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Mercredi 22 octobre 2008

Standing Committee on Regulations and Private Bills

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

Chair: Michael Prue
Clerk: Sylwia Przezdziecki

Président : Michael Prue
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Wednesday 22 October 2008

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

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

Mercredi 22 octobre 2008

The committee met at 0900 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Michael Prue): I call the meeting of the Standing Committee on Regulations and Private Bills to order.

We have a number of things we must do before we proceed into the meat of the agenda. The first one is the subcommittee report, and I think members have before them a copy of the subcommittee report. I would appreciate it if someone who was on the subcommittee—you were there. I would ask Mr. Miller to read the subcommittee report.

Mr. Paul Miller: The subcommittee met on October 15, 2008, to consider the method of proceeding on Bill 72, An Act to amend the Building Code Act, 1992, the City of Toronto Act, 2006 and the Municipal Act, 2001 with respect to fire sprinkler systems in new residential buildings and recommends the following:

That the committee not schedule consideration of the bill at this time.

The Chair (Mr. Michael Prue): That's the motion that's before us. Any discussion? All those in favour? Opposed? That carries.

REGISTRAR OF REGULATIONS BRIEFING

The Chair (Mr. Michael Prue): The next item is the presentation by the registrar of regulations. Joanne Gottheil is here, and the floor is yours.

Ms. Joanne Gottheil: Good morning. I'm the registrar of regulations for the province of Ontario. I've been invited to make a brief presentation explaining what a regulation is, how it's related to a statute, how a regulation is made and filed and what the role of the registrar of regulations is.

As you all know, the Legislature enacts statutes. Most statutes contain a section that says something like, "The Lieutenant Governor in Council may make regulations respecting," and then a list of topics follows. The authority to make regulations is a delegation of legislative authority by the Legislature to a specified person or body. Regulations are therefore known as delegated legislation.

The authority to make a regulation is set out in an act, and regulations are said to be made under an act. The statutory provision that authorizes a regulation to be made specifies who is authorized to make it. In most cases, the statute authorizes the Lieutenant Governor in Council to make regulations. In some cases, the statute will authorize the relevant minister to make regulations. There are other possibilities, but they're not as common. For example, a police commission or a marketing commission or the governing body of a profession may be authorized to make regulations either alone or subject to the approval of the Lieutenant Governor in Council or subject to the approval of a minister.

There are three basic steps in the regulations process: making, filing and publishing. A regulation is made when it's signed by the persons who are authorized by the statute. So if the statute says, "The minister may make regulations subject to the approval of the Lieutenant Governor in Council," then the regulation must be signed by the minister, also by the chair of cabinet, and by the Lieutenant Governor. At that point, the regulation is considered to have been made. However, a regulation has no legal effect unless it is filed with the registrar of regulations. It's only when a regulation is filed with the registrar of regulations that it is considered to be law. Every regulation must also be published on the e-Laws website promptly after it is filed. This is a legal requirement in the Legislation Act. There's also a legal requirement that every regulation must be published in the print version of the Ontario Gazette within one month after it is filed.

There is a distinction between the date that a regulation comes into force and the date that it can be enforced against a person. A regulation comes into force on the day that it's filed with the registrar of regulations unless it provides otherwise. Some regulations provide that they come into force on a specified future date, or they can provide that they come into force on the same day that a provision of the act comes into force. But a regulation isn't enforceable against a person until it has been published, unless the person had actual notice of it.

Now I'll say a few words about the role of the registrar of regulations. The registrar is a lawyer in the Office of Legislative Counsel, appointed by the Lieutenant Governor in Council. The duties of the registrar include advising on and assisting in the preparation of regulations, numbering regulations as they're filed and publishing them, and setting standards for the format in which regulations are submitted for filing.

The Office of Legislative Counsel, under the direction of the registrar, provides advice to the regulation maker on drafting issues, such as the wording of the regulation, how to organize the regulation, on whether the content of the regulation is within the authority set out in the statute, and on various other legal issues. The advice given to the regulation maker by the Office of Legislative Counsel is confidential legal advice.

The registrar can't refuse to accept a regulation for filing just because the registrar may be of the view that the regulation is not authorized, or if the registrar is of the view that it contravenes the guidelines in the standing orders. If the regulation appears to have been made correctly, if the signatures of the appropriate people appear on the regulation, then the regulation can be filed. Regulations are presumed to be valid until they're found to be not valid by a court.

The Chair (Mr. Michael Prue): Any questions? No questions. Thank you very much.

DRAFT REPORT ON REGULATIONS

The Chair (Mr. Michael Prue): I would next invite up Marta Kennedy and Andrew McNaught so we can get into the balance of the agenda.

Just for the record, on the last occasion, there was a request to hold this matter down in order to invite those interested ministries that wanted to comment to be allowed to come forward, and that has been done.

Just for the record, Madam Clerk, could you say to whom you sent the letters—and not all, I believe, responded—so that it's on the record that they were sent the information?

0910

The Clerk of the Committee (Ms. Sylwia Przezdziecki): Letters inviting ministry representatives to appear were mailed to legal directors in the ministries whose regulations appear in the regulations report. Those are the Ministry of the Attorney General, the Ministry of Community and Social Services Family Responsibility Office, the Ministry of Education, the Ministry of Health and Long-Term Care, the Ministry of Government Services and the Ministry of Small Business and Consumer Services.

The Chair (Mr. Michael Prue): So what I propose to do as Chair is to briefly ask Ms. Kennedy to continue with anything she might have had to say the other day, and then we will deal with the proposed changes one at a time and invite the respective ministries, if they have anything they want to say about it, forward for a very brief statement. Now, we only have a little over an hour to conduct the business today, and we're hoping to finish it, so I would ask the members, if they have questions, to keep them to a minimum. First of all, Ms. Kennedy.

Ms. Marta Kennedy: As the Chair said, my name is Marta Kennedy. I'm a research officer and lawyer with the legislative library.

For time considerations, I'm going to be very brief. Last meeting, we discussed briefly the Ontario College of Teachers Act, which is the first regulation that appears in the report. It's on pages 5 to 7, and you should all have a copy of that report. I'm not going to go through that regulation, since we discussed it at the last meeting. I'm going to start very quickly and cover the next set of regulations, which begins on page 7, and they're listed under the heading of the Ministry of Government and Consumer Services. There are four regulations that are listed under this heading. Two of them are now actually being administered by the Ministry of Small Business and Consumer Services. The regulations that are included in the report here—all of these are regulations where the ministry has agreed that there's a problem and has proposed a solution. The draft recommendations on pages 8 and 9 reflect those solutions that they've proposed. Unless you have questions about those regulations, I'm just going to go right by them.

The Chair (Mr. Michael Prue): Let's deal with each one, in case there is. Is there anyone here to discuss recommendation 1, any person from any of the ministries?

Interjection.

The Chair (Mr. Michael Prue): The first recommendation reads: "The Ministry of Education amend O. Reg. 72/97 to remove all references to the suspension of elected members of the Council of the Ontario College of Teachers."

Is there anyone here from a ministry to speak to that? Please come forward, then. Now, I just need to state for the record, as the ministries understand, the recommendation is made by the committee; it does not force the ministry or the minister to do anything other than take it under advisement. So, knowing that, can you explain to the committee why you may not want the committee to go forward with this recommendation?

Mr. David Costen: My name is David Costen, and I'm the legal director for the Ministry of Education and the Ministry of Training, Colleges and Universities. We've prepared some materials for the committee's consideration to address the two concerns that have been raised in the report. We hope that this will be helpful in your deliberations in terms of looking at the draft report.

If I could take you to slide 2 of the presentation, the regulations that are before you and what you are considering are regulations coming out of the Ontario College of Teachers Act. Just to frame this whole discussion, it's important to recognize that the Ontario College of Teachers is an independent, self-governing, regulatory body established through the Ontario College of Teachers Act of 1996, and you'll see in our materials that it's referred to as the OCTA. Its role is to regulate the profession of teaching and to govern its members.

This is one of the bodies that Ms. Gottheil referred to in which self-governing bodies initiate changes to the regulations. You'll see on the second bullet point of page 2 that the regulation-making authority of the OCTA is set out in subsection 40(1) and it describes a process whereby the Lieutenant Governor in Council approves the regulation on prior review by the minister and also

the council of the college. Bear in mind that the process that this regulation comes to you from is a little different than the normal regulation that's developed within a ministry, goes through a policy approval process and then comes through legs and regs, and is ultimately approved by the cabinet.

Just to give you a little bit of history about this particular section, in 2006, Bill 78 introduced amendments to the OCTA. They did two things: They imposed an explicit duty on each council member to serve and protect the public interest and act in accordance with any prescribed conflict-of-interest provisions; and they added a new conflict-of-interest regulatory authority. The new conflict-of-interest regulatory authority provided that the OCT, the Ontario College of Teachers, with the approval of cabinet, could make regulations. You see that at the bottom of page 3 we've reproduced that section. That's a new section that has been added to the regulation-making authority that the college already had.

If I could take you to page 4, the general regulation for this was an older regulation, 72/97. That was the general regulation made under the act, and it was amended by a regulation on July 23, 2007. That's 369/07, the regulation that you have before you. It was to implement the change of adding the new section on conflict of interest, which I referred to.

As we understand the concerns of the standing committee, it's understood that the draft report on regulations that has been presented to the standing committee identifies two areas of concern with respect to O. Reg. 369/07, one of which also relates to the general regulation in 72/97. I'll deal with the first one now.

It's been asserted that the regulations may be in contravention of the second guideline set out in standing order 107(i), that, "Regulations should be in strict accord with the statute conferring of power." The regulation-making authority of subsection 40(1)5 of the OCTA allows for a regulation prescribing the conditions disqualifying elected members from sitting on the council and governing the removal of disqualified members from the council. As I understand it, the concern of the draft report is the wording around "disqualified."

Under the sections under consideration are the sections of Reg. 72/97 and Reg. 369/07 that deal with disqualification and which include a reference to suspending the member. That whole section is laid out in our appendix.

Our response to this first point is that the OCTA provides authority for the council of the college to make regulations concerning the conditions disqualifying elected members from council and governing the removal of disqualified members. Section 6 of the original regulation, which is 72/97, establishes a disqualification scheme which the college is to follow if that trigger point is required. In these subsections, suspension is an element of disqualification.

If you see that disqualification can happen in a number of ways, suspension in a time-limited way is one subset of disqualification. That can either be done by an intermediate step, where a member is under review, or in a time-limited disqualification set out as to how the member is to act while suspended by the council.

Again, subsections 6(3) and (4), which include suspension provisions, were not part of the amendments of the 2007 amendments, but actually were part of the original disqualification scheme. So if you trace back the original scheme that was set up here, the cabinet, through the regulation, considered a situation where a suspension would be a subset of disqualification. As you can imagine, there could be all forms of disqualification: permanent disqualification, and a suspension which would be a more time-limited situation. So that would be our response to the first point.

0920

Our response to the second point: The draft report asserts that there is a contradiction between section 27(1) and section 27(6) of regulation 72/97, as these subsections relate to a member being present when a decision is being made in which a member may have a conflict of interest. The details of that are set out in appendix II of our materials. It is asserted in the draft report that the apparent contradiction may violate the third guideline set out in standing order 107(i)(iii): "Regulations should be expressed in precise and unambiguous language." Our response to that point is that these sections are not in conflict, but, rather, complement one another. Section 27(1) is a definition section. It defines what is a conflict of interest. Section 27(6) identifies the rules and guidelines to be followed by a member if the member becomes aware of a conflict. This includes that, if permitted, a member can remain present at a meeting even if it is a conflict of interest, if the prescribed circumstances are met.

Just to sum up, this is a regulation that was made by the Ontario College of Teachers. It was reviewed by the college council, which is responsible for the communication and implementation of that regulation, and any proposed changes to the regulation would require a review by the college council and subsequent approval by the college council.

The Chair (Mr. Michael Prue): Having said all of that, the job of this committee is not to arbitrate whether your legal opinion is right, but it is to send it to the appropriate body for review. Do you have any objection to it being sent to the appropriate body for review?

Mr. David Costen: I think we would have no objection to that being put forward, so long as our concerns are properly reflected.

The Chair (Mr. Michael Prue): Okay. Any discussion, then, from the committee members?

Mr. Mario Sergio: Sorry, Mr. Chairman, did he say "revised"? What was your last comment?

Mr. Bas Balkissoon: No, it's okay. He wants to go forward.

Mr. Mario Sergio: I understand he wants to go forward. Did you say, as long as your concerns—

Mr. David Costen: As long as our position is made part of the report or reflected in the report.

Mr. Mario Sergio: Okay.

The Chair (Mr. Michael Prue): All right. So we have that copy, and a copy will be sent. Mr. Miller.

Mr. Paul Miller: It's been my understanding, over the years, that not all teachers like the college. They have to pay dues to it and all that. It's not a popular organization.

Secondly, who do they answer to, in this whole body of language? They're making decisions about conflicts. Where does that person who may be under review go for an amendment or go for an objection? Who does he or she appeal to if this body comes down with a decision that is contradictory to what she or he thinks is right?

Mr. David Costen: My colleague Margaret Kohr, who is an expert in this particular area, is probably better suited to answer that question.

Ms. Margaret Kohr: I'm not an expert, but this particular regulation is dealing with matters internal to the college, so this is related to the executive council of the college; it's how the college itself governs internally. And there's a review process, if there is a suspension or an ultimate disqualification to be on the council.

Mr. Paul Miller: With all due respect, I'm asking who this person, if they don't agree with the decision of the college, can go to. Do they come to this committee? Do they go higher? If they're in conflict, what avenue of appeal do they have?

Ms. Margaret Kohr: There is a section in regulation 369/07 which identifies that "a member against whom a determination … is made may, within 10 days after receiving notice of the determination … submit a written notice of appeal to the council." The council would "hold a hearing for every appeal submitted to it … within 30 days of receiving the notice," and no member of the council who participated in the original decision would participate in the review.

Mr. Paul Miller: That's what I wanted.

The Chair (Mr. Michael Prue): Just for the record, Hansard didn't get your name.

Ms. Margaret Kohr: Margaret Kohr.

The Chair (Mr. Michael Prue): Any other questions? Seeing none, we'll go on.

Ms. Kennedy, you started to describe the next committee recommendations, which are recommendations 2, 3, 4 and 5:

"2. The Ministry of Government and Consumer Services proceed with appropriate amendments to the Liquor Licence Act.

"3. The Ministry of Government and Consumer Services proceed with appropriate amendments to O. Reg. 215/01.

"4. The Ministry of Government and Consumer Services proceed with appropriate amendments to O. Reg. 214/01 and 223/01.

"5. The Ministry of Government and Consumer Services proceed with appropriate amendments to O. Reg. 223/01 and 210/01."

Is there anyone here to speak to those? There is. All right. Would you identify yourself, and the same proviso: In the end, it has to come down to, do you have any objection to the committee sending this for review to the ministry? That's the final and bottom line.

Ms. Kennedy.

Ms. Marta Kennedy: I know it's hard to know what to respond to, given that you haven't actually seen the draft report. I just wanted to point out to you that these recommendations are based on your recommendations on how you propose to deal with these issues.

Ms. Rosemary Logan: Correct. I'm Rosemary Logan, counsel with the ministry. The ministry's intention is to proceed with amendments to the regulations under the Technical Standards and Safety Act at our earliest opportunity. With respect to the amendments to the Liquor Licence Act, I presume that would be to clarify that endorsements may be added to liquor licences. Is that correct?

Ms. Marta Kennedy: Yes.

Ms. Rosemary Logan: I guess we can take that under consideration. By way of historical context, the classes and endorsements of licences have been in place since the Liquor Licence Act had a major revamp in 1990, so it's a system that's well known to liquor licensees, and it's well entrenched.

The Chair (Mr. Michael Prue): I take it, then, that you have no objection to the committee forwarding this to you.

Ms. Rosemary Logan: That's correct.

The Chair (Mr. Michael Prue): Any questions of the members?

Thank you for your attendance.

The next committee recommendation would be recommendation number 6.

Ms. Marta Kennedy: That was actually a recommendation that falls under the Ministry of Government Services, having to do with the Vital Statistics Act.

The Chair (Mr. Michael Prue): Would you briefly state the purpose of it?

Ms. Marta Kennedy: Sure. We're at the bottom of page 9 of the draft report. This is a housekeeping matter. What happened was that there was a minor error. The regulation was amended so that it refers to a section of the act that no longer exists, and the ministry had proposed two possible solutions to the problem. I'll let the ministry discuss those.

The Chair (Mr. Michael Prue): Okay.

For the record, could you give your name for Hansard?

Mr. Jacob Bakan: My name is Jacob Bakan, legal counsel from the Ministry of Government Services.

The Chair (Mr. Michael Prue): The proviso I have given to the other people is that we have to determine whether to send it on to the ministry for review. Ultimately, the answer has to be either yes, you agree to send it for review, or no, you don't, and why you don't. Having said that, please proceed.

Mr. Jacob Bakan: We have no objection to the recommendation as discussed in the correspondence back and forth.

The Chair (Mr. Michael Prue): Any discussion by committee members? Thank you very much.

Next.

0930

Ms. Marta Kennedy: We're on page 10 now of the draft report. We're looking at two regulations under the Ministry of Health and Long-Term Care, one under the Nursing Act and one under the Dentistry Act, 1991. These are two regulations where the ministry does not believe that the regulations violate the committee's guidelines. What we're looking at here is the difference between "set" and "approved." That may seem a little picky. The main reason it's being brought forward is because the act was amended to allow regulations about setting and approving examinations. That was done in June 2007. In July 2007, the colleges of nursing and dentistry—separately—amended their regulations to talk about approving exams. Unfortunately, the amendments to the act don't come into force until June 2009, so it appears as though the colleges have jumped the gun by about two years. The ministry has said in its correspondence that it believes that it already has the authority to do that under the previous wording of the act.

The Chair (Mr. Michael Prue): So this is committee recommendation—

Ms. Marta Kennedy: Oh, I'm sorry. This is committee recommendation number 7.

The Chair (Mr. Michael Prue): Found on page 13.

Ms. Marta Kennedy: On page 13, yes.

The Chair (Mr. Michael Prue): Having heard that, is there anyone here from the ministry to respond to this? No? Okay. Are there any questions, then, of committee? Okay. Thank you very much for that. On to the next one.

Ms. Marta Kennedy: The next regulation is on page 13 of the draft report. It's a regulation that's administered by the Ministry of the Attorney General. This regulation was reported as a potential violation of two guidelines: the court jurisdiction guideline and the administrative tribunals guideline.

This is a new regulation under the Municipal Act. What it does is allow municipalities to impose what are called in the act "administrative penalties" for the violation of parking bylaws. These are essentially parking tickets under a different name. As part of imposing these new administrative penalties, they've set up a system whereby you can appeal your parking ticket to what's called a "hearing officer." It appears—based on what the hearing officer does—that a hearing officer that allows a person to appear before them and conducts a hearing meets the definition of an "administrative tribunal." That would appear to violate your guideline that you can't create an administrative tribunal by regulation. That's the first point.

The second point is the court jurisdiction. The guideline about court jurisdiction says that you can't exclude the jurisdiction of the courts by regulation. This regulation quite clearly says that the decision of a hearing officer is final, and what this does essentially is that it's supposed to prevent appeals to courts. Again, that would seem to violate the committee's guideline.

We have two draft recommendations on page 16, numbers 8 and 9, the first being that "The Ministry of the Attorney General amend the Municipal Act, 2001, to allow for the creation by regulation of an administrative tribunal that reviews the decisions of screening officers," and draft recommendation 9, which is that "The Ministry of the Attorney General amend O. Reg 333/07 by revoking subsection 8(5)," which is the section that excludes the jurisdiction of the courts.

The Chair (Mr. Michael Prue): Having heard that, is there anyone here from the Ministry of the Attorney General? Please come forward. Again, if you can identify yourself for the purposes of Hansard. And remember, the proviso in the end is whether you have any objection to the committee forwarding this for further discussion and/or action.

Ms. Diana Hunt: Is that referral to the Ministry of the Attorney General?

The Chair (Mr. Michael Prue): Yes, in the end. This is the recommendation of the committee. We are not here to arbitrate who is right; we are here simply to facilitate and to determine whether or not this is something that should be discussed.

Ms. Diana Hunt: My name is Diana Hunt. I'm the director of the criminal/POA policy and programs branch in the court services division at the Ministry of the Attorney General. This is my colleague, Lisa Minuk. She's counsel in my branch.

With respect to your first recommendation, it's the position of the Ministry of the Attorney General that the broad powers under the amendments to the Municipal Act do authorize the provisions we have put in place with respect to an administrative penalty scheme. Subsection 102.1(3) of the Municipal Act provides very broad regulation-making power, which allows us to provide for any matters that are necessary or desirable for the purpose of the section, including granting municipalities the power to require that persons pay administrative penalties, and with respect to other matters necessary for a system of administrative penalties. It also permits the Lieutenant Governor in Council to impose conditions and limitations on a municipality's powers.

These provisions assist municipalities by allowing them to regulate routine parking matters through a local administrative system rather than under the Provincial Offences Act. Despite permitting municipalities to take these matters outside the Provincial Offences Act, the system still requires an administrative decision-maker who can determine how the system would affect individuals; otherwise, there would be no way to challenge the imposition of an administrative penalty. In any event, whenever a penalty is imposed, there needs to be a procedure put in place that would require fairness. There is nothing in the Municipal Act that would suggest that those liable to pay administrative penalties should be deprived of an opportunity to respond to the imposition of the penalty.

In fact, the requirement in the Municipal Act that the regulation can only be made by the Lieutenant Governor in Council on the recommendation of the Attorney General, who is responsible for the administration of justice in the province, does imply that the system of administrative penalties is required to be fair. It is the position of the Ministry of the Attorney General that fairness in this case requires that persons upon whom a penalty is imposed be provided an opportunity to be heard. Therefore, one of the conditions and limitations that have been imposed on municipalities in moving into administrative penalty systems is that they are required to appoint hearing officers and to give people an opportunity to be heard.

With respect to that recommendation, it's our position that the legislative intention can clearly be inferred, from these broad powers, that municipalities must be given the opportunity to create administrative tribunals in order to be able to take advantage of the administrative penalty program that is being offered to them under the legislation.

With respect to the second recommendation, it's the ministry's position that we absolutely have not excluded the jurisdiction of the courts. It would be available to anybody upon whom an administrative penalty was imposed to apply for a judicial review. Upon a judicial review, the divisional court can set aside the decision of a hearing officer if, for example, the hearing officer acted outside his jurisdiction, if he or she conducted an unfair hearing or if he or she made an error of law or an error of fact. So the courts very much have an oversight role under the Judicial Review Procedure Act. All we have done is to say that there's no further step past the hearing officer at the municipal level.

0940

The Chair (Mr. Michael Prue): Again, we are not here to arbitrate. Our job is to send any perceived problems to the Legislature for onward transmission to the appropriate ministry. Do you have any objection to this being sent to your ministry for discussion on these two points?

Ms. Diana Hunt: No.

The Chair (Mr. Michael Prue): That being the case, are there any questions of the deputy?

Mr. Paul Miller: I've just got one question. Correct me if I'm wrong, but is this not creating another level of bureaucracy with this tribunal that you want to have? If someone gets a ticket, they go to provincial court and fight the ticket. Now you're creating each municipality to have an administrative body called a tribunal that will make the final decision on that person's violation. But on the other hand, you say they can go to court if they're not happy with the decision. Are you not putting a middleman in there now that makes even more red tape to deal with an offence? And what do you mean by administrative penalties? Are you talking about court costs and the time required by the municipality or the courts involved with that individual on their appeal? What do you mean? What are you talking about?

Ms. Diana Hunt: Prior to these amendments to the Municipal Act, if a person received a parking ticket and wanted to challenge it, they had the right to go to the Ontario Court of Justice under the Provincial Offences Act, and upon conviction could be required to pay a fine. What these amendments do is offer to the municipalities an alternative way of regulating parking so that if the municipalities comply with the terms and conditions in the regulation that we have set out, they can, by bylaw, establish an alternate system of dealing with parking tickets, which would mean that they would not go through the Provincial Offences Act courts. Instead, if you got a ticket, you would automatically be liable to pay an administrative penalty. You can go to a screening officer and challenge the ticket on—

Mr. Paul Miller: Sorry for interrupting, but are you not telling me that the decision of that individual—the municipality has created a different route—is not final and binding? This person can also decide to go on to court and appeal it?

Ms. Diana Hunt: I think it would be virtually impossible to ever exclude judicial review.

Mr. Paul Miller: So it's final and binding. This is actually relieving court time for the provincial courts and allowing municipalities to deal with it directly. I'm getting mixed messages here. You're saying they can appeal it to the court, or they can't? It's a final decision by whoever is appointed by the municipality to make that decision? That's it; they can't go any further?

Ms. Diana Hunt: Unless there are grounds to judicially review the matter to the divisional court of the Superior Court of Justice.

Mr. Paul Miller: There are lots of technicalities and grounds, so really, what I think we're doing here is creating another job, another level of bureaucracy in the community. That's my point.

The Chair (Mr. Michael Prue): Any further questions? Seeing none, thank you very much.

We have one final matter. The members of the committee would have gotten an update. The update was sent October 9. It was confidential for committee use only, and it includes a 10th recommendation. Again, I don't know whether anyone is here from the Ministry of Community and Social Services, but we'll wait for a moment. Ms. Kennedy, if you could brief us on the recommendation.

Ms. Marta Kennedy: If you look at page 16 of the draft report, at the bottom of page 16, there's a note to the committee. It's about a regulation that's administered by the Family Responsibility Office. At the time when the report was prepared, we hadn't yet received an answer to a second letter we had sent to the Family Responsibility Office. Since the report has been prepared, we have received that response, and so what we are suggesting is that this note to committee at the bottom of page 16 be removed and the wording on pages 2, 3 and 4 of the update be inserted in its place.

I'll just go through the update with you very quickly. At the bottom of page 2 of the update memo, this is a

new regulation, and it creates what it calls "standard terms that are recommended for support orders." It gives wording for courts to use when they draft child support orders or spousal support orders. So the regulation is set out as a series of recommendations, not as a set of requirements. So the question is, if this is a regulation that only sets out recommendations, what legal effect does it have? Are these recommendations binding? Are they enforceable? It's a bit confusing—whether you have to follow this regulation, because they're only recommendations, and what the consequences would be if you didn't follow these recommendations.

We've prepared a draft recommendation on page four of that update memo. It's recommendation number 10. It recommends that the ministry amend either the act or the regulations to deal with this.

The Chair (Mr. Michael Prue): Okay. Having heard that, you're from, I assume, the Ministry of Community and Social Services—if you could identify yourself for the purposes of Hansard.

Again, with the same proviso, in the end it's whether or not you object to its being forwarded through the Legislature to the appropriate ministry for discussion.

Ms. Lois Bain: Good morning. My name is Lois Bain and I'm the assistant deputy minister at the Family Responsibility Office. With me is Tina Earl, who is counsel with the office. Thank you for this opportunity. We did circulate some materials earlier. I'm not sure if committee members have them.

The Chair (Mr. Michael Prue): You're referring to this large volume here.

Ms. Lois Bain: The binder, yes.

The Chair (Mr. Michael Prue): Yes, okay.

Ms. Lois Bain: We're only going to refer to a section of it which is in the very front of it. I'm going to say a couple of words about the—

Mr. Mario Sergio: Excuse me; I didn't hear Ms. Bain saying if she has any concern if we forward this to the Legislature.

The Chair (Mr. Michael Prue): Well, she hasn't got to that point yet.

Mr. Mario Sergio: She didn't get to that point? I thought she was going straight into the presentation.

The Chair (Mr. Michael Prue): No, but she is. That's the proviso, the ultimate question that we have to ask at the end, because that's the role of the committee. It's not to arbitrate who is right.

Ms. Lois Bain: Fair enough.

Just a bit of context: Our sole mandate—the sole mandate of myself as the director of the Family Responsibility Office—is to enforce either spousal or child support. Each order that we receive from the court has to indicate the amount of support that we are to enforce, and many times what we get from the courts doesn't have that information. When we can't determine the amount of support, then we have to decline to enforce the order. You can imagine how disappointing and contentious it can be for both recipients and payers, and for their lawyers alike, when that happens, and the frustration that they experience.

We operate under the child support guidelines that require orders to contain certain information. Most orders do not conform to these requirements; however, often they have enough information in them that, in fact, we can enforce the order. Specifically, we need to know the name of the payer, the name of the recipient, and we need to know the number of children, if any, in the family and the amount of support that has been deemed payable and when that first payment is due.

The regulation that we're speaking about today provides assurances to both litigants that the order can be enforced by the Family Responsibility Office if they use the recommended wording, because all legally required information will be included in those terms.

I'm going to ask Tina to talk specifically to some of the concerns that have been raised.

Ms. Tina Earl: Yes. Actually, just so that you understand this, the reason we can decline to enforce a support order is that, under our legislation, under section 7(1)(c), the director can refuse or decline to enforce where an order itself is ambiguous or its meaning is unclear, which is actually rather ironic considering the concerns of this committee. Clause 63(1)(p.2) of the act was added under Bill 155, which was just a few years ago. In 2004 the Liberals brought it forward, and it passed in 2005. It wasn't in the original bill, but it was added at the Standing Committee on General Government in May 2005. The purpose of that clause was, as we pointed out at the time in the explanatory notes, to provide wording to help parties—not just courts, but particularly parties—because most people draft their own separation agreements, or they are in court and they quickly draft up something about what they want their order to be, and the court just accepts, as filed, whatever their endorsement says. So we wanted to make sure that, in the majority of cases, in the greater percentage of cases, we could actually enforce the orders.

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Now, I've gone through the different standing orders, and just wanted to respond to each one of them. I know that the concerns are basically that, first of all, our regulation 454/07 doesn't have the force of law and therefore can't be a legislative instrument, and then also that the legal effect of the regulation is unclear or ambiguous. I did notice, in the standing orders, that there is no requirement that there be clarity of legal effect of a regulation; rather, that it be comprehensible to the person reading it. So first of all, whether or not it's a legislative instrument: It was pointed out to us that the Supreme Court case of Manitoba language rights dealt with whether or not something that wasn't a regulation or a statute could be a legislative instrument. But the court said that any statute and any regulation is a legislative instrument. That's our argument, basically: that it has to be a legislative instrument if it's a regulation, and it is a regulation. We have the authority, in the statute, to make this regulation. The authority itself says, "recommended

terms." We never got authority to make mandatory terms. There is a reason for that, and actually, I'm just going to skip to slide 12.

The reason why it couldn't be "mandatory effect" is because we have to recognize judicial jurisdiction, which is your standing rule 5. If we told the judges of this province what they had to put in, and that if they didn't put it into their orders the order would be of no effect, that would be treading on their toes and we didn't want to do that. We can't do that. So we didn't violate that one. We were never accused of violating that standing order, but had we made it a mandatory effect, we would have been treading on their toes and we would have been violating that standing order.

The policy was established by statute to be recommended terms, so we did comply with standing order 1. As far as the ambiguous and imprecise language: The reason that there are rules against vagueness or ambiguity is because people need to know what they have to do and what the penalties are, if any, if they don't do it. In this case, there is no penalty. They are recommendations. They are just exactly what they say: "In this case, this is recommended, to put this language in." If they don't put it in and we can understand it, we will still enforce it. This is our guarantee that they will be able to have their order enforced. It is not mandatory that they use it, but it gives them some sense of security to know that if they use our terms, as we've suggested them, or something very similar, they will be able to have their order enforced and it won't be sent away.

The rest of the standing order rules—we haven't violated those as well, but I've just set out exactly that we haven't, in our presentation.

The Chair (Mr. Michael Prue): We come down, again, to the ultimate question: We're not here to arbitrate. We are here to forward it to the House, in turn to the ministry, for discussion. Do you have any objections to that?

Ms. Tina Earl: No, we don't have any objections to that.

The Chair (Mr. Michael Prue): Questions? I saw Mr. Miller and then Mr. Craitor.

Mr. Paul Miller: In your opening statement you said that it's kind of a grey area on the amount of support to be paid. I'm a little confused. Don't you have a guideline of so much per child, based on the income of the individual? Also, you said you have trouble following court orders. It's my understanding that in a lot of cases you've actually garnisheed people's wages, you've frozen their bank accounts. That, I would say, is quite a lot of power. I'm a little confused with your statement, and maybe you can help me out with that.

Ms. Tina Earl: I'd be glad to. First of all, the Family Responsibility Office doesn't determine the amount of support. We receive an order from the courts or a separation agreement from the parties, and it says in it, "Mr. Smith shall pay Mrs. Smith X amount"—

Mr. Paul Miller: But the judge has a guideline.

Ms. Tina Earl: Somebody has to tell us how much.

Mr. Paul Miller: Well, the judge has a guideline.

Ms. Lois Bain: And where it's clear—

Mr. Paul Miller: It's so much per child per amount that they make.

Ms. Tina Earl: Exactly, but we're not allowed to determine that amount, and even if we were—

Mr. Paul Miller: It's usually in the order, isn't it?

Ms. Lois Bain: Not always. That's the point—

Ms. Tina Earl: Absolutely. When it's written down, we have powers to enforce, but when the judge doesn't specify either the names of the parent and the recipient or if they don't specify the amount per the child support guidelines, we are left—

Mr. Paul Miller: Has your organization ever acted and determined yourself the interpretation of what the judge has said and gone ahead and done that, which may have been incorrect? Has that ever happened?

Ms. Tina Earl: I suppose it's possible, but I wouldn't think so. Usually what we do is refuse to enforce. So what we'll say is, "I can't figure it out, we can't enforce," and send it back. That's what our legal advice would always be.

Mr. Paul Miller: I've heard a few horror stories and other interpretations, but anyway, okay, I hear it. We're not here to discuss the procedures.

The Chair (Mr. Michael Prue): No. Mr. Craitor.

Mr. Kim Craitor: Actually, I am going to discuss procedure, so that's fine. I'm really glad you're here. This is one that I get a lot of, so it was really helpful to listen to you, because it's amazing how I get people who come in and say, "You've got to go see the judge. He didn't put enough money into the order, and I think you're the MPP, so you have the right to call him up and tell him that he's wrong," or I get the converse, "He put too much into the order, Kim, and you should go see the judge and tell him to reduce it, because it's not fair." Obviously, it doesn't work that way. We don't go into the judicial system and say, "You should do this," or "You should do that." In fact, I think if I called a judge, I wouldn't be an MPP very long.

But I had a couple of questions, so I'm really glad you're here. When a court order is issued, does it automatically go to the Family Responsibility Office? Do you get it directly sent to you by the courts, or do you wait for the individual to bring it in to say that they want FRO to enforce this court order? The reason I ask is, I had a fellow show up who said that he and his wife had an agreement that they were going to do it in a cordial manner, but in the meantime—

The Chair (Mr. Michael Prue): Mr. Craitor, I've been advised they've having difficulty hearing you. You're too far away from the mike.

Mr. Kim Craitor: Okay. This is helpful for me because I've had a couple of these cases. In the meantime, I was told that it's now a new procedure that when the courts issue these court orders, they go directly to you and you just start enforcing them even if there was an agreement between the husband and wife, because in this case the husband's employer got a letter from you and so he was panicking, thinking he was going to lose his job

when they had this agreement. So you know what my question is: Does it automatically come to you and you just start enforcing? Is that something new?

Ms. Tina Earl: They are supposed to be sent automatically to us. There's often a delay because the court has to issue the order, which means it has to be typed up and signed by the judge—

Mr. Kim Craitor: So it's automatically sent to you, and you start enforcing?

Ms. Tina Earl: We enforce the most recent order that we have received. So if we haven't received a more recent order or filed agreement, then—

Mr. Kim Craitor: So even if there's an agreement between the husband and wife, you still start enforcing?

Ms. Lois Bain: We receive all of the orders. The parties can withdraw. It is a mandatory program, so every court order is filed with us unless the parties withdraw.

Mr. Kim Craitor: Unless the parties—okay. Thanks.

The Chair (Mr. Michael Prue): Any other questions? No other questions. Thank you very much.

We are now in the process of moving the draft report and the amendment.

Shall the draft report on regulations, including the amendment, be adopted? Carried? Carried.

Upon receipt of the printed report, shall the Chair present the committee's report on regulations to the House and move the adoption of the recommendations? Carried? Carried.

Is there any other business, Madam Clerk or parliamentary assistant?

Mr. Mario Sergio: You did well, Mr. Chairman. Just before we get to the end, I would like to thank the library staff for the work they have done in preparing the report. We had a couple of weeks to familiarize ourselves with the contents of this report as well, and I can see that it falls within the mandate of our committee. As such, I see no reason why we should not proceed in recommending the report to the Legislature. In turn, the various ministries will have an opportunity to review it again. Therefore, I have no problem with the report, and I want to thank you as well for being so patient with the members of the committee.

Mr. Paul Miller: Mr. Chair, there's another piece of information here that we haven't dealt with. It's a letter from Mr. Chudleigh requesting information.

The Chair (Mr. Michael Prue): Oh.

Mr. Paul Miller: It's not on this committee, but I'm wondering—I'm sorry; wrong committee. It's the Standing Committee on Estimates. I'm wrong.

The Chair (Mr. Michael Prue): Okay.

Mr. Paul Miller: I withdraw that statement.

The Chair (Mr. Michael Prue): All right, because I had not seen that.

I believe that that is the conclusion of the meeting today, other than that the next meeting will be scheduled at the call of the Chair. It will be approximately two or three weeks from now, depending on the period—I believe we're off in remembrance week, so I'm not sure of the time frame. But it will be at the call of the Chair in approximately that time frame. Any other business?

Meeting adjourned.

The committee adjourned at 1001.

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

Mr. Bas Balkissoon (Scarborough–Rouge River L)
Mr. Mike Colle (Eglinton–Lawrence L)
Mr. Kim Craitor (Niagara Falls L)
Mr. Gerry Martiniuk (Cambridge PC)
Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)
Mr. Bill Murdoch (Bruce–Grey–Owen Sound IND)
Mr. Michael Prue (Beaches–East York ND)
Mr. Tony Ruprecht (Davenport L)
Mr. Mario Sergio (York West / York-Ouest L)

Also taking part / Autres participants et participantes
Ms. Diana Hunt, director, criminal/POA policy and programs branch,
Ministry of the Attorney General
Ms. Lois Bain, assistant deputy minister,
Ms. Tina Earl, counsel,
Family Responsibility Office,
Ministry of Community and Social Services
Mr. David Costen, legal director, legal services branch,
Ministry of Education /
Ministry of Training, Colleges and Universities
Ms. Margaret Kohr, counsel, legal services branch,
Ministry of Education
Ms. Rosemary Logan, senior counsel, legal services branch,
Ministry of Government Services /
Ministry of Small Business and Consumer Services
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