

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS

FIRST REPORT ON REGULATIONS 2023

1st Session, 43rd Parliament
2 Charles III

ISBN 978-1-4868-7339-5 (Print)
ISBN 978-1-4868-7340-1 [English] (PDF)
ISBN 978-1-4868-7343-2 [French] (PDF)
ISBN 978-1-4868-7341-8 [English] (HTML)
ISBN 978-1-4868-7344-9 [French] (HTML)

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The Honourable Ted Arnott, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Procedure and House Affairs has the honour to present its Report and commends it to the House.

A handwritten signature in cursive script that reads "Jennifer French".

Jennifer K. French, MPP
Chair of the Committee

Queen's Park
September 2023

STANDING COMMITTEE ON PROCEDURE AND HOUSE AFFAIRS MEMBERSHIP LIST

1st Session, 43rd Parliament

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Research Officer

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

This report covers the 912 regulations filed under Ontario statutes in 2021.

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 110(g) (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.

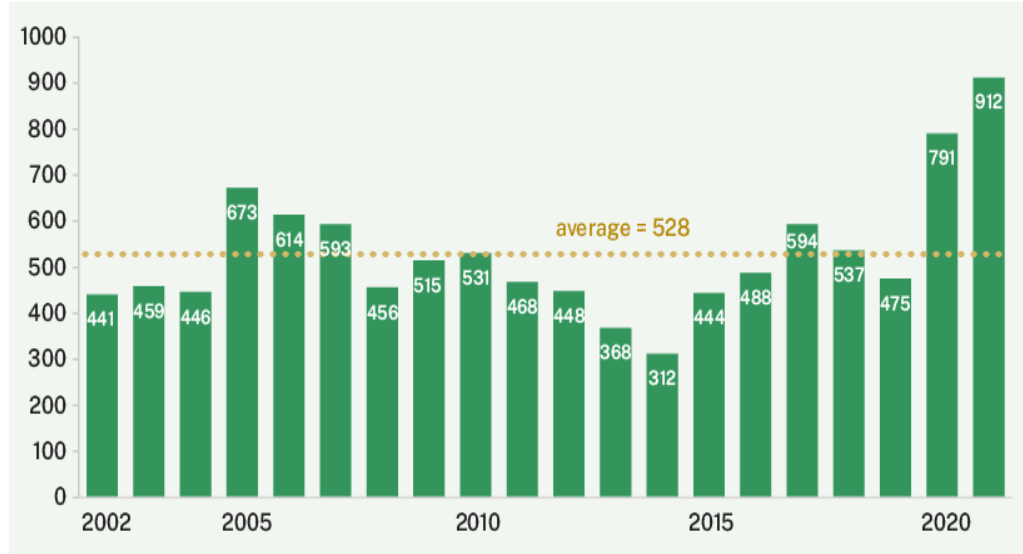
STATISTICS: 2002–2021

Number of Regulations Filed

The graph on the following page indicates the number of regulations filed with the Registrar of Regulations from 2002 to 2021. Over this 20-year period, the average number filed each year was 528.¹

¹ 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.)

**Figure 1:
Total Regulations Filed: 2002-2021**



The 912 regulations filed in 2021 were made under the authority of 182 Acts, under the administration of 24 ministries.² Twelve Acts generated at least 10 regulations each; these represented 54% of all regulations filed in 2021.

Appendix D lists the Acts under which at least 10 regulations were filed in 2021.

New, Revoking, and Amending Regulations

Generally, 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.³

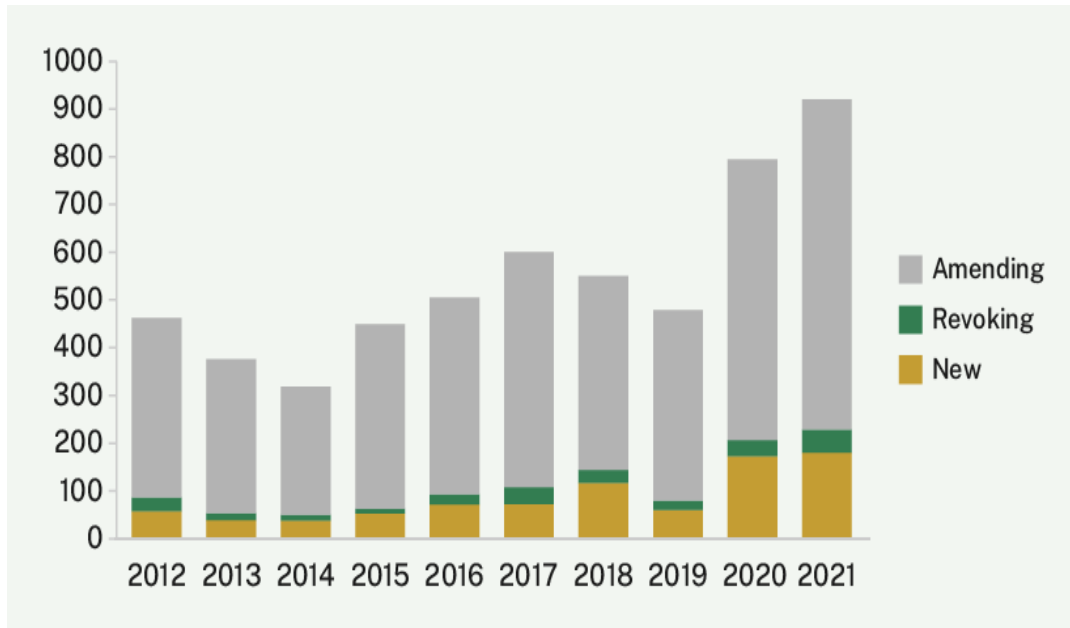
The tables below show the number of new, revoking, and amending regulations filed in the years 2012 to 2021, and the proportion they represent of all regulations filed in a particular year.⁴

² The list of Ministries used for this calculation is found on the Ontario.ca website at [Ministries](#), accessed May 3, 2023.

³ 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](#), accessed May 3, 2023.

⁴ Certain regulations are 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. For this reason, the sum of the percentages shown in Figure 3 totals more than 100% for certain years. In 2021, 7 regulations were identified as both New and Revoking regulations. As a result, the sum of the percentages shown in the table for 2021 totals 101%.

**Figure 2:
New, Revoking, and Amending Regulations Filed: 2012–2021**



**Figure 3:
New, Revoking, and Amending Regulations Filed: 2012–2021**

| | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|-----------------|------|------|------|------|------|------|------|------|------|------|
| New | 57 | 38 | 37 | 52 | 71 | 72 | 116 | 59 | 172 | 180 |
| % of total | 13% | 10% | 12% | 12% | 15% | 12% | 22% | 12% | 22% | 20% |
| Revoking | 29 | 15 | 13 | 10 | 21 | 35 | 28 | 20 | 34 | 48 |
| % of total | 6% | 4% | 4% | 2% | 4% | 6% | 5% | 4% | 4% | 5% |
| Amending | 376 | 322 | 268 | 386 | 412 | 493 | 405 | 399 | 588 | 691 |
| % of total | 84% | 88% | 86% | 87% | 84% | 83% | 75% | 84% | 74% | 76% |

Of the 180 new regulations filed in 2021, 33 were made under a statute with no previous regulations.

**Figure 4:
New Regulations Filed in 2021
Under Statutes with No Previous Regulations**

| Statute | O. Reg. No. and Title of Regulation |
|--|--|
| <i>Alcohol and Gaming Commission of Ontario Act, 2019</i> | O. Reg. 722/21 Lottery Subsidiary - iGaming Ontario |
| <i>Bail Act</i> | O. Reg. 812/21 Forms |
| <i>Building Broadband Faster Act, 2021</i> | O. Reg. 809/21 Designated Broadband Projects O. Reg. 782/21 Prescribed Loss or Expense |
| <i>Building Opportunities in the Skilled Trades Act, 2021</i> | O. Reg. 877/21 General O. Reg. 876/21 Prescribed Trades and Related Matters O. Reg. 875/21 Scopes of Practice O. Reg. 874/21 Hearings O. Reg. 873/21 Definition of Journey person O. Reg. 872/21 Administrative Penalties and Compliance Orders |
| <i>Building Transit Faster Act, 2020</i> | O. Reg. 682/21 Priority Transit Projects O. Reg. 181/21 Delegation |
| <i>Chartered Professional Accountants of Ontario Act, 2017</i> | O. Reg. 561/21 Application of Not-For-Profit Corporations Act, 2010 |
| <i>Compensation for Victims of Crime Act</i> | O. Reg. 666/21 Dissolution |
| <i>Estates Act</i> | O. Reg. 110/21 Small Estates |
| <i>Estates Administration Act</i> | O. Reg. 811/21 Forms |
| <i>Interprovincial Summonses Act</i> | O. Reg. 813/21 Forms |
| <i>Liquor Control Board of Ontario Act, 2019</i> | O. Reg. 753/21 General |
| <i>Legal Aid Services Act, 2020</i> | O. Reg. 673/21 Transitional Matters O. Reg. 672/21 General |
| <i>Liquor Licence and Control Act, 2019</i> | O. Reg. 767/21 Transitional Matters O. Reg. 746/21 Licensing O. Reg. 750/21 Minimum Pricing of Liquor and Other Pricing Matters O. Reg. 747/21 Permits O. Reg. 745/21 General |
| <i>Ministry of the Environment Act</i> | O. Reg. 636/21 Fees |
| <i>Mortgages Act</i> | O. Reg. 814/21 Forms |
| <i>Not-for-Profit Corporations Act, 2010</i> | O. Reg. 693/21 Extension of Temporary Suspension Period O. Reg. 396/21 Corporations Sole - Application of Act and Regulations O. Reg. 395/21 General O. Reg. 394/21 Names and Filings |
| <i>Ontario Land Tribunal Act, 2021</i> | O. Reg. 351/21 Consolidated Hearings O. Reg. 350/21 Transition |

REGULATIONS REPORTED

Following our initial review of the 912 regulations filed in 2021, we wrote to seven ministries to inquire about nine regulations made under seven Acts. After considering the responses to our inquiries, we decided to report three 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 Agriculture, Food and Rural Affairs

O. Reg. 735/21, amending Regulation 23 of R.R.O. 1990 (Pounds) under the Animals for Research Act

Issue

Does the *Animals for Research Act* authorize a regulation (1) establishing a waiting period before a pound operator can make a decision that they are in possession of a pit bull or take certain steps with respect to a pit bull and (2) requiring release of the dog in certain circumstances?

The *Animals for Research Act* (ARA) sets out in s. 20(7.2) – (7.4) the steps that must be taken by the operator of a pound who believes it has possession of a pit bull.

O. Reg 735/21 amended R.R.O. 1990, Regulation 23 (Pounds) by adding provisions that address the situation where the operator of a pound “has not yet made a final decision” that the dog is a pit bull or has not yet done everything required under s. 20(7.4) of the ARA.

As amended by O. Reg. 735/21, Regulation 23 now includes a waiting period before an operator can make a final decision or take all steps described under s. 20(7.4) of the ARA and provides that the operator must release the dog to its owner in certain circumstances and under certain conditions.

We were unable to locate explicit authority in the ARA for a regulation establishing a waiting period in the above circumstances. We therefore asked the Ministry to pinpoint the authority for the above-noted provisions of O. Reg. 735/21.

The Ministry replied that “the overall effect of O. Reg. 735/21 is to provide structure with respect to the requirement in subsection 20(7.2) of the ARA that the dog owner be provided an opportunity to satisfy the pound that the dog is not a pit bull. It sets out time frames for the statutory process without contradicting its purposes.” The Ministry also noted that the regulation “adds detail to the ARA, as opposed to overriding the provisions of the ARA concerning pit bulls.”

The Ministry further explained that O. Reg. 735/21 “provides for a ‘pause’ to the pound operator’s ability to make a determination of the dog’s breed or, if the

pound has already made a determination, to take steps against the dog” and described the benefits of this approach.

The Ministry cited clauses 23(e), (j), and (p) of the ARA as authority for regulations imposing a waiting period and requiring the release of a dog to its owner in certain circumstances.

These clauses provide as follows:

- Clause 23(e) authorizes regulations prescribing standards for the health, welfare, and care of animals in a pound. The Ministry explained that “the welfare of a dog is generally better served by providing a temporary release from the pound so that it can be cared for in a home and with people it is familiar with.”
- Clause 23(j) authorizes regulations “prescribing methods for the identification of animals.” The Ministry noted that “[w]hile the regulation does not directly prescribe a method for identification, it expands upon the process within which that identification takes place.”
- Clause 23(p) authorizes regulations “respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.” The Ministry noted that O. Reg. 735/21 governs the details of the dog owner’s opportunity to make their case – in particular, the time available to make their case. The Ministry notes that O. Reg. 735/21 “supplements the provisions of the ARA to grant additional procedural fairness to dog owners.”

In the Committee’s view, the ARA’s provisions relating to the decision-making process and transfers and returns of pit bulls do not appear to contemplate additional waiting periods or adjustments to restrictions on the release of dogs believed to be pit bulls.

Moreover, the regulation-making powers of the Act cited by the Ministry (outlined above) do not provide explicit authority for regulations prescribing these additional matters.

Recommendation

The Committee recommends that the Ministry of Agriculture, Food and Rural Affairs either (a) take steps to amend Reg. 23 of R.R.O. 1990 to align with the regulation-making authority granted by the *Animals for Research Act* or (b) take steps to bring forward a Bill to amend the *Animals for Research Act* to authorize regulations prescribing (1) a waiting period before a pound operator can make a final decision or take all steps under s. 20(7.4) of the Act and (2) the release of a possible pit bull during the prescribed waiting period.

Ministry of Public and Business Service Delivery

O. Reg. 759/21, amending O. Reg. 401/21 (General) under the Extra-Provincial Corporations Act

Issue

Should O. Reg. 759/21 have been made by the Minister instead of the Lieutenant Governor in Council?

O. Reg. 401/21 is the general regulation under the *Extra-Provincial Corporations Act* (EPCA). It prescribes classes of corporations that are exempt from the EPCA. As originally made, the regulation exempted corporations that held a manufacturer's licence to sell under the *Liquor Licence Act*.

O. Reg. 759/21 amended the general regulation so that it references the *Liquor Licence and Control Act, 2019*, rather than the now-repealed *Liquor Licence Act*.

The authority to make regulations prescribing classes of extra-provincial corporations and exempting classes of extra-provincial corporations from the EPCA is s. 24.1(1)(b) of that Act. This regulation-making power is assigned to the Minister.

While the parent regulation (O. Reg. 401/21) was made by the Minister, it appears that the amending regulation (O. Reg. 759/21) was made by the Lieutenant Governor in Council.

We therefore asked the Ministry to comment on whether O. Reg. 759/21 was properly made.

The Ministry replied that it will work to address the issues raised with this regulation.

Since the Ministry has indicated that it will be addressing this matter, the Committee is not making a recommendation.

Ministry of Transportation

O. Reg. 437/21, amending O. Reg. 618/05 (Designation of Bus By-Pass Shoulders on King's Highway) under the Highway Traffic Act

Issue

Should O. Reg. 437/21 have been made by the Minister instead of the Lieutenant Governor in Council?

O. Reg. 618/05 designates parts of highways as having paved shoulders for use of buses and prescribes the signage that indicates that use. O. Reg. 437/21 strikes out references in the parent regulation to licences issued under the now-repealed *Public Vehicles Act*.

The authority to make regulations designating any part of the King's Highway as having a paved shoulder and restricting the use of the paved shoulder to prescribed vehicles is found in s. 151(1) of the *Highway Traffic Act*. This regulation-making power is assigned to the Minister.

Upon review, it appeared that O. Reg. 437/21 was made by the Lieutenant Governor in Council, not the Minister. We therefore asked the Ministry to comment on whether O. Reg. 437/21 was properly made.

The Ministry replied that the fact that O. Reg. 437/21 was not made as a Minister's regulation "will be brought to the Ministry's attention to address."

Since the Ministry has indicated that it will be addressing this matter, the Committee 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.

APPENDIX B

STANDING ORDER 110(G)

110 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:

- (g) Standing Committee on Procedure and House Affairs . . . 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 2021

