under the Act, and, in our view, may amount to a violation of the Committee's second guideline.

The rolling definition is consistent with the purpose of the *Beef Cattle Marketing Act*, including the establishment and standardization of the sale of beef and to stimulate the cattle industry.

For these reasons, the Committee is satisfied with the regulation as written and is not making a recommendation.

## **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.

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## APPENDIX B

### Standing Order 111(i)

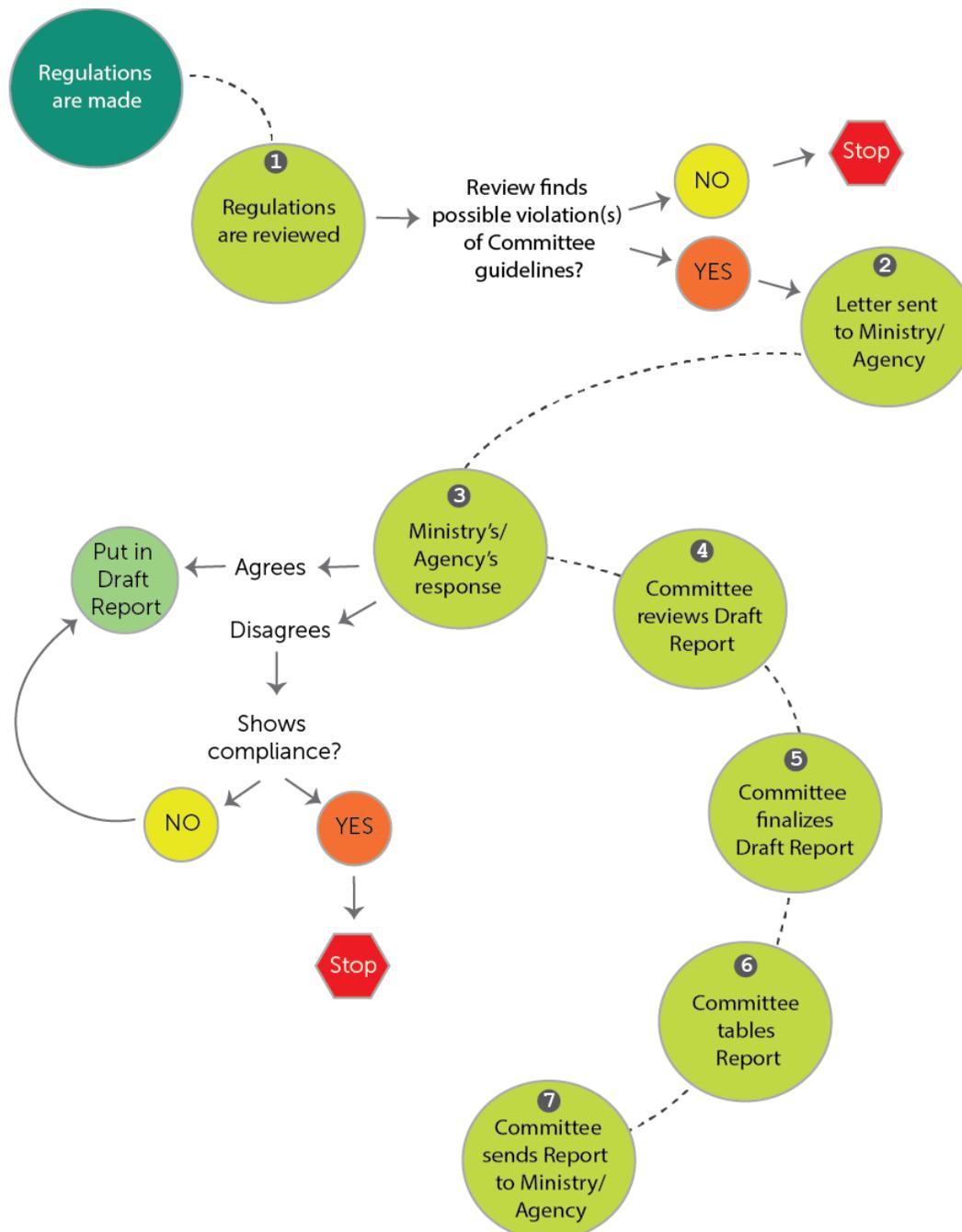
**111** Within the first 10 Sessional days following the commencement of a Parliament, the membership of the following Standing Committees shall be appointed, on motion with notice, for the duration of the Parliament:

- 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.

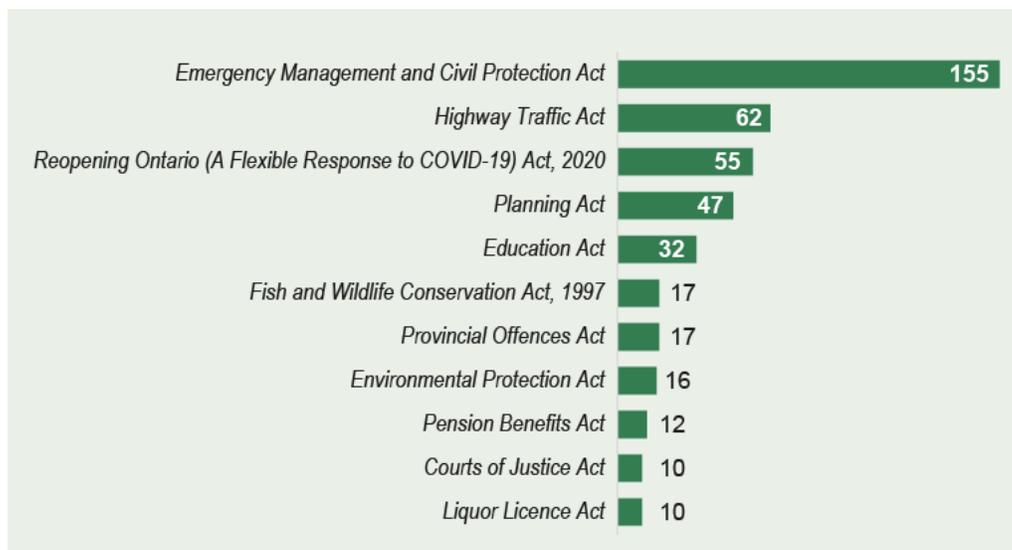
## APPENDIX C

### Committee's Process for the Review of Regulations



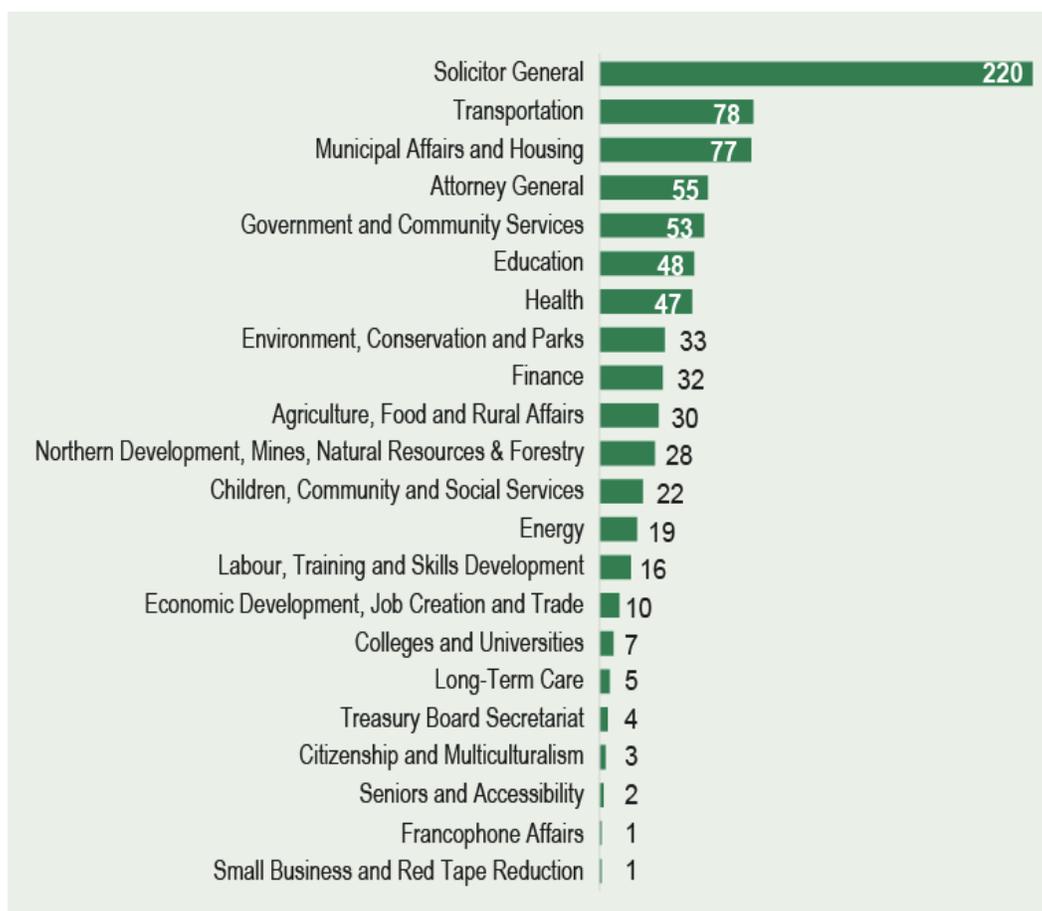
## APPENDIX D

### Acts Under Whose Authority Ten or More Regulations Were Filed in 2020



## APPENDIX E

### Ministries and Associate Ministries and the Number of Regulations Filed in 2020 for Which Each Was Responsible<sup>5</sup>



<sup>5</sup> 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 March 17, 2022. The number of regulations for which each Ministry or Associate Ministry 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 March 2022.

