



ISSN 1180-4319

Legislative Assembly
of Ontario
Second Session, 41st Parliament

Assemblée législative
de l'Ontario
Deuxième session, 41^e législature

Official Report of Debates (Hansard)

Wednesday 28 September 2016

Journal des débats (Hansard)

Mercredi 28 septembre 2016

**Standing Committee on
Regulations and Private Bills**

Draft report on regulations

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

Rapport préliminaire
sur les règlements

Chair: Ted McMeekin
Clerk: Christopher Tyrell

Président : Ted McMeekin
Greffier : Christopher Tyrell

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 416-325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 416-325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

CONTENTS

Wednesday 28 September 2016

Briefing.....	T-3
Draft report on regulations	T-6

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

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

Wednesday 28 September 2016

Mercredi 28 septembre 2016

The committee met at 0902 in committee room 1.

BRIEFING

The Chair (Mr. Ted McMeekin): The Standing Committee on Regulations and Private Bills will now come to order.

As there has been quite a bit of change in the membership of this committee, I thought—we thought—it might benefit us to get a refresher briefing on the committee's mandate; fair? So here with us today are Ms. Sibylle Filion from legislative counsel and Ms. Tammy Hauerstock from legislative research.

We will begin with our Clerk giving us a short refresher on the private bills process. Then I will invite Ms. Filion to provide us with a general overview of the regulations process in Ontario. Following that, we will begin consideration of the draft report on regulations made in the second half of 2015. Ms. Hauerstock will then walk the committee through the report. I believe all of you should have copies in front of you. You do? Just checking. I want to make sure I'm in the right place.

Ms. Daiene Vernile: Where else would we be?

Ms. Jennifer K. French: If I could respectfully ask for your microphone to move closer to you, because I'm having difficulty hearing you.

The Chair (Mr. Ted McMeekin): Is that better?

Ms. Jennifer K. French: It is.

The Chair (Mr. Ted McMeekin): Okay. Thank you. We'll turn it over now to the Clerk.

The Clerk of the Committee (Mr. Christopher Tyrell): Good morning. As all of you hopefully know, I'm Chris Tyrell. I'm the committee Clerk for the Standing Committee on Regulations and Private Bills.

I will just speak briefly about private bills and then turn things over to Ms. Filion and Ms. Hauerstock to talk about the regulations component and take you through the draft report that you all should have in front of you today.

The committee's permanent mandate under the standing orders is twofold: One is the review of regulations and the other is the consideration of private bills. This is all covered under standing orders 82 to 97 and standing order 108(i).

This is the committee to which private bills are referred after first reading and to which all regulations stand permanently referred.

Just to quickly go through it: A private bill relates to a matter of specific benefit to a particular person or organization. It does not form part of public law and it does not have a general application to the population in general. It only applies to those to whom the bill specifically applies, if that makes sense, and offers them an exemption from general law, generally speaking.

Private bills initiated by an application from a member or members of the public go through the same legislative stages as a public bill, so it requires an MPP sponsor to introduce it in the Legislature and to carry it through committee.

In addition to the committee's permanent mandate, the House may, from time to time, refer government bills or private members' bills for the committee's consideration. That's at the discretion of the House. A resource binder with detailed information on all this, as well as the procedural and administrative practices of the committee, should have been sent to your offices either last week or the week before. Feel free to contact me or my assistant, Shriya, with any questions you may have at any time.

I'm always happy to arrange to meet in person with members who have more detailed questions on the committee and its work.

The Chair (Mr. Ted McMeekin): Okay. Thank you, Mr. Clerk, for that. I thought you did that well. Are there any questions from the committee? Seeing none, we'll ask Ms. Filion to proceed, please.

Ms. Sibylle Filion: As has been mentioned, my name is Sibylle Filion. I'm with the Office of Legislative Counsel. I am going to speak to you today a little bit about regulations and explain what a regulation is, and a bit about the process for making regulations. I believe you all have received a handout from our office. Everything I'm going to tell you today is in that handout, but I'm not necessarily going to follow the order in which it is presented in the handout.

I work for the Office of Legislative Counsel as a drafter. The Office of Legislative Counsel is the central drafting office for the government, and under standing order 139 we are officers of the assembly charged with specific responsibilities relating to the preparation, amendment and publication of bills, both private members' bills and government bills, in the House.

Our office is headed by a chief legislative counsel, and that is currently Mark Spakowski. Another lawyer in our

office is appointed registrar of regulations under section 31 of the Legislation Act, 2006. Currently that position is occupied by Joanne Gotheil. We have a team of about 17 lawyers who work as drafters, such as myself, and together with several translators, linguists and editors, we draft and translate into French—in many cases into French—and arrange for the publication of all legislation—again, both the bills and the regulations.

The first question is, what is a regulation? Regulations are laws. They're a form of legislation, and we often refer to them as delegated legislation, subordinate legislation or even secondary legislation. This is distinguished from statutes, which can be referred to as primary legislation or even sometimes enabling legislation. This distinction is based on the fact that it is the statutes enacted by elected representatives, such as yourselves, in the Legislature that authorize the making of the regulations. The Legislature, having the power to legislate on all subjects within the provincial sphere under the Constitution, enact a statute, and in the statute there are provisions authorizing a particular entity or individual to make regulations on specific topics that fall within the scope of the statute. So it is the Legislature that delegates the power to make regulations to entities and individuals named in the statute.

This distinction between statutes and regulations is very important. It's why we say that regulations are creatures of statutes. A regulation cannot purport to do anything that is not strictly authorized by the statute. To the extent that it does, it's susceptible to a challenge in court and may be struck down by a court as being *ultra vires* the statute; that is, it is outside the scope or unauthorized by the act.

If you want to find a definition of what a regulation is, you'll probably find it in the Legislation Act, 2006. You will find it there. That statute is a law about laws. It sets out several rules and processes that apply to the enactment of statutes and the making of regulations, as well as rules relating to the interpretation of legislation.

0910

Part III of the Legislation Act, 2006, which we call the Leg. Act, is about regulations. Under that part of the Legislation Act, the registrar of regulations that I mentioned earlier is appointed. Section 17 of the Legislation Act defines a regulation to mean “a regulation, rule, order or by-law of a legislative nature made or approved under an act of the Legislature”—so, again, it derives its power from the statute—“by the Lieutenant Governor in Council, a minister of the crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council...” Then it goes on to exclude municipal bylaws and orders made by the OMB, specifically.

As you can see by this definition, a regulation is sometimes not called a regulation in the statute. Sometimes it will be called an order or it will be called a bylaw. So, for example, it may give the minister the power to make orders. But so long as those orders are of a legislative nature and they're made by the minister—

that's one of the key criteria in the definition of a regulation—it would fall within the definition of a regulation under the regulation part of the Legislation Act. Therefore, it would be required to be drafted in our office and it would be subject to all the processes and rules set out in part III of the Leg. Act.

That definition also answers the next question, which is, who can make a regulation? It's the Lieutenant Governor in Council—so it's cabinet; a minister of the crown; an official of the government, and that's pretty rare; and a board or a commission all of the members of which are appointed by the Lieutenant Governor in Council. The vast majority of regulations are made by cabinet, obviously, or by a minister. It's the rare exception that you've got like the Farm Products Marketing Commission or the council of a self-regulating body that will have the power to make regulations as well.

The process for making regulations: As mentioned, the regulations are drafted by legislative counsel in our office. We draft a regulation on instructions from lawyers in the legal services branches of the ministry responsible for the administration of a particular statute.

I come back to the issue of the scope of the regulation: During the drafting process, we're very mindful of the statutory authority for the regulation. One of the first questions I discuss with my clients is, obviously, “What are you trying to do in this regulation?” and, secondly, “What is your statutory authority for the regulation?” Each instruction and each provision is scrutinized for the requisite statutory authority. We give advice to the various ministries on how to interpret the authorizing provisions and try to work out a mutual understanding of the statute and its authority. We also provide advice, as needed, to cabinet—or the other body or entity making the regulation—with respect to statutory authority. So, ensuring that regulations are authorized and properly drafted according to our office conventions is really our primary concern in drafting regulations.

Then the regulations go through the approval processes that are necessary in the ministry. They are sent to cabinet or to the other entity for the regulation to be made. The regulation is made by that entity signing the regulation. However, that's not the end of the process: The Legislation Act requires regulations to be filed in the Office of Legislative Counsel, with the registrar of regulations, and it doesn't have the effect of law until it's filed in our office. So it can be made, and if it never comes in to be filed, it just has no effect. Then, after it's filed in our office, our office publishes the regulation. We publish them on e-Laws and we publish them in the Ontario Gazette, in printed version. And that's what makes it enforceable: Once it's published, it can be enforced as a law.

That's pretty much the end of the process. It ends with the publication. The handout I gave you gives you a bit more detail on the duties of the registrar of regulations. It also talks a little bit about what is a parent regulation, an amending regulation or a revoking regulation. I'll let you read that for yourselves. It talks a little bit about

numbers. We have 1,900 consolidated regulations right now on our consolidated section of e-Laws. We draft, on average, over 400 regulations in a year. It keeps us pretty busy.

Also, many of our regulations are bilingual. Unlike the statutes, which are required under the French Language Services Act to be bilingual, with regulations it's up to the discretion of the Attorney General to determine whether or not they are going to be translated. Currently, the Attorney General has given our office a mandate to try and increase the number of bilingual regulations, and we're working on a project to do that. Translations are prepared in our office. We are heavily staffed for that purpose.

I think that's about it. If you have any questions, I'm happy to answer them.

The Chair (Mr. Ted McMeekin): Do any members—Ms. French.

Ms. Jennifer K. French: Thank you. There was lots of information there.

One of the terms that I hear sometimes with stakeholders and in conversation is about regulations not being promulgated. I'm not sure that that is the right word, but when you talk about filing and that until they've gone through that process and been filed with the registrar and published in the manner that you laid out, they don't take effect, that is sort of my interpretation of that term. Do you—

Ms. Sibylle Filion: Yes, it's not a term that we generally use. We do talk about regulations coming into force. The Legislation Act provides that regulations come into force upon filing unless the regulation itself provides otherwise. All regulations contain a commencement provision, and it will either provide for it to come into force on filing or on a specified date in the future. Sometimes it's six months down the road or upon the occurrence of a particular event, like a provision of the statute coming into force because it requires that provision of the statute to come into force for it to come into force; so the two are often linked that way.

Ms. Jennifer K. French: Thank you. You used the number that 1,900 regulations are currently filed and—

Ms. Sibylle Filion: In effect.

Ms. Jennifer K. French: —in effect. So how many, give or take, are sitting—I don't know where they would sit, where they haven't yet been filed. Maybe they're on—I picture a giant room full of stacks of regulations that have yet to be filed. Correct me if I'm wrong. But about how many are in the process—that they have indeed been approved or have moved through that part of the process? They've been written, they've been drafted, but they have yet to be filed. What does that number look like?

Ms. Sibylle Filion: I really can't answer that question, because we draft them, we send them out to our clients, and they have the responsibility for bringing them in and filing them. If they're still sitting out there in their offices, I wouldn't really know. Generally speaking, once it's gone through the approval process, once it's been

made, they come in pretty quickly for filing those regulations.

Ms. Jennifer K. French: I had read something in here that I didn't hear you talk about, with the ability to go back—I'm looking for it in the—

Ms. Sibylle Filion: Retroactive regulations?

Ms. Jennifer K. French: Thank you. I'd read it; I didn't hear us talk about it. We've had some interesting conversations in this committee before some of the members had joined us—Ms. Hauerstock might recall—about a regulation where, perhaps, the wording would be better and we see that it's sort of a theme across other ministries that perhaps the—not retroactivity, but when documents are changed or updated, the regulation cannot reflect that. So we have sort of problem-solved as a team about, “Wouldn't it be great if the regulations could be worded differently?” However, I recognize that that would be quite a process. Do you really have to look at them one by one or can you kind of—Ms. Hauerstock, do you know where I'm going with this?

0920

Ms. Tamara Hauerstock: I think the issue you're referring to may be incorporation by reference—

Ms. Jennifer K. French: Yes.

Ms. Tamara Hauerstock: —and that's where a regulation refers to and incorporates an outside document.

Ms. Jennifer K. French: And then as the documents are updated, the regulation can't just allow them. It has to go back and—

Ms. Tamara Hauerstock: Sometimes the statute allows for what's called rolling incorporation, or I think it's sometimes called ambulatory incorporation, so that as the outside document is updated, the regulation effectively is updated as well.

Regulations that have been referred to in this committee in the past, as I recall, have related to—

Ms. Jennifer K. French: Buses or something. Bus safety.

Ms. Tamara Hauerstock: It may have been—where the regulation purports to employ rolling incorporation but the act did not specifically allow for that.

Ms. Jennifer K. French: So I guess my question—I'm not entirely sure how to word it, but when we recognize that that doesn't make sense and we're probably going to see that across many different acts, wouldn't it be great if the wording were slightly different? There is no provision anywhere that would allow your team to go back and make this change across acts to make the process more efficient?

Ms. Sibylle Filion: No.

Ms. Jennifer K. French: I like that I made you laugh about making government more efficient.

Ms. Sibylle Filion: It's an issue that's talked about a lot in our office. When you incorporate a document by reference, you are actually giving the person who makes that document the authority to legislate with respect to the things in that document. That's called a subdelegation. As I mentioned, the Legislature delegates authority for an entity to do something. If we incorporate what

another body has written as part of that law, we're actually deferring—the entity that has been given the power to regulate is deferring to that other power. So they need specific authority to do that in the statute.

Ms. Jennifer K. French: That sounds reasonable.

Ms. Sibylle Filion: Yes, and if that power—if they are going to change their mind, then they need to come back to the entity that can make the regulation and say, “Hey, we’ve changed our mind; we’ve changed our rules. What do you think of these new rules?” That’s why it always has to come back.

Ms. Jennifer K. French: That explanation would have shortened our discussion considerably, I think, back in the day, because that sounds reasonable.

Thank you very much for your presentation. I think I’m good on my questions.

Ms. Sibylle Filion: Okay. You’re welcome.

The Chair (Mr. Ted McMeekin): Okay. Any more questions? Yes?

Ms. Jennifer K. French: Sorry; I remember another one.

The Chair (Mr. Ted McMeekin): Ms. French.

Ms. Jennifer K. French: You talked about those who can authorize a regulation, that there are—did you say self-regulating bodies that have the power to make regulations? How recently was another self-regulating body able to make regulations? How often does that happen? I see your examples in here about the Council of the College of Physicians and Surgeons or—

Ms. Sibylle Filion: Yes. Those have been around for a long time, obviously. But, for example, the college of social workers was created in, I think, the year 2000, and they have the power to self-regulate. Teachers have also now got a college. I think that’s in the last decade or so, so they have the power to make regulations. Mostly, in those cases, the regulations that they make are approved either by the minister or by the LGIC, so they work closely with ministries in drafting their regulations, and they do come through our office as well.

Ms. Jennifer K. French: There’s usually still a layer of oversight, for lack of a better term?

Ms. Sibylle Filion: Yes.

Ms. Jennifer K. French: Just curious.

Ms. Sibylle Filion: I don’t know of any more recent than that, but there seems to be a trend for elevating trades to the level of a self-regulating body.

Ms. Jennifer K. French: But they’re being created as a self-regulating body, separate from—have they actually made regulations?

Ms. Sibylle Filion: They are usually always given the power to make regulations.

Ms. Jennifer K. French: And have they exercised that power? I’m more curious to know—

Ms. Sibylle Filion: That I cannot answer.

Ms. Jennifer K. French: That’s the piece that I’m curious about. Okay, thank you.

The Chair (Mr. Ted McMeekin): Thank you. Any other questions? I’m hearing none.

DRAFT REPORT ON REGULATIONS

The Chair (Mr. Ted McMeekin): We’ll begin consideration of the draft report. We’re going to proceed as is the normal protocol, Mr. Clerk, section by section. After each section, I understand it’s customary that we pause and the committee members have a chance to ask questions or generate further discussion, and then you vote on it section by section. Right?

Interjections.

The Chair (Mr. Ted McMeekin): We don’t vote; we don’t have interjections; we just move through it. Right? Sounds good, Mr. Clerk. We’ll see where we go.

So I’ll turn it over to you, young lady. Tamara, please lead us.

Ms. Tamara Hauerstock: Thank you. I actually wanted to begin this morning with a quick review of the committee’s regulations mandate and a quick review of the regulations review process. The committee’s mandate with respect to regulation has two sources. The first is set out in section 33 of the Legislation Act, 2006, which you’ll see in appendix A to the draft report in front of you, on page 10. Section 33 provides that all regulations stand permanently referred to this committee.

The second source document is standing order 108(i), which you’ll also find in the draft report. That’s appendix B, on page 11. So the Legislation Act and the standing orders provide that this committee is to examine the regulations made each year under Ontario statutes. In conducting the review, the committee is to ensure that regulations were made in accordance with the nine guidelines set out in the standing orders.

Over the years, the two guidelines that have been most frequently cited in our committee reports are guidelines 2 and 3. The effect of guideline 2 is that there should be clear authority in the enabling statute to make a regulation. Guideline 3 provides that regulations should be expressed in clear and precise language.

It’s important to note that the committee’s mandate specifically excludes any consideration by the committee of the merits of the policy or the objectives of a particular regulation. In other words, the committee is to consider only the legal principles that are set out in the committee’s guidelines. As a result, the issues raised in the draft report are usually quite technical and legalistic.

We’ve had the benefit this morning of a briefing on regulations and how they’re made, so I wanted to go straight into the process for the review of regulations. You’ll see on page 12 of the draft report, appendix C, a visualization of the regulations review process. Just to quickly take you through that, once the regulations are made and filed, the lawyers and research officers at the legislative research service read the published regulations to assess compliance with the nine guidelines. That’s shown in step 1 of the visualization. We flag potential violations of the guidelines and write letters to the ministry legal branches responsible for the regulations in question. That’s step 2. We then consider the ministry responses, shown as step 3. In some cases, the ministry

will agree with the issue we've raised, and we would include that in our reports. In other cases, they disagree with us. Sometimes their provided responses would satisfy us that there is in fact no guideline violation. In other cases, it doesn't satisfy us. In the latter situation, we would include that regulation in the draft report.

Once the draft report has been prepared, it comes before this committee. That's where we are today. Once the committee has reviewed the draft report and finalized it, it is tabled, and copies are sent to the ministries affected.

I'd like to now take you through the draft report. This report covers regulations made in the second—

Mr. Bill Walker: Chair?

The Chair (Mr. Ted McMeekin): One sec.

0930

Ms. Tamara Hauerstock: Yes.

Mr. Bill Walker: Sorry. Can I just ask: If we do this "disagrees," and then it goes back up to "put in draft report," I'm assuming it then comes back to committee and moves forward. So if we disagree, it comes to us, we send it back to them and they disagree again, does it just keep going in that circular—because I don't see that you have an arrow going backwards.

Ms. Tamara Hauerstock: Right. This visualization shows—essentially, most of these circles are the process of drafting the draft report for you. You come into the picture at step 4, effectively, and, at that point, if you want to call witnesses or communicate further with the ministry, that's something you can instruct us to do. But that circle that you're looking at at step 3 refers to what happens before the report is drafted. That's our communication with the ministry.

Mr. Bill Walker: So a point of clarification, though: If we get to step 4 and we put a recommendation on the table as the committee but the ministry people say, "No, no, no. That's not how we do business," really, who has authority? Because I think we've had one of these before in my past.

Ms. Tamara Hauerstock: The power of this committee is to make recommendations. The committee does not have the power to instruct the ministry to make a change; it can recommend.

Mr. Bill Walker: So a further point of clarification and, again, this is going back a little bit: If we make that recommendation and the ministry says no, but we believe, truly, that it's non-compliance, do we then have the authority or the jurisdiction to ask that that act or regulation be amended?

Ms. Tamara Hauerstock: You have the authority to ask or recommend.

Mr. Bill Walker: Thank you. I think I know where we are again.

The Chair (Mr. Ted McMeekin): So then you go back up to 1 and you start going back in a circle again.

Mr. Bill Walker: Yes, that's my exact fear: We talk about the same thing over and over again and we never get it changed. Anyway, that's good. Thank you for the clarification, Ms. Hauerstock.

Ms. Tamara Hauerstock: Yes.

So just moving along to the draft report—

The Chair (Mr. Ted McMeekin): So it depends on our ability to persuade, Bill.

Mr. Bill Walker: Correct.

Interjection.

The Chair (Mr. Ted McMeekin): Well, I think the members from around this table are very persuasive people, so if we have some logical things we want to do, I'm sure that the various ministries would take those into serious account very quickly. That has been your experience, hasn't it? Has it?

Mr. Bill Walker: We were able to recommend—

Ms. Tamara Hauerstock: Yes. On occasion.

Interjections.

The Chair (Mr. Ted McMeekin): The authority vested in Joe, by Joe.

Okay, please proceed. Anything further?

Ms. Tamara Hauerstock: Moving to the substance of the report, which begins on page 5—I'm sorry; I wanted to take you through the first part of the report.

The Chair (Mr. Ted McMeekin): Then we're going to get into the substance of it.

Mr. Bill Walker: Excellent.

Ms. Tamara Hauerstock: Yes. So on page 1, there's the standard introduction explaining the role of the committee and what the report covers.

The Chair (Mr. Ted McMeekin): That was my favourite part.

Ms. Tamara Hauerstock: Starting on the bottom of page 1, there's a section on statistics for the years 1996 to 2015, and that sets out basic statistics on regulations filed in that period. You'll see that over the 20-year period noted, the average number of regulations filed each year was 522.

Page 3 sets out some statistics on new, revoking and amending regulations over the past 10 years.

I'll just pause here and see if there are any questions about this part of the report.

The Chair (Mr. Ted McMeekin): Any questions about this part of the report? Interesting statistical analysis. Okay.

Ms. Tamara Hauerstock: Now the substance of the report, which begins on page 5: This is the section where we discuss any regulations we have identified as possible violations of the guidelines. In this particular report, there is only one regulation being reported. As noted in the opening paragraph of the draft report, we reviewed the 258 regulations made in the second half of 2015 and we wrote letters to three ministries raising questions about six regulations. After considering the responses from the ministries, we have decided to report on one regulation under guideline 3, and that's the guideline that requires that regulations be expressed in precise and unambiguous language. The regulation I'm referring to is under the heading "Ministry of Transportation." It's O.Reg. 419/15, made under the Highway Traffic Act.

When we reviewed this regulation, we found it very difficult to understand. It contains definitions that are

very complex and subject to multiple exceptions, modifications and cross-references. I've actually handed out copies of the regulation, if you'd like to get a sense of its complexity. That's the document that looks like this.

Ms. Jennifer K. French: Can we have a minute or two to read this?

Ms. Tamara Hauerstock: Yes.

The Chair (Mr. Ted McMeekin): So this is the only one before us in this report.

Ms. Tamara Hauerstock: That's correct.

The Chair (Mr. Ted McMeekin): Any questions?

Ms. Tamara Hauerstock: I was just going to quickly note some things in the regulation itself.

The Chair (Mr. Ted McMeekin): Yes. Okay.

Ms. Tamara Hauerstock: So as you see in the regulation, if you flip to the first page, section 2 sets out several sections which are covered by these definitions. As you flip to page 2, subsection (2) contains some exclusions cross-referenced to another regulation.

Going on to section 3, some other exclusions: In subsection (2), some additional exclusions from a particular clause; and in subsection (3), some additional exclusions.

Then, section 4 is the definition of "tow truck," which also goes on to include several exclusions cross-referenced to another act. It's quite complex and would take a very long time to unpack and understand.

We raised this complex structure with the ministry. The ministry noted to us in its response that the structure of the regulation is designed to replace provisions formerly found in section 16 of the Highway Traffic Act, so the structure of the regulation is largely due to the design of the provisions as they appeared in the act itself. On top of this, a new class of vehicle is added to the Commercial Vehicle Operator's Registration Certificate program, so information specific to tow trucks had to be inserted as well.

The ministry also noted that this regulation is a technical one, specific to a particular industry. The industry was governed by these provisions, or by quite similar provisions, when they were in the act, and the industry is already familiar with the requirements. They went on to note that they consulted with the tow truck industry and they continue to meet with them. They concluded that, in their view, this is one of those technical regulations that may seem complex but is understood by the persons affected by it.

After we considered the ministry's response, we still had concerns about its level of complexity. We've included that in the report, but we've noted, on page 7, two different options that the committee may wish to consider.

Option 1—I'll just flip to it.

The Chair (Mr. Ted McMeekin): That's back to the report?

Ms. Tamara Hauerstock: Back to the report, page 7. That's the greyed-out box.

Option 1 would be recommending that the regulation be amended so that it's more easily understood by the reader.

Option 2 would be for the committee not to make a recommendation in recognition of the ministry's response that the requirements are carried over from the act and that, in the ministry's view, the regulation is understood by the persons affected by it.

0940

The Chair (Mr. Ted McMeekin): There are two options: Do we want to dabble with what a commercial motor vehicle and a tow truck is, or do we want to accept the ministry's comments that it's generally understood within the industry? Ms. French.

Ms. Jennifer K. French: Thank you, Tamara, for explaining this. After looking through the regulation and trying, as you said, to unpack it—how many working definitions of commercial motor vehicle and tow truck do we have across various acts? The terms in question—how many different definitions as referred to in this specific regulation?

Ms. Tamara Hauerstock: How many cross-references in the regulation?

Ms. Jennifer K. French: Yes, because, as I see here—and I was following along with the definition as in subsection blah blah blah and in this act such-and-such, and all of these different references are going in different directions. How many different working definitions of tow trucks do we have in the province of Ontario, across our acts? Regardless of whether the industry is familiar with all of them.

Ms. Tamara Hauerstock: First of all, this reg refers to more than just tow trucks.

Ms. Jennifer K. French: Yes.

Ms. Tamara Hauerstock: But the tow-truck part of it is what's new to the regulation that, if I understand correctly, was not found in the Highway Traffic Act. I don't know the answer as to how many different definitions there are.

Ms. Jennifer K. French: I see a number of exclusions of vehicles under this and this and this. At first glance, in recognizing that, I see how this appears to be a tangled web. Regardless of whether the industry is familiar, I don't know that that's what they should have to deal with.

Ms. Tamara Hauerstock: Yes. So our concern in reading that was essentially that: that the regulation is not accessible to the reader. The ministry's view was essentially that the people who need to understand it do understand it, if I can summarize what I understand to be their view.

In terms of how many definitions there are, I can't answer that question, but if you take a look at section 2, there are 20 different sections of the act that are referred to. The rest of the regulation creates various amendments or carve-outs from certain of those sections in different ways. I haven't gone through it to actually parse that out.

Ms. Jennifer K. French: Your option 1 is making a recommendation that these specific definitions be more clearly defined—that we're talking about a clearer definition. We're not saying to not make references to

other acts and exclusions; we're asking for a more concise working definition of these terms. Is that correct?

Ms. Tamara Hauerstock: Yes, I think so.

Ms. Jennifer K. French: We're not saying, 'Untangle the whole thing'; we're saying, "Just be clear on definitions."

Ms. Tamara Hauerstock: Yes.

Ms. Jennifer K. French: I'm trying to head off an argument at the pass, here.

Ms. Tamara Hauerstock: Definitions can be complex. It is a technical regulation, and there are certainly times that cross-references are required or appropriate.

Ms. Jennifer K. French: I think that option 1 sounds fair and reasonable.

The Chair (Mr. Ted McMeekin): Mr. Crack.

Mr. Grant Crack: Thank you very much, Mr. Chair. You look fine today in that position.

I've seen a lot of regulations, over my five years, in legislation, and Joe seemed quite a bit more—yes, that's Mr. Dickson. When I look at this, I don't see it as that ambiguous, personally.

Interjection: You don't see it as?

Mr. Grant Crack: That ambiguous. There's some complex language in there; that's my view. But at the end of the day, if the ministry itself is saying that they're satisfied with it, I have to ask myself, who am I to—I respect the opinion of professionals here, but who am I to know what works and what doesn't work? It seems to be working.

Would it be possible that we, as a committee, could ask someone from the ministry to come in and explain to us, before we make our informed decision—

The Chair (Mr. Ted McMeekin): I think that's an option. Has that already happened?

Interjection.

The Chair (Mr. Ted McMeekin): It hasn't happened yet with respect to this particular regulation, but we can have them come in and define what a tow truck is, I suppose.

Were you finished, Mr. Crack?

Mr. Grant Crack: I'm open, yes.

The Chair (Mr. Ted McMeekin): Ms. French.

Ms. Jennifer K. French: In fairness to the work that has been done in this draft report—and I would like to echo what Mr. Crack said: that we respect the opinions of professionals. I would actually like to say that we should better respect the opinions of those professionals. Ms. Hauerstock, thank you.

I'd like to go back to something that was said earlier. I didn't appreciate that you were called "young lady." I would like to not diminish your role. I appreciate the work that has been done here.

I think that it isn't for us to sit at this table and add our own interpretations of whether it is that ambiguous or not. If those who do the work and are paid to do the work professionally have made a recommendation, I find it very frustrating in this committee that time after time we say, "You know what? If the ministry says it's fine, it must be fine, because those are our colleagues and those are the people who make the decisions." It is a tangled

regulation, as pointed out, and to diminish this and say, "We can have people come in and talk to us about the definition of tow truck"—that isn't exactly what's on the table here. So I think that making light of the work that has been done—I hope that's not a direction that we go in.

I recognize the value in having experts come in to speak to us. I don't know whether it's an option to have members from the industry come in and talk about whether or not this is an accessible regulation. Is that an option, to have members of industry come in, or just to have someone from the ministry? What are our options here in this committee?

The Chair (Mr. Ted McMeekin): Mr. Clerk?

The Clerk of the Committee (Mr. Christopher Tyrell): The committee does have the power to invite anyone to come in. Usually, the committee tends to invite the ministry because the regulations have to do specifically with something that the ministry has created, in terms of regulation. But if the committee wanted to invite other potential stakeholders, that's up to the will of the committee.

The Chair (Mr. Ted McMeekin): Mr. Clerk, do we know whether the ministry, in fact, consulted with the industry? I'm assuming they did, but I don't know that. Would you know that?

The Clerk of the Committee (Mr. Christopher Tyrell): I have no way of knowing that.

Ms. Tamara Hauerstock: I'm just going to refer to the letter from the ministry for one moment.

Interjections.

Ms. Jennifer K. French: You were to take that at face value.

The Chair (Mr. Ted McMeekin): We take that at what?

Ms. Jennifer K. French: At face value, that they've been consulted.

I appreciate they've been consulted, but I'm just—obviously, the ministry has also been consulted, but we still have questions.

The Chair (Mr. Ted McMeekin): Okay, Ms. Wong.

Ms. Soo Wong: Having spent my career writing public policy, dealing with public health, I think when we deal with legislation and regulations, besides the comments made by my colleagues opposite, and Mr. Crack's comments about inviting the ministry to come and speak, I think it would be very appropriate for us to ask the folks who are enforcing this law. Because if we are writing the law, and they don't understand it—they write the law and the ticket gets thrown out, because of the interpretation.

I think the folks who are enforcing these regulations—because of the laws we write—have to understand. It's not just for us, Joe public, but also the folks who are actually implementing and enforcing our legislation and our regulations. I think it's more important that the front-line people who are—we, as legislators, are charged with the responsibility to write the law. We are not responsible for the enforcing the law, folks. If they don't understand the law, does the law understand the law? I think that is as equally important as the MTO.

I think it's valid to have Mr. Crack's suggestion on the MTO, but I am also equally interested to hear from the front-line people or the inspectors or the MTO guy who does the inspections on the roads and what have you if these regulations are appropriate—not just appropriate; we're way past it. The suggestion by the staff that the clarifications and what have you—that's what this report is saying. There might be some clarification concerns. So let's hear from the folks who are going to be enforcing this piece.

The Chair (Mr. Ted McMeekin): Okay. So—

Mr. Bill Walker: Could you repeat that?

The Chair (Mr. Ted McMeekin): Yes. I think that Ms. Wong's suggestion to hear from people was a good one, right?

Ms. Daiene Vernile: Chair?

The Chair (Mr. Ted McMeekin): Yes?

Ms. Daiene Vernile: Thank you, Chair. Just a final remark: I want to hearken back to what the legislative researcher told us this morning: that we ought to be aiming for clear, precise and unambiguous language. That really ought to be the focus here too: trying to understand in a very clear way what this means.

I would support Ms. French and my colleagues here on the Liberal side that we need someone from MTO to come in here and give us some further explanation.

The Chair (Mr. Ted McMeekin): Ms. French, go ahead.

Ms. Jennifer K. French: Yes. I appreciate the comments from my colleagues opposite because, as I'm sure we're going to find time and time again, we have opinions on regulations and our interpretation or understanding of them. But fundamentally, as Ms. Wong said, there are those who are interpreting them and enforcing them, and if they're getting tangled in them, they would be the ones to tell us.

If we could somehow hear from them, whether they come or someone is able to reach out to them—because this seems ambiguous to me. So I would second that.

The Chair (Mr. Ted McMeekin): Okay, fair enough. It sounds like we have an emerging consensus here. It's looks like we're getting to "yes" on something, so that's always a good sign.

Would it be appropriate, Mr. Clerk, to entertain a motion at this point? Does someone want to make a

motion to facilitate the emerged consensus that I referenced? I'll wait in breathless anticipation.

Ms. Wong.

Ms. Soo Wong: Okay, let's see if I can get it right. I move that we invite—

The Chair (Mr. Ted McMeekin): Can you move the mike a little bit closer to you? Thanks.

Ms. Soo Wong: I move that we invite MTO, along with appropriate staff who deal with the enforcement of these regulations, to address this committee, I think, by next Wednesday morning.

The Chair (Mr. Ted McMeekin): Okay. I'm assuming, Ms. French, that you might be prepared to second that motion.

Ms. Jennifer K. French: I would second that.

The Chair (Mr. Ted McMeekin): Good. Any discussion on the motion? All those in favour? Thus let it be written; thus let it be done. Opposed, if any? None. Carried.

We're not in the position to move forward with the report per se. We're at that crossing point in time where we're going to—

The Clerk of the Committee (Mr. Christopher Tyrell): Chair, if I might?

The Chair (Mr. Ted McMeekin): Sorry?

The Clerk of the Committee (Mr. Christopher Tyrell): Just a comment.

The Chair (Mr. Ted McMeekin): Of course; please.

The Clerk of the Committee (Mr. Christopher Tyrell): It was mentioned for next week. I'm not sure if I'll be able to get the appropriate people to come next week. If the committee is okay with it, I'll work with the Chair, and we'll get information to you as to when we can get them to come in.

Ms. Soo Wong: Our next meeting—how's that?

The Chair (Mr. Ted McMeekin): Agreed? Agreed.

Okay, is there any further reference vis-à-vis this report at this point, Mr. Clerk, that we need to do?

The Clerk of the Committee (Mr. Christopher Tyrell): I think we've gone as far as we can.

The Chair (Mr. Ted McMeekin): We've gone as far as we can. Is there any other business that the committee has? Is there a motion to adjourn the committee? Oh, I don't need a motion. The committee is adjourned.

The committee adjourned at 0954.

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Chair / Président

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Westdale L)

Vice-Chair / Vice-Président

Mr. Joe Dickson (Ajax–Pickering L)

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Mr. Grant Crack (Glengarry–Prescott–Russell L)

Mr. Joe Dickson (Ajax–Pickering L)

Ms. Jennifer K. French (Oshawa ND)

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Westdale L)

Mr. Mario Sergio (York West / York-Ouest L)

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

Ms. Soo Wong (Scarborough–Agincourt L)

Mr. Jeff Yurek (Elgin–Middlesex–London PC)

Substitutions / Membres remplaçants

Ms. Daiene Vernile (Kitchener Centre / Kitchener-Centre L)

Clerk / Greffier

Mr. Christopher Tyrell

Staff / Personnel

Ms. Sibylle Filion, legislative counsel

Ms. Tamara Hauerstock, research officer,
Research Services