



ISSN 1180-4319

**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 1 June 2005

**Journal
des débats
(Hansard)**

Mercredi 1^{er} juin 2005

**Standing committee on
regulations and private bills**

Draft Report
on Regulations

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

Rapport préliminaire sur
les règlements

Chair: Marilyn Churley
Clerk: Tonia Grannum

Présidente : Marilyn Churley
Greffière : Tonia Grannum

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Copies of Hansard

Information regarding purchase of copies of Hansard may be obtained from Publications Ontario, Management Board Secretariat, 50 Grosvenor Street, Toronto, Ontario, M7A 1N8. Phone 416-326-5310, 326-5311 or toll-free 1-800-668-9938.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Exemplaires du Journal

Pour des exemplaires, veuillez prendre contact avec Publications Ontario, Secrétariat du Conseil de gestion, 50 rue Grosvenor, Toronto (Ontario) M7A 1N8. Par téléphone : 416-326-5310, 326-5311, ou sans frais : 1-800-668-9938.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 1 June 2005

Mercredi 1^{er} juin 2005

The committee met at 1001 in committee room 1.

DRAFT REPORT ON REGULATIONS

The Chair (Ms. Marilyn Churley): I'd like to call the standing committee on regulations and private bills to order. Welcome, everybody.

Today we are dealing with just one item, consideration of the draft report on regulations, and we have the report in front of us. I would welcome Mr. Edward Wells to the committee and ask you to just take us through this report briefly.

Mr. Edward Wells: If I may, Madam Chair, this report deals with regulations under acts of the Legislature. Of course, regulations help to flesh out the acts under which they are made and to implement them. Regulations are made by the Lieutenant Governor in Council, which is cabinet, by the minister, and other people too can make them, if they are delegated the authority.

This committee gives MPPs a chance to review that subordinate legislation and question it. It's your big opportunity to question all those regulations that are made under acts, but you're not allowed to review the policy behind them. The acts deal with the policy; the regulations are meant to implement the policy.

The report itself is a draft. There are some typos that need fixing, etc. But in essence, it starts with some general statistics dealing with a number of regulations that we've reviewed. I reviewed two years worth of regulations, which is not unheard of, depending on the workload. In fact, I was asked to come in and do it specifically on behalf of the research service because they needed somebody to help them stay current with other work that they do. I brought to your attention a couple of things which I'll get to in a moment.

You'll see that the report goes back to 1991. If you look on page 2, you'll see the regulation-making activity. It goes up and down, depending on whether or not there's an election year, whether new legislation has been passed which requires a number of regulations or not. It's somewhat difficult to say precisely how much you're going to get in any particular year. Years ago, it used to be about 500 a year. Now it's a little less than that in terms of the number of regulations made.

There are a couple of items which are highlighted in the report. One deals with the Drug Interchangeability and Dispensing Fee Act. I wrote a letter to the folks at the Ministry of Health and Long-Term Care because I was looking at the regulations in the big book—you can do that or you can look at them in e-Laws—and I saw the regulation dealing with drug interchangeability. A couple were made by the minister and another was made by the Lieutenant Governor in Council, and I thought, well, they must have a typo here. They've got the wrong person doing it. I was wrong. I inquired, and it turns out that because of various considerations which are outlined in the draft report, the minister will make regulations dealing with putting drugs on the list which are interchangeable, but in terms of being able to take a drug off the list, that's got to be cabinet. That I discovered in my query, because it really seemed to me that they are so similar that I just didn't understand what was going on there.

Another one I draw your attention to is under the Electricity Act. Again, I was reading the regulation and discovered that where a rather high-voltage line is left disused—let's put it that way—for “a prolonged period of time,” you're supposed to do something about it, but there's no particular definition of what a prolonged period of time is or is not. I think probably when I was reading this somebody had just been electrocuted at some station, and I thought, hmm, I think I'll find out about this a bit more, especially since we have high-voltage lines coming into our cottages, our houses and everything else. Again, this is one where the regulation itself is made under delegated authority by the Electrical Safety Authority. They have agreed to review that definition as is outlined in the report here so that hopefully down the road in the not-too-distant future we'll have a better idea of what a “prolonged” period of disuse really is and make sure that where there is a high-voltage line which is not being used, it is taken out of service or suitably dealt with.

The last thing that I comment on is retrospectivity. The last draft report dealt with a number of regulations which purported to be retroactive, but there was no authority for it. You can't make a regulation that's retroactive without authority. You're just not supposed to do that. I think it's pretty obvious why. If it were a tax, you'd be royally incensed if in fact there was no

authority for making the regulation retroactive. The comment is that in fact I found nothing in the last couple of years where it was retrospective in effect and not authorized. I just wanted to bring that to your attention.

The rest of the report mainly is statistics on different acts and different ministries and the number of regulations under which they've acted. There are some editorial changes needed to ensure that in fact it makes some sense, because I was not present when this final draft went out and I couldn't read it because the fax sent to me was basically all blacked out. Now it's all fixed up and I can assure you it does make some sense, Madam Chair.

If you have any questions, I'll endeavour to answer them.

The Chair: Thank you very much, Mr. Wells. I'll take some questions and comments, and perhaps we can go through this page by page as well. Mr. Ramal.

Mr. Khalil Ramal (London-Fanshawe): I'm not sure on which page, but I heard you talking about the authority—

The Chair: Can you speak up a little bit, please?

Mr. Ramal: I heard you talking about authority, that you cannot change the regulations without authority. Whose authority are we talking about here?

Mr. Wells: Under the statute. In other words, the act will provide provisions that say you may make regulations to do X, Y, Z. If it's A and not X, Y, Z, then you don't have authority to make that regulation. We checked them all to see that that's there. Sometimes it's a bit iffy, but most of the time it's pretty straightforward, especially as we get to more modern regulations. The office of legislative counsel is being a little more careful and a little more organized about making sure that the authority is there before they permit a regulation to go forward.

1010

Mr. Ramal: But does the cabinet have the authority to change the regulation, or does the regulation have to be part of the act? We heard this committee or different committees talking about this many times: "It's not mentioned in the regulations or in the act, but the cabinet did this and this." Does the cabinet have the authority to change or to put aside any regulations, or to create different regulations?

Mr. Wells: Not normally. Normally, when cabinet makes a regulation, it follows the regulation.

Mr. Ramal: They don't create one, they just follow it.

Mr. Wells: You don't have to make a regulation in every case. It depends on what it is you wish to do. Where you do make a regulation, then you should follow it.

Mr. Tony C. Wong (Markham): I'm curious as to how we compare with other jurisdictions with respect to the regulation-making activity. Just looking at the chart, typically, it ranges from about 450 to 800 on an annual basis. As the chair of the newly formed small business agency, one of my goals is to try to cut down on the regulatory burden to small businesses. I know this is a very loose indicator—the number of regulations does not

really reflect the overall regulatory burden—but how do we compare with other jurisdictions, especially Quebec and British Columbia?

Mr. Wells: I think I'd have to research that for you, which I'd undertake to do.

Mr. Wong: That would be great.

Mr. Wells: Certainly red tape, if we can use that older phrase, is an issue, or it was an issue, especially. Ministries in the past have been given marching orders to slow down on those regulations a bit, if possible.

Mr. Wong: I look forward to receiving your response.

The Chair: Can I ask you for a clarification? When you said ministries have been asked to slow down that whole exercise of cutting red tape, I wasn't sure what you meant by that.

Mr. Wells: Yes, that's what I meant: the exercise of cutting red tape.

Mr. Kuldip Kular (Bramalea-Gore-Malton-Springdale): Could you comment on how election timing changes regulation-making activity?

Mr. Wells: In my experience—I can only go by my number of years doing this—when there's an election forthcoming, often regulations are not made, because the ministry is waiting to see whether the government will be returned to power, whether somebody else will come in or, even if the government is returned to power, whether the same focus or thrust will be there. So often there are delays in making regulations.

Mr. Kular: Since the regulations don't matter—it's not the policy-making in this one; it's the already-made act that has to be regulated, right?

Mr. Wells: True.

Mr. Kular: So that, in my opinion, should not affect it through election time.

Mr. Wells: I can't disagree with you, but I am telling you that in fact it does happen. Things are just put on hold in the public service, to a degree, while the election takes place, and then the direction is given by the new government as to what the priorities are and where the thrust should be.

The Chair: Shall we just have a quick look through this page by page to see if anybody has any questions or specific comments? Shall we start at page 1, the introduction? Let's have a quick look at that. Now, you mentioned that there might be a few typos in here.

Mr. Wells: It's not typos per se, but in the schedules the headings need to be cleaned up, and there is one typo to fix.

The Chair: You'll point that out to us when we get to it?

Mr. Wells: I'll point that out to you, absolutely.

The Chair: Any comments or questions about page 1? All right, let's flip to page 2. Any questions or comments? I'm sure everybody, of course, took a good look at this report before we came to committee this morning.

Page 3? I guess I have a question on page 3, if you will indulge me here. At the top it says, "Regulations should be expressed in precise and unambiguous language"; in other words, plain language. How's that

going? It's a constant problem even for legislators, let alone for the public, to understand regulations sometimes. Is there still a process in place on that?

Mr. Wells: Absolutely. They should be plain language. They should be understandable to the audience for whom they're intended. If you're dealing with some of the more esoteric, say electrical matters, where you've got formulae that are the length of the page, that doesn't impress me particularly, not being an engineer. But the people who have to deal with it, of course, know. It's one of those things which is always something to be striven for; it's not always achieved.

The Chair: Any other comments on that page?

Mr. Wong: Just a question on guideline number 2 as well. It's obvious that regulations should be in strict accord with the statute, but oftentimes that's difficult to do in a strict sense because obviously regulations expand, in some sense, upon the statute. As a lawyer by profession, I've come across situations when they do not strictly adhere to the technical language used in the statute. I guess that's happened in the past, Mr. Wells? Has it happened in the past, where there has been a challenge or dispute as to whether regulations were in strict accordance with the statute?

Mr. Wells: The question of whether or not a regulation is in strict accord with a statute is a matter of interpretation. Sometimes someone's interpretation will be, "Of course it's in strict accord with the statute." Another person looking at the very same regulation will say, "No it's not. It's gone beyond what the statute provides." There's that constant tension on occasion where there is a real dispute as to what the regulation encompasses, what it doesn't encompass, whether or not there is authority, or whether it follows the legislation. I certainly have seen that over the years. Most of the time, nothing has turned on it in the sense of going to court over it, although I've been in court over regulations, in another lifetime. Let me say that it is a matter of interpretation.

Mr. Wong: I take it that the government of Ontario has not lost in any court challenges in the last few years, with respect to this aspect?

Mr. Wells: I'd have to look that up for you.

The Chair: That's the second follow-up that they'll make a note of. Any other questions on page 3?

Let's move on to page 4. I'll just give people a minute to take a look.

We'll move on to page 5, appendix A.

We'll move on to page 6, appendix B.

We'll move on to page 7, appendix C, which, of course, is just the list.

We'll move on to pages 8, 9, 10, 11, 12, 13 and the final page, 14. Any comments or questions on any of those? No? OK.

Mr. Wells, you were going to tell us about a small change in a heading and a typo.

Mr. Wells: On page 5, the reference to section 12(2) of the Regulations Act should read, "Every regulation stands permanently referred to the standing committee for the purposes of subsection (3)."

The Chair: So there should be a "(3)" added there. Anything else?

Mr. Wells: Not really. When I first saw the shaded parts of appendices C and D, they were a bit off with respect to the lists etc., but they're fine now.

The Chair: Good. Mr. Wong?

Mr. Wong: I move that the draft report, as amended, be adopted and reported to the House.

The Chair: Is there a seconder for that? Thank you, Mrs. Van Bommel.

All in favour? Opposed? It carries.

We're done. The committee stands adjourned until 10 a.m. on Wednesday, June 8, 2005. I understand that we have several items of substance for that meeting, so I look forward to seeing you there. I will be reporting this in the House after it's finalized. Thank you all very much.

The committee adjourned at 1022.

CONTENTS

Wednesday 1 June 2005

Draft report on regulations..... T-53

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Chair / Présidente

Ms. Marilyn Churley (Toronto–Danforth ND)

Vice-Chair / Vice-Président

Mr. Tony C. Wong (Markham L)

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Ms. Marilyn Churley (Toronto–Danforth ND)

Mr. Kim Craiton (Niagara Falls L)

Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale L)

Mr. Gerry Martiniuk (Cambridge PC)

Mr. Bill Murdoch (Bruce–Grey–Owen Sound PC)

Mr. Khalil Ramal (London–Fanshawe L)

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

Mr. Tony C. Wong (Markham L)

Substitutions / Membres remplaçants

Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

Clerk / Greffière

Ms. Tonia Grannum

Staff / Personnel

Mr. Edward Wells, counsel and research officer,
Research and Information Services