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## **Official Report of Debates (Hansard)**

**Wednesday 31 March 2010**

## **Journal des débats (Hansard)**

**Mercredi 31 mars 2010**

**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: Michael Prue  
Clerk pro tem: Trevor Day

Président : Michael Prue  
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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 31 March 2010

Mercredi 31 mars 2010

*The committee met at 0901 in room 151.*

**DRAFT REPORT ON REGULATIONS**

**The Chair (Mr. Michael Prue):** It's 9 o'clock. The meeting is called to order. On the last occasion, the meeting was adjourned in order to allow ministry officials from both the Ministry of the Environment and from the Ministry of Natural Resources to come forward to answer questions of the committee in the order in which I have them listed here and, I assume, the order in which we are going to hear from them.

I would invite people from the Ministry of the Environment to come forward and perhaps to make an opening statement on the ministry's position on the regulations that are under discussion and the ministry's feelings. Then I will invite questions from the members of the committee.

Just for the edification of the members of the committee, this is not at all on the policy behind this, but in terms of how the regulations meet the requirements of the act that was passed by the Legislature, whether or not it meets it, so just hone your thoughts down that road.

The floor is yours. If you could identify yourself, please, for the purposes of Hansard.

**Ms. Myra Hewitt:** Good morning, members of the committee. My name's Myra Hewitt; I'm counsel with the Ministry of the Environment. I've been working with the Ministry of the Environment for over 20 years and doing legislative drafting for the last 10 of those years. My area of practice is environmental assessment. That's the issue, I guess, before the committee in terms of the regulation that's before you.

This is Blair Rohaly; he's a project manager. Blair and I both worked on the transit regulation that is the subject matter of your questions.

I will just do a brief introduction to the regulation that's before you and the issue that has been raised. First of all, I would say that the EA is a very complex area of my practice, and it has also been the focus of significant policy development over the last several years, a focus of it because of the importance of many of the projects that are proceeding, particularly transit projects and the importance of those to the environment.

Essentially, an EA is given in respect of an individual project, which is referred to as an individual EA, or you

get approval by proceeding through a class EA, where approval has been given for a class of projects. Sometimes the EA process is undertaken as a function of an exemption under the environmental assessment. The transit regulation is an exempting regulation that introduces an environmental assessment project as a condition of that exemption.

Part II.1, which is the focus of this issue, was added in 1996. Prior to 1996, there were class EAs, but the authority for those class EAs was based solely on part II of the act. Part II of the act refers to individual EAs, and part II.1 refers to class EAs. Essentially, part II.1 springs from part II and relates back to that part. For example, applications for approval of class EAs are submitting under part II. So they're very intimately linked, and part II.1 relies very much on the authorities in part II. Since the introduction of that provision, a number of exempting regulations have been made that effectively create that assessment process for classes of projects through an exemption, and it really mirrors what is found in some of the class EA processes.

The approach of introducing environmental assessment through an exempting provision presents some complex drafting challenges, and this approach is what was taken with respect to streamlining the transit projects. The approach that was taken around the particular issue that's been raised—the intent of the regulation was to allow proponents the option of proceeding either by way of their class EA, which was to be left in place, or by way of the streamlined process under the transit regulation. Both the class EA process and the transit process are streamlining processes because the class EA is a pre-approval process. While the regulation was being developed, MOE heard from proponents of these projects that, notwithstanding the opportunity to take advantage of the streamline process through the exempting regulation, they wanted the flexibility to be able to proceed through their class EAs.

By only exempting projects from part II as opposed to II and II.1, the intention was not to leave intact the requirement to proceed by way of class approval but to leave that as an option, some flexibility available to those who wanted to get their projects on the ground. In other words, if a proponent chose to avail itself of the exemption, it was intended there would be no basis upon which to suggest compliance with the class approval would still be required.

In the face of the issue that was raised when Ms. Marta Kennedy wrote to us, we took this issue and asked our clients to have a look at it. We're still in that process. It's not to suggest that we think there's a problem there, necessarily, but when somebody else has looked at a regulation and looked at the policy aspect we've tried to achieve and the words that we've used to try to achieve that, obviously, we take that very seriously and are trying to work our way through it to see if, in fact, there does need to be anything to address it.

**The Chair (Mr. Michael Prue):** It's still a work in progress, then?

**Ms. Myra Hewitt:** I would say it's still a work in progress, yes.

**The Chair (Mr. Michael Prue):** Questions? Mr. Miller, then Mr. Murdoch.

**Mr. Paul Miller:** The word "streamlining" is a concern for me because it's my understanding that the EA process is long and trying for people with projects, and that was one of the reasons they wanted to streamline it.

My concern is that with some of the regulations that were originally in II, and now you've got II.1, it's not as strong. There's not as much meat to the bill. Personally, what I can see is that a lot of stuff was to expedite processes for developers or the EA process for pollution or whatever the situation was. It was to make it easier for companies to get their projects moving, whether it's an incinerator, whether it's a landfill or whatever it is. Would that be a fair statement that some of the things in II are now missing in II.1 that could have an impact?

**Ms. Myra Hewitt:** I'm assuming you mean in part II and II.1?

**Mr. Paul Miller:** Right.

**Ms. Myra Hewitt:** No. I think the statute clearly creates a parallel process between class EAs and individual EAs, but I think—

**Mr. Paul Miller:** Well, the reason I'm saying that is because when I was involved with the Taro landfill—I'm sure you remember Philip Environmental—one of their biggest complaints was that the process was too long. They didn't like it. There were too many conditions, too many regulations, and they wanted it sped up. It appears that since then, things have been streamlined and sped up, the processes for developing projects.

I'm basically asking: Is there anything that used to be in II that is in II.1 now that should still be in II.1 and isn't? I think that some things have been removed. It used to be a year-long, maybe a year-and-a-half-long process; now it's six months they're pushing for, depending on the project. Would that be a fair statement? I'm concerned about things being left out in II.1 that were in II.

**Ms. Myra Hewitt:** I'm going to try and tackle your question by translating it a bit, if you don't mind.

**Mr. Paul Miller:** No, go ahead.

0910

**Ms. Myra Hewitt:** Because II and II.1 are in the statute, nothing has changed in the statute. But what you're talking about are the exempting regulations that

have been made under a completely different provision of the act, which allows the cabinet to make regulations exempting people from EA.

I won't be able to speak to the policy, but I can say that the intention was to preserve all of the environmental protections with respect to whatever went on in an individual EA, in a class EA process or an exempting process. The perception that it was a slow process and that the exempting process was intended to help streamline that process by making the process more certain and clear for each project—all I can say is, that was the intention.

Nothing has been lost in the statute. The statute was not changed when these things were done. They were done by actually making an exempting regulation, taking them out of the statute.

**Mr. Paul Miller:** So why are we streamlining it? Why are we making it for specific projects like transportation? If everything was there in the original item II, why are you streamlining it to II.1? What's the purpose of that, then, if everything was there?

**Ms. Myra Hewitt:** I think the issue is that it streamlines it because the rules on what a proponent has to do are very clear. In an individual EA, the rules are not laid down. The proponent actually writes the rules as part of their terms of reference and as part of their EA. The intention was to try and create clearer rules.

But, again, I'm not here to defend a policy; I'm not here to speak about that policy.

**The Chair (Mr. Michael Prue):** No, no; we're not asking you to.

**Ms. Myra Hewitt:** I know.

**Mr. Paul Miller:** Okay. All right.

**Ms. Myra Hewitt:** I feel like I'm sort of veering into that. I'm just saying that I know what the policy intention was when I, as the drafts person, was asked to do something. It was to ensure that the environmental protections that were afforded during an individual EA process were not lost, but to create a more standardized, clearer process so that people weren't tied up in process, not knowing what the next steps were.

**The Chair (Mr. Michael Prue):** Mr. Murdoch.

**Mr. Bill Murdoch:** Okay. I just want to thank you for coming. My main thing in this was just to find out who actually had the power behind the bills, to meet the people who actually write these things. On this one, that was your concern. I'll be more in the next one. I just want to thank you for coming.

**Ms. Myra Hewitt:** Thank you.

**Mr. Bill Murdoch:** Now I know who has the power. Well, it isn't us. We sort of sit around here and fumble around all the time, so it's really nice to see who makes up all these rules.

**Ms. Myra Hewitt:** I can assure you, we don't think we have the power—

**Mr. Bill Murdoch:** Well, yeah. No, we do.

**The Chair (Mr. Michael Prue):** Mr. Leal.

**Ms. Myra Hewitt:** Somebody must.

**Mr. Jeff Leal:** I think it's important that we have some clarity there. This change was made to expedite transit projects in the province of Ontario, to create employment opportunities for those Ontario and Canadian manufacturers that were in this particular category, like Bombardier in Thunder Bay, and some other players. Right now—

*Interjection.*

**Mr. Jeff Leal:** No, listen. I know, in the region of Durham, they're going through the full EA process to site an energy-from-waste facility and—

**The Chair (Mr. Michael Prue):** Mr. Leal, you're getting very close to policy here.

**Mr. Jeff Leal:** Oh, no, but I just—I mean, if we're going to yip and yap here, I think we've got to understand what's going on.

**Interjection:** “Yip and yap”?

**Mr. Jeff Leal:** This was changed to expedite transit projects in the province of Ontario, solely. Thank you very much.

**Ms. Myra Hewitt:** And not at the cost of environmental protections.

**Mr. Jeff Leal:** Exactly. Thank you.

**The Chair (Mr. Michael Prue):** All right. Mr. Martiniuk.

**Mr. Gerry Martiniuk:** As I understand it, a statute authorizes two particular classes: II and II.1, whatever they are; that's statutory. The statute, you say, also has a provision which provides that this act can be exempted by regulation. Correct?

**Ms. Myra Hewitt:** Correct.

**Mr. Gerry Martiniuk:** There's an authorization for that. I assume, therefore, there is also a particular legislative provision that states that if a particular project is exempted from II or II.1, then they can, by regulation, create a new class and create a new process, because it's not a statutory process; it's now a regulation. You're saying that there is a statutory provision which provides that the cabinet, by regulation, can establish a new category, in effect, by exemption and setting out an entirely new process.

**Ms. Myra Hewitt:** Yes. The ministry and cabinet have done that by imposing conditions of that exemption. So you're only exempt if you follow the process and follow it properly; otherwise, you have to have an environmental assessment done under part II.

**Mr. Gerry Martiniuk:** Could you provide the particular section in the statute, please?

**Ms. Myra Hewitt:** Just bear with me. It's section 39, “The Lieutenant Governor in Council may make regulations ... exempting any person, class of persons, undertaking or class of undertakings from this act or the regulations or a section or portion of a section thereof and imposing conditions with respect to that exemption.”

**Mr. Gerry Martiniuk:** Thank you.

**Ms. Myra Hewitt:** That's clause (f) of section 39 of the Environmental Assessment Act.

**Mr. Gerry Martiniuk:** Thank you very much.

**The Chair (Mr. Michael Prue):** Mr. Ruprecht.

**Mr. Tony Ruprecht:** Just a quick question in terms of the influence this committee wields. I know Mr. Murdoch was saying earlier that you've got the power, but from what I see on “note to the committee” here—

*Interjection.*

**Mr. Tony Ruprecht:** Yes. The committee members should note that we've got all kinds of influence. I'm just wondering, Mr. Chair: In terms of these recommendations that went back to you, have we made many of them? I don't recall making many recommendations on this matter for the Ministry of the Environment and, in fact, to other ministries.

**The Chair (Mr. Michael Prue):** As was explained on the last occasion—and I can let the lawyer reiterate that—the lawyers look through hundreds of regulations and they pick out some they think may be in violation of the statute that created them. They report to us. Our job is to vet those and then to recommend to the House whether we think the regulations may not be in accordance with the law. We don't change them. We just report back and say, “These may or may not be in accordance with the law.”

As we heard from this deputant, they are still working on it. They are still actively considering the suggestions that have been made by our legal counsel as to whether or not they are correct. That's our role. We do this every year, and it may not be the environment; it could be any ministry that the lawyers come up with, and every year we have four or five or 10 recommendations and every year we do this. That's the role of this committee.

**Mr. Bill Murdoch:** I missed that meeting last year.

**The Chair (Mr. Michael Prue):** Perhaps, if you'd like to—

**Ms. Marta Kennedy:** Sure. When we sent a letter to the Ministry of the Environment this year, we actually wrote them about four different regulations, and this is the only one that we still have concerns about or that we're going forward with and are including in this report.

This report only has potential recommendations for the committee on about five regulations. The report from last year included eight regulations. If you'd like, I can provide a listing of the recommendations.

**Mr. Tony Ruprecht:** Thank you very much.

**The Chair (Mr. Michael Prue):** And next year, there will be more.

**Mr. Bill Murdoch:** Next year, they know they've got to come now. They always have to.

**The Chair (Mr. Michael Prue):** Okay. Mr. Miller.

**Mr. Paul Miller:** I'd like to know the difference between a full EA and a streamlined EA. If you've created this provision for the new, streamlined EA pertaining to transportation, would it be reasonable to think that you could streamline for other projects as well, which would be incinerators, landfills etc.? Could they not continue, saying, “You've made a class for transportation. Now we want a class for these types of projects too”?

You claim in II.1 that everything is done in the streamlined process that's done in the regular one. So

why would there be a time element difference between a full EA and a streamlined EA?

**Ms. Myra Hewitt:** Again, I think we're delving deep into the policy and program area that really isn't, with all due respect, the job—

**Mr. Paul Miller:** So I'm not going to get an answer, is what you're saying.

**Ms. Myra Hewitt:** Can I just indicate that what I did say was that the environmental protections associated with an individual EA are carried forward into that streamlined process? So the details around what gets done is—

**Mr. Paul Miller:** So all the stuff from the first one is brought to the next one. Every category in II.1 is involved in the streamlined one, you're telling me.

0920

**Ms. Myra Hewitt:** I don't really know what you mean, Mr. Miller, about all the categories. I'm really sorry. I'd like to be more helpful.

**Mr. Paul Miller:** I'll get you the information.

**The Chair (Mr. Michael Prue):** Any other questions? Seeing none, I thank you very much. We'll hold the debate on this until we've heard from the second deputant.

**Ms. Myra Hewitt:** Thank you very much.

**The Chair (Mr. Michael Prue):** I would invite forward the Ministry of Natural Resources. For the purposes of Hansard, if you could identify yourself before we begin.

**Ms. Gina Cunningham:** My name is Gina Cunningham. I'm a policy liaison officer with the Ministry of Natural Resources. I've worked for MNR off and on since 1975. My primary role is working on central agency submissions related to fish and wildlife.

**Ms. Alison MacKenzie:** My name is Alison MacKenzie. I'm legal counsel at the Ministry of Natural Resources. I've worked at MNR since 1991. My main area is fish and wildlife. I have been working with the Fish and Wildlife Conservation Act, which is the act under which the question today arises, since 1999, when it came into effect. I'm working on many of the regulations under that act.

**The Chair (Mr. Michael Prue):** All right. Our legal counsel has made a recommendation; you've seen it. There seems to be some dichotomy between the ministry and what our legal counsel thinks should be done. If you could explain the ministry's position, and then we'll open it up for questions.

**Ms. Alison MacKenzie:** Yes. I would just like to follow up on what you heard last Wednesday at your meeting. Your counsel did send a letter to our office last summer asking about regulation 144 of 2008 under the Fish and Wildlife Conservation Act. That's a regulation which amends the rules about wild turkey hunting. A specific question was asked to our office about a portion of that regulation. The regulation was made by the cabinet, but the question that was asked is why one part of that regulation was included. Should that part have been made by the minister?

Our office did write back to your counsel, and we explained why our legal opinion is that the regulation was properly made. It was made strictly in accordance with the authority of the Fish and Wildlife Conservation Act.

We haven't been permitted to see the draft report, so I'm not sure what material the committee has in front of it. This is quite a technical question. It deals with the statutory interpretation of the legislation, so I'm going to try to explain it the best I can. I'm not sure if I'm allowed to give the committee a copy of the regulation, for example, or anything like that.

**The Chair (Mr. Michael Prue):** Of course.

**Ms. Alison MacKenzie:** Okay. I brought with me—

**Mr. Bill Murdoch:** As long as you make a note to tell the ministry you did this.

**Ms. Alison MacKenzie:** Pardon me?

**Mr. Bill Murdoch:** As long as you make a note and you put it in your diary that you talked to all of us guys. You know how you have to do that. You can't talk to one of us unless you make a note and let the ministry know you did this.

**Ms. Alison MacKenzie:** Okay. This is the regulation; this is a copy of the regulation. I brought three items with me that I'd like the committee members to have just in case it's helpful. I brought a copy of the regulation, I brought the table of contents for the larger regulation to which this is an amendment, and I brought an excerpt from the act.

**Mr. Bill Murdoch:** It's the turkeys.

**Ms. Alison MacKenzie:** Turkeys. Wild turkeys.

**Mr. Bill Murdoch:** Why don't you just make it simple? The way I got it, anyway, it said that the minister would decide how many turkeys we could kill, but somewhere else it said the cabinet. We were just wondering who actually could do it then.

**The Chair (Mr. Michael Prue):** I think in laymen's terms, in a nutshell, that's more or less it.

**Ms. Alison MacKenzie:** Yes. Okay. Maybe I won't need those things, but let me try to explain it to you in a very, very brief way.

**Mr. Bill Murdoch:** That would be good.

**Ms. Alison MacKenzie:** The scheme of the Fish and Wildlife Conservation Act is that there are two lists of regulation-making authorities in the act.

There is a list of regulation-making authorities that is for the cabinet, and that is quite a long list: There are about 56 items on that list. Within the items, there are sub-items. So there are hundreds of topics upon which the cabinet may make regulations.

In the act, there is also a list of regulations that the minister may make. That is a shorter list: It's 10. Within that, there are also sub-items.

So the scheme of the legislation is that the preponderance of regulation-making authority in this act rests with the cabinet, but there have been a number of items that have been carved out and given to the minister. The intention of that was that those were items that were less controversial and more routine and things that would

not generally need the scrutiny and perspective of the cabinet table.

There are those two lists in the act, and the general rule is that the cabinet makes these regulations and the minister may make a smaller number of types of regulations. But there is also another rule in the act, and that's found in subsection 113(2), and it says that the cabinet may make any regulation that the minister may make. I'm just going to read that to you. It says:

“Concurrent authority

“(2) The Lieutenant Governor in Council may make any regulation that the minister has authority to make and may amend or revoke any regulation made by the minister.”

Despite the fact that there are two sets of rules, and generally those regulations are made by the body that is the head of that particular list, there's this other rule that allows the cabinet to make any regulation that the minister may make.

Now, in the case of the regulation that is before you, it's a regulation to deal with turkey hunting. It has many provisions in it that fall under the cabinet part of the hunting authority, because cabinet has the authority to regulate with respect to hunting, particularly hunting, trapping or possession of wildlife. That falls under the cabinet list. The regulation was made by the cabinet, but using the concurrent authority there were a few provisions in that regulation that dealt with bag limits that were included in that regulation. They were included in the regulation so that the regulation made sense and all worked together. Those were put in under the authority of the concurrent authority of the cabinet to make the regulations.

**Mr. Bill Murdoch:** Okay. The cabinet actually can do everything, so they're sort of the boss; they can make regulations on anything. But you pick out some and you say, “We'll let the minister do that,” but the cabinet can overrule the minister.

**Ms. Alison MacKenzie:** It's not a matter of overruling the minister; it's a matter of having concurrent authority to deal with the same things that the minister could deal with.

**Mr. Bill Murdoch:** That sounds the same to me.

**Ms. Alison MacKenzie:** It's not overruling. It's just who is going to do something—

**Mr. Bill Murdoch:** Okay, let's say the minister said you can kill 20 turkeys and the cabinet said no; you can only kill 10. Who would win?

**Ms. Alison MacKenzie:** That wouldn't happen, with respect.

**Mr. Bill Murdoch:** Well, okay. How come?

**Ms. Alison MacKenzie:** Because it's a question of who is going to make a regulation at a particular time.

**Mr. Bill Murdoch:** So the minister has made those recommendations and that's it, then?

**Ms. Alison MacKenzie:** This particular regulation that we're speaking about was made by the cabinet.

**Ms. Gina Cunningham:** I wonder if it would be useful to indicate the instances in which the current authority

was intended to be used. There are two scenarios foreseen.

One was where a group of amendments were being proposed and some of them fell under the cabinet authority and some of them fell under the minister's authority. In order to give a complete picture of what was being proposed, there are occasions where it makes sense to put all of them in a regulation that's approved by cabinet.

The other scenario in which the concurrent authority was foreseen to be used was a situation in which the minister had the regulation-making authority but for whatever reason it was felt that it might benefit from discussion at cabinet.

**Mr. Bill Murdoch:** Yes, so they're making the decision.

*Interjections.*

**Mr. Bill Murdoch:** We didn't find this, of course. You sent your regulations to the Legislative Assembly, then they found this and thought something wasn't right. You can jump in here any time.

**The Chair (Mr. Michael Prue):** Go ahead.

**Ms. Marta Kennedy:** Okay. I think the question isn't whether or not it's legitimate for the minister and cabinet to have concurrent authority. That's not the problem. The question arose—if you look at this document, the Fish and Wildlife Conservation Act, on page 5 in my copy it's marked with highlights at the top and it's paragraph 4. This is the section that gives the Lieutenant Governor in Council the ability to make regulations “prohibiting or regulating the hunting, trapping or possession of wild life, other than...” and “prescribing limits on the number of wildlife of a species, sex, size” or whatever “that may be killed....”

**0930**

That's the kill limit section, and this paragraph, this ability to set kill limits, seems to be carving out from the Lieutenant Governor in Council's ability to make regulations. The question is: If the Lieutenant Governor in Council is able to make regulations about hunting except for kill limits—it says “other than”—and the minister is given the power to make regulations setting kill limits, but the Lieutenant Governor in Council has the ability to make regulations on everything the minister can make, what does this “other than” kill limit section do?

**Ms. Alison MacKenzie:** I do have an explanation for that. This is a question of statutory interpretation, and obviously our office takes a different interpretation than the legislative researchers. The way we read this, it's leading from what I was saying earlier about the fact that the scheme of this legislation is that there are two lists, one setting out the authorities of the cabinet for regulation-making powers and the other setting the authorities of the minister for regulation-making powers.

Now, if you look at paragraph 4, where the highlighting is, you'll see that generally the power to prohibit or regulate the hunting, trapping or possession of wildlife rests with the cabinet. Then there are three things that have been highlighted as “other than.” Those three things

are in the list of the minister's powers. If you turn to section 113, you will see that those three things are paragraphs 2, 3 and 4 of the minister's powers. The reason that these have been carved out here, from paragraph 4 of section 112, is to make it very clear which list they're on. They're on the minister's list. Although the cabinet has the general power to regulate hunting, trapping or possession, these three areas that deal with hunting, trapping and possession are on the minister's list.

That makes it clear that the two lists are very clear; otherwise, there would be overlap. If there wasn't that exclusion carved out of paragraph 4—if it just said "prohibiting or regulating hunting, trapping or possession," full stop—when you moved on to the minister's list, you would see paragraphs 2, 3 and 4, and you would say "Oh, there's overlap here. How does this work?" It makes the two lists very clear that those are minister's powers. But notwithstanding that there are two very clear lists, there's also an additional rule that you find in subsection 113(2). Despite the fact that there are two very clear lists, the Lieutenant Governor in Council still may make any regulation the minister has the authority to make.

That's how we read it. We don't see that there's any confusion or conflict in the wording of the legislation.

**The Chair (Mr. Michael Prue):** This has certainly confused me.

Mr. Miller, and then Mr. Martiniuk.

**Mr. Paul Miller:** I just want to know who gets to kill the—who gets the call? Who do the turkeys appeal to? Do they appeal to the cabinet, or do they appeal to the minister? "We're losing brothers and sisters here. Who do we appeal to?" Or who do the environmentalists appeal to? Who do the people who are concerned about the kill levels and the amount—this was an endangered species a few years ago, if I'm not mistaken. They were reintroduced—

**Ms. Gina Cunningham:** It was extirpated.

**Ms. Alison MacKenzie:** It was an extirpated species. It was reintroduced in the 1950s.

**Mr. Paul Miller:** Obviously the minister and the minister's staff would have the most information and access to the turkey hunt and to the provisions provided to hunters and to everyone involved, and they would be asking the ministry for the rules, the licensing and all the things. Why would you involve the cabinet to overrule the minister? It doesn't make sense to me. Why would you have two bodies controlling the same legislation when they're both with the government; they're still under the control of the government? I really think the minister is being undermined here. If he makes a decision, and the cabinet—not with their lack of information or lack of involvement on a daily basis—decides to overrule him, that is a conflict of interest and could cause some real problems. Would that be a fair statement?

**Ms. Gina Cunningham:** There's never been an instance where anything has been overruled.

**Mr. Paul Miller:** Why have it, then?

**Ms. Gina Cunningham:** In order to deal with situations such as the one that arose here, where some of the provisions being proposed were under the authority of the cabinet and some were under the authority of the minister. All the regular processes applied. There was posting on the environmental registry, consultation with stakeholders, consultation with the turkey advisory group and then the regulation was brought forward to cabinet.

**Mr. Paul Miller:** Well, I think it's duplication.

**The Chair (Mr. Michael Prue):** Mr. Martiniuk.

**Mr. Gerry Martiniuk:** As I understand it, the statute is quite clear that the Lieutenant Governor in Council can overrule or amend the ministry regulation at any time. Is that not correct? That's what subsection 113(2) says under "Concurrent authority."

**Ms. Alison MacKenzie:** Okay. I would like to restate my view. I really don't see it as overruling. These provisions are talking about the making of regulations, so the question is: Who is going to make a particular regulation at a particular time? You're right that subsection 113(2) does give cabinet the authority to make any regulation under this legislation. So the cabinet can make a regulation. A regulation is made from time to time, and a regulation may be amended from time to time. I don't consider that to be overruling anything.

**Mr. Gerry Martiniuk:** Well, it says specifically that not only do they have the authority the ministry has to make any regulations; they also may amend or revoke. If that isn't overruling, I don't know what is, because it's specifically stated. Not only do they have the authority to make the same regulations as the minister, but they may amend or revoke any regulation, which means they overrule the minister in the case where they feel they don't like what the ministry has done. There's nothing wrong with that—I'm not suggesting there's anything wrong with that—but it's very clear that they can revoke.

In the regulation, what they are trying to do—I don't understand what they're trying to do. Are they trying to delegate their authority to the ministry and saying, "We are now overruling the provisions of the statute, which we can, at any time, amend or revoke any regulation," and now they're saying, "Only the ministry has the authority, and we relinquish our right to revoke or overrule the regulation of the ministry"?

**Ms. Alison MacKenzie:** No, that's not what the regulation does. If you look at the regulation that was handed out to you—it's regulation 144/08—the first provision of that regulation, as an example, revokes an old clause. It's a regulation amending regulation 665/98. One of the other handouts I gave to you, which is a one-page handout, is just the table of contents of regulation 665/98. So you can see that it's the general hunting regulation, and it covers a number of topics. It has 18 topics in it, and they're under various subjects. So if a person wanted to know what the rules were for hunting deer or hunting wild turkey, they would be able to see what part of the regulation to look to. What the specific regulation 144/08 does is amend part VI of the general hunting regulation.

If you turn back to it, you will see, as I said, using the first provision as an example, that it revokes a clause that was formerly in 665/98 and replaces it with the following: “(a) who hunts small game or wild turkey;” I don’t know what that means at the moment, because it’s not in its context, as it’s amending a larger reg. But the reference in the legislation to the ability to revoke a regulation is that when you’re amending regulations as they go, you have to take out the old parts and put in the new parts. So you have to revoke something and replace it with something else. That’s the power that any person, be it the cabinet or the minister, has to have when amending regulations to be able to make them comprehensible.

The idea here is that these regulations have to be comprehensible to the general public, so that someone who’s interested in hunting wild turkey can go to the regulation, read the provisions and understand the rules.

**Ms. Gina Cunningham:** The purpose of this regulation, primarily, was to make amendments to allow not only a spring wild turkey hunt but a fall wild turkey hunt, and because the regulation previously only referred to a spring hunt, there had to be some revisions to the text to allow for that.

**The Chair (Mr. Michael Prue):** Mr. Murdoch.  
0940

**Mr. Bill Murdoch:** I’ll just ask a real simple question, then. The minister says you can have 10 kills. That’s what the regulation is, by the minister. That’s what she says; this would just say that. But somebody in cabinet doesn’t like that and they bring it up in the cabinet. They can say, “No, that’s not right. They can have 20.” Is that not right? It isn’t right, then? They couldn’t do that? Cabinet could not make that decision?

**Mr. Gerry Martiniuk:** Yes, it says they can.

**Mr. Bill Murdoch:** What about the statute that says they can’t?

**Ms. Gina Cunningham:** It would have to be done through a subsequent regulation.

**Ms. Alison MacKenzie:** As well, any regulation going to cabinet has to be recommended by the minister. There has to be a conscious decision—

**Mr. Bill Murdoch:** You don’t think cabinet can just bring that up on their own?

**Ms. Alison MacKenzie:** They can bring it up on their own and they can discuss it, but in order to make it into a regulation, they have to go through the entire process for making regulations that Ms. Cunningham described to you a moment ago.

**Mr. Bill Murdoch:** Then how come it says this in here? You read that again. You got it right there, that one where it says: “Cabinet may....” We’re just trying to understand this. It may sound a little frivolous because it’s turkeys, but we’re trying to find out what this committee is all about.

**Ms. Alison MacKenzie:** I assure you, we don’t consider this to be frivolous at all. We consider this to be very serious, and it applies to all the regulations that the ministry makes under this legislation.

**Mr. Bill Murdoch:** We just happened to pick this one, that’s all, and that’s what I’m trying to say.

**Ms. Alison MacKenzie:** That’s right. This is the example that we’re talking about.

**Mr. Bill Murdoch:** Okay. But it says “current authority.” I don’t know what section this is under.

*Interjections.*

**Ms. Alison MacKenzie:** It’s subsection (2) of section 113.

**Mr. Bill Murdoch:** But it says: “The Lieutenant Governor in Council may make any regulation that the minister has authority to make and may amend or revoke any regulation made by the minister.” That’s what it says. To do that, there’s another process, then, you’re telling me?

**Ms. Alison MacKenzie:** No. What I’m saying to you is that all regulations are made through a process. Some regulations may be made by the cabinet; some regulations may be made by the minister. In this statute and in several other statutes in Ontario, there is also a concurrent regulation-making authority which provides that the cabinet may make all the regulations under the act. But it doesn’t matter which authority is making a regulation; when a regulation is made, it has to go through the proper process, the legal process required to make a regulation. It’s not like the cabinet is just going to step in and unilaterally do something; they have to go through the entire regulation-making process.

**Ms. Gina Cunningham:** And that includes having the minister sign the regulation and have the submission go to cabinet.

**Mr. Bill Murdoch:** It doesn’t make sense to me.

**The Chair (Mr. Michael Prue):** Mr. Ruprecht.

**Mr. Tony Ruprecht:** Maybe I can throw some clarity on this very quickly. I don’t know if you’ve been in cabinet or not, but I can remember—

**The Chair (Mr. Michael Prue):** I have not.

**Mr. Tony Ruprecht:** You have not. I can remember. A minister makes a recommendation, and then there’s a hue and cry from the public because the recommendation is either not acceptable or, they would say in this case, “We only have two or three birds with a beard. That species would be at risk.” You’ve got to watch that too, as an aside.

**Mr. Bill Murdoch:** They’re not at risk, let me tell you.

**Mr. Tony Ruprecht:** The point being, that goes to cabinet, and somebody says in cabinet—any minister can say in cabinet, “I’ve had so many phone calls on this. Let’s send this back.” And the minister will say, “Okay, fine; I’ll look at it again.” So in most cases, that happens in a co-operative spirit. It goes back to the minister and the whole process starts again.

**Mr. Bill Murdoch:** Okay, but that’s not the way it reads.

**Mr. Tony Ruprecht:** Well, that’s how it works.

**Mr. Bill Murdoch:** If you trust the system, then you’re different than I am.

**Mr. Tony Ruprecht:** Yes, I trust the system. The system is pretty good.

**The Chair (Mr. Michael Prue):** If I could ask our legislative counsel: Are you satisfied with the explanation that has been given?

**Ms. Marta Kennedy:** I think we got a little side-tracked onto the concurrent-authority part of it.

Mr. Murdoch, I think that the problems that you're seeing probably don't exist in practice, as the ministry has explained. I think you're right, in my opinion, that cabinet can overrule a minister's regulation, but in the sense that they would make another one on top of it. The minister would make their regulation, and then if, six months or 10 months or 12 months or three years down the line, they decide they need to change the regulation, what this subsection does is it allows the cabinet to make the change instead of the minister, for whatever reason—the minister is out of the country or he's not available or for whatever reason they decide it's an important issue for cabinet to look at.

So 113(2) probably—similar subsections are in other statutes, and so probably that's not really a problem. It's a practice question, and that's not really what we're looking at.

The concern that has been raised is if the act says that cabinet can make regulations about hunting, except for kill limits, and the minister can make regulations about kill limits, but cabinet can make regulations about anything the minister can make regulations about, what does that "except for" do? The ministry has explained its position, and our position is in the draft report.

**Mr. Bill Murdoch:** Yes, you don't agree, and I don't know where it goes. It's just no wonder government takes so long to do anything. It's crazy.

**The Chair (Mr. Michael Prue):** If I could use the prerogative of the Chair to just ask a question: The reason that I think we are concerned about this is that the limit, as set out in the legislation, is one turkey, and then a second one if you have a second licence, and that's it for the year. What if somebody goes out and kills three or four or five turkeys and says that the kill limit was not set by the minister as required but was set by cabinet? Is that a legal defence? That's what it comes down to, in a nutshell: who did it, whether they had the authority to do it, and somebody who goes out and breaks the law has a legal defence.

**Ms. Alison MacKenzie:** As I said to you earlier, our view is that the regulation was properly made. The interpretation put forward by the legislative research lawyers would read into subsection 113(2) an exclusion that is not there. So we don't think that reading is in accordance with the legislation.

In answer to your question about a prosecution, maybe someone could raise that as a defence. I can't say that they couldn't, because defence lawyers are always creative and looking for something to defend their clients. If they did raise that as a defence, maybe they could convince a justice of the peace that the regulation wasn't properly made. If that was the case, then, of

course, the crown would appeal because we agree with our interpretation and we believe the regulation was properly made. In my view, that is the better interpretation of the legislation. I do not think that a court would, in the face of the concurrent authority, find that the regulation was improperly made.

**Mr. Bas Balkissoon:** A question, Mr. Chair.

**The Chair (Mr. Michael Prue):** A question, Mr. Balkissoon.

**Mr. Bas Balkissoon:** Thank you. I just want to understand something. If I look at 112, subparagraph 4(iii)—

**Ms. Alison MacKenzie:** Yes.

**Mr. Bas Balkissoon:** The minister can do that.

**Ms. Alison MacKenzie:** Yes.

**Mr. Bas Balkissoon:** When the Lieutenant Governor steps in and is exercising the powers given to the Lieutenant Governor, where the Lieutenant Governor can do anything the minister can do, can the Lieutenant Governor do this particularly?

**Ms. Alison MacKenzie:** Yes.

**Mr. Bas Balkissoon:** So then why do we need the word saying "exception"?

**Ms. Alison MacKenzie:** You mean the "other than"?

**The Chair (Mr. Michael Prue):** Yes.

**Ms. Alison MacKenzie:** I tried to explain that earlier. Our view is that it's making it clear what is the content of the two lists, because the Lieutenant Governor does have the power, as in the lead-in words of paragraph 4 of section 112, to prohibit or regulate the hunting, trapping or possession of wildlife. That is a very broad category and it includes these three subsets that are actually in the minister's power, if you turn over and you look at the list of the items that belong to the minister.

**Mr. Bas Balkissoon:** Where is the list?

**Ms. Alison MacKenzie:** The list is section 113, on the bottom of page 8. It starts on the bottom of page 8. You see "Regulations: minister." Then if you look at paragraphs 2, 3 and 4, right there at the very bottom of the page, those are the same three items that have been excluded in paragraph 4 that we were looking at earlier on page 5. So it's just making it very clear that those are minister's powers.

**Mr. Bas Balkissoon:** I guess that's the problem for us. When you read 4 on its own, it doesn't refer you to the other part clearly, and that's what is causing the confusion here.

**Ms. Alison MacKenzie:** But if you look at the list of regulations that the minister may make, there are 10 items on that list. It's not just these three items. There are 10 things about which the minister may make regulations, and then, when you look at the next paragraph, it says, "The Lieutenant Governor in Council may make any regulation that the minister has authority to make." That includes all 10, which includes 2, 3 and 4. It doesn't say "excluding the items listed on"—

**Mr. Bas Balkissoon:** Okay. But I go back again: If the Lieutenant Governor can do everything the minister can do, then where is the difference between the powers

given to each in the concurrent process that allows an elimination of certain lists? I don't understand it. And I'm sorry; I'm a layperson, so how is a layperson out there going to understand it?

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**Ms. Alison MacKenzie:** The 10 items that are on the minister's list: The minister may make regulations in relation to only those 10 items.

**Mr. Bas Balkissoon:** So you're saying that it's the reverse process; that the minister cannot do—

**Ms. Alison MacKenzie:** What the cabinet can do.

**Mr. Bas Balkissoon:** What the cabinet can do. So the cabinet has a longer list.

**Ms. Alison MacKenzie:** Yes.

**Mr. Bas Balkissoon:** Somehow you've got to reword this to clarify that, because we were looking at it the other way. Somewhere in here, it has to be a little clearer that it's the cabinet that has more powers than the minister.

**Ms. Alison MacKenzie:** The preponderance of regulation-making authority lies with the cabinet. That is clear. When you're reading a statute—we only have a couple of provisions here before us, but if you read section 112 and you look at it, it has 56 items on it and then the minister's list only has 10. So it's clear that the general preponderance of regulation-making authority under this legislation rests with the cabinet.

**Mr. Bas Balkissoon:** Maybe the lawyers clearly understand that, but now that it was explained the other way, somehow this document doesn't clearly state that.

**The Chair (Mr. Michael Prue):** All right. I have Mr. Miller next. Our job is to point out if things are not clear. If, at the end of the day, it's not clear to us, then we simply send it to the Legislature and ask them to clarify it. That's our role, so if you're not clear, that's our job. Mr. Miller.

**Mr. Paul Miller:** Not only am I not clear, I concur with my colleagues. My final question is: Why are there two lists? Why can't there be one list that the minister uses as a guideline for the cabinet? Why do we have two separate lists countermanding each other, overruling each other, interlocking with each other? To me, that's duplication and doesn't make sense. One turkey; one list. Simple. Why do we complicate this? I don't understand this at all. There's no common sense here at all. None. So I don't know why we're having two separate lists. The government instructs the minister; the minister is the government. They're the same entity. Why would you have two lists for the same entity? It's absolutely insane.

**Mr. Tony Ruprecht:** Make a recommendation, Paul.

**Mr. Paul Miller:** I recommend one list for both the ministry and the cabinet to go by as a guideline for turkeys.

**The Chair (Mr. Michael Prue):** This is not a question. Are there any other questions of the deputants?

**Mr. Tony Ruprecht:** Excuse me, Mr. Chair. This was not a question.

**Mr. Paul Miller:** That's a statement.

**The Chair (Mr. Michael Prue):** I know; that's why I've gone to you. Are there any other questions of the deputants? Then thank you very much for attending.

We bring it back into committee. On the last occasion, we dealt with the entire report, save and except the two recommendations in question, for which we invited staff to attend.

The first committee recommendation involves the environment. You have it on page 5. For the record, "The committee accepts the ministry's response and recommends that ... the Ministry of the Environment inform the committee of the results of the ministry's consideration." They said that it's under consideration. Is that an acceptable recommendation? Does anybody want to speak to it? Or we can get a motion on the floor—

**Mr. Tony Ruprecht:** Could you repeat that last part?

**The Chair (Mr. Michael Prue):** The recommendation is that, "The Ministry of the Environment"—that's the first deputation, not the second—"inform the committee of the results of the ministry's consideration." They have said that it is still under consideration. So we're asking them to report back to us when they finally make that decision. That's what they said.

Any discussion? Are there any motions, any discussion? Do we just accept that?

**Mr. Paul Miller:** I'm happy with them reporting back.

**The Chair (Mr. Michael Prue):** All right. Is there a motion to accept the recommendation?

*Interjection.*

**The Chair (Mr. Michael Prue):** It's already done? Okay. We're all fine with it? It's done.

The second one is the contentious one.

**Mr. Tony Ruprecht:** Excuse me: Do we need a motion for that?

**The Chair (Mr. Michael Prue):** We don't need a motion for that. We're going to adopt the whole report, but I'm not sure yet, because there's still this one outstanding one. This is up to the committee. The recommendation on the top of page 8 deals with the second and the contentious issue with the Ministry of Natural Resources.

**Mr. Gerry Martiniuk:** It's the turkey resolution.

**The Chair (Mr. Michael Prue):** Yes. And the recommendation that has been made—I'll read it into the record. The recommendation that has been made by our legal counsel is that, "The Ministry of Natural Resources amend O.Reg. 665/98 (Hunting) to remove all provisions that prescribe limits on the number of wildlife of a species, sex, size, age or type that may be killed, captured or possessed, and inform the committee once these amendments have been made."

That is the recommendation that has been put forward by legal staff for discussion.

Mr. Balkissoon and then Mr. Ruprecht.

**Mr. Bas Balkissoon:** I think the last line of questioning that I asked the legal person for the ministry sort of clarified things. I think it shed some light, but it's not clear in the documents that she gave us that that's the

way to interpret it. So it's a matter of clarifying that document and how to interpret it.

What it basically says is that cabinet has the most powers. They have all the powers of the minister, but the minister has a restricted set of powers, which is just a list of 10. The minister cannot make regulations to the larger list, which is 56 or 57, but cabinet can always make all of them, including what the minister can do. That's what it should really read, as a layperson; I'm not a lawyer.

I think our recommendation should really reflect what is wrong with the regulation, because the average person on the street trying to read it can make the mistake of thinking that cabinet can overrule what the minister does and the minister can overrule what cabinet does, and back and forth. I have to say, when the legal person kept saying "concurrent," I kept thinking it's the same for both of them, until I finally figured out, "Let's ask this question." It's the old rule in politics: If you don't ask the right question, you don't get the answer.

So our recommendation probably needs to be changed, that the document, whatever it was—section 112—needs to be clarified; that cabinet has more powers than the minister and the minister has restricted powers to the 10 when it comes to the list.

**The Chair (Mr. Michael Prue):** Okay, but that's not a motion. Think about your motion. Mr. Ruprecht said he wanted to make a motion.

**Mr. Tony Ruprecht:** Yes. Notwithstanding the good point that Mr. Balkissoon is actually making, I want to make this recommendation, and that's on page 8—you read it earlier—that the Ministry of Natural Resources amend regulation 665/98. I'm going to make that motion, Mr. Chair.

**The Chair (Mr. Michael Prue):** All right. So we have a motion on the floor. Discussion on the motion on the floor?

**Mr. Gerry Martiniuk:** I would like to possibly make an amendment that would state, further, that the ministry clarify the duplication of lists and the powers of the minister and the executive council, I guess, in relation to the making of regulations.

**The Chair (Mr. Michael Prue):** So we have an amendment to the motion. Speaking to the amendment, Mr. Rinaldi.

**Mr. Lou Rinaldi:** I guess it's more for clarification of the amendment. Even our research counsel agreed that those provisions are in other statutes as well. So if we attempt to make revisions or suggest amendments, what happens to other statutes?

**Mr. Bas Balkissoon:** Statutes don't change.

**Mr. Lou Rinaldi:** No, no. I'm just saying that those provisions they gave us today are common.

**Ms. Marta Kennedy:** Similar provisions exist in other statutes.

**Mr. Lou Rinaldi:** Right. So if the amendment that Mr. Martiniuk is suggesting is to really amend that, then what happens to others?

**Mr. Gerry Martiniuk:** It's a recommendation; it's not an amendment.

**The Chair (Mr. Michael Prue):** Yes. This is a report we are making. We're not changing any statutes—

**Mr. Bill Murdoch:** We have no power.

**Mr. Lou Rinaldi:** I understand that.

**The Chair (Mr. Michael Prue):** And we are only reporting in five small areas. That's all we're looking at.

**Ms. Marta Kennedy:** Mr. Rinaldi, what exists in other statutes is the provision that says that the cabinet can make any regulation the minister can make. It's not common in other statutes, but it does exist. The uniqueness of the fish and wildlife statute is this exception, this "other than" exception.

Even though it says that cabinet can make any regulation the minister can make, this exception is, from what I can tell, unique to the fish and wildlife act.

**1000**

**Mr. Lou Rinaldi:** So for clarification, is the amendment, then, reflecting that?

**Mr. Gerry Martiniuk:** Yes. I'm confused. That's all we're indicating to them.

**Mr. Bas Balkissoon:** And you're a lawyer.

**Mr. Gerry Martiniuk:** Yes. There is some confusion. No, no, it's not just I am confused.

**The Chair (Mr. Michael Prue):** One at a time.

**Mr. Gerry Martiniuk:** Our counsel has indicated that possibly what they're doing is ambiguous at best. Confusion in the public would be very understandable if the counsels, in fact, are at loggerheads.

**Mr. Tony Ruprecht:** Yes. You don't want to use the word "confused."

*Interjection.*

**Mr. Gerry Martiniuk:** I don't want the word "confused." I think that the amendment indicates that.

*Interjections.*

**The Chair (Mr. Michael Prue):** Okay. We're having a lot of—are there any other—Mr. Leal.

**Mr. Jeff Leal:** Mr. Prue, if we make these changes—I think there's a consistent line of thinking here—and it goes back to the ministry, then they will come back to us. Is that the—

**Mr. Bas Balkissoon:** They may or may not.

**The Chair (Mr. Michael Prue):** It goes to the Legislature—

**Mr. Jeff Leal:** And we may make a legislative change to incorporate what we're recommending today?

**Mr. Bas Balkissoon:** No, no.

**The Chair (Mr. Michael Prue):** No. The Legislature will determine what to do with it. I am sure that it will filter back to the ministry pretty quickly.

**Mr. Bas Balkissoon:** It's only advice.

**The Chair (Mr. Michael Prue):** It's only advice.

**Mr. Bas Balkissoon:** They may choose to accept it or not accept it.

**The Chair (Mr. Michael Prue):** We're giving advice.

**Mr. Bas Balkissoon:** Neutral advice.

**The Chair (Mr. Michael Prue):** And if I can, we have the advice of eight people who are thoroughly confused by the regulation, and asking them, "Is this

really what you want? Don't you think this needs to be clarified?"

**Mr. Jeff Leal:** I'm just looking at the process to make the change to get rid of the ambiguity and—

**Mr. Tony Ruprecht:** He has to leave, so can we move on?

**The Chair (Mr. Michael Prue):** So if I could, what I'm going to say that we are doing is we are going to have the recommendation and then we are also going to have the amendment carry as advice to the ministry to clarify the lists.

**Mr. Bas Balkissoon:** Mr. Chair, one question of you: The recommendation that we have—I would agree with Mr. Martiniuk on the opposite side. What bothers me about the recommendation is the word "remove." The ministry may choose to keep it, but what we need to do is clarify it, because today it's ambiguous and it's causing confusion among the eight of us.

**Mr. Gerry Martiniuk:** How about "consider removing"?

**Mr. Bill Murdoch:** That would be an amendment to the amendment.

**Mr. Gerry Martiniuk:** Yes, well—

**Mr. Bas Balkissoon:** Or "remove the ambiguity."

**Mr. Gerry Martiniuk:** That's what my little addition is.

**Mr. Lou Rinaldi:** I would support the first amendment that Mr. Martiniuk—

**Mr. Bas Balkissoon:** Yes, "consider removing."

**The Chair (Mr. Michael Prue):** Okay. All right. First of all, on the amendment of Mr. Martiniuk—I don't have any amendments to the amendment. On the amendment of Mr. Martiniuk, all those in favour? Opposed? That carries.

**The Clerk of the Committee (Mr. Trevor Day):** Just to be clear, the recommendation was the first part of it. His amendment was that we also add, in this report, that there be clarity as to what's on each list.

**The Chair (Mr. Michael Prue):** Yes.

**The Clerk of the Committee (Mr. Trevor Day):** That's what is going to go in the report: this, and the clarity.

**The Chair (Mr. Michael Prue):** All right. So on the main motion, which is the recommendation, as amended—okay. All those in favour? Opposed? That's carried.

There's unanimity on this. The other items have all been dealt with.

**Mr. Paul Miller:** All I know is that the turkeys are going to get shot, and they don't have any representation.

*Interjections.*

**The Chair (Mr. Michael Prue):** Shall the report be adopted? Carried.

Shall I present the report to the Legislature? Adopted.

Do you give the authority to the Chair to sign off on the final copy? Okay; done.

Before you go, legal counsel had a couple of small things she wanted to discuss.

**Interjection:** Aw.

**Ms. Marta Kennedy:** I'm sorry.

**The Chair (Mr. Michael Prue):** We still have 15 minutes before we—

*Interjections.*

**Ms. Marta Kennedy:** They're very quick. They're just things about regulations that I thought I would bring up that might be of interest to you. As I said, they're very quick.

One has to do with the motion in the House at the beginning of March having to do with Ipperwash Provincial Park. What I thought I'd point out to you is that one of the reasons why that motion was introduced was because provincial parks are made by regulations. The statute, the Provincial Parks and Conservation Reserves Act, says that if you want to change the size of a provincial park by at least 1% or 50 or more hectares, you must introduce a motion in the House that the House agrees to. You must get the endorsement of the House to this change. So that was the actual reason why that motion had to be introduced and had to be passed. That's just the first thing. It was interesting; I thought I would pass it along to you.

**The Chair (Mr. Michael Prue):** We wondered why.

**Ms. Marta Kennedy:** The second thing has to do with a recent case you might have seen in the papers about stunt driving, where there was a lady who was driving back from Ottawa, or Kanata I think. She had been to see her daughter who had had a baby. She was on Highway 7 and she was clocked going at 131 kilometres an hour after she had tried to pass a transport truck, and she was charged with stunt driving.

The lower court found that the stunt driving provision was unconstitutional and struck it down and said that she was, therefore, not guilty. It did not stand.

Recently, two weeks ago, the Court of Appeal said, "Well, yes, actually, you know what? It is good, that law. Stunt driving is constitutional and we're going to send it back and she has to have a new trial."

I thought this was interesting because stunt driving—even though the actual offence is in the Highway Traffic Act, the description of stunt driving is in a regulation. What the court actually struck down originally was the regulation. It found that regulation unconstitutional. That's not actually listed on the guidelines under standing order 108(i), but it probably should be because constitutionality of regulations is also important.

I thought that was interesting. I would just bring that up to you because it was in the papers and it has to do with a regulation.

**Mr. Paul Miller:** Are there two lists on that, or one?

**Ms. Marta Kennedy:** I think there's probably only one.

There's one other thing I would just mention to you very briefly. It was in the Auditor General's 2009 general report in chapter 3. There is a section about user fees. User fees need to be only—let me try and say that again.

**Mr. Bill Murdoch:** You've got to get it right. We're pretty good here.

**Mr. Bas Balkissoon:** We're pretty good at getting confused.

**Ms. Marta Kennedy:** There's a difference between a user fee and a tax. User fees are only supposed to cover the cost of the service. A tax is bigger than that. If a user fee is more than the cost of the service, then it may be that it's considered an invalid tax and the province has to pay back some of the user fee.

This was interesting to me because user fees are often set by regulation, which would again be something that would come before the committee to look at.

And that's it.

**The Chair (Mr. Michael Prue):** Okay.

**Mr. Bill Murdoch:** I can see we're going to be busy.

**Mr. Paul Miller:** She's doing her job.

**The Chair (Mr. Michael Prue):** If I can just ask the clerk in terms of—we're not here next week, but the week after that, is there likely to be a committee? Do we have work?

**The Clerk of the Committee (Mr. Trevor Day):** Probably not. We've got a couple of private bills. There's some more coming down the pipe. We're going to wait until we have a few of them and put together a big meeting.

**Mr. Bill Murdoch:** MNR might be back to see us.

**The Chair (Mr. Michael Prue):** All right. So then, with that, the meeting is adjourned.

*The committee adjourned at 1008.*



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Mr. Jeff Leal (Peterborough L)

Mr. Gerry Martiniuk (Cambridge PC)

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