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Wednesday 25 February 2015

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Mercredi 25 février 2015

**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

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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 25 February 2015

Mercredi 25 février 2015

The committee met at 0901 in committee room 1.

DRAFT REPORT ON REGULATIONS

The Chair (Ms. Indira Naidoo-Harris): Good morning, everybody. I just want to welcome you all here this morning. The Standing Committee on Regulations and Private Bills will now come to order. As you all know, we are here this morning to resume consideration of the draft report on regulations made in 2013. I trust that you've all got the revised draft report in front of you so you can look it over.

Last week, the committee agreed to postpone the consideration of the possible recommendations for further discussion and for more information. Today, we're going to resume that discussion. I'd like to start with Ministry of Education regulation 288/13, which is on page 4. I'm going to ask the research officer, Tamara Hauerstock, to go over what the discussion is about and to give us a summary of the issue again. Tamara?

Ms. Tamara Hauerstock: Good morning. This regulation, which is regulation 288/13, is found on page 4 of the revised draft report. The issue that we had raised was that the regulation was made by the Minister of Education but that when we reviewed the relevant act, it appeared that the authority to make this type of regulation went instead to the Lieutenant Governor in Council. In the revised report that we've provided, I've left the black lines in, just for ease of reading. You can see where the changes have been made. Shall I go ahead and go through the changes in the report?

The Chair (Ms. Indira Naidoo-Harris): Sure.

Ms. Tamara Hauerstock: Last week when we were here, one of the issues that was raised was with respect to the reference to the same type of issue having been raised in earlier reports of the committee. Discussion of this is midway through page 5 of the revised report. The question that was raised was, in the April 2011 and April 2012 reports when the committee raised this issue, was it with respect to the same ministry? I've put in some language here to clarify that, in fact, it was not with respect to the same ministry. We've clarified that that reference was intended to be to the issue, and not to the Ministry of Education. As you'll see, in April 2011 we raised it with respect to a regulation under the Highway Traffic Act, and in April 2012 we raised it with respect to

a regulation under the Apprenticeship and Certification Act, 1998.

If you take a look at the following paragraph, that's just a brief summary of what the representatives of the ministry told us when they appeared before us last week. They noted that they will attempt to ensure that this type of issue doesn't occur, and they also explained that most of the regulation has, in fact, been revoked. There's only one section that remains in force, so what I've done to the possible recommendation, which is in the box—the first box that you'll see here is the original recommendation; the second box is the revised recommendation. I've just tightened up the language to clarify that, in fact, it's only section 1 of the regulation that would need to be remade, since the rest of it is gone in any case.

The Chair (Ms. Indira Naidoo-Harris): Thank you, Tamara.

I'd now like to open this up for discussion. I think the researcher has made it clear what the various issues are, and we'd like to find out what the committee members think about some of this. Is there anyone who would like to start the discussion? MPP French?

Ms. Jennifer K. French: Thank you. Just a point of clarification: I know that in the discussion last week we had talked about having them remake it or just get rid of it. We also, in a separate discussion last week, talked about what the powers of this committee, so to speak, might be. I wondered because I don't see that as a possible recommendation; even though it was a section still in force, it was a redundant section, essentially, because it was a duplicate. I don't see that recommendation here. Is that because we don't have that power?

Ms. Tamara Hauerstock: No, I think it would be open to the committee to recommend revocation of a regulation.

Ms. Jennifer K. French: I just don't know, without the recommendation here—not just the language but whether that would even be worthwhile. I don't know if one is better than the other.

The Chair (Ms. Indira Naidoo-Harris): I'm going to ask for some clarification. From what I understand, most of the portions of this regulation have moved forward already and are done, right? It's just one section that's left outstanding now?

Ms. Tamara Hauerstock: Yes, it's just the one section.

The Chair (Ms. Indira Naidoo-Harris): So, really, this is continuing to move forward. That's accurate, right?

Ms. Tamara Hauerstock: Yes, it's just the one section that remains in force. And yes, they did indicate that it was somewhat redundant. My thinking would be that, yes, it's somewhat redundant, but if they felt a need—just for clarification purposes, I imagine—to make that regulation originally, even though it doesn't in the end add that much effect, they likely may as well keep it. But it would be open to the committee to recommend that they get rid of it altogether.

The Chair (Ms. Indira Naidoo-Harris): MPP Vernile.

Ms. Daiene Vernile: Thank you, Chair. Well, when we heard from the Ministry of Education, they did acknowledge the oversight. Really, there hasn't been what I would call a practical impact on the system with this oversight, so I think we should encourage the Ministry of Education to follow the procedural requirements, but I would recommend that we keep the regulation with an amendment.

The Chair (Ms. Indira Naidoo-Harris): Okay. Is there any further discussion of MPP Vernile's recommendation, or other suggestions? MPP Walker.

Mr. Bill Walker: I just still struggle—I think I'm with my colleague MPP French. Why would we keep something if everyone is really agreeing that it's redundant and there's no value to it? I just don't understand why we would go through that process. I struggle. It just seems to me that we're spending a lot of time and energy on something—if it's not providing value, why would we go down that path? I don't mean that in a mean-spirited way; I just don't understand why we would do that. If we can get rid of it and it's not having any harm, and it's one less regulation to have to continually come back at some point, why would we not just get rid of it?

The Chair (Ms. Indira Naidoo-Harris): Go ahead.

Ms. Tamara Hauerstock: I think that in making the recommendation and formulating it, I was attempting to address the issue of the maker of the regulation. The issue that the ministry talked about in terms of the possible redundancy of the section is another issue, but it would be an option at the end of the day to recommend that the ministry revoke.

Mr. Bill Walker: Chair, may I ask for a further point of clarification?

The Chair (Ms. Indira Naidoo-Harris): Yes, MPP Walker. Go ahead.

Mr. Bill Walker: I guess what I'm really struggling with is, I respect that you're trying to maintain that, but if it was done and we now know that there's an error, and it's a duplication and there's no value—and maybe it's my not understanding what we can do, similar to MPP French, at this committee, but I'm still struggling with why we wouldn't put that recommendation on and get rid of it. If the maker is not really objecting to getting rid of it and they believe it's redundant, the more streamlined we can make our governments, the better and the more efficiently we all operate.

0910

So I struggle that we would talk about something—you know, this is now our second meeting to talk about this. Theoretically, it could come back again, and it's a redundant piece of legislation that isn't providing value.

The Chair (Ms. Indira Naidoo-Harris): Thank you, MPP Walker. Just so that I'm clear—sorry. MPP McGarry, go ahead.

Mrs. Kathryn McGarry: Sorry. I certainly understand that conversation. Perhaps we can recommend and say that the regulation has been repealed and we can ask the education ministry to do better next time, and that would sort of resolve that.

The Chair (Ms. Indira Naidoo-Harris): If I can ask—it seems to me that we actually have two recommendations that are moving forward now: certainly the one that the legislative researcher suggested, and MPP Vernile. I'm wondering if we can—if I'm missing any others. But could I ask that the recommendations that are being suggested—MPP Vernile, please clarify what it is, perhaps write it out and clarify it for all of us.

Ms. Daiene Vernile: I would suggest a motion, if I could, Chair.

The Chair (Ms. Indira Naidoo-Harris): Okay.

Ms. Daiene Vernile: That the committee recommends, with respect to reg. 288/13, that the Ministry of Education make every effort going forward to adhere to the procedural requirements when establishing regulations.

The Chair (Ms. Indira Naidoo-Harris): Okay. I wonder if you could write it out for us and then I'll present it as a motion.

Ms. Daiene Vernile: Okay.

The Chair (Ms. Indira Naidoo-Harris): Thank you.

Okay. Committee members, I understand that there is a motion on the table right now from MPP Vernile.

“Section 1: The committee recommends, with respect to reg. 288/13, that the Ministry of Education make every effort going forward to adhere to the procedural requirements when establishing regulations.”

Shall the recommendation carry?

Interjection: I don't understand part of it.

The Chair (Ms. Indira Naidoo-Harris): Sorry. Any discussion? My apologies. Go ahead, MPP French.

Ms. Jennifer K. French: Thank you, and it's helpful to have it in front of me.

The possible recommendations, as they are written in the draft report: One is to remake the whole regulation 288/13, and the other one is to just remake section 1 of that; it's more specific. That's what's in this draft, which is an actual action on the regulation, and whether we talk about having them revoke it or not, that would also be an action on the regulation. So fix it or get rid of it.

This is not making any recommendation about the regulation. It's just saying, “Going forward, please follow procedure in everything you do.” Because this doesn't say to “remake” or “fix” or “do away with,” this doesn't address the regulation. This just addresses process about “regulations such as.” Is that my understanding?

The Chair (Ms. Indira Naidoo-Harris): MPP Vernile, can you clarify?

Ms. Daiene Vernile: I'm sorry. Can you please say that again?

Ms. Jennifer K. French: I'm comparing this to the two options, as I understood them, on the table, because what's in the draft report that had been suggested by research is that we remake it or remake part of it, so fix it. Then the conversation over here has sort of been, "If it's a duplicate, then just get rid of it." So this is "fix or get rid of," whereas this doesn't actually take an action towards the regulation; this is a process issue: "In the future, if you're addressing a regulation such as this or anything else like it, please follow the rules or please follow the process." This doesn't actually specifically address the regulation on the table, unless I'm misunderstanding.

Ms. Daiene Vernile: It's being repealed, and so my suggestion is that we acknowledge that the Ministry of Education realizes that there was this oversight and, moving forward, we continue with the regulation with an amendment.

Ms. Jennifer K. French: So the "it's being repealed" piece is new. That was what MPP McGarry had mentioned. I'm not—

The Chair (Ms. Indira Naidoo-Harris): Okay, I'm just going to step into this. MPP McGarry, I know that you had your hand raised. Do you have a comment to make?

Mrs. Kathryn McGarry: That's really what I was saying. I understood, and I'm just going to ask for clarification—I felt that 288/13 was repealed and we were addressing the aftermath of what we do with that.

The Chair (Ms. Indira Naidoo-Harris): Researcher.

Ms. Tamara Hauerstock: The regulation, as it was originally made, consisted of, I think, one or possibly two lines of text and then a long table. What the ministry was noting last week was that that long table has been repealed and is gone and it's just the two or three lines of text, which we keep referring to as section 1, that remain. That section is part of the parent regulation, the original regulation, which is called O.Reg. 221/11. So it still exists in the larger regulation.

Mrs. Kathryn McGarry: That clarifies it. Thank you.

The Chair (Ms. Indira Naidoo-Harris): Thank you, researcher. Any other comments?

Ms. Jennifer K. French: Does this motion address the regulation or is it addressing process? If it's addressing process, is that not already included in here that they acknowledge there was an oversight? When they were here they said that, in going forward, this isn't going to happen again, because it was technical, not substantive. They already explained that. Is this just saying, "Don't do it again," and is that necessary?

The Chair (Ms. Indira Naidoo-Harris): I am going to refer to the Legislative researcher, but before we move forward, I do want to point out that this does say "with respect to reg. 288/13," so I think it is directly responding to the regulation. However, I will ask the legislative researcher for some clarification.

Ms. Tamara Hauerstock: As I read this, I don't see an obligation on the ministry to make any specific changes. It's more of a forward-looking recommendation.

The Chair (Ms. Indira Naidoo-Harris): Yes, MPP Kwinter.

Mr. Monte Kwinter: My reading of it is that the regulation was made by the minister and then approved by the Lieutenant Governor in Council. What they're saying is that it should have been made by the Lieutenant Governor in Council. What they're really saying is that, in the future, let's make sure that you follow the correct procedure. But it has nothing to do with the regulation per se; it's just a matter of the methodology of getting it approved.

Ms. Tamara Hauerstock: Yes, I think that's fair to say.

The Chair (Ms. Indira Naidoo-Harris): MPP Walker.

Mr. Bill Walker: So in respect of all of the work from legislative research—I read both of yours, which are taking an action. The one that MPP Vernile has put in, I would suggest again, is more of a process: "You shall do better in future." But we're not really fixing or cleaning or doing any revision, which both of the recommendations, as I read them—that you have provided—are to take an action.

My fear is that if we just use the one of MPP Vernile's, we've again sat here last week and this week, talked about this and done absolutely nothing with it other than saying, "You shall not." Some of the explanatory notes say they've made a couple of similar errors in the past, so what faith do I have that they won't make yet another error at some point in the future? We still haven't fixed and cleaned it up.

I'm still back to: Either we get it totally out of there and the redundancies gone and we've taken an action, or why are we going through this? That's where I'm not understanding, and maybe MPPs Kwinter or Dickson, who are much more senior in their experience here, can share that, because I still get a feeling of: What are we really able to do here? If we're not going to fix things when we do a review, what's the purpose of this?

0920

The Chair (Ms. Indira Naidoo-Harris): Thank you for your comments, MPP Walker. I was just consulting with the Clerk, and she did point out that this committee really sits to have these discussions and we decide how we want to proceed: if we want to take an action, if we don't want to take an action. So it is within the purview of what the committee discusses and we decide as we move forward. But you do bring up a good point.

Are there any other comments? Yes, MPP Vernile.

Ms. Daiene Vernile: Well, in deference to Mr. Walker—and I'm not as experienced as some of the other people who are sitting here, as you pointed out—my understanding is that the regulation was repealed and, moving forward, the Ministry of Education has said that it is going to do a better job in the future. So does that give you assurances?

The Chair (Ms. Indira Naidoo-Harris): Does the legislative researcher want to comment at this point?

Ms. Tamara Hauerstock: Sure. There is still the one section of the regulation—

The Chair (Ms. Indira Naidoo-Harris): Which is the three lines?

Ms. Tamara Hauerstock: Yes, the two or three lines—which has not been repealed but which the ministry noted was “somewhat redundant”; I think that is they wording they used. So it is still there, but the actual effect of it is not that high.

The Chair (Ms. Indira Naidoo-Harris): MPP Walker, go ahead.

Mr. Bill Walker: I was going to ask for that clarification, because I didn’t interpret it as the whole bill having been repealed. There still is a piece there, which is what we’re trying to talk about.

So may I ask just a generic question, then? If we were to put a motion on the floor to totally repeal it, is that something within the jurisdiction of this committee to do? Because if it is redundant, which they have agreed to, why would we not just get rid of it and be done?

The Chair (Ms. Indira Naidoo-Harris): As Chair, I’m going to have to step in and say we do have a motion on the floor already that we are discussing. So, as procedure dictates, we have to discuss the motion on the floor now. If you want to discuss other motions later, that would be fine, but this is the one that we’re discussing, and we’ll have to decide whether we want to proceed with this one first before we discuss other motions that may be on the floor.

Mr. Bill Walker: And is this MPP Vernile’s motion that we’re now—just so we’re clear on which one.

The Chair (Ms. Indira Naidoo-Harris): Yes. The one that was handed out on the piece of paper here.

Is there further discussion of this motion that is on the floor right now? MPP French.

Ms. Jennifer K. French: I don’t have a problem with the concept: In going forward, make sure you adhere to the guidelines or whatever. That’s great. But if we pass this motion, does it somehow take the other recommendations off the table? I don’t know what trumps what here. So if we pass this, does it mean that the conversation is finished and we can’t action to fix or repeal?

The Chair (Ms. Indira Naidoo-Harris): My understanding is, if we move forward with this motion, then that means this will go to a vote: “Will this recommendation carry?” And that means we move on to the next item on the agenda.

Ms. Jennifer K. French: So this motion would trump the recommendations made by research and we can’t discuss? Because if this is based on an assumption or an understanding that the whole thing was repealed and in fact it hasn’t been—

The Chair (Ms. Indira Naidoo-Harris): Sorry, MPP French.

Ms. Jennifer K. French: If this is based on the understanding that the whole regulation has been repealed when in fact, as we’ve had clarified, there is still

a section 1 that has not been repealed, then does MPP Vernile still want to put this forward as a replacement for the recommendations made by research?

The Chair (Ms. Indira Naidoo-Harris): MPP McGarry?

Mrs. Kathryn McGarry: Thank you. I’m actually satisfied with it. I certainly understand the confusion, because it is confusing for those of us who haven’t dealt with it before.

To my way of understanding, in light of the conversations we had last week with the Ministry of Education, the part of the regulation that’s still on the books is redundant because they’ve moved forward with full-day kindergarten. So that part of the regulation has already been replaced by something else as we’ve moved forward with that.

So for me, I’m quite satisfied at this point that, even though section 1 of the regulation will remain on the books, the Ministry of Education has replaced that, as we’ve moved forward with full-day kindergarten.

We will entreat them, and I’m sure they’re well aware, now that they’ve had to make these submissions and come forward—I’m quite satisfied that they will check that process twice next time. In reference to MPP Kwinter’s comment, I’m quite sure they’ll look to make sure that when they roll out a regulation next time, they do it in the proper order. So I’m quite satisfied with this motion.

The Chair (Ms. Indira Naidoo-Harris): Thank you, MPP McGarry. Any further discussion, then, of this recommendation by MPP Vernile? Are you ready to vote? If you’re ready to vote, let’s put it forward, then.

Shall the recommendation carry, which is worded, “The committee recommends, with respect to reg. 288/13, that the Ministry of Education make every effort going forward to adhere to the procedural requirements when establishing regulations”? All those in favour? All those opposed? We have five in favour, one opposed. It’s carried.

Interjections.

The Chair (Ms. Indira Naidoo-Harris): Just to make sure that we’re all on the same page—I want to make sure that we all understand that this is the recommendation that we’ve just passed. We will move forward on to the next discussion. Is that accurate, in terms of committee members, or is there further discussion? Yes, MPP French?

Ms. Jennifer K. French: Just for my clarification: The possible recommendations as put forward by research on taking action for this specific regulation have just been rendered null and void by a recommendation.

The Chair (Ms. Indira Naidoo-Harris): The Clerk is advising that, if we want to, we could go through these recommendations that are on the table, just to be clear, and have a further vote on them, if that’s what you’d like, MPP French.

Ms. Jennifer K. French: I guess I wonder if there’s any—I respect that research has made recommendations to take an action to fix the regulation, so what we have

passed does not take an action on the regulation. It just sits marginally or slightly redundant on their books and doesn't get touched, because we've said, "Just don't do it again," but we aren't addressing the regulation specifically. As the original conversation about, "Should we have them revoke it?"—that's obviously not a topic for discussion. But can the recommendations by research be a topic of discussion?

The Chair (Ms. Indira Naidoo-Harris): This recommendation doesn't necessarily replace these. We can still discuss these further recommendations on—

Ms. Jennifer K. French: That was my earlier question. I misunderstood. I thought it just rendered it null and void.

The Chair (Ms. Indira Naidoo-Harris): The Clerk has clarified, so these other two possible recommendations are still up for discussion. We can discuss further, and we can hold a vote on them, if you would like.

Is there further discussion wanted on the possible recommendation that the committee recommends that the Ministry of Education remake regulation 288/13 under the Education Act? Do we want further discussion of this? We've had some discussion about this already, but is further discussion desired? Yes, MPP Walker?

Mr. Bill Walker: If we were to accept your revised recommendation from legislative research, would that put the bill back in proper compliance? It would fix the bill so that this does not return to us in another further review, whether that be a year down the road or three years down the road, suggesting—because your job, I believe, if I understand it correctly, is to review, to ensure that everything is accurate and done according to what was expected. So if we don't accept one of your recommendations, this bill, in my mind, using my terminology, is going to be in non-compliance, and it could come back to this committee for discussion yet again.

Ms. Tamara Hauerstock: If the ministry corrected or remade the regulation, it would address the issue that we've raised so that it would not be raised with respect to this matter by us again. I would note that, in practice, the way that we review regulations is on an annual basis, although all regulations do stand permanently referred to the committee. So we could go back and look at any regulation at any time. In practice, we review the annual regulations generally.

0930

Mr. Bill Walker: But if we go forward today and do nothing more than that motion by MPP Vernile, this is still an outstanding item that somewhere in your annual review is going to come back again.

Ms. Tamara Hauerstock: It's unlikely that it would be raised again, simply because, in general, we review the annual regulations. In other words, since this was a 2013 regulation, in general, we don't go back and look at prior years again.

The Chair (Ms. Indira Naidoo-Harris): I believe what the legislative researcher is saying is that once we have dealt with the year 2013 report, which is what the committee is examining now—once we're done with this report and move it forward, that's done. Is that accurate?

Ms. Tamara Hauerstock: Yes.

Mr. Bill Walker: I think the struggle I'm having, Chair, is that the legislative researcher did the review and brought it to our attention that there is something that is in error. If we don't do anything with it, it remains in error. Then it's a futile waste of time for us all to sit here because we've done nothing with something that she's identified as being outstanding and in error. I think that's partly what MPP French and I are saying. We have recommendations. We at least should be taking one of her recommendations to clean this up so that we can all leave here with good conscience that we've made and addressed an error.

The Chair (Ms. Indira Naidoo-Harris): Perhaps, I think, what committee may need—

Interjection.

The Chair (Ms. Indira Naidoo-Harris): MPP Vernile, one second—and perhaps this is something that the researcher does need to clarify: What does the re-making of a regulation entail and what kind of ramifications and impact does it have? In terms of process, because that's what the first recommendation is. Right?

Ms. Tamara Hauerstock: In terms of the internal process for a ministry to make a recommendation, I am actually not too familiar with that. The impact of the regulation—because the ministry has indicated that the remaining section is somewhat redundant, I think the impact would likely be small.

The Chair (Ms. Indira Naidoo-Harris): Thank you. MPP Vernile?

Ms. Daiene Vernile: I would agree with you, Mr. Walker, that we don't want any more time-wasting on this particular issue. The Ministry of Education, though, has told us that they've acknowledged the issue. They're moving forward. I think we should, too. Full-day kindergarten has rolled out, so the likelihood that we are going to revisit this—and I would ask our legislative researcher to speak to this. What are the chances that we are going to revisit this regulation, considering that full-day kindergarten has occurred?

Ms. Tamara Hauerstock: Revisiting this particular regulation, 288/13, would be unlikely because, as I was noting earlier, we review the regulations annually. Now that we are ending our review of the 2013 regulations, we move on to 2014, 2015 etc. Since this is a 2013 regulation, we generally wouldn't go back to look at it further.

The Chair (Ms. Indira Naidoo-Harris): MPP McGarry?

Mrs. Kathryn McGarry: Thank you for that answer; actually, that was my question. To MPP Walker's comments: I would agree with you. If this regulation was now not redundant and replaced by something else, I would have your concern with moving forward and potentially looking at trying to rewrite it or bring it back. The only reason I would recommend that we just leave it as is now is simply because it's redundant and it's not going to be in use anymore. As I said, if it was something that was still going to be on the books and still is current legislation, then I would agree with you. We would want

to move forward to ensure that that is on the books more accurately. It's only because this is now redundant in the legislation of 2015 that I'm quite comfortable just to let it go this time.

The Chair (Ms. Indira Naidoo-Harris): MPP Kwinter.

Mr. Monte Kwinter: I just want to get back to my earlier point. No one is questioning the content of the regulation. I'm just questioning the procedure and that the minister brought it forward and subsequently it was approved by the Lieutenant Governor in Council. In their review, they said, "That is not the way it should be done; it should be brought forward by the Lieutenant Governor in Council." All we're really saying is, "Follow the correct procedure, and make sure you don't do that again because it wasn't done appropriately."

No one is questioning the content. That has gone by. This is just a signal to say, "In the future, follow the procedure that is proper." That's what this amendment calls for.

The Chair (Ms. Indira Naidoo-Harris): Further discussion of this possible recommendation? Shall we put it to a vote, just to be clear, or are you—MPP French, do you have anything further you'd like to add?

Ms. Jennifer K. French: If we were putting it to a vote, the revised possible recommendation that is section 1-specific seems a little tighter than the other. So that would be my druthers, but I won't suspect it will go to a vote.

The Chair (Ms. Indira Naidoo-Harris): MPP French is suggesting that we actually look at revised recommendation number 2, which is on the bottom. Possible recommendation: The committee recommends that the Ministry of Education remake section 1 of regulation 288/13 under the Education Act.

Would the committee like to proceed with a vote on this? Yes. Okay, let's proceed. All those in favour of the revised recommendation, please raise your hands. All those opposed?

Hands, please. Opposed to the revised recommendation? I see just two hands up.

Mrs. Kathryn McGarry: Could it be read out?

The Chair (Ms. Indira Naidoo-Harris): Sure. I'm sorry. I'll read it out again. Apparently there's some confusion.

We are putting to the vote the revised possible recommendation—not the one that MPP Vernile brought up, but the revised possible recommendation that the committee recommends that the Ministry of Education remake section 1 of regulation 288/13 under the Education Act.

Once again, all those in favour of the possible revised recommendation? Those who are in favour—

Interjection.

The Chair (Ms. Indira Naidoo-Harris): Oh, I'm sorry. And those opposed?

Mr. Joe Dickson: Recorded vote, please?

Mrs. Kathryn McGarry: May I request a recess, please? Ten minutes.

The Chair (Ms. Indira Naidoo-Harris): MPP Anderson?

Mr. Granville Anderson: Okay. If we didn't oppose this, would it have to come back?

Mr. Bill Walker: No.

Mr. Granville Anderson: That's my understanding: that it's not coming back.

The Chair (Ms. Indira Naidoo-Harris): I think what we have to move forward with here is, the Clerk has advised me that we did do an actual count of this. The possible recommendation was voted on here: The committee recommends that the Ministry of Education remake section 1 of regulation 288/13 under the Education Act. That recommendation will carry.

Ms. Daiene Vernile: But we asked for a recess, Chair. *Interjection.*

The Chair (Ms. Indira Naidoo-Harris): We can't have another count. We've already had—

Interjection.

The Chair (Ms. Indira Naidoo-Harris): Yes.

Ms. Daiene Vernile: Chair, we had some people voting who, I believe, were not clear on what you were putting forward, and it would seem unfair that you would keep and record that vote when there was not a clear understanding of what was being put forward.

The Chair (Ms. Indira Naidoo-Harris): I think we should call a recess. Let's call a recess, please. It seems that there is a little confusion about the two recommendations that were on the table, so let's call a recess—five minutes.

The committee recessed from 0940 to 0956.

The Chair (Ms. Indira Naidoo-Harris): We are back. I think it's fair that the committee members all understand where we are with this. So, just ensuring that the committee members understand what just took place, I want all of the committee members to be aware that apparently some committee members were not aware that we were looking at the revised recommendation on page 5 when we took the vote. That was where the confusion was.

Having said that, we did do it twice, and we did go through the process the way it should have gone. So I think that the vote should stand, and I'm going to have the vote stand. In the future, I think we need to be clear about what it is that we're discussing and ensure that we are on the right page and looking at the actual recommendations.

This was the draft report recommendations that are featured, and it was read twice and the vote was taken twice. As Chair, I think I have to make a decision, and the decision is to let it stand.

So, we have MPP Vernile's initial recommendation, which moved forward and has passed. Also, the revised possible recommendation featured on page 5, which we took a vote on, was passed and is being moved forward.

The Clerk—

Interjection.

The Chair (Ms. Indira Naidoo-Harris): Pardon me?

Ms. Tamara Hauerstock: Researcher.

The Chair (Ms. Indira Naidoo-Harris): The researcher can now explain the process, so that committee members are aware of what happens, since we've gone to recommendation number 2.

Ms. Tamara Hauerstock: From our perspective, once the report is finalized, I believe it's the practice to send a letter to all ministries affected by recommendations in the report—

Interjection.

Ms. Tamara Hauerstock: You can't hear?

Ms. Jennifer K. French: Just a little louder, please.

Ms. Tamara Hauerstock: Sure. I believe it's the practice of the committee to send a copy of the report to all ministries affected, as well as a covering letter indicating to the ministry that there is a reference to them in the report. Then it's for the ministry to determine its next steps.

The Chair (Ms. Indira Naidoo-Harris): Thank you.

We're going to move forward with our committee considerations.

Item number 2 is the Ministry of Transportation regulation 169/13, on page 8. I would like to ask the legislative researcher, Ms. Hauerstock, to go over the issue again, and the revisions she has made.

Ms. Tamara Hauerstock: Okay. We're looking at page 8 of the revised draft report. The regulation in question is O.Reg. 169/13. As we discussed last week, it's a regulation amending the regulation that deals with school buses.

The issue we raised with the ministry had to do with incorporation by reference. That's a drafting technique whereby a document that exists outside the regulation is referred to by the regulation and in that way is brought—

Mr. Joe Dickson: On a point of order, Madam Chair, is there any way we can turn up the sound? I've heard it from the other side—

Ms. Tamara Hauerstock: Oh, I'm sorry. I have a cold. I'm having a hard time talking.

The issue that we raised with the ministry had to do with incorporation by reference, and that is where an outside document is incorporated into the regulation. In other words, it's brought into the regulation by referring to it. So it becomes a part of the regulation, even though it exists on the outside.

In this case, it was a standard developed by the Canadian Standards Association having to do with school buses which was brought in. What the Legislation Act tells us is that when this is done in this type of situation, unless the act permits it, the method of incorporation should be what we call static. That means that once the regulation is made, if the outside document—the standard—is changed at a later date, those changes don't get automatically inserted into the regulation. In other words, it's the standard as it existed on the day that the regulation—which continues.

There's another way of doing this called rolling incorporation, and that means that later changes to the outside documents would automatically be imported into the regulation.

In this case, when the ministry made the regulation, they used rolling incorporation. As the school bus standard changes, the regulation would, in effect, incorporate those changes.

When we looked at the Highway Traffic Act, we did not see express authority for rolling incorporation. In other words, we raised the issue that we believed that the incorporation by reference ought to have been done on a static basis.

If you look at page 9 of the draft report, the black-lined paragraph midway through the page, it's just a brief summary of what the ministry representative told us when he appeared before us last week. He indicated that the ministry's view is that rolling incorporation is impliedly permitted, given the nature of the act, the subject matter and the standard maker, which is the Canadian Standards Association.

What we have underneath that paragraph is, in effect, three options for the committee. The first box is the original possible recommendation, which is that the ministry amend the regulation to comply with the rules about incorporation by reference. The second box is a revised possible recommendation, which is that the ministry take steps to bring forward a bill to amend the Highway Traffic Act to ensure that the regulation complies with the requirements of the Legislation Act. So that would mean changing the act to expressly permit what the ministry has indicated is already impliedly permitted. The third paragraph, which is not inside a box, which is another option, that the committee take note of this issue but not make recommendations at this time, if that's what the committee chooses.

The Chair (Ms. Indira Naidoo-Harris): I'm going to open up discussion. MPP McGarry.

Mrs. Kathryn McGarry: Thank you very much, Chair. I certainly appreciate the researcher's commentary.

As PA to transportation, I know how important it is to ensure that we have up-to-date standards, particularly with our school buses, that happen right away when legislative or regulatory changes happen. Certainly the Canadian safety association is one of those agencies that leads many ministries across the country in up-to-date standards for school buses. It is certainly implied and has been for a long time in the Ministry of Transportation to ensure that these are rolling standards and they're adopted right away.

What concerns me greatly—I have several children still on school buses—is that if indeed we send this back to try to use staff time to make another legislative change, go back to cabinet, we're a year out. In that year, there may be some vital components to school bus safety that we would not be able to adopt because we've held that process up, and I'm very uncomfortable with this.

The Ministry of Transportation has long used the Canadian standards for school buses, has implied rolling legislation—sorry, rolling regulations; I'll get it right. I think that we should leave it as is. I would recommend that the Ministry of Transportation keep regulation 169/13 as written. Thank you.

The Chair (Ms. Indira Naidoo-Harris): Further discussion?

Ms. Jennifer K. French: I certainly would echo MPP McGarry's point that we need to have our safety standards current and our buses in compliance with whatever new recommendations are out there.

However, something that was interesting in the conversation last week, when the ministry came and presented to us, was that this concept of rolling incorporation is not provided for in legislation. So, as he said, it's that the ministry interprets it differently than research and than this committee was interpreting it. So the revised possible recommendation of suggesting that the Ministry of Transportation take steps to bring forward a bill that is going to amend the Highway Traffic Act to ensure that they comply—this second recommendation addresses what we talked about last time, which is this static incorporation versus rolling incorporation, that rolling incorporation, as it stands now, is not—it doesn't exist. It's their interpretation.

This is what prompted the question that we had put to research last week about, can you tell us what we can and can't recommend, what the powers of this committee are, because if we can suggest to ministries that they bring forward a bill to address the fundamental issue in the act, that sounds great. I don't know why we wouldn't take the opportunity to suggest that we fix the actual problem.

As MPP McGarry said, they are interpreting—well, she didn't say this, but they're interpreting it now, and they are following the practice of rolling incorporation, which is fine and what we want, but don't we want to actually fix the problem so that they can, in good conscience, continue to follow rolling incorporation?

The Chair (Ms. Indira Naidoo-Harris): MPP Walker first.

Mr. Bill Walker: Thank you. I just want to clarify, because I think I'm kind of in the middle with where my colleague Ms. French is. If we accept recommendation 2 from legislative research—

Mrs. Kathryn McGarry: Could you please identify what option 2 is?

Mr. Bill Walker: Sorry. Option 2 is to bring forward a bill. So if they're bringing forward a bill, does that stop anything from happening the way it currently is? Because we're not changing anything until that bill would be adopted. So they're still going to use the existing legislation the way it is. They will utilize their interpretation, which means it is really rolling forward. The new bill would actually put it in black and white, that they had the ability to address and have the rolling-forward option. So the current legislation doesn't change if they're moving forward to bring a bill to us.

The Chair (Ms. Indira Naidoo-Harris): Before we move forward, I want to just make sure we all are clear on what we're discussing. I will go to the legislative researcher in a minute, but, if I understand correctly, MPP French and MPP Walker are talking about possible recommendation 2—

Mr. Bill Walker: Revised, yes.

The Chair (Ms. Indira Naidoo-Harris):—which is the revised possible recommendation: “The committee recommends that the Ministry of Transportation take steps to bring forward a bill to amend the Highway Traffic Act to ensure that reg. 612 of R.R.O. 1990 complies with the requirements of s. 62 of the Legislation Act, 2006.”

Mr. Bill Walker: Correct.

The Chair (Ms. Indira Naidoo-Harris): But also to clarify, MPP McGarry first suggested, and I believe, MPP McGarry—does actually what I'm calling option 3 relate to what you're saying? So what you moved forward initially was possible closing paragraph if the committee does not—“The committee has taken note of this issue but makes no recommendation” at all. That's the one that you're discussing, right?

Mrs. Kathryn McGarry: That's correct.

The Chair (Ms. Indira Naidoo-Harris): Okay. So just so we all know what's on the table before we move forward, I'm going to go to the legislative researcher to clarify your question, MPP Walker.

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Ms. Tamara Hauerstock: With respect to that second recommendation, the one that's titled “(Revised) Possible Recommendation,” it is my understanding that the regulation as it stands would continue to exist in the way that it exists, and the bill, if it were taken forward, would effectively correct a gap in the act. It would make express something that the ministry has told us is already implied; it is already their understanding that that is the way that it's appropriate for them to be doing this. It would just be making it extremely clear—

Mr. Bill Walker: Black and white.

Ms. Tamara Hauerstock: Black and white; express.

The Chair (Ms. Indira Naidoo-Harris): MPP Vernile?

Ms. Daiene Vernile: I just wanted to add to what the legislative researcher just said and also the representative from the Ministry of Transportation who spoke to us last week, who did say that rolling incorporation is implied, so underscore “implied.” That being the case, do we really need to look at this act and change it? It sounds like it's fine just the way it is, and like Mr. Walker said earlier, he wants us to stop wasting time.

The Chair (Ms. Indira Naidoo-Harris): MPP French.

Ms. Jennifer K. French: Just so I'm clear: On page 9, when we're talking about the recommendations, the first one is: Tell them to fix it and thereby go to static incorporation, which I'm understanding no one in this room thinks is a good idea.

Skipping to option 3 is, “Don't do anything; all is well; leave it alone.” Option 2 is, “Don't make any changes because all is well; it will continue doing what it's doing; leave it alone; but we're going to make the recommendation that you look at”—because it says “recommends that the Ministry of Transportation take steps to bring forward a bill.”

So we're not saying they have to; we have no power to say "Thou shalt." We are saying, "We recommend," so that this doesn't come up in future, so that "rolling incorporation," which we all agree is the best practice for safety, to fix the actual piece in the Highway Traffic Act, so that someone on the government side can bring forward a bill that says, "Hey, we've found a loophole; let's close it." That's my understanding of option 2.

I don't understand why making a recommendation to fix a behind-the-scenes problem in the Highway Traffic Act—I don't understand why we wouldn't take that option to suggest, "Hey, we found a problem. Might we suggest that you fix it?" I guess I'm going to need that explained to me if we're going to pick option 3, which says, "Let's do nothing and pretend it never happened."

The Chair (Ms. Indira Naidoo-Harris): I'd like to remind the committee that we have about three minutes left. I would like to find out how you would like to proceed.

We have three options on the table. If you want, we can put all three to a vote and move forward from there, if the committee is open to doing that. If you'd like further discussion, we can have further discussion.

Yes, MPP Dickson.

Mr. Joe Dickson: I'd just like to clear the air on a couple of things. Number 1: Is there any reason we're not getting hard copies, if you say you've got three motions? They're scribbled in here. I've written down "1, 2, 3," and we can do all that, but the proper format is to circulate hard copies.

Part 2, Madam Chair, is, I did ask a question of the Clerk. When it comes to a recorded vote, even though there's a hand vote taken, immediately on the end of that, to my 30 or 40 years in all levels of government, a recorded-vote request means you take a recorded vote at that point in time. I ask for clarification of that.

The Chair (Ms. Indira Naidoo-Harris): I'm going to ask the Clerk to refer to that question.

The Clerk of the Committee (Ms. Valerie Quioc Lim): Because the Chair has already called the—

Mr. Joe Dickson: I'm sorry, I can't hear you.

The Clerk of the Committee (Ms. Valerie Quioc Lim): The Chair has already called a vote of all those in favour and the votes have been counted. A recorded vote should be called before the question: The Chair has asked, "Are we ready to vote?" A recorded vote could be requested at that time, and a recess as well.

In this case, the Chair did already take the vote twice, the first time understanding that there was some confusion. But the request for a recorded vote came when the votes in favour had already been counted. The request for a recorded vote has to come before the question, when the Chair says, "Are we ready?"

Mr. Joe Dickson: I'll just leave it with you to resolve, but I asked the question and I didn't get an answer. It's either yes or no.

Once a vote has been taken, as long as it's immediately said, "Recorded vote," a recorded vote has to be taken at that point in time. So if you can just do a clarification of that. Maybe Queen's Park operates differently than other levels of government.

The Chair (Ms. Indira Naidoo-Harris): Thank you, MPP Dickson. Just so you know, I did ask for clarification myself from the Clerk, and I understood that the recorded-vote request had to come before the vote was taken.

Mr. Joe Dickson: That's not so, but I'd like her to—

The Chair (Ms. Indira Naidoo-Harris): I take my advice from the Clerk.

Mr. Joe Dickson: If she could provide something in writing to that.

The Chair (Ms. Indira Naidoo-Harris): Thank you. There was another question, though, that you had, MPP Dickson, which was about having these delivered to you in paper, if it was a motion.

Mr. Joe Dickson: Yes.

The Chair (Ms. Indira Naidoo-Harris): Clerk, do you want to clarify that?

The Clerk of the Committee (Ms. Valerie Quioc Lim): It is on the draft report in front of you, on page 9. So it's not a motion but recommendations that are proposed in front of you so that—

Mr. Joe Dickson: This is what you're talking about?

The Clerk of the Committee (Ms. Valerie Quioc Lim): Yes, that's right.

The Chair (Ms. Indira Naidoo-Harris): Okay? All right. Is there further discussion?

Mr. Monte Kwinter: Madam Chair?

The Chair (Ms. Indira Naidoo-Harris): Yes, MPP Kwinter?

Mr. Monte Kwinter: In my copy, page 9 has nothing to do with what we're talking about. In my copy, it has to do with the Grain Act.

Mr. Joe Dickson: It looks like they've done a rerun. It's actually page 10 which MPP Kwinter—

Ms. Jennifer K. French: No, it's page 9 of the draft report.

Mrs. Kathryn McGarry: His page 9 does not reflect that.

Mr. Joe Dickson: His is different.

Interjections.

The Chair (Ms. Indira Naidoo-Harris): The time is 10:20. Given the time, I'm going to propose that we adjourn for now and pick this discussion up next week. Is everyone okay with that? Okay. Thank you.

The committee adjourned at 1016.

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