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**Official Report  
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**Wednesday 28 March 2012**

**Journal  
des débats  
(Hansard)**

**Mercredi 28 mars 2012**

**Standing Committee on  
Regulations and Private Bills**

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

Chair: Peter Tabuns  
Clerk: Tamara Pomanski

Président : Peter Tabuns  
Greffière : Tamara Pomanski

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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 28 March 2012

Mercredi 28 mars 2012

*The committee met at 0900 in room 151.*

**The Chair (Mr. Peter Tabuns):** Good morning. Will the Standing Committee on Regulations and Private Bills come to order? The items on the agenda are as follows: Bill Pr3, An Act respecting Master's College and Seminary; briefing by Mark Spakowski, chief legislative counsel; consideration of the first draft report on regulations, 2010.

I understand, Mr. Hillier, that you have motions that you will want tabled and we will have them at the end of the other business.

**Mr. Randy Hillier:** That is fine.

**The Chair (Mr. Peter Tabuns):** Okay.

**MASTER'S COLLEGE AND SEMINARY  
ACT (TAX RELIEF), 2012**

Consideration of the following bill:

Bill Pr3, An Act respecting Master's College and Seminary.

**The Chair (Mr. Peter Tabuns):** We'll now proceed to the first item of business on the agenda. The first item is Bill Pr3, An Act respecting Master's College and Seminary. Mr. Leal, you'll be sponsoring the bill.

Could we have the applicants please come forward? Could the applicants please introduce themselves for the purposes of Hansard?

**Mr. Ken Pelissero:** Chair, my name is Ken Pelissero. I'm the director of corporate services at Master's College and Seminary in Peterborough, Ontario.

**Mr. Emmet Connolly:** My name is Emmet Connolly. I'm the solicitor for Master's College and Seminary.

**The Chair (Mr. Peter Tabuns):** Mr. Leal, the sponsor, do you have any comments for us?

**Mr. Jeff Leal:** Thank you very much, Mr. Chair. I'm delighted to be here today with Mr. Pelissero and Mr. Connolly regarding the private member's bill for Master's College and Seminary.

Just to give members of the committee a bit of background: This, many years ago, started as the eastern Canadian Pentecostal Bible college. It has been in Peterborough for a long, long, long time. It has a very distinguished history in our community.

During that period of time, they recruited people from right across Canada to come to Peterborough to become ministers and missionaries in the Pentecostal church.

Many of the graduates from the eastern Canadian Pentecostal college, of course, did missionary work around the world and, indeed, missionary work right here in Canada.

For a while, they left Peterborough and they were in Toronto. They did not sell their property in Peterborough; they kept their property in Peterborough.

In fact, Mr. Chair, a number of years ago, members of the committee will recall, there was an evacuation of Kashechewan. Many of the First Nations people from Kashechewan actually came to Peterborough, and we housed them in the residences of the Bible college. It was our opportunity to outreach to some of our citizens who found themselves in very difficult straits.

It's interesting enough, the person that helped organize that evacuation was Julian Fantino, who was then the emergency measures commissioner for the province of Ontario. Mr. Fantino visited Peterborough during that period of time to facilitate the evacuation.

We were very pleased, as a community, to assist those citizens during a period of time when they were in distress. I think that was a great example of the community outreach of the Bible college in Peterborough.

The proposal we have here today is very consistent with a number of bills that have been passed by this committee. A year ago, I was pleased to shepherd through a bill on behalf of the Sisters of St. Joseph in Peterborough with regard to their new convent that they built in Peterborough. Before that, of course, we had a similar bill on behalf of the Sisters of St. Joseph in London, Ontario, and Mr. Miller had a bill on behalf of the Sisters of St. Joseph in Hamilton, Ontario.

So the request today, Mr. Chair, is very consistent with what this committee has done in the past. Let me say, I'm very pleased to be here with Emmet and Mr. Pelissero this morning. Thank you very much, Mr. Chair.

**The Chair (Mr. Peter Tabuns):** Thank you, Mr. Leal.

Applicants, do you have any comments for us?

**Mr. Emmet Connolly:** Just to give maybe a little further background on the reason for the requirement now: Back in 2008, the college was in Toronto, as Mr. Leal just indicated, and at that time there was a successful amendment to their act. The reason that they're now in a tenancy situation—again, if they own their land outright as an educational institution, they would be exempt from property tax—the offer they received to purchase

their building was contingent on them being a tenant in the property going forward. That's why the college is in a situation where it again needs to request this special legislation.

**The Chair (Mr. Peter Tabuns):** Okay. Thank you.

Are there any other interested parties in the room who want to speak to this matter? I don't see any indication of that.

Any comments from the government on this?

**Mr. Michael Coteau:** I have a question.

**The Chair (Mr. Peter Tabuns):** Michael.

**Mr. Michael Coteau:** Is this type of legislation common, and, if so, do you have any examples of this happening in the past?

**Mr. Jeff Leal:** The Sisters of St. Joseph in Peterborough, a year ago; the former member from London—Fanshawe brought through a similar bill on behalf of St. Joseph's in London, Ontario; and Mr. Miller with St. Joseph's convent in Hamilton, Ontario—so this is a very common occurrence, particularly with many organizations in our community that do a lot of great charitable work and are very involved in their communities. This is very consistent.

Those of us that have had the opportunity to serve at the municipal level of government will know that these requests come on a fairly regular basis to get this tax-exempt status for these organizations.

**Mr. Michael Coteau:** Thank you.

**Mr. Jeff Leal:** Mr. Tabuns is nodding because he had a very distinguished career in municipal politics here in Toronto.

**The Chair (Mr. Peter Tabuns):** He's hoping to get my vote someday.

Are there questions from any other committee members? Mr. Hillier.

**Mr. Randy Hillier:** Well, I would say that I find this private bill is consistent with the undertakings of this Legislature with respect to private bills, and it does, indeed, meet all the requirements, so we'll be supportive of this private bill.

**The Chair (Mr. Peter Tabuns):** Great. Okay, are the members ready to vote, then, on the bill itself? If you're ready, we'll go there. You have the bill.

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Excellent.

As far as I can tell from my notes, that's it; that's done. We'll do some paperwork here and I will be bringing it into the House. Thank you very much.

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

**Mr. Emmet Connolly:** Thank you very much.

## BRIEFING

**The Chair (Mr. Peter Tabuns):** The next item, then: a briefing by Mark Spakowski, chief legislative counsel.

**Mr. Mark Spakowski:** Good morning. My name is Mark Spakowski. I head the office that drafts regulations, translates them, receives them for filing and then arranges for their publication. So I'm going to give you a brief overview of regulations and the role of our office.

First—and I'm following, roughly, from the outline that Joanne Gottheil of our office prepared; she's the registrar of regulations—regulations are typically law, just as statutes are, but they're made by cabinet, a minister or, in some cases, another person or body. The authority to make regulations is set out in an act of the Legislature. In that sense, it's a delegation from the Legislature to some other official to make law, to make regulations. That's why we often refer to them as "delegated legislation," and that's often a term that's used.

In the handout, there's a brief explanation—a fairly technical explanation—about what a regulation is for the purposes of the Legislation Act that probably isn't of terrible interest to you. With most regulations, it's quite clear that they are regulations, and this is mostly relevant for borderline cases.

### 0910

As I've noted, it's the act that specifies who makes a regulation, and in almost all cases, that's the Lieutenant Governor in Council, a minister or at least someone else with the approval of one of those officials.

The scope of what can be done by regulation is also set out in the act. The starting point in law is that there's no authority to make a regulation unless the act specifically gives it, and then the act will typically delineate what regulations can be made by defining what scope they can be made in. The common law also provides for rules to interpret or limit reg-making authorities in acts. So there's the words in the statute, but there's also a considerable body of law developed through cases in which the courts have looked at such things and decided that those words should be limited in some way etc.

Now, the making of a regulation needs to be distinguished from the filing of it. The making is when the person who has the authority to make the regulation actually signs or, if it's a group of people, votes to approve it. But regulations are not legally effective unless they're filed in the office of the registrar of regulations, and that's a legal requirement under the Legislation Act. That process is more or less what you'd imagine. The actual copy of the regulation is brought in and filed in our office.

The official who sort of oversees that process is the registrar of regulations. That's a drafter in the Office of Legislative Counsel who's been appointed by the Lieutenant Governor in Council as the registrar. Their duties include overseeing that operation, the filing of regulations; and also generally advising and overseeing the work on regulations by the lawyers in our office, because all of the drafters in the Office of Legislative Counsel will work on regulations. The registrar oversees this process, as do I as the head of the office, but the actual work of preparing regulations is done by the legislative counsel.

When a regulation is filed, it becomes law, and there are legal obligations to publish that. The Legislation Act provides for two methods; they both have to be used. One is it's published on the e-Laws website—that's an electronic publication—and then it's published in the Ontario Gazette. As you know, the Gazette comes out weekly, and if a regulation is filed in a week, it's included in the Gazette on the third Saturday after filing. That's because of the printing and publication requirements of the Gazette.

A regulation becomes law when it's filed, but there are limits on its effectiveness against people before it's published. So it comes into force on filing, unless it actually provides for—sometimes regulations provide for the coming into force on a future date. But it's important to note that the law provides that a regulation is not effective against a person before it is published unless that person has actual notice of it. Publication in either the e-Laws website or the Gazette is publication for this purpose.

The handout explains that in some cases, legislation clarifies that something that can be done under a statute is not a regulation. Sometimes, that's just to clarify doubtful cases, or sometimes it's just to provide that things that would otherwise be caught by that technical definition of "regulation" are not treated as regulations for the purposes of the Legislation Act, and there are a couple of examples there. Typically, these are things like bylaws made by a body, or it can be policies or directives by a minister that aren't really intended to be law per se. They're excluded, so they don't have to go through the filing process or be published in the Gazette in the same way regulations do.

I already noted earlier that the people who actually draft the regulations are legislative drafters or legislative counsel who work in the Office of Legislative Counsel—that's the office I head—and they do this on the instructions of the responsible ministry. So what actually happens is, the ministry is responsible for deciding what the regulation should do, what the policy is—that's how we express it—and then we work with them, we do the drafting, and then it's a process of back and forth until the text of that regulation is settled. We draft it, but the ministry ultimately has responsibility for what it does.

A few notes that may help to understand the different kinds of regulations—and they're described using three different terms here: parent, amending and revocation. In a way, the latter—amending and revocation—are the easiest to explain. An amending regulation is a regulation that just amends some other regulation, and you will have seen those; a revocation, as you'd imagine, revokes a regulation; and a parent regulation is what we think of as a regulation that, on itself, will apply. We use these terms a fair bit, and maybe it's useful for you to understand how we use those terms, although they're not legal technical terms, really.

All of these regs, whether they're new, amending or revocation regs, need to be filed as discussed, and they're all published in the Gazette and on the e-Laws website.

When there's an amending reg, we also incorporate those amendments into the regulation that's being amended, and that regulation which we call a consolidated regulation—i.e., a regulation that consolidates the original regulation as made and then all subsequent amendments—is set out on the e-Laws website. So on the e-Laws website, all the regulations as they're made—which we call source law—are set out, but also all the regulations, with all of the amendments made to them, are set out. That's what we call the consolidated law and that's what applies now. So the consolidated regulations, as well as the consolidated statutes, are all set out on the e-Laws website.

Just a little bit of information on statistics: There are about 1,700 consolidated regulations now, and that number goes up and down as regulations are either revoked or added to. The total regulations in a year that are made—that's either new regulations, amending regulations or revoking regulations—on average, there's a little over 500 a year. That's a little over 2,000 pages in the Gazette.

A note about bilingual regulations: Unlike statutes, not all regulations are bilingual, but a significant proportion are. Currently, a little over 40% of the regulations in Ontario exist in both English and French, and the rest are English only.

As I noted at the very beginning, the French versions of regulations, if there is one—that's something that our office also prepares.

That's the end of the remarks I was going to make.

**The Chair (Mr. Peter Tabuns):** Thank you very much. Are there questions? Mr. Leal.

**Mr. Jeff Leal:** Mark, I'm just curious: Ontario has functioned as a province since 1867, and successive governments have brought in legislation and regulation. But if we kind of look back—in 1982, of course, the federal Constitution, or a large part of it, was repatriated back to Canada, and there was the enshrinement of the Charter of Rights and Freedoms. It would seem to me that when that was done, there would have been a whole series of regulations prior to 1982—that there would have been issues.

**0920**

I know on page 2, you talk about, "Regulations should be in strict accord with the statute conferring of power, particularly concerning personal liberties." Post 1982, was there a review of many regulations that had been on the books, perhaps for 100 years, to see if they were in conformity to the provisions of the Charter of Rights and Freedoms?

**Mr. Mark Spakowski:** Certainly that's before my time a little bit, but I think that was done.

**Mr. Jeff Leal:** Was it? Okay.

**Mr. Mark Spakowski:** My recollection is that when the charter was brought in, its effectiveness was delayed for a certain period of time to allow that, and presumably there was a similar process for statutory law, to bring it into conformity with the charter. I'm not exactly sure how that process went. I imagine it probably would have been led by each ministry looking at its own legislation

to bring it into compliance with the charter, and presumably that would have involved looking both at its statutes and its regulations, and making whatever changes were necessary.

**Mr. Jeff Leal:** Are provinces required to review their regulations when subsequent decisions are made by the Supreme Court of Canada regarding the Charter of Rights and Freedoms in provincial domain?

**Mr. Mark Spakowski:** Legally, I'm not aware of any requirement like that, no.

**Mr. Jeff Leal:** Okay. I'm just curious.

**The Chair (Mr. Peter Tabuns):** Other questions? Mr. Hillier?

**Mr. Randy Hillier:** Yes. I'd like to just add a couple of comments in here, first, for all the members of the assembly. Regulations come in many shapes, sizes and forms, and as we were told, there are about 1,700 regulations on the books right at the moment. Here is one of the most simple ones: It's a total of 16 words in length, and it's Ontario regulation 497/07, which created Ornge. I think it's 16 words in length. I didn't bring in the regulations for the Nutrient Management Act, which is about 300 pages in length. So each regulation can be significantly different in its shape and scope.

I think it's important, also, for every member on this committee to understand that this is the last and really the only eyes that the members of the Legislative Assembly have on reviewing or seeing what is done in the name of provincial law in this province. These regulations do not come before the House for discussion or debate. This is the only legislative body that can review the law of the land—it's the only body. We've seen it's very strict criteria that we have for reviewing regulations—but nonetheless very important. Regulations can get us in very hot water, can get governments in hot water. The G20 regulation probably is one that would come to people's minds on a confusing, complicated regulation that, without proper oversight, can cause chaos and confusion. So this is an important body of the Legislature, and reviewing regulations is of utmost importance, I think, to all our constituents as well.

**The Chair (Mr. Peter Tabuns):** Thank you, Mr. Hillier. Any other comments?

**Mr. Michael Coteau:** A quick question: Why only 41% bilingual bills—or regulations?

**Mr. Mark Spakowski:** The requirements for the French versions of laws are set out in the French Language Services Act, and it required as of 1990—and it may have actually required it just a little before then—that statutes had to be bilingual, at least public statutes. So private statutes, private bills, would be just unilingual. But, as you know, all public bills in the House are bilingual, and as of 1990, all the statutes were translated, so the Revised Statutes of Ontario, 1990, which was a restatement of the statute law as of the end of 1990, is a full bilingual set of laws, and ever since, all the public laws have been bilingual.

That law did not require regulations to all be bilingual, but it provided for that, and it provides for the Attorney

General to look at and decide on what regulations should be translated, so over that time, regulations have been either translated, i.e., a French version is added to the existing unilingual regulation, or if a regulation is made newly, it's made in bilingual form. So that's how we've gotten up to 41% from essentially, probably, zero in 1990.

**Mr. Michael Coteau:** Thank you.

**The Chair (Mr. Peter Tabuns):** You're satisfied? Mr. Leal.

**Mr. Jeff Leal:** Thank you very much, Mr. Chair, and through you to Mark, I have lots of lawyers in my family, and I appreciate lawyers do the drafting of regulations.

I just want to follow up from Mr. Hillier. He raises a good point about the Nutrient Management Act. If an individual from the agricultural community goes into ServiceOntario to get information regarding the Nutrient Management Act, is there any attempt to really put a lot of these regulations in what I would call Tim Hortons or Canadian Tire language so they're better understood by the public who may want to go in and seek information about a particular act because it's relevant to their day-to-day operations—in this particular case, an individual owning a farm who wants to comply with the Nutrient Management Act? It's a bit of a challenge, you know.

**Mr. Mark Spakowski:** It is a challenge. The plain-language movement has actually been a significant aspect of legislative drafting going back quite a few decades now. When I started my career, it was already part of the thinking of new legislative drafters that we should, to the extent possible, draft laws in plain language that everyone can understand. We do do our best to make law understandable not just to lawyers, but of course there are limitations on the subject matter. It's a challenge to make complex legal documents plain to everyone. We do do our best to write things in plain language, and of course ministries will also provide explanatory material in certain cases to further explain how legislation works—and there's lots of examples of that—that supplement the actual text of the law.

**Mr. Jeff Leal:** Thank you very much.

**The Chair (Mr. Peter Tabuns):** Any further questions before we go to the next item?

There being none, thank you very much.

#### DRAFT REPORT ON REGULATIONS

**The Chair (Mr. Peter Tabuns):** Okay, Andrew. We're now going to consideration of the first draft report on regulations 2010. Research officer Andrew McNaught is here to give us a briefing, and then we'll get into it.

**Mr. Andrew McNaught:** Good morning. I'm Andrew McNaught, counsel to this committee. I'm here this morning to present the committee's draft report on regulations made in 2010.

Just before we get to that report, I draw your attention to a flow chart that was just distributed, which I hope places the committee's regulations review process in the context of the larger regulation-making process.

Just as a quick refresher, the committee's mandate under the Legislation Act and the standing orders is to review the regulations made under Ontario statutes each year and to assess their compliance with nine guidelines that are set out in standing order 108(i). As an example, perhaps the most important guideline is that there should be authority in the enabling statute to make the regulation in the first place.

Our office, the Legislative Research Service, conducts the initial review of regulations and raises potential guideline violations with the legal branches at the various ministries. After considering the ministry responses, we deliver a draft report to the committee setting out the regulations we feel still represent a potential guideline violation.

**0930**

That's where we are today. The report in front of you covers the 531 regulations made in 2010. I just note that we're looking at regulations made in 2010; this report was first delivered to the committee last May, towards the end of the last Parliament, and the committee at that time decided that it didn't have enough time to consider the report, so it's been moved forward, carried over to this Parliament.

Just looking at the report, the first six pages of the report and the four appendices set out what we would see as the usual statistical information and other background information. I'll just stop there to see if there are any questions about those sections of the report, and if there aren't, we can just go to the substance of the report, which begins on page 7.

**The Chair (Mr. Peter Tabuns):** Mr. Hillier.

**Mr. Randy Hillier:** I just have a—2010, as I mentioned earlier, was what I'll refer to as the G20 regulation, and I don't see it in the draft report at all. If you could comment on that, because, again, one of those criteria is "precise and unambiguous language." I've read that regulation quite a few times and still don't understand it. Maybe if you can just comment on why we don't see that further on in the report.

**Mr. Andrew McNaught:** Well, we reviewed that regulation. If you've looked at it, you'll see that it's a property description; it's a legal property description.

**Mr. Randy Hillier:** Yes.

**Mr. Andrew McNaught:** So when we looked at it—sorry, just to back up, it designates certain areas of downtown Toronto as a public work for the purposes of the Public Works Protection Act. When we look at the regulation, nothing out of the ordinary jumps out at you. As I say, it's simply a property description. So, in applying the nine guidelines, there was clear statutory authority to make the regulation, and as I say, nothing else jumped out at us. When you look at it, you know, all property descriptions are rather technical, and it's hard to know what their effect is until they're put into practice, I suppose.

I think, in hindsight, we might have said that that regulation could have been more clearly drafted, but the larger issues that emerged afterwards, related to the con-

stitutionality of the act itself, which had been in place for—you know, it was a wartime era statute, and those larger issues were discussed in the Ombudsman's report and Mr. McMurtry's report. By the time we got to review that regulation, those two reviews were under way, and we felt we couldn't really add to those.

**Mr. Randy Hillier:** Is there anything that prevents a regulation from using visuals as a descriptive mechanism?

**Mr. Andrew McNaught:** No, I don't think so. If you're asking, could there have been a map of some sort included with that—

**Mr. Randy Hillier:** Yes.

**Mr. Andrew McNaught:** —perhaps, again in hindsight, that might have been a good idea, but I don't think there's any restriction in that regard.

**Mr. Randy Hillier:** Okay.

**The Chair (Mr. Peter Tabuns):** Satisfied with that answer?

**Mr. Randy Hillier:** Yes.

**The Chair (Mr. Peter Tabuns):** Any other questions from the committee? There being none, please proceed.

**Mr. Andrew McNaught:** So, as I said, the substance of the report begins on page 7, and the first regulation we're proposing to report is under the heading "Ministry of Community Safety and Correctional Services." This regulation is made under the Ministry of Correctional Services Act and deals with conditions in provincial correctional institutions.

Now, at issue is a provision that authorizes the superintendent of a correctional facility to impose certain "penalties"—that's the term used in the reg—on inmates for misconduct, and we've listed some of those penalties at the top of page 8 of the report. You'll see they include revocation of temporary absence rights, loss of earned remission and that kind of thing.

We initially flagged this as a potential violation of the committee's sixth guideline, which provides that a regulation "should not impose a fine, imprisonment or other penalty." The principle here is that when the Legislature is going to impose a penalty, it should do so through legislation rather than by regulation.

So, given that the regulation uses the term "penalties" and that some of these penalties included some significant restrictions on personal liberties, we asked the ministry to comment on the possible application of the sixth guideline. The ministry's view is that the term "penalty," as used in the committee's guideline, should be interpreted to mean a penalty imposed for the commission of a criminal offence or a provincial offence. In the ministry's view, the regulation in question is authorizing sanctions that are to be imposed to maintain discipline inside a correctional facility and should not be seen as an additional penalty imposed for the commission of an offence. In support of this position, the ministry cites a Supreme Court decision which we've quoted at the top of page 9.

As we indicate in the text that follows, we agree with the ministry's interpretation of the sixth guideline and

that it does not apply in this instance. However, in a follow-up inquiry, we asked whether the purpose of the regulation might be clearer if the words “disciplinary measures” were substituted for the word “penalties” in the regulation. At the bottom of page 9, you’ll see, somewhat to our surprise, that the ministry agrees with us, so that we have a recommendation at the top of page 10 that the ministry amend the regulation by substituting the words “disciplinary measures” or similar wording for the word “penalties” wherever it occurs in the regulation.

I’ll just stop there and see if there’s any comment.

**The Chair (Mr. Peter Tabuns):** Are there any questions? Mr. Hillier.

**Mr. Randy Hillier:** I’ll get to the question on that, but I just want to go back a little bit. On the top of page 7, in the report it says you inquired about 23 regulations and you received responses for all but three regulations. Does it identify which three regulations and which ministries failed to respond?

**Mr. Andrew McNaught:** No, we have not identified those.

**Mr. Randy Hillier:** Could you make that available to us?

**Mr. Andrew McNaught:** I can go back and check those, yes.

**Mr. Randy Hillier:** The one other thing that I would like the committee to consider on all these recommendations is that recommendations that are advanced include a mechanism or a request for reporting back to the committee and some means or method of actually tracking and making sure that what the committee is requesting is done or—

**Mr. Andrew McNaught:** In some cases, we have asked that, but it’s not automatic at this point.

**The Chair (Mr. Peter Tabuns):** That’s logical to me. Out of curiosity, just simply a motion to be carried, or can—

**The Deputy Clerk of Committees (Mr. Trevor Day):** A motion that the clerk be in touch with the ministries to ask for a response as to what’s been done after the report has been tabled.

**Mr. Randy Hillier:** Yes.

**The Chair (Mr. Peter Tabuns):** Okay. Can I just clarify, in terms of procedure? You’ve gone through the beginning of this report, and we’re getting into the recommendations now. It makes the most sense to me to have you brief us—and then vote on each recommendation so that we’re not going back over previous ground.

Before we go deeper into the recommendations, are there any questions or comments about the first seven pages of this report?

**Mr. Michael Coteau:** Is it common practice to receive a report like this the morning of and actually go through it and make the recommendations and vote on it? Is that regular procedure?

**The Chair (Mr. Peter Tabuns):** It was distributed last week.

**Mr. Michael Coteau:** I didn’t see this. I didn’t get this in the package.

**The Chair (Mr. Peter Tabuns):** I understand from the clerk that each package that was delivered had to be signed for and that these were included in the packages.

**Mr. Michael Coteau:** This document?

**The Chair (Mr. Peter Tabuns):** Yes.

**Mr. Michael Coteau:** Okay.

**The Chair (Mr. Peter Tabuns):** So, you’re right: It is not common. Documents have to be circulated in advance.

Are there any other questions about the opening pages?

That being the case, I’d like to proceed on with the recommendations. Is there any further discussion about this recommendation which comes up on page 10? None?

There being no further debate on the recommendation, all those in favour, please raise your hand. All those opposed? Carried.

Mr. McNaught, please proceed.

**0940**

**Mr. Andrew McNaught:** The next regulation we’re considering is on page 10, under the heading, “Ministry of Community and Social Services.” This regulation was made under the Social Work and Social Service Work Act, 2010, and it deals generally with the registration of members of the Ontario College of Social Workers and Social Service Workers.

At issue here is a provision that establishes conditions that apply to an inactive member of the college who wishes to become an active member again. Specifically, the regulation requires that an inactive member who resumes practice as a social worker must pay a penalty if he or she fails to notify the college of their intention to become an active member again.

As with the regulation we just discussed, we initially considered whether this penalty falls within the committee’s sixth guideline, and as we discuss on pages 10 and 11 here, we are again agreeing with the ministry’s interpretation, which is that the penalty being imposed here is an administrative penalty and therefore falls outside the scope of the committee’s sixth guideline, which I mentioned earlier deals more with criminal and provincial offence penalties.

But a further problem we identified was that we could find no authority in the act to make regulations imposing an administrative penalty. The ministry’s position is that the authority to impose this kind of penalty falls within its power, within the power of the college to make regulations imposing conditions on certificates of registration, but our view is that the authority to prescribe conditions does not include the authority to prescribe the consequences for failing to meet a condition; in other words, a penalty.

So we have a recommendation in the middle of page 11 that the ministry reconsider whether there is statutory authority to make the provision in question and that the ministry report back to the committee.

**The Chair (Mr. Peter Tabuns):** Questions. Mrs. Piruzza.

**Mrs. Teresa Piruzza:** Through you to legal counsel, in terms of both these recommendations, I guess I found it interesting that they both deal with penalties and the definition and interpretation around penalties. So if the regulation is drafted by the lawyers within the ministry and then it comes forward and we review it with respect to where it stands just generally, my question is, is there any kind of review to suggest if this is a common area of concern when you're reviewing legislation—for example, penalties or the interpretation of the word or how that impacts on various regulations—if there is some kind of broader discussion? I just found it interesting that of the recommendations in here, two of them deal with the definition or interpretation of “penalties” and how to apply those. I guess that's just something that struck me as I was reading through this.

**Mr. Andrew McNaught:** By the way, these are the only two regulations mentioned in the report that deal with penalties, but my understanding is that legislative counsel and ministry branches apply similar criteria to what the committee is authorized to apply here, so they consider these issues when drafting the regulations. So I guess we're just an additional check on top of that. We could go back over the history of this committee to see how many times this kind of problem has arisen, which would give you a sense of how common it is, but beyond that, I don't know how you would—

**Mrs. Teresa Piruzza:** Again, it was just a general question in terms of, you know, it has come up a couple of times just in this one report. I don't have the background if there was ever some determination of trends with respect to some of the questions that might come forward when these recommendations are brought forward. That's all.

**Mr. Andrew McNaught:** Well, I'd like to think that we would pick up on that, since we've been doing the review for many years. So if we see something that is recurring over and over again, then we would, I think, bring that to the committee's attention.

**Mrs. Teresa Piruzza:** Okay. Thank you.

**The Chair (Mr. Peter Tabuns):** Mr. Hillier?

**Mr. Randy Hillier:** I think the important aspect on this one is the second part that you mentioned, Andrew, and that is that it's quite significant that any subordinate body, any ministry, when they craft up legislation, do indeed have the authority to do that regulation, to exercise that power. If it hasn't been granted by statute, they should be checked on that. That's a path that leads to not very good ends, when bodies make law and they don't have the authority to do so.

So I would recommend, on this particular one, that we toughen up the language a little bit on the recommendation to the ministry, so that it maybe reads something of this nature: “The committee expects that the Ministry of Community and Social Services revoke the unauthorized penalty provisions enacted under regulation 383/00 and report back when completed.”

**The Chair (Mr. Peter Tabuns):** Comment, Mr. McNaught?

**Mr. Andrew McNaught:** Well, I just would remind the committee that the mandate is to make recommendations. So I guess you have to be careful about straying into making demands to change a regulation or revoke a regulation, but—

**Mr. Randy Hillier:** It would still be under a recommendation, but just recognize that there's an expectation, or an elevated expectation, in this matter that regulations need to have the enabling statute.

**The Chair (Mr. Peter Tabuns):** So if in fact—and I'm picking up on what you're saying, because our power is solely to recommend and to report. But if we were to recommend and state that we expected that the ministry would be acting, it would simply emphasize further that we are not happy with the direction.

**Mr. Randy Hillier:** Yes.

**Mr. Andrew McNaught:** It's up to the committee to decide that.

**The Chair (Mr. Peter Tabuns):** We're not out of order on that? Is that a wording that works for you?

**Mr. Randy Hillier:** It works for me.

**The Chair (Mr. Peter Tabuns):** We have an amendment moved by Mr. Hillier. No objections? Okay.

**Mrs. Teresa Piruzza:** Just to clarify; sorry. So in the wording, then, you're suggesting within the act that if there is language for a ministry that it would be revoked?

**Mr. Randy Hillier:** No, no.

**Mrs. Teresa Piruzza:** I'm sorry; I just want to clarify in terms of the language.

**Mr. Randy Hillier:** It would read, under the title of “Recommendation,” “The committee expects that the Ministry of Community and Social Services”—instead of the word “reconsider”—“revoke the unauthorized administrative penalty provisions of regulation 383/00.”

**Mrs. Teresa Piruzza:** But has it been determined that it is unauthorized? Because I read this to say, “reconsider whether it is authorized.” So has it been determined that the act does not provide?

**Mr. Andrew McNaught:** Yes. I mean, we're raising it as an issue. As I say, if you say something similar to what Mr. Hillier has suggested, that the committee “expects” that the ministry will revoke the provision in question, it could be seen as straying into the realm of issuing an order to the ministry, which I think is clearly beyond the committee's mandate. I suppose a compromise might be, “The committee expects that the ministry will reconsider whether there's authority to make the provision,” something like that. If the committee simply says, “We expect you to revoke the offending provision”—

**Mr. Randy Hillier:** Well, I think that is—if there is indeed an unauthorized regulation, that ought to be the expectation of the Legislative Assembly, that it would be revoked.

**Mr. Andrew McNaught:** So if the ministry determines, on further review of this provision, that it is in violation, that there was no statutory authority, it will revoke that provision.

**Mr. Randy Hillier:** Yes.

**Mr. Andrew McNaught:** I'll reword it to that.

**Mrs. Teresa Piruzza:** Okay. So it's an extension, then, to reconsider it, and if there is no statutory, then to revoke.

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**Mr. Andrew McNaught:** Yes.

**Mrs. Teresa Piruzza:** I'm just trying to clarify. Okay.

**The Chair (Mr. Peter Tabuns):** Mr. Leal.

**Mr. Jeff Leal:** Through you, Mr. Chair, to Mr. Hillier: Is the language suggested by Andrew acceptable to you?

**Mr. Randy Hillier:** Well, I think he just had that—we'll see what Andrew comes up with in his notes here, I guess, in the final say.

**Mr. Jeff Leal:** Okay. I just wanted to check.

**Mr. Randy Hillier:** Yes. But it sounds—you know, again, it's just a matter of elevating the expectation here, or elevating it to the ministry, that there is an expectation that they follow through with their statutory authorities only.

**The Chair (Mr. Peter Tabuns):** Okay.

**Mr. Andrew McNaught:** Okay, so I'll redraft that and we can reconsider it at the next meeting.

**The Chair (Mr. Peter Tabuns):** Okay.

**Mr. Andrew McNaught:** Moving on, the next regulation we're reporting is towards the bottom of page 11. This is a regulation made under the Condominium Act and deals with the funding of condominium reserve funds.

Just by way of background, condominium boards are required, under section 94 of the act, to develop a funding plan that ensures that a condominium's reserve fund will be adequately funded within a certain period of time. That period of time is to be prescribed by regulation.

At the top of page 12, we've reproduced the section of the regulation that prescribes this period of time—and I invite you to read it, if you dare. The difficulty we have with this provision is its convoluted wording, so we flagged it as a possible violation of the committee's third guideline, which is the "precise and unambiguous language" guideline. We asked the ministry whether this provision could be more clearly drafted.

In its response to our letter, the ministry acknowledges that it's a difficult provision to read, and they say the reason for this is that you have to refer back to section 92 of the act in order to understand the regulation. However, they're not offering to redraft this. We're saying that the difficulty in understanding this regulation is not the fact that you have to refer back to the act; it's simply the convoluted wording that's been employed here. So that's our recommendation at the bottom of page 12, that the—

*Interruption.*

**The Chair (Mr. Peter Tabuns):** Mr. McNaught, sorry to interrupt. That's an adjournment motion—a 30-minute bell. We have to be back in the chamber at 10:15, just to let you know the time remaining.

Sorry, Mr. McNaught. Please proceed.

**Mr. Andrew McNaught:** The recommendation at the bottom of page 12 is that the ministry make a plain-language amendment to this provision.

**The Chair (Mr. Peter Tabuns):** Is there discussion on this? Is anyone against plain language? Ms. Piruzza.

**Mrs. Teresa Piruzza:** I was just going to say, if there's anything, plain language is the way to go with some of this. If I have to open three different acts to try to figure out what I'm reading, it needs to be a little bit plainer.

**The Chair (Mr. Peter Tabuns):** Okay. Any further debate on this recommendation? All those in favour, please raise your hands. All those opposed? It is carried.

Mr. McNaught.

**Mr. Andrew McNaught:** The next regulation is at the top of page 13 of the report, under the Ministry of Training, Colleges and Universities. The regulations in this section are the French-language versions of two regulations made under the Apprenticeship and Certification Act. You heard Mr. Spakowski earlier talk about the bilingual requirements of regulations.

The issue here is really a technicality. The act says that the regulations should have been made by the minister, but, in fact, they were made by cabinet. The ministry acknowledges that this was an administrative error, but they're suggesting that the fact that the minister recommended to cabinet that the regulations be made is sufficient to correct the error. We're taking a strict interpretation here in saying that the act clearly states that the minister is to make the regulations, not recommend them. So at the top of page 14, we're recommending that the Ministry of Training, Colleges and Universities remake the French-language version of these regulations.

I just note that we made similar recommendations in previous reports on this.

**The Chair (Mr. Peter Tabuns):** Is there any discussion or questions for Mr. McNaught?

There being none, all those in favour, please raise your hand. All those opposed? Carried.

Mr. McNaught.

**Mr. Andrew McNaught:** Okay. On page 14, under Ministry of Health and Long-Term Care, we have a regulation made under the Long-Term Care Homes Act, 2007. It's the first regulation made under that act. The provisions in question here deal with long-term-care homes that are established by municipalities in territorial districts of northern Ontario.

Under the act, the board of management for a territorial district home is required to estimate the operating and capital costs of the home, and the supporting municipalities in the district are required to make payments to the board to cover their share of these costs. So for this purpose, the act provides that the cabinet is to make regulations specifying the times by which municipalities are to make these payments each year. However, the regulation that's been made under this authority does not specify times; it simply provides that the boards of management are to establish the times by which municipalities are to make these annual payments.

We asked the ministry about the authority of cabinet to delegate its responsibility for prescribing the time for making payments to long-term-care homes. The ministry's view is that there's no strict rule against delegating regulation-making authority, but our review of the case law on this issue, which we've noted on page 15, suggests that when a statute says that a certain person or body is to specify a time by which something is to be done, as is the case here, then it is that person or body that must specify the time. They cannot delegate this responsibility to somebody else.

That's our recommendation at the bottom of page 15—that the ministry amend the regulation to specify the time by which payments required under the act must be made.

**The Chair (Mr. Peter Tabuns):** Any questions for Mr. McNaught? Well explained, then.

All those in favour? All those opposed? It is carried. Mr. McNaught.

**Mr. Randy Hillier:** Chair, could I interject? It would seem there are some bells coming, and the next one is indeed a little bit more substantial. It deals with charter items. Maybe people would like to have a little bit more time to review that one. Could we table that next recommendation until later, until the next sitting?

**The Chair (Mr. Peter Tabuns):** This is the recommendation on page 17?

**Mr. Randy Hillier:** That's correct.

**The Chair (Mr. Peter Tabuns):** Is there any difficulty with that? I accept that recommendation. We will table that for consideration at our next meeting.

**Mr. Andrew McNaught:** Well, that was the last recommendation we're bringing to your attention.

**The Chair (Mr. Peter Tabuns):** We have carried a number of recommendations. We have to come back to this document next week. You have some instructions for drafting. My matter has been tabled. We have to leave here at 10:05 and you have a motion that you want to table.

**Mr. Randy Hillier:** Yes. I'd like to table two motions, Chair. These motions both come out of the royal commission by James McRuer that was in the 1960s that actually created this committee.

The first one is that the Standing Committee on Regulations and Private Bills recommend to the Standing Committee on the Legislative Assembly that the standing orders of the House pertaining to the Standing Committee on Regulations and Private Bills be amended to include that the committee shall review regulations to ensure that the regulation does not make any unusual or unexpected delegations of power.

Mr. McNaught has done up research that I'd like to make available to all the committee members so that they

can review where the rationale for this motion comes from. It indeed was one of the substantial recommendations that was, I'll say, expected to be adopted when this committee was originally created.

The second one, again, comes out of that royal commission inquiry. It was a recommendation, and it is: that the Standing Committee on Regulations and Private Bills recommends to the Standing Committee on the Legislative Assembly that the standing orders of the House be amended such that any member is permitted during introduction of bills to table a motion requesting a review and debate upon the merits of any regulation filed with the registrar of regulations.

If this motion is passed, the government would ensure the motion is debated within that session of Parliament and allow for up to two hours of debate on that regulation.

**The Chair (Mr. Peter Tabuns):** Now, this is just being tabled. We're not debating it today.

**Mr. Jeff Leal:** I just wanted to ask Mr. Hillier a question.

**The Chair (Mr. Peter Tabuns):** If you want to make a comment.

**Mr. Jeff Leal:** Through you, Mr. Chair: Mr. Hillier, you referenced a royal commission.

**Mr. Randy Hillier:** Yes.

**Mr. Jeff Leal:** Was the royal commission set up in response to something, or was the royal commission established to provide a framework for the establishment of a new committee here at Queen's Park? I just want to get a bit of the background, please.

**Mr. Randy Hillier:** The name of the royal commission was the inquiry into civil rights. It was a very lengthy—it spanned a number of years, and it was chaired by the Chief High Court Justice of Ontario at the time.

**Mr. Jeff Leal:** Sure.

**Mr. Randy Hillier:** That royal commission put out five volumes of recommendations and rationales to improve the freedoms and safeguard the liberties of residents of Ontario. One of those substantial recommendations was the creation of an oversight body of the Legislature on regulations. It listed 10 criteria that this committee ought to look at.

So we do have that background information, and we will ensure—

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

**The Chair (Mr. Peter Tabuns):** Mr. Hillier, my suggestion is that the two of you talk directly. This has been tabled. We'll be debating it at our next meeting. In order that we get up in time, I'm going to adjourn the committee.

*The committee adjourned at 1002.*

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