



ISSN 1180-4319

Legislative Assembly
of Ontario
Second Session, 39th Parliament

Assemblée législative
de l'Ontario
Deuxième session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 8 December 2010

Journal des débats (Hansard)

Mercredi 8 décembre 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: Katch Koch

Président : Michael Prue
Greffier : Katch Koch

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.

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.

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 8 December 2010

Mercredi 8 décembre 2010

The committee met at 0900 in room 151.

DRAFT REPORT ON REGULATIONS

The Chair (Mr. Michael Prue): I call the meeting to order. We have just one item on the agenda, and that is the report of the overview of the draft second report on regulations, 2010. Marta, the floor is yours.

Ms. Marta Kennedy: As you know, I'm Marta Kennedy. I work for the Legislative Research Service, and I also act as counsel to this committee. I'm here today to present the draft second report, 2010. It covers the regulations made in the second half of 2008 and all the regulations made in 2009.

I don't know if you'd like me just to start going through the report, beginning with an overview of the committee's role—

Mr. Gerry Martiniuk: I've heard the committee's role. I'd prefer just to hear the report.

The Chair (Mr. Michael Prue): Does anybody need to hear the committee's role? Any new members of the committee? Does everybody remember it?

Mr. Rick Johnson: I've never been here before.

The Chair (Mr. Michael Prue): You've never been here before. We'd better do it.

Mr. Rick Johnson: Just the Reader's Digest version.

Ms. Marta Kennedy: Okay. The Standing Committee on Regulations and Private Bills is required by section 33 of the Legislation Act and by standing order 108(i) to conduct a review of the regulations that are made under Ontario statutes. The purpose of this review is to ensure that the regulations that are made in Ontario are only those regulations that are authorized by statute.

As you know, unlike statutes, regulations are not made by the Legislature. The purpose of the regulations review is to provide oversight of the regulations and make sure only those regulations are made in accordance with the limits imposed by the Constitution, the statute and the standing orders.

We have nine guidelines that are in the standing orders which cover various things, but the principle underlying all of the guidelines is, was this regulation made in accordance with the limits imposed by the statute? This goes back to the purpose of regulations review, because regulations are delegated legislation; that is, they're laws like statutes, but they're delegated. The ability to make

these laws, these regulations, is given by the Legislature to someone else, like the minister or Lieutenant Governor in Council or something like that. This delegation is done in the regulation-making authority of the statute, where it says, "The Lieutenant Governor may make regulations governing highways," or something like that. Because the ability to make these regulations is given by the Legislature to someone else—as the source of the law-making power, the Legislature has the right to ensure that the power it has given to this other person or body is being used appropriately. That's the purpose of regulations review.

So, for the purpose of the regulations review, counsel to the committee act on behalf of the committee, reviewing the regulations on your behalf, and contact ministries if we think that there may be a problem with some of the regulations. They write back, and we discuss it with the ministries and then put together a draft report. That's what we have today.

Mr. Rick Johnson: Perfect.

Ms. Marta Kennedy: Okay. You should have two documents: One is the overview, a short document, and the other is the actual draft report.

The draft report is divided into four parts: statistics at the beginning; regulations reported; a new section, which is an update on regulations that were included in the first report that we did back in March; and then appendices at the end, which is information about the number of regulations that various ministries have filed.

I'll just start with the statistics part, and I won't really go through it unless someone has any questions about it. I just wanted to point out to Mr. Martiniuk that he had asked a question last time about new regulations made under statutes. There's a new chart on page 6 of the draft report that shows the new regulations made in 2009 under statutes with no previous regulations.

Mr. Tony Ruprecht: I have a question, Mr. Chair—

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

Mr. Tony Ruprecht: I'm going back to the overview, if that's okay with you. Can we switch over to the overview of the draft second report on regulations?

Ms. Marta Kennedy: Yes.

Mr. Tony Ruprecht: Why does the report cover the regulations filed between July 1, 2008, and December 2008 and all regulations filed in 2009? Why is this not up to date?

Ms. Marta Kennedy: Well, back in March—I think it was in March—we did the first half of regulations for 2008, which were the January to June regulations. That report was prepared and ready to go in the fall of 2009, I guess, but for a number of reasons it wasn't possible for the committee to look at it. So we did the first half of 2008 in March of this year. This report covers up to the end of 2009. We haven't done 2010—2010 is not included in this report. We're working on 2010. The 2010 regulations are still being made and still being filed, and they will be until the end of December.

I guess one of the reasons why we are behind, in the sense that we're not presenting, for example, the first half of 2010 to you, is that other things happen in legislative research and we have other responsibilities besides these regulations.

Mr. Tony Ruprecht: Okay. My second question is this: On various occasions over the years, Mr. Martiniuk and I think lately Mr. Miller—and prior to that probably Mr. Prue, if my memory serves me correctly—have raised some issues that may be beyond the purview of what you're trying to accomplish, but I'm interested in them and maybe they should be part of the regulations; that is, on various occasions, we have the public appear here, and then what happens, essentially, is that there's simply a quick vote and they're gone again and it has been approved, yet they come from a very far distance. They come from northern Ontario, they come from Windsor, just to be here for one quick vote. I'm wondering, while you're making this presentation, whether this is part of the review or whether this is outside of what you're trying to accomplish this morning.

And one more point while you're thinking about this: The Conservative Party—Mr. Prue, you'll remember this, I think—had a—what was it?

Mr. Jeff Leal: Red Tape Commission.

Mr. Tony Ruprecht: Red Tape Commission that was looking at that. They made a number of recommendations and then we're back to square one; namely, the same process still takes place.

Ms. Marta Kennedy: I think the first thing you were talking about is private bills, the revival of companies. I think that's what you were talking about, Mr. Ruprecht, where members of the public have come in as witnesses? I think that's probably what you were talking about. I believe Mr. Prue has some information about ministries.

The Chair (Mr. Michael Prue): Oh, yes. I thought all members got a copy of that, or did they not? There was a letter sent by Mr. Takhar stating that the ministry is looking into ways that companies can be revived without having to come before this committee.

0910

Mr. Tony Ruprecht: I didn't see that letter. Did you, Paul?

The Chair (Mr. Michael Prue): This was some months ago, but nothing has transpired since. We asked, because we sent it off. It came back, but it just said that they were looking into ways. We've heard nothing since.

Mr. Tony Ruprecht: Do you need a motion, then? What do you need to follow this up, since I don't remember getting that?

The Chair (Mr. Michael Prue): I don't want this to be confused. One half of what we do is private bills. The other half of what we do is what we're doing today, which is looking at the regulations. I don't believe we've ever had a deputant on the regulations, other than ministry staff who do come in to tell us about the regulations and why we ought not to rebut them and change them.

Mr. Tony Ruprecht: I will, of course, not insist on this discussion, but it may be a good idea to get back on this in the future, like the next few times we meet, to follow this up. I don't know what you need to—

The Chair (Mr. Michael Prue): Okay, but I don't know that that's what we're here for today. Today, we only have the regulations.

Mr. Tony Ruprecht: All right.

The Chair (Mr. Michael Prue): When and if a decision is made by the government on any changes they want to make to this committee or the authorities that we have on private bills, I'm sure there will be a significant debate at that point.

Mr. Tony Ruprecht: Mr. Chair, I understand, and I apologize ahead of time, but I think that what I would like, as a member of this committee for some time, for you to do as Chair is to follow this up as well.

The letter from Mr. Takhar may be filed. It may be forgotten. Who knows what will happen? It just may be a good idea to tweak their response.

I came here this morning, and I think that while we're talking about this half of the regulations—

The Chair (Mr. Michael Prue): If you want to make a motion, I think it's a good one. If you make a motion that the clerk, on behalf of the committee, send a follow-up to the minister and ask if there has been any development in their study on private bills, that's probably a good thing to do. Will you make that motion?

Mr. Tony Ruprecht: Yes, I'm prepared to make that motion.

Mr. Gerry Martiniuk: Excuse me. Tony, I would suggest that maybe we would ask, not the minister but the deputy minister—to invite him to the committee to discuss that matter. It won't happen till March.

Mr. Tony Ruprecht: I'm not prepared to do that, Mr. Martiniuk, at this stage of the game—

Mr. Gerry Martiniuk: No? Because all it will get us is another letter saying that it's under consideration. That's all I'm thinking of.

Mr. Tony Ruprecht: I don't want this to be a big discussion or whatever. I just want them to follow up on the letter at this stage.

Mr. Gerry Martiniuk: Okay.

Mr. Tony Ruprecht: We can continue with that later on, as the Chair says. We can invite other deputants to discuss this and have a full discussion on it. But at this stage of the game, I would just be prepared to ask for a follow-up on that letter. That would be my motion, Mr. Chair.

The Chair (Mr. Michael Prue): Okay. Any discussion on the motion? Mr. Leal.

Mr. Jeff Leal: I just happen to think that Mr. Martiniuk is probably correct here. If we're looking at a way—and I don't want to get away from all the other business we're discussing. These numbers of companies that lapse and get revived—it's a pretty common process. Setting aside the government of the day, the deputy minister would probably be coming up with the process to allow that to happen on a continuous basis without coming back here. I, for one, would be interested to hear from that individual how that might occur without continually coming back and going through this process for what is a pretty standard procedure to revive a number of these—but I don't want to prolong the debate today if there's a—

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

Mr. Paul Miller: I think I'm the one who started this ball rolling, so basically I agree that there should be some kind of a response from the ministry so that we know the status of what they're doing and whether they're looking into it. Report back to this committee so that we have some timelines on if there's going to be any progress or not. At this point, just an inquiry would be good.

I agree with Mr. Martiniuk and Mr. Leal that we might invite somebody from the ministry to come and say what's going on, where we are and if this is going ahead or not.

The Chair (Mr. Michael Prue): Okay. So we have a motion. Is that all covered and understood by the clerk? You're going to draft the letter, so it is all understood?

Mr. Gerry Martiniuk: What does the motion say?

Mr. Tony Ruprecht: What does the motion say? It's a follow-up on the previous letter by Mr. Takhar.

The Chair (Mr. Michael Prue): Yes, it's a follow-up from Minister Takhar on what the ministry is intending to do on the revival of companies—

Mr. Gerry Martiniuk: Okay. Can I move an amendment to that motion?

The Chair (Mr. Michael Prue): Sure.

Mr. Gerry Martiniuk: The amendment would be that in the letter to the minister we invite a representative from the ministry to come to the committee and report on progress in regard to the inquiry.

The Chair (Mr. Michael Prue): We have an amendment to the motion. Any discussion of the amendment?

We're ready to vote on the amendment. All those in favour? Opposed? That's carried.

On the main motion, as amended, all those in favour?

Mr. Tony Ruprecht: Mr. Chair, can we go back and have a recorded vote on that amendment?

Mr. Gerry Martiniuk: It's too late now.

The Chair (Mr. Michael Prue): The vote is taken.

Mr. Tony Ruprecht: Well, excuse me; you were just going too fast.

The Chair (Mr. Michael Prue): I asked for discussion, Mr. Ruprecht. I did ask for discussion, and I'm seeing a lot of heads shaking. I mean, that's the process. The vote has been taken.

On the main motion, as amended, all those in favour? Opposed? That's carried.

So we will inquire of the ministry, and we will invite someone to a subsequent meeting to find out what's happening.

Now that that's taken care of, let's go back to the regulations that brought us here. Any questions before we start going page by page?

Mr. Paul Miller: Just one question: You mentioned that you were behind for whatever other work-related things. Is it because of lack of personnel or lack of time or is not enough attention given to this? What's the reason for the delays?

Ms. Marta Kennedy: Probably the main reason for the delays is, in a sense, not enough personnel, I guess. Things that are urgent take priority over things that are not urgent.

Mr. Paul Miller: You mean we're not urgent?

Ms. Marta Kennedy: I think that members would be concerned if their questions were not answered in a reasonable fashion, and legislative research also has to deal with research questions that come in to the library and are asked.

Mr. Paul Miller: Do you have interns?

Ms. Marta Kennedy: We have one intern coming in January.

Mr. Paul Miller: Why don't you assign the intern to it?

Ms. Marta Kennedy: To the regulations?

Mr. Paul Miller: Yes.

Ms. Marta Kennedy: I'm not sure that the intern would have the appropriate knowledge to do it.

Mr. Paul Miller: That's why you're there. She can come and ask.

Ms. Marta Kennedy: That's true, but the people who review the regulations are actually lawyers.

Mr. Paul Miller: Can I ask you a question? No disrespect to you, but how do they expect a committee to function properly if we're six or eight months or a year behind with information? If you require information, I guess you've got to go to the library yourself and get it, and it may be outdated or not up to date. How do you function on this committee with improper information?

Ms. Marta Kennedy: Do you mean you as a committee member?

Mr. Paul Miller: Yes.

Ms. Marta Kennedy: I guess I can't answer that question.

Mr. Paul Miller: Oh.

Ms. Marta Kennedy: I know it has always been a concern of legislative research that we are behind, and there have been pushes to get us back up to date.

Mr. Paul Miller: Do you need more people? You can say yes. Don't be shy.

Ms. Marta Kennedy: More people are always useful.

Mr. Paul Miller: Okay. Good answer. Thank you.

The Chair (Mr. Michael Prue): That appears to be the end of general questioning. Perhaps we should start going through the various ministries, starting with the

Ministry of Agriculture, Food and Rural Affairs, which is the first one reported on page 8 and which is also the first one in the overview.

Ms. Marta Kennedy: Right.

The Chair (Mr. Michael Prue): Could you describe this and what needs to be changed.

Ms. Marta Kennedy: Okay. We're on page 8, and it's a regulation under the Nutrient Management Act, 2002. It's the general regulation made under this statute, and is administered by the Ministry of Agriculture, Food and Rural Affairs. This is one of two regulations in this report where the ministry believes that the regulation does not violate the committee's guidelines, and this is included in the draft report as a potential violation of the clarity-of-language guideline.

0920

The Nutrient Management Act deals with things like generation and storage of nutrients and their application to land. You probably know what nutrients are. They are things like fertilizer, manure, compost—

Mr. Gerry Martiniuk: That's our job.

Mr. Paul Miller: We hear a lot of nutrients every day. Lots of nutrients in the House.

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

Ms. Marta Kennedy: This is the main regulation. We're looking at the section of the regulation that deals with NASM plans. What's NASM? NASM is non-agricultural source materials, which are nutrients that come from off the farm, things like sewage biosolids, food processing waste, that kind of stuff.

A farmer who uses those kinds of nutrients—NASM—may be required to have a NASM plan. What's a NASM plan? It's a plan that deals with the storage of this NASM on the farm and its application to land.

The regulation says that land that is covered by a NASM plan is exempt from part V of the Environmental Protection Act. Part V of the Environmental Protection Act deals with waste management and it requires a certificate of approval to be given before NASM can be applied to land. Without this exemption in the regulation, a farmer would have to go and get a certificate of approval under the EPA before he could spread this type of nutrient on his land.

The question is, can this regulation that's made under the Nutrient Management Act exempt land from the requirements of the EPA? This is kind of a problem, because normally a regulation can't do that unless there is specific authority in the act. It's even more unusual for a regulation to exempt things from the application of another act.

We wrote to the Ministry of Agriculture, Food and Rural Affairs and we said, "This is very odd. You don't seem to have authority for this part of this regulation. What's going on?" They said, "This isn't actually an exemption. These are the conditions for getting the exemption." If you look at the regulations under the EPA, the regulations there have the actual exemption. So we thought, okay, if the actual exemption is in the EPA, which they're allowed to do—they're allowed to exempt

land from being required to get a certificate of approval—if that's where the exemption is under the EPA, what's this thing doing over here in the nutrient management regulations? It looks like an exemption. If you look at it, they actually called it an exemption. At the bottom of page 8, it says, "Exemption, part V of Environmental Protection Act."

Given what the ministry said, we thought, okay, if it's not supposed to be an exemption, then there's a problem with the language here. If it's just supposed to be the conditions for the exemption—the description of the type of land, the situation under which you'd get the exemption—then perhaps this part of the regulation should be rewritten so this is clearer.

The Chair (Mr. Michael Prue): Mr. Martiniuk, then Mr. Miller.

Mr. Gerry Martiniuk: We don't have the particular sections of the statute to see if there are any limitations in the sections, and I assume there are not per se; that depends on the wording.

Let me give you a hypothetical situation where the Legislature, for whatever reason, saw fit not to permit regulations under a statute. Let's assume that, and let's assume the environmental act, the EPA, has that provision. Now, all of a sudden, in another act, where the Legislature has given them permission to make regulations, what the ministry is saying is that somehow that right to make regulations under this act is going to affect the EPA. In effect, it's a regulation of the EPA.

The Legislature has already said it's not going to permit you to have a regulation under that statute. How is that possible?

Ms. Marta Kennedy: That's not quite the situation we have here, but yes, that is a variation of the situation we have here.

Mr. Gerry Martiniuk: I have to simplify it in my own mind.

Ms. Marta Kennedy: Right. That's why we wrote to them and asked whether there was a problem.

One way to fix this is to put into the Nutrient Management Act, "Regulations under the Nutrient Management Act can create an exemption from the Environmental Protection Act." It would be odd, but you could do it.

Another way to do it is to change the regulations under the Nutrient Management Act so that it just says that to get an exemption under the EPA, the land has to do this, this, and this; you have to meet these requirements. That's the possible recommendation that is in the report, which of course you can change as you like.

Mr. Gerry Martiniuk: I'm still not—you're going to change the agriculture act to affect the EPA on another matter—

Ms. Marta Kennedy: No.

Mr. Gerry Martiniuk: —or you're going to change the EPA regulation to affect the other act?

Ms. Marta Kennedy: No. Change the nutrient management regulation so that all that it says—right now it says, "A NASM plan area that satisfies the following requirements is exempt from part V of the Environmental Protection Act," okay?

Mr. Gerry Martiniuk: Yes.

Ms. Marta Kennedy: What you could possibly do, and it would be up to the ministry to decide, is say that to get an exemption from the EPA, you have to meet these requirements. That's not the actual exemption; it's just the conditions for the exemption.

Right now, there's an actual exemption in the EPA regulation. The EPA regulation says that a NASM plan area is exempt from part V of the Environmental Protection Act, or the requirements to get a certificate of approval—something like that. That's fine, because they have that authority in the EPA so they can make those regulations. The problem is the regulation under the Nutrient Management Act.

Mr. Gerry Martiniuk: Okay, but does the section itself in the Nutrient Management Act specifically authorize them to make regulations that affect other statutes?

Ms. Marta Kennedy: No. One of the things it says is, "The Lieutenant Governor in Council may make regulations ...

"(e) exempting any agricultural operation, person or thing or class of agricultural operation, person or thing from the application of this act, the regulations or a provision of this act or the regulations and prescribing conditions for the exemptions;"

Mr. Gerry Martiniuk: Okay.

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

Mr. Paul Miller: I think you've got a problem here with the way you're going about this, because the Environmental Protection Act is there. It depends on the land usage. A farmer or agricultural or other related industry could be using hazardous material for whatever growth or whatever particular item they're dealing with that also affects—it has to be under the Environmental Protection Act, because it goes into the rivers, lakes and streams that surround the farms.

You cannot eliminate the Environmental Protection Act from governance. Certificates of approval are given to landfills, industrial sites and chemical plants. There are some pretty strong chemicals that are used in the farming industry that would have access, through the soil, through erosion, to go into your lakes and streams.

I don't like the fact that we're doing an end run around the Environmental Protection Act to rectify the situation with NASM. If you do that, you've actually eliminated the jurisdiction of the Ministry of the Environment. I'm not sure I like the way you're going with this. You're giving an exemption from NASM, the exemption is being removed from the Environmental Protection Act and you're putting it under the natural resources act, but I'm not quite sure it'll have the impact because they won't have the inspectors that the Ministry of the Environment has if there's a problem. So I think you're creating a problem for yourself here.

0930

Ms. Marta Kennedy: Whether or not it's a good idea is really not what we're looking at here. But I will say this: My understanding of what happened when they

made these amendments was that the Ministry of the Environment and the Ministry of Agriculture, Food and Rural Affairs got together and decided how they were going to divide up dealing with the application of nutrients on farms, the storage of nutrients on farms. What they decided was that farmers would have to create different types of plans for dealing with generation of nutrients, storage, application, and these plans would have to be approved by agriculture, food and rural affairs, and the Ministry of the Environment would be responsible for enforcement. That's how they divided it up. They decided that they wouldn't need these certificates of approval because they're going to have these plans and strategies that have to be approved by OMAFRA. Environment and OMAFRA decided that this was appropriate and went ahead with these amendments.

Mr. Paul Miller: Are you saying that the farming industry is going to regulate the nutrient disposal, nutrient storage, and all the Ministry of the Environment is to do is to act on complaints or dumpage or whatever may come up that affects rivers, lakes and streams?

Ms. Marta Kennedy: I'm not sure, because I don't really know—

Mr. Paul Miller: Well, I'm having a real problem with this. I think we should get more information from both ministries before we move ahead with any stuff like this.

I'll tell you, I remember an incident in Hamilton where they had the Taro landfill and they had a farm right next door, and they were worried about stuff coming through the liners and going into the farmland, which was perfectly good farmland, which now has been condemned and they're having problems. The farmers got sick. They sold their land. They're gone, and it's up in the air. It's in the courts. The farmers are suing what used to be Philip Environmental for loss of income and all the things that go along with a farm.

I'm not quite sure they've looked at this as well as they should have, and I personally will be asking questions about this. I don't like where this is going.

The Chair (Mr. Michael Prue): I have Mr. Leal and then Mr. Levac.

Mr. Jeff Leal: I just want to ask a question for clarification. If a farmer was using a material like Sound-Sorb, which is a paper biosolid mixed with sand, then he or she would have to file under NASM to use that material. Is that correct?

Ms. Marta Kennedy: You'd have to ask OMAFRA specifically, but my understanding is that if you want to spread that type of material on your farm, you have to file and prepare and get approved a NASM plan, which covers the application of this and the storage of this application to your farmland.

I should also say that I believe that these don't come into force until January 2011. Currently, I don't think they have to do it.

The Chair (Mr. Michael Prue): Mr. Levac.

Mr. Dave Levac: I start by asking for forgiveness regarding my ignorance on this committee work that

we're asking. I just need clarification for myself to understand exactly what we're doing.

I listened to the last two questioners and I see questions based on the actual content, as opposed to—and maybe I am wrong—the process and investigating regulations as they pertain to this committee: what they mean, how they apply and what they're doing, versus the content.

Could I get some clarity on that for my sake, so that I can understand? I'm hearing an in-House debate as to whether or not they like or don't like a regulation, versus whether or not we're reviewing regulation. I'm not sure. I just need some clarity on that, please.

The Chair (Mr. Michael Prue): Well, if I can: If all members turn to page 10, there is a possible committee recommendation. I think maybe that spells out what the solicitor is trying to do, that "The Ministry of Agriculture, Food and Rural Affairs amend" the sections "to clarify that s. 8.3(1) only sets out the requirements necessary to obtain an exemption," because it's not clear in the regulation.

Mr. Dave Levac: I see.

The Chair (Mr. Michael Prue): Our job is to point out to the various ministries how their regulations may be misinterpreted.

Mr. Dave Levac: Got it.

The Chair (Mr. Michael Prue): That's our job. Our job is not to write the regulations or anything else. That's up to the various ministries. That's where we're heading; we're heading in this direction. Either we want to do this or we don't; we want to hear people to determine whether we make this recommendation or we don't. But we can't go behind all these ministries and all these regulations and why they did it.

Mr. Dave Levac: I appreciate that clarity, because I just wanted to make sure I had an understanding of the committee's work regarding the content of a regulation and requesting legislative research to provide us with some information and background as to whether or not the regulation is appropriately placed, if it has content that needs to be questioned. I'm clear. I was getting kind of torn in different directions and I needed clarity.

I apologize again, because it was just my ignorance due to not being on the committee; I'm a sub. I just wanted to get that understood, and I appreciate that, Mr. Chairman.

The Chair (Mr. Michael Prue): Mr. Miller again.

Mr. Paul Miller: Yes, just for Dave's benefit: Basically, if we okay the recommendation, we've moved it on back to the House. If you have any questions or you're concerned about the committee's recommendation, you discuss it here.

Mr. Dave Levac: Got it.

Mr. Paul Miller: Those were my concerns. They're on the record now. If it passes, it passes, but at least I've brought my concerns forward.

Mr. Dave Levac: I just needed some clarity to understand in terms of where the outcome was with regard to

the evaluation of the regulations, so I appreciate the clarity.

The Chair (Mr. Michael Prue): If I can just read from the standing orders, although this is difficult as well, the standing order says that the committee is "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 ... " Then there's a whole bunch of "in regards to."

So we are to look at the scope and method of the exercise of the delegated power, but not the merits of the policy or the objectives.

Mr. Dave Levac: It's helpful that you did that for me, because I was teetering, so thank you.

The Chair (Mr. Michael Prue): Okay, yes.

Mr. Gerry Martiniuk: My only concern is whether or not this is—the effect of it, between statutes—in fact a legal regulation. I'm not dealing with the merits of it at all. I don't even understand the merits at this moment.

My question to counsel is very simple. The recommendation, as set out on page 10: Will that result in a legally enforceable regulation?

Ms. Marta Kennedy: I would hope so.

Mr. Gerry Martiniuk: Oh no. No, no.

Ms. Marta Kennedy: Okay. If it's done—

The Chair (Mr. Michael Prue): I think he's looking for a definitive answer.

Ms. Marta Kennedy: If it's done properly, yes. It will always depend on the wording.

Mr. Gerry Martiniuk: Yes? We have a recommendation which we're going to make to the House, and my question is, are we recommending something that will legally solve the problem or not? If not, then we shouldn't be recommending it, that's all. It's as simple as that.

Ms. Marta Kennedy: Right. Again, it will depend, as with anything, on the wording. In my opinion, it would be possible to fix this by changing the wording to make it clear that, if you look at—

0940

Mr. Gerry Martiniuk: No, no; I'm looking at the recommendation. The suggestion is that we make this recommendation as set out on page 10.

Ms. Marta Kennedy: Right.

Mr. Gerry Martiniuk: Does that clarify the situation and ensure that this regulation would be legally enacted under the terms of the statute?

Ms. Marta Kennedy: I think the only way to do that would be to actually set out the actual wording of the section as you want it changed. So if you actually set out "to amend this section so that it reads as follows," that would be sufficient, presumably. But the recommendation as set out here gives a bit more leeway.

Mr. Gerry Martiniuk: Yes. Is it within the jurisdiction of this committee to recommend a particular specific change to the regulations, or are we merely to make generalities?

Ms. Marta Kennedy: I think—

The Chair (Mr. Michael Prue): I don't believe it's within our mandate to write the regulation. Correct me if I'm wrong. I don't think—

Mr. Paul Miller: Well, with all due respect, Mr. Chairman, you're asking us to pass something that a couple of members have concerns about. If we're not sure that it's done right, if we're not sure that it has the proper content, then why are we passing it or why are we moving ahead with something that may be insufficient or could be questioned further down the line? To me, that's a waste of bureaucratic time. It's a waste of our time to recommend something that might not be legal in the sense of the word.

I personally have some concerns about this end run we're doing around the Ministry of the Environment. I don't like it. So I will not be voting for this because, with all due respect to legislative research, she's kind of hoping everything is okay and it's going to go through. It wasn't a definitive answer, so I personally will not support this recommendation in its present form if it's not completely covering all the bases. It's as simple as that.

The Chair (Mr. Michael Prue): Mr. Levac.

Mr. Dave Levac: After hearing what I heard, for my clarification, that's exactly what makes the world go round. I mean, Mr. Miller doesn't like it; we might. We get to that point where we believe that it's being covered off the way we're hearing the recommendation coming from legislative research.

There will be an analysis of this on an ongoing basis. It does not mean that this is the be-all and end-all, because at one point, if Mr. Miller is right, there will be a challenge and there will be somebody from the legal society somewhere who will say, "I think it's illegal to do this." And with all due respect to Mr. Martiniuk, I honestly believe that we might get different opinions from different lawyers. I think I've seen a room where we had three lawyers and got seven different opinions.

That's why I asked the question: to make sure that we have clarity on exactly our purpose. I believe I've heard you clearly, that the purpose is not to deal with the content of the regulation but to ensure that it complies. As Mr. Martiniuk is rightfully asking, does it comply with the capacity of our committee to make these recommendations, whether they're liked or disliked? This is the direction that we're asking.

The Chair (Mr. Michael Prue): It's not just our committee. With respect, the recommendation we make would be to the ministry, that there is a possible difficulty in the regulation. The recommendation is, "This is what is necessary to possibly fix it before some legal problem develops." That's what we're doing.

Mr. Dave Levac: And that's what I'm saying. That's what I feel clear about now that I've heard the description. You've said yourself that you believe you've covered the scope of what our committee is supposed to be doing.

Inside of that, I heard Mr. Miller say he's not happy with that. If it's a vote on this recommendation, does it not come to a vote on whether or not we do this recom-

mendation? If the vote carries, then that recommendation gets to the ministry to make a decision on how it's going to receive that recommendation or information, correct?

The Chair (Mr. Michael Prue): That is correct, and what we have done in the past when we don't understand is we have invited people from the ministry. Has the ministry been consulted, and are they opposed to this or do they like it?

Ms. Marta Kennedy: They haven't been consulted on the recommendation.

The Chair (Mr. Michael Prue): But do they say that there's a potential difficulty here?

Ms. Marta Kennedy: No. Originally, we had written the ministry to say, "We don't think that you have the authority in the statute to make this regulation." They wrote back and said, "Well, we're not doing what you think we're doing. What we're doing is something different. We're not creating an exemption; we're setting out what you have to do to get the exemption, the requirements for the exemption." That's why we said, "There's a problem, then, with the language. It's not with the authority for the regulation; it's the problem with the language," because the language makes it look like there's an actual exemption in the regulation. If all you want to do is set out the requirements to get this exemption, then you need to change the language so that it's obvious.

Mr. Dave Levac: Makes sense.

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

Mr. Paul Miller: With all due respect to Mr. Levac and this committee, I'm here to recommend to the House whether this recommendation should go ahead or not. I'm not here, in my humble opinion, to rubber-stamp things that can be argued down the road. What is the purpose of this committee? Just to rubber-stamp recommendations that people bring forward without discussion, without inquiry, without telling what you don't like about it? What is my function here? To just say, "Go ahead with the recommendation"?

I really would like you to read that thing you read earlier. It's basically telling me I'm just rubber-stamping something from the ministry. I can't discuss it; I can't argue it until it gets to the House. So what is the purpose of this committee?

The Chair (Mr. Michael Prue): The purpose of this committee, or of our exercise here, is to examine the regulations—

Mr. Paul Miller: To examine the regulation—

The Chair (Mr. Michael Prue): —with particular reference to the scope and method of the exercise of the delegated legislative power. This has to be done without reference to the merits of the policy. What we're doing is we're looking at it and saying, "Ministry, we don't think what you're trying to accomplish can be accomplished by this regulation because there's something wrong with it and you should fix it."

Mr. Paul Miller: But you're saying at the end of that, which contradicts the first part of it—it says, in reference to the mandate, "We can discuss it, but we can't make reference to the content." What is that? It's double talk.

Read that again. We're saying that we can't talk about it, but we have to recommend it. It's double talk.

The Chair (Mr. Michael Prue): Unfortunately, it's in the standing orders. I mean, if we disagree with the standing orders—

Mr. Paul Miller: I do. I think it's ridiculous.

The Chair (Mr. Michael Prue): Then somebody can move a motion asking whoever looks at the standing orders to possibly look at this and say that this committee should have different authority. This is only set out for us to go through some regulations once or twice a year to see whether or not they are meeting the objectives of the various acts.

Mr. Paul Miller: But we can't discuss the content or make reference to it.

The Chair (Mr. Michael Prue): Because that's the job of the Legislature.

Mr. Paul Miller: So what's our job?

The Chair (Mr. Michael Prue): Our job is to see if there are mistakes.

Mr. Dave Levac: It's the process, Paul.

Mr. Paul Miller: Process? Well, the process needs to be changed, and I am making a motion.

The Chair (Mr. Michael Prue): The House has to change the standing orders. The committee can't change the instructions given to them.

Mr. Paul Miller: That's ridiculous. Whatever; another stupid thing. Okay.

The Chair (Mr. Michael Prue): Mr. Johnson.

Mr. Rick Johnson: I was just going to say that my understanding, in clarifying, is that if we find something that we think is wrong and potentially clashes with others our job here is to point that out. Then it's up to the affected ministries to straighten it out, report back to us and say, "Thank you for pointing this out. We've taken care of it." Will they report back on this?

Mr. Paul Miller: No, we can't make reference to the content.

Mr. Rick Johnson: No, but we can make reference to the fact that we think something is wrong with it, and it's up to them to correct it.

Mr. Paul Miller: That's reference to the content.

Mr. Rick Johnson: No, it's not. It's about the process, which is what this recommendation does.

Mr. Paul Miller: Oh, Christ. It's all a bunch of double talk.

Ms. Marta Kennedy: I think I'll just answer Mr. Johnson's question first. Then I might be able to clarify Mr. Miller's point.

In this report, we do have, at the end, a new section which is an update to regulations that were included in the previous report and what the ministries have done since then. The ministries do not automatically report back to the committees on what they have decided to do with the committees's recommendations. That can be included in a recommendation to ask the ministry to report back to the committee. We have followed up with some of the regulations, some of the recommendations.

It's up to you what you would like to happen going forward with these recommendations.

I think, Mr. Miller, that what the standing orders say is that what this committee is supposed to do is look at whether or not the regulation is, in essence, legal. It's not looking at whether the content is good or whether the implementation of the regulation is good or whether it's a fair regulation or whether—

Mr. Paul Miller: Can I ask a question? If the content is not good, then it's probably illegal.

0950

Ms. Marta Kennedy: Not necessarily.

Mr. Gerry Martiniuk: Chair?

The Chair (Mr. Michael Prue): Before, if I can just clarify, if people look at this report—we've done this before on other things and, I'll tell you, this is a frustrating exercise because we went through this last year. If you turn to pages 16, 17, 18 and 19, you'll see what we did the last time. We recommended a change to the Early Childhood Educators Act; that's number one, the first one. The act was amended to create the authority and, effective June 3, "the provision of the act that was in conflict with the regulation was repealed." So the ministry did something.

If you look at the next one, over on to page 17, the ministry response to the recommendation was, "As of November 1, 2010, the regulation has not been amended." So they did nothing with it.

If you look down at the bottom of the page, with the transit projects of greater Toronto, the ministry response was "None."

"The ministry was contacted by letter dated November 10 ... regarding this regulation and a subsequent amendment...." The ministry has chosen not to act. And on and on it goes, all the rest. The ministry didn't act.

We made five recommendations last time and only one had the effect that the committee—

Mr. Paul Miller: Can I ask a question?

The Chair (Mr. Michael Prue): Yes.

Mr. Paul Miller: Was the recommendation we made on content or was it on procedure?

The Chair (Mr. Michael Prue): Every one of them was on procedure.

Mr. Paul Miller: So we don't deal with the content, then?

The Chair (Mr. Michael Prue): We don't deal with the content, and if you remember—

Mr. Paul Miller: What a useless committee.

The Chair (Mr. Michael Prue): I think the last one that we spent a lot of time on was the wild turkeys.

Mr. Paul Miller: The wild turkeys?

The Chair (Mr. Michael Prue): The wild turkeys.

Mr. Gerry Martiniuk: That was a drink, wasn't it?

The Chair (Mr. Michael Prue): It was not the drink; it was the wild turkeys, about the species, sex, size, age or the type that might be killed. We made the recommendation and the ministry response to that was "None."

It is sometimes an exercise in frustration. The job that the Legislature gave to this committee was to go through and find out if any of the regulations are in error.

Mr. Gerry Martiniuk: Mr. Chairman?

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

Mr. Gerry Martiniuk: I'm just concerned with the legalities. I would be satisfied if the recommendation ended and we requested a report by the ministry back to the committee with their resolution of the problem. At least we'll get an answer. It's a little stronger than just passing the regulation, I think.

Mr. Dave Levac: I see that as a friendly amendment, actually, because what we're talking about is exactly what you just pointed out on pages 15, 16, 17, which is—the process is to evaluate the legalese of the regulation and make a recommendation that we think we've found a flaw. We got a response from the ministry that said, "But that's not what we're doing. This is what we're doing." So we made a recommendation to address what they're saying. If they take it, it means that this committee was accurate in its assessment of that regulation. If they don't take it, it means that they believe we're not accurate. That's what we're doing. We point that out.

So I would further that by requesting that we do this recommendation with the added caveat of "and report back to the committee on action taken."

The Chair (Mr. Michael Prue): I think that should be the recommendation in all—

Mr. Dave Levac: On all of it.

The Chair (Mr. Michael Prue): We have a number here that we have to deal with.

Mr. Dave Levac: Sure. Are we at the point where we can say now that we'd like to decide on our committee recommendation?

The Chair (Mr. Michael Prue): Are there any other questions, first? Mr. Miller?

Mr. Paul Miller: You guys can do what you want, but bottom line here is, if I'm making a recommendation on a recommendation to the House and I can't discuss content, how can I make a recommendation? Content is part of the regulation. It's one within one. There's total confusion here, and personally I will not be supporting it, because I have problems with that recommendation. It doesn't matter; it's going to go through anyway. It'll be rubber-stamped, but that's fine.

The Chair (Mr. Michael Prue): Okay, is there somebody who will make a motion to either adopt or not adopt?

Mr. Dave Levac: So moved, with the friendly amendment included.

The Chair (Mr. Michael Prue): Okay, what are you moving? Are you moving the recommendation contained on page 10? You have to be a little more specific.

Mr. Dave Levac: The committee recommendation on page 10: "The committee recommends that

"1. The Ministry of Agriculture, Food and Rural Affairs amend s. 8.3(1) of O. Reg. 267/03 (General) to clarify that s. 8.3(1) only sets out the requirements necessary to obtain an exemption from part V of the Environ-

mental Assessment Act, and does not create an exemption," and that the ministry report its action back to this committee.

Mr. Paul Miller: Mr. Chairman, I'd like a recorded vote on this.

The Chair (Mr. Michael Prue): All right, there will be a recorded vote, but first of all, discussion on the motion by Mr. Levac. Mr. Martiniuk.

Mr. Gerry Martiniuk: My question is, is there ever any debate in the House when we make this report? Is there an opportunity for debate in the House to discuss the merits of the regulation?

Mr. Paul Miller: I don't remember any.

Mr. Gerry Martiniuk: We discuss the merits of the statute and the section, and then the government establishes regulations. That's their function; that's the way the parliamentary system works. Is there ever an opportunity for the merits of those regulations to be discussed? I'm not talking about the procedure; that's what we're doing here. But is there ever an opportunity to discuss the merits of the regulations per se?

The Chair (Mr. Michael Prue): I think the clerk has the appropriate answer to this.

Interjection.

The Chair (Mr. Michael Prue): I could say it, but he will say it so much better.

Mr. Paul Miller: So who knows, really?

The Chair (Mr. Michael Prue): Well, he knows better than I.

The Clerk of the Committee (Mr. Katch Koch): All committee reports to the House are placed on the order paper for the government to call for debate.

The Chair (Mr. Michael Prue): So if the government calls them for debate, they're debated; if the government doesn't call them for debate, they're not.

Mr. Paul Miller: So they never call regulations. I never saw any discussed—ever. In three years, I've never discussed a regulation in the House. So the government doesn't call it; they just rubber-stamp it.

The Chair (Mr. Michael Prue): But it's the role of the governing party to do that.

Mr. Paul Miller: Okay, that's fine. It's a lousy procedure, but that's the way it is.

The Chair (Mr. Michael Prue): Mr. Levac.

Mr. Dave Levac: I beg to differ. Specific to the question Mr. Martiniuk asked, yes, the clerk has indicated one avenue to debate it. There are motions, there are opposition day motions, there are private member's bills and there's opportunity in the House at any time in debate on a bill for anyone to make a point on a regulation contained therein. So the House is probably the one spot where there's very little opportunity for someone not to talk about any topic they choose.

In terms of the process, the one thing I will give to Mr. Miller's concern is that the process does not specifically take regulations and expose them on an ongoing basis for debate in the House, because inside of that is the understanding that legislation that requires regulations, when debated, is a spot where that would come too. It has

come to the House on occasion, where someone says, “Yes, the same old same old. You’re going to do it in regulations. So what about this, what about that?”

Is it specific to the question you asked? No. Is it generalized, where absolutely anything can get discussed? Specifically in this room with these members present, knowing they have reviewed the regulation and they’re not happy with it, is there a spot for them to bring that to the House? Absolutely, under any circumstance. But specific to it, you could offer it as an opposition day motion, you could offer an opposition day dedicated to regulations, you could offer a private member’s bill or you could offer a private member’s motion and such.

So quite frankly, in the broader context of this discussion, there’s all kinds of opportunity to bring a concern about what an individual regulation means or doesn’t mean. As a matter of fact, there have been some petitions designed because of a regulatory stream, specifically around the environmental act, where communities actually put a petition together to talk about regulation 621 of the environmental act—just numbers to be used as an example—where they say that that’s going to impact their community. They’ve issued petitions and offered an opportunity for those to be read into the House.

I hope I’ve covered off a lot of the avenues and the areas in which people can make that point heard.

1000

Mr. Gerry Martiniuk: Minority reports.

Mr. Dave Levac: Not in report.

Mr. Gerry Martiniuk: No. A minority report.

Mr. Dave Levac: Oh, yes, you can.

Mr. Gerry Martiniuk: Any member of this committee can make a minority report.

Mr. Dave Levac: And a member can order a report.

Mr. Tony Ruprecht: If the member so chooses.

Mr. Dave Levac: Absolutely.

Mr. Tony Ruprecht: The opportunity is there.

Mr. Gerry Martiniuk: They can raise anything. No one censors that, so they could raise merits, for that matter.

Mr. Dave Levac: Absolutely.

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

Mr. Paul Miller: Maybe Mr. Levac can tell me when petitions are discussed in the House.

Mr. Dave Levac: They’re responded to by the government after 30 days.

Mr. Paul Miller: Yes, but they’re not discussed in the House.

Mr. Dave Levac: They’re read into the House; they’re read into the record.

Mr. Paul Miller: They’re not discussed in the House.

Mr. Dave Levac: As a debate?

Mr. Paul Miller: They’re read in, so that’s false. They’re not discussed.

Mr. Dave Levac: Jesus. Somebody needs a coffee and a warm milk and an apple.

The Chair (Mr. Michael Prue): I think we’re straying a little bit.

Mr. Gerry Martiniuk: We’re not going to finish today.

The Chair (Mr. Michael Prue): I’m not sure we’re going to finish today in any event. We’re only on the first one.

Is there any other discussion? Does anybody else want to say anything?

All right, then. I have the motion made by Mr. Levac, which is the recommendation on page 10 with the addendum that we ask the ministry to report back to this committee on what they do with our recommendation. Okay?

Mr. Gerry Martiniuk: Recorded vote.

Ayes

Johnson, Leal, Levac, Martiniuk, Ruprecht.

Nays

Paul Miller.

The Chair (Mr. Michael Prue): That is carried.

We have the second, from the Ministry of Community and Social Services. If we could have a general discussion of why you believe that the regulation may not be doing what it was intended to do?

Ms. Marta Kennedy: This is a regulation that appears to have a similar problem to the previous regulation, in that the regulation attempts to exempt disclosure of information under this regulation from another statute. What we’re talking about here is an adoption information disclosure regulation under the Child and Family Services Act, and the regulation says that information is allowed to be disclosed under this regulation even if its disclosure violates the Vital Statistics Act.

Again, there does not appear to be authority in the Child and Family Services Act to make regulations that override the provisions of the Vital Statistics Act, so we asked the ministry about it. They wrote back and they said, “Well, no, there isn’t authority”—they didn’t quite say that. What they said was that this part of the regulation was added to clarify that a disclosure veto filed under the Vital Statistics Act or a notice of no contact filed under the Vital Statistics Act, those types of things, do not prevent information from being disclosed under the Child and Family Services Act. We’re talking about non-identifying information held by children’s aid societies and things like that. So they said that it’s just for clarity and it doesn’t actually have any legal function, which leads to the question: If it doesn’t have any real legal effect, why is it there?

The possible recommendation is that the ministry revoke this section so that it’s no longer there, because if it doesn’t do anything, if it’s in effect meaningless, it just serves to confuse, in my opinion.

The Chair (Mr. Michael Prue): Has the ministry been consulted, and what is their opinion?

Ms. Marta Kennedy: Their opinion is that the point of that part of the regulation is to clarify that a disclosure

veto filed under the Vital Statistics Act doesn't affect the Child and Family Services Act. They think it's fine.

The Chair (Mr. Michael Prue): Okay. And you think it's not?

Ms. Marta Kennedy: Yes.

The Chair (Mr. Michael Prue): Okay. There you go. All right, Mr. Martiniuk.

Mr. Gerry Martiniuk: Tell us what the background of the concern is. Is it simply that some individuals who are adopted or adoptive parents will use the Vital Statistics Act to obtain the identity of the adopting parent or the adopted child? Is that the concern? Why are we even dealing with it?

Ms. Marta Kennedy: I'm not sure what the concern was. What they said was that the purpose of that part of the regulation is to clarify that these disclosure vetoes can't prevent the disclosure of non-identifying information held under the Child and Family Services Act.

Mr. Gerry Martiniuk: Do we have a list of that information?

Ms. Marta Kennedy: The information is non-identifying information held, for example, in children's aid society files, so things about the parent that don't identify the person: their hobbies, their background, the type of work they did—that sort of thing. The Child and Family Services Act has a process to allow this information to be disclosed, and this section of the regulation says that even if you have this non-disclosure veto under the Vital Statistics Act—which is the identifying information prevention filed under the Vital Statistics Act—that non-disclosure veto can't prevent this other information over here from being disclosed under the Child and Family Services Act.

What the ministry said in their letter was, "That non-disclosure veto doesn't have anything to do with the disclosure of non-identifying information anyway; it can't prevent it, it has nothing to do with it. We just put this section in here to make it clearer to someone who's reading it that this non-disclosure veto doesn't prevent the disclosure of non-identifying information."

Mr. Gerry Martiniuk: Okay. Gentlemen, my only concern is that the House has made it clear that where a person files a veto, their identity is sacred, for obvious and good reasons; I've talked to a number of my constituents over this matter. I just want us to be certain in our own minds—maybe I'm dealing with the merits, but I want to be certain—that this doesn't open the door for individuals to obtain identity information on their adoptive parent, which would be contrary to the intent of this Legislature on two occasions, I believe.

That's my only concern. I don't know how we can ask that question.

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

Mr. Paul Miller: I was just handed the standing orders, and it says here, under Standing Committee on Regulations and Private Bills—that's us—"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."

I am assuming that that would include content, because that's what that says: "observations, opinions and recommendations." Would observations and opinions be considered content? If you're not giving observations, opinions and recommendations on content, what are you giving observations, opinions and recommendations on?

Mr. Tony Ruprecht: You're like a dog with a bone.

Mr. Paul Miller: Well, I'm sorry. I'm just reading the rules. That kind of contradicts what's been said before.

The Chair (Mr. Michael Prue): As I understand—and I've only been the Chair of this committee now for the last three years—in the past, this was accommodated by way of the research or legal person writing to the ministry and seeking clarification and their thoughts. That's how it has been done.

Mr. Paul Miller: So section 33, part III, means nothing?

The Chair (Mr. Michael Prue): I'm not here to interpret that. That's the way it has been done in the past.

Mr. Paul Miller: Okay.

The Chair (Mr. Michael Prue): A number of speakers now: I have Mr. Leal, then Mr. Levac and Mr. Ruprecht.

Mr. Jeff Leal: The intent, as I understand it—and I've had constituents talk to me about this—is that the two statutes are consistent, and that information that is in a locked box will always stay in the locked box, basically.

1010

The Chair (Mr. Michael Prue): Mr. Levac.

Mr. Dave Levac: If I could get a response from the legislative researcher, Ms. Kennedy. Gerry is absolutely correct. There was never anyone who spoke who did not understand that the veto meant veto. If Mr. Martiniuk's question is very simple, and that is, doing this would unlock that box, it's a problem for the intent of the legislation. If the regulation is written in such a way or we remove a section of a regulation in any way to unlock that box, we need to know that.

Ms. Marta Kennedy: According to the ministry, the Vital Statistics Act and the Child and Family Services Act deal with different types of information. The Vital Statistics Act deals with identifying information. The Child and Family Services Act deals with non-identifying information. When this regulation was originally made, it did not include this section about disclosure vetoes not overriding the disclosure of non-identifying information.

The ministry says that they included that section for clarity. Perhaps they had questions from people saying, "I filed a disclosure veto. Why is this non-identifying information being disclosed?" I don't know. They didn't say.

What the ministry does say specifically is, if subsection 2.1(1), which is the section we're talking about,

was not part of the regulations, notices of contact preference, no-contact notices and disclosure vetoes would not affect the disclosure of information under O. Reg. 464/07. However, subsection 2.1(1) provides greater clarity to the reader. It makes clear to the reader of the law that a notice or veto under the VSA does not affect or prevent the disclosure of information by a custodian or children's aid society under that regulation.

Mr. Dave Levac: I defer to Mr. Martiniuk on this, but I'd make a comment and then ask him to respond.

If what we're hearing is that the ministry has taken that into consideration and is acknowledging in writing that it would not have a negative impact on the veto that everyone acknowledges is the purpose, then I don't have a problem with it, but I caution us to get that completely verified.

Am I hearing you to say that the ministry does not believe it would have an impact on the veto?

Ms. Marta Kennedy: That's my understanding of what they've said, yes.

Mr. Dave Levac: Okay. I will then defer to Mr. Martiniuk if he's satisfied with that.

Mr. Gerry Martiniuk: It's difficult to follow it just being read to us, quite frankly. I would prefer to have that in front of us so we could discuss it at our next meeting.

Mr. Dave Levac: I agree with Mr. Martiniuk because, quite frankly, as strongly as his constituents—I've had the same type of constituent, and I'd hazard a guess that everyone who has had this debate has made it quite clear about the veto, and I would like to feel comfortable that that is the case. So, at a later date, a copy of this—I'm not sure, Mr. Chairman—

The Chair (Mr. Michael Prue): If we could have a motion to defer this until the next occasion and for staff to provide the necessary documentation that's been requested.

Mr. Gerry Martiniuk: I'll so move.

The Chair (Mr. Michael Prue): Moved by Mr. Martiniuk. Any discussion on that? All those in favour? Carried.

So we'll hold this one down till the next time, and we'll try to get that information.

We've got about—

Mr. Tony Ruprecht: Did you put me down to speak?

The Chair (Mr. Michael Prue): Yes, but then we had a motion to—

Mr. Tony Ruprecht: Put me down anyway. I want to say something—

The Chair (Mr. Michael Prue): Then say something. It's being held till the next day, but put it on the record now.

Mr. Tony Ruprecht: I understand. I just wanted to indicate to you that this may be Mr. Martiniuk's last meeting with us. As we just have seen, his contribution to this committee has been very substantial. Consequently, I don't know if you got a chance to thank Mr. Martiniuk officially at this meeting or you want to do it at another meeting, but something like that should be made.

The Chair (Mr. Michael Prue): Let's ask him: Is this your last meeting? Are you being replaced? There are two members of the committee from the Conservatives.

Mr. Gerry Martiniuk: Anything can happen.

The Chair (Mr. Michael Prue): Well, I know that. Are you anticipating that this is your last meeting?

Mr. Gerry Martiniuk: No, I'm not. I think we're going to sit in March, at least.

The Chair (Mr. Michael Prue): In March, in April or in May.

Mr. Gerry Martiniuk: So I will be seeing you then.

Mr. Paul Miller: I want you to raise a flag to him.

Mr. Gerry Martiniuk: The Cuban flag.

Mr. Tony Ruprecht: Mr. Chair, I want you to just ensure that we thank this member for having made a substantial contribution to the meeting when that is appropriate, okay?

The Chair (Mr. Michael Prue): When it's appropriate. Okay.

We have approximately five minutes. Do you want to start the next one or do you want to say it's a day, and we'll come back on the next occasion?

Mr. Tony Ruprecht: How long will it take?

Mr. Paul Miller: Ten minutes, because I'm going to ask questions.

Mr. Tony Ruprecht: Can we rush through it?

The Chair (Mr. Michael Prue): Well, the next one is the recommendation on the Ministry of the Attorney General and justices of the peace.

Interjection.

The Chair (Mr. Michael Prue): Okay, let's see how much we can get done in the next five or six minutes.

Ms. Marta Kennedy: This regulation is a regulation under the Justices of the Peace Act. The ministry, because it needs to involve a second ministry—the Ministry of Government Services—has asked that consideration of this regulation be deferred to the committee's next meeting.

Mr. Gerry Martiniuk: See how fast we get through these things?

The Chair (Mr. Michael Prue): Is the committee in agreement to have this held down until the next meeting? Okay. So that's pretty simple.

Mr. Jeff Leal: Handled that one. No vote necessary.

The Chair (Mr. Michael Prue): No vote necessary here.

The next one is the Ministry of Transportation regulation under the Highway Traffic Act.

Ms. Marta Kennedy: For this next set of regulations, the Ministry of Transportation—there's three regulations—has said that it believes that they're fine but it is willing to change them if necessary.

What's happened with this regulation—it's a regulation having to do with races, contests and stunts on highways. The English and the French version of the regulation don't match, or appear not to match. The English version was made first, then the first section of the regulation was revoked. Then they made a French version of the regulation that included a section 1, even though it had been revoked in the English version.

What's happened is that on e-Laws, which is the government website that publishes statutes and regulations, that section 1 from the French version is no longer there. So we asked them, "What happened to section 1 in the French version?" Because the French and English versions of a regulation are equally authoritative. So if a part is missing, if they don't match, that's bad from a legal point of view, but it's okay—you can't say one's the proper version and the other one's wrong. They're equally authoritative; you have to look at both.

We asked them about it and they said, "Well, we don't want section 1 in the French version. We think it's okay that we took it off of e-Laws, but we're willing to revoke it from the French version, if necessary."

The Chair (Mr. Michael Prue): Could I ask a question, because I've always understood, under the Official Languages Act, that where there is a conflict between the English version and the French version the French version will predominate, because the French language is far more specific. The Official Languages Act is very clear that the French version will predominate if there is a conflict.

Ms. Marta Kennedy: Is the Official Languages Act not federal?

The Chair (Mr. Michael Prue): It's federal. Yes, it is.

Ms. Marta Kennedy: That's federal legislation, so it doesn't apply specifically to Ontario's statutes. It doesn't govern them specifically. The way the courts have interpreted differing versions of French and English is that they have looked at them and decided that they are equally valid.

Mr. Gerry Martiniuk: Did you say that the ministry removed a section of the regulation from e-Laws, that was included in the regulation? They actually just dropped it in the presentation to the public?

Ms. Marta Kennedy: The Ministry of Transportation didn't do that. The ministry responsible for e-Laws did it. Now, they—

The Chair (Mr. Michael Prue): Which ministry is that?

Ms. Marta Kennedy: I'm not sure, but I believe it's government services.

The Chair (Mr. Michael Prue): Okay.

Ms. Marta Kennedy: I know that when they put something up on e-Laws or they take something down, they do it on the instruction of legislative counsel. So if they removed that section from the French version, I would expect—I don't know, but I would expect—it was on the instruction of legislative counsel.

Mr. Gerry Martiniuk: Maybe we should be resolving that e-Laws should reflect the law, both in French and English, as it presently stands. I don't want to embarrass anybody, but that seems fairly elementary to me.

Mr. Paul Miller: You can't talk content.

Mr. Gerry Martiniuk: Well, we're not talking content; we're talking about what the law is and the representation to the public. We did away with it in 20, but usually we publish the law and make it public.

Mr. Tony Ruprecht: I'm prepared to make a motion.

Interjection: Uh oh.

Mr. Gerry Martiniuk: Well, no; I'm not being facetious. That's a serious matter.

Ms. Marta Kennedy: I think that in this case there is perhaps some potential for disagreement in the interpretation, because section 1 in the English version was revoked on May 1, 2009, and on the same day, the French version came into force. So on the same day, at the same moment, the English version lost section 1 and the French version came into force. I guess there's a question of whether or not the French version came into force an instant before the English version removed section 1 and whether that happened—there's potentially a legal interpretation that could permit it. I think it's wrong, myself, but there's potentially a legal interpretation that could permit it.

Mr. Tony Ruprecht: Let's fix this.

The Chair (Mr. Michael Prue): Okay. Mr. Ruprecht, and then we're going to have to adjourn after him.

Mr. Tony Ruprecht: I'm looking to you, Mr. Chair, for a motion on this, because it seems somewhat easy to fix, unless I get this wrong, but why not—here's my motion: It's simply to say that we would ask that the Ministry of Government Services or the Minister of Government Services look into this and either dovetail those two, the English with the French version, or that at least they would be similar as soon as possible.

Mr. Rick Johnson: Doesn't the recommendation make it—the ministry states that it's prepared to expressly revoke the French version of the regulation, and what we're saying to them is, "Go ahead," in this recommendation, correct?

The Chair (Mr. Michael Prue): Yes.

Mr. Tony Ruprecht: Let's vote on that and get it on.

Mr. Rick Johnson: They made a mistake; they're going to fix it.

Interjection: Motion on the floor.

Mr. Gerry Martiniuk: I think Tony's recommendation is dealing with the whole problem, not just this problem. The law in e-Laws should reflect the actual law, whether they like it or not or whether it was a mistake or not. It makes no difference. It's got to be right.

The Chair (Mr. Michael Prue): Okay, but there are three recommended courses of action here on pages 13, 14 and 15, all under the same ministry and the same act. Is that correct? No?

Ms. Marta Kennedy: No. They deal with different regulations.

The Chair (Mr. Michael Prue): Okay. So we're just dealing with the one that's number 4.

Mr. Ruprecht is moving number 4?

Mr. Tony Ruprecht: Yes.

The Chair (Mr. Michael Prue): Okay, it's been moved. Any discussion? No discussion?

All those in favour? Opposed? That's carried.

All right, I think that's our time for today. We'll come back for the other two that have been held down and recommendations 5 and 6 on the next occasion.

Mr. Tony Ruprecht: When?

The Chair (Mr. Michael Prue): That would be probably sometime in February or March, when we come back.

I'm not sure 100% of the date; the 22nd has been circled on my calendar, but it is up to the government. They can recall the Legislature earlier or later at their whim. So, sometime after that date.

Mr. Tony Ruprecht: Just don't cause an emergency. Ask your party not to do that.

The Chair (Mr. Michael Prue): Anything else we need to do today? Then we'll see everybody—the clerk will advise us on the first available date following our return to the House in the new year.

Meeting adjourned.

The committee adjourned at 1024.

CONTENTS

Wednesday 8 December 2010

Draft report on regulations T-57

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Chair / Président

Mr. Michael Prue (Beaches–East York ND)

Vice-Chair / Vice-Président

Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)

Mr. David Caplan (Don Valley East / Don Valley-Est L)

Mr. Kim Craitor (Niagara Falls L)

Mr. Jeff Leal (Peterborough L)

Mr. Gerry Martiniuk (Cambridge PC)

Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)

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

Mr. Michael Prue (Beaches–East York ND)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Mr. Tony Ruprecht (Davenport L)

Substitutions / Membres remplaçants

Mr. Rick Johnson (Haliburton–Kawartha Lakes–Brock L)

Mr. Dave Levac (Brant L)

Clerk / Greffier

Mr. Katch Koch

Staff / Personnel

Ms. Marta Kennedy, research officer,
Legislative Research Service