

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

**Official Report
of Debates
(Hansard)**

T-18

**Journal
des débats
(Hansard)**

T-18

**Standing Committee on
Regulations and Private Bills**

Draft report on regulations

2nd Session
41st Parliament

Wednesday 20 September 2017

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

Rapport préliminaire
sur les règlements

2^e session
41^e législature

Mercredi 20 septembre 2017

Chair: Ted McMeekin
Clerk: Christopher Tyrell

Président : Ted McMeekin
Greffier : Christopher Tyrell

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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



ISSN 1180-4319

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

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

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

Wednesday 20 September 2017

Mercredi 20 septembre 2017

The committee met at 0903 in committee room 1.

BRIEFING

The Vice-Chair (Mr. Lou Rinaldi): Good morning.

Mr. Bill Walker: Good morning, Mr. Chair.

The Vice-Chair (Mr. Lou Rinaldi): Welcome. Everybody is dry from yesterday. That's good to see.

I'd like to call to order the Standing Committee on Regulations and Private Bills. The Standing Committee on Regulations and Private Bills will now come to order. We are here today to review a draft report on regulations made in the second half of 2016. All of you have had copies of the report delivered to your offices. The Clerk has extra copies of the report, should anyone here need one—and I think there is one in front of you.

As there have been some changes in the membership of this committee, I thought it might benefit us all first to get a refresher on the committee mandate. Here with us today are Tammy—am I going to attempt to say that?

Ms. Tamara Hauerstock: Hauerstock.

The Vice-Chair (Mr. Lou Rinaldi): Tammy Hauerstock from legislative research, and Tara Partington, the registrar from the regulations office of the Ministry of the Attorney General.

We will begin with our Clerk giving us a short refresher on the private-bills portion of our committee mandate. I will then invite Ms. Partington to provide us with a general overview of the regulations process in Ontario. Following will be the beginning of our consideration of the draft report, with Ms. Hauerstock.

I now turn the floor to the Clerk.

The Clerk of the Committee (Mr. Christopher Tyrell): Good morning. The Standing Committee on Regulations and Private Bills is the committee to which private bills are referred after first reading and to which all regulations stand permanently referred.

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. Guidelines for the committee's mandate are outlined in the assembly's standing orders, from standing order 82 to 97, and standing order 108(i).

I will speak a little bit about private bills today, and then a little later, my colleague Tammy Hauerstock, from legislative research, will speak about her role with the

committee and the regulations aspect of the committee's mandate.

A private bill relates to a matter of special benefit to a particular person or organization. It does not form part of public law and does not have a general application to the people of Ontario at large.

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

In addition to the committee's permanent mandate, the House may refer government bills or private members' public bills for the committee's consideration, or any other matter for its review.

A resource binder with detailed information on this, as well as procedural and administrative practices of the committee, was handed out to some of you last week. For some of you, you may have it in front of you today. My contact info is on the last page, so please contact me if you have any questions or require any assistance. I'm also happy to arrange to meet with you one-on-one to discuss anything further about the committee's mandate that you might wish to discuss.

Are there any questions?

The Vice-Chair (Mr. Lou Rinaldi): Are there any questions of the Clerk? No? There are none, so we'll now go to Ms. Partington.

Ms. Tara Partington: Thank you. Hi, my name is Tara Partington. I'm from the Office of Legislative Counsel, and I am currently the acting registrar of regulations at that office.

I have been asked to speak to you a bit about regulations today. I'll be explaining what a regulation is, and a bit about the process for making regulations. My office has prepared a handout that you should all have in front of you, and everything that I'm going to talk about is covered in that handout, but I won't cover all of it and I might cover things in a slightly different order.

As I said, I work at the Office of Legislative Counsel, which is the central drafting office for the government. Under standing order 139, we are officers of the assembly and we have specific responsibilities relating to the preparation, amendment and publication of bills in the House.

We have a chief legislative counsel, currently Mark Spakowski. As I said, I'm currently acting as the registrar of regulations. We have about 17 lawyers who work as drafters, and then we also have translators, linguists, editors—a fairly large team that works together to draft, translate and arrange for the publication of all legislation: the bills that are presented, motions for bills, and all the regulations that are made under those statutes.

The first question is, what is a regulation? Regulations are laws. They're a form of legislation. Sometimes you'll hear regulations referred to as delegated legislation, subordinate legislation or sometimes secondary legislation. This is distinguished from statutes, also referred to as acts, which are sometimes called primary legislation or enabling legislation.

This is a really important distinction, particularly for the work that this committee does on regulations, because the statutes enacted by elected representatives in the Legislature are where the authority to make regulations comes from.

The Legislature has the power to legislate on all subjects within the provincial sphere under the Constitution, whether general or particular in nature. The Legislature enacts a statute, and in the statute there are provisions that authorize a particular entity or an individual to make regulations on specified topics that fall within the scope of the statute. So the Legislature delegates the power to make regulations to specific entities or individuals that are named in the statute.

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Sometimes we refer to regulations as being creatures of statute. A regulation cannot purport to do anything that is not strictly authorized by the statute, and to the extent that it does, it's susceptible to a challenge in court and it may be struck down by a court as being unauthorized. Sometimes you'll hear that referred to as being *ultra vires*.

There is a definition of what a regulation is in the Legislation Act, 2006. This is a law about laws. It has many rules and processes that apply to the enactment of statutes and the making of regulations, and many rules relating to the interpretation of legislation. I'll refer a couple of times to part III of the Legislation Act, which is all about regulations and is a good starting place if you want to know more about the rules as they relate to regulations.

In the definition of a regulation in part III of the Legislation Act, it refers to a regulation being a "regulation, rule, order or bylaw of a legislative nature...." That's something important to flag, that just because something isn't called a regulation—it might still be determined to be a regulation under the Legislation Act. For example, a statute may give a minister power to make orders, and as long as the order meets the other criteria for a regulation under this definition in the Legislation Act, then the order is considered to be a regulation. It should be drafted by our office, and all the processes and requirements set out in part III of the Legislation Act will apply to that order.

This is why sometimes you will see in a statute a provision that specifies that part III of the Legislation Act does not apply to a particular document or a particular set of rules. The purpose behind including a provision like that in an act is to clarify that the intention of the Legislature is that these documents would not be treated as regulations.

The definition I referred to in the Legislation Act also sets out who can make regulations. It can be cabinet, a minister of the crown, an official of the government, or a board or commission all of the members of which are appointed by the Lieutenant Governor in Council. So whatever provision in the act authorizes the making of the regulation will always specify who is authorized to make that regulation. Sometimes that's why you might see two regulations dealing with the same topic under an act. One might be a minister's regulation and one might be a cabinet-made regulation. In most cases, we see the Lieutenant Governor in Council authorized to make regulations. The next most common would be the minister being authorized to make regulations. But there are other situations that arise; for example, a commission or a governing body of a profession might be authorized to make regulations subject to the approval of the Lieutenant Governor in Council.

We've talked about what a regulation is and who can make it. There is more in the handout about the scope of what a regulation can cover, that it's confined by the authority set out in the statute. But now I'm going to move on and talk briefly about the process for making a regulation.

In our office, we draft a regulation based on the instructions we receive from the lawyers working in the legal services branches at the various ministries. As I'm sure you know, each ministry has responsibility for administering statutes. Along with that comes responsibility for administering the regulations made under those statutes.

During the drafting process, as drafters, we're very mindful of the statutory authority to make a regulation. One of the first conversations that we'll have with our ministry clients is twofold: "What are you trying to accomplish in this regulation?" and "What's the statutory authority for making this regulation?" So we scrutinize every instruction and every provision to make sure the requisite statutory authority is in place, we give advice to the various ministries on how to interpret those authorizing provisions, and we try to arrive at a mutual understanding with them of the statute and what that authority consists of. Sometimes we provide advice, as requested, to Cabinet Office or to the person who is making the regulation.

Basically, ensuring that regulations are authorized and properly drafted is one of our primary concerns. Part and parcel with that is trying to draft in plain language to make the regulations as understandable and clear as possible.

Once the regulation is drafted, it's sent to cabinet or the minister or whoever is making the regulation for

signing. Once the regulation has been signed, it's made, but it is not yet effective. A regulation is effective, as provided for in part III of the Legislation Act, once it's filed. There's an important distinction between the making of a regulation and the filing of a regulation. The ministry client will bring the regulation into our office and file it. At that point, that's when it becomes law. All regulations filed in our office are available to the public.

There are also rules in the Legislation Act about when regulations come into force. The default rule is that regulations come into force on the day that they're filed, but the regulation, or the enabling statute, can provide for a different rule regarding when a regulation comes into force. For example, the regulation itself might specify that it comes into force on a specified future date, or sometimes it will be the date on which a statutory provision is going to be proclaimed into force so that the regulation and the statute come into force at the same time.

There are requirements in the Legislation Act to publish regulations once they are filed. We publish them on the e-Laws website promptly, usually on the same day, but always within two business days. They're also published in the print version of the Ontario Gazette within one month after being filed.

There are rules in the Legislation Act about when a regulation becomes effective against a person. It's the earlier of the day it is first published, which is usually on e-Laws, and the time the person has actual notice of it.

I think that's what I'll say for now about the process for making regulations.

Just a few more concluding pieces of information for you: As I said, the registrar of regulations has specific duties. These are described in the handout that is provided. The handout also explains different types of regulations that may be made and published. You might hear references to a parent regulation. That would be the first regulation made under an act. We'll publish that, when it's filed, to a category of laws on e-Laws that is called source law. Then, as time goes by, that parent regulation may need to be amended or updated. It may also need to be revoked. You'll hear references to amending regulations and revoking regulations, which basically do something to that parent regulation that is already existing.

If we have an amending regulation or a revoking regulation, it will also be posted in the category of source law on e-Laws, but our office also takes those changes and creates an updated version of the parent regulation. That updated version is in the category on e-Laws entitled current consolidated law. Basically, we're always updating the laws so that in current consolidated law you can see what the most recent version of the law is, with those amendments incorporated into the document. Currently, Ontario has over 1,900 consolidated regulations. The total number of regulations that are filed each year is a little over 400 on average. So drafting regulations is a big part of our job.

Currently, 53% of our regulations are bilingual. I'm happy to report that that's up from 48.5% last year, when

my colleague gave a similar presentation. Under the French Language Services Act, the Attorney General has a responsibility to "cause to be translated into French such regulations as the Attorney General considers appropriate...." Unlike bills, there's no statutory requirement that regulations be bilingual; however, we're making great strides in getting more regulations to be bilingual. What's happening more and more is that the first version filed will be English-only, but then the French version will be added through an amending regulation as soon after as possible.

0920

I think that's all I was going to mention today. I'm happy to take any questions you may have.

The Chair (Mr. Ted McMeekin): Are there any questions from members of the committee?

My apologies for being late. We weren't involved in the actual accident, but I witnessed an accident coming in today and needed to stick around for a few minutes, so that's what made us a bit late.

Okay, any questions?

Thank you very much.

Ms. Tara Partington: My pleasure.

The Chair (Mr. Ted McMeekin): You did good.

Ms. Tara Partington: Thank you.

DRAFT REPORT ON REGULATIONS

The Chair (Mr. Ted McMeekin): We'll now begin consideration of the draft report. We're going to proceed through the report, section by section. We will be pausing after each section, and I'll look to committee members for questions that could potentially lead to further discussion—perhaps not, but you never know.

Ms. Hauerstock is here with us today. She's an expert on all this stuff, and she's going to be kind enough to lead us through the report.

Ms. Tamara Hauerstock: I'm just going to start with a brief summary of the mandate, leading up to the regulations.

The Chair (Mr. Ted McMeekin): She's going to start with a brief summary of the mandate, leading up to the regulations.

Please start with the brief summary.

Ms. Tamara Hauerstock: Thank you. I'm Tamara Hauerstock. I am a research officer and legal counsel to this committee. As noted, I'm going to give you a brief overview of one of the mandates of this committee, which is the review of regulations.

The committee's regulations mandate is currently set out in standing order 108(i) and is also described in section 33 of the Legislation Act, 2006. You can find section 33 of the Legislation Act, 2006, on page 13 of the draft report in front of you, which is appendix A, and the standing order is appendix B, on page 14.

The standing order and legislation provide that this committee is to review regulations made under Ontario statutes, and in conducting this review, the committee is to consider the scope and method of the exercise of

delegated legislative power. This, in effect, means that the committee must look at the regulation, examine the statute that allows the regulation to be made, and ensure that the regulations are made in compliance with the guidelines set out in the standing order. As you can see, there are nine guidelines. These are based on legal principles that are well established in many common-law jurisdictions.

The two guidelines that have been raised most frequently by this committee in its past reports are guidelines (ii) and (iii). Guideline (ii) says, “Regulations should be in strict accord with the statute conferring of power...” This means that there should be explicit authority in the statute that allows the regulation to be made. Guideline (iii) says, “Regulations should be expressed in precise and unambiguous language.” This means that a regulation must be clearly written.

It’s important to note that the committee’s mandate explicitly excludes consideration of the merits or objectives underlying a regulation. The mandate is limited in this way because a regulation operates within the framework of an act, and the act and the policy underlying it have already been debated and decided by the Legislature. The royal commission that initially recommended the creation of this committee recommended that the policy of an act not be reopened for discussion.

The Legislation Act requires the committee to report, from time to time, its observations, opinions and recommendations. The practice in recent years has been for the committee to consider a report about twice a year. In terms of how the review of regulations actually happens, we have a visualization attached as appendix C to the draft report.

We read all the regulations published each year in Ontario. We flag possible violations of the guidelines. We then write to the legal branches of the ministries responsible for the regulations that we flagged, and when the ministries respond, we consider whether they have adequately addressed the concerns raised about possible violations. We then prepare a draft report for this committee and include a discussion of those regulations where we continue to have concerns about possible violations of the guidelines.

The final stage is when the committee meets to consider the draft report, as you are today. When the committee considers the draft report, it can decide to include discussion of a given regulation, either with or without a recommendation. Once the committee has finalized the report, the final report is tabled in the House.

I’d also like to note that, from time to time, bills other than private bills are referred to this committee. For those bills, the research service is available to assist the committee, for example, with research questions or a summary of recommendations.

Unless there are questions, I would move on to the draft report.

The Chair (Mr. Ted McMeekin): Are there any questions? Okay, we’ll move on to the draft report.

Ms. Tamara Hauerstock: This draft report covers the regulations made in the second half of 2016. The first

few pages—as you’ll see, there’s an introduction and some statistics giving a general picture of the types of regulations made.

The regulations that are specifically discussed begin on page 6. The first regulation that I’ve included here is O. Reg. 388/16 made under the Waste Diversion Transition Act, 2016. The concern that we flagged with this regulation is that the statute under which the regulation is made permits regulations to be made governing the composition and appointment of the board of directors of an industry funding organization. The regulation itself provides for a board composed of nine elected members and one appointed member.

Since the act provides for the appointment and not the election of members, we asked the ministry whether there is statutory authority to make this type of regulation. The ministry responded that “appointment” can be read broadly to include any manner of selection—whether appointment, election or otherwise.

We note that “election” and “appointment” are generally used in Ontario statutes as distinct means of selecting the members of a board. We also note that the identical concern was raised by this committee with respect to O. Reg. 33/08, which set out the composition of Stewardship Ontario under the current act’s predecessor. The committee made a recommendation in its First Report 2010 to amend O. Reg. 33/08 to remove references to the election of the board of directors.

The possible recommendation that I’ve included, which is the bolded portion on the top third of page 7, is that the committee recommend that the Minister of the Environment and Climate Change amend the regulation to remove references to the election of the board of directors of Stewardship Ontario.

The Chair (Mr. Ted McMeekin): Okay. Mr. Walker?

Mr. Bill Walker: Just a point of clarification: Can you explain why originally “election” was the way to have someone appointed or elected to this committee, and what the rationale is to remove the “election” portion and only have “appointment”?

Ms. Tamara Hauerstock: The concern that we’re raising is that the statute that enables this regulation refers to “appointment,” but the regulation itself refers to a different method, which is election.

Mr. Bill Walker: I agree with that, but what I’m trying to figure out is why are they actually different, and why are they not still under “election,” if that’s what the original composition and the expectation of how you had members join that committee were. I want to make sure that this is remaining as an election, as opposed to an appointment.

The concern that people in the public are sharing is that you get into way too many partisan appointments. Is this not saying that they’re taking away the ability to have election, if this regulation goes through?

Ms. Tamara Hauerstock: If the recommendation that I’ve included here is accepted: Is that what you mean?

Mr. Bill Walker: Yes.

Ms. Tamara Hauerstock: If they changed the regulation in the manner suggested, I suppose the board members would be appointed rather than elected.

An alternate recommendation that the committee could make would be to suggest that the act itself be amended to permit the type of board composition that is found in the regulation as it stands today.

Mr. Bill Walker: Can a member of the government explain why this is being proposed to be changed?

Interjection.

0930

The Chair (Mr. Ted McMeekin): Mr. Walker, as the Clerk rightly points out, we can move any amendment we want.

I took from what Ms. Hauerstock was saying that she had thought the original proposal was to appoint, but that the language was confusing, given it also made reference in a later section to election.

Ms. Tamara Hauerstock: The language in both the current statute and the predecessor statute refers to “appointment.” The language in the current regulation as well as the predecessor one refers to “election.”

In that sense, it’s my understanding that it’s not a change. The issue that we are concerned with existed under the prior set of statute plus regulation, and it has rolled over into the updated statute and regulation.

The Chair (Mr. Ted McMeekin): Mr. Walker, if you wanted to see members elected, you could move a motion to do that.

Ms. French.

Ms. Jennifer K. French: I’m also having a bit of a challenge with following this.

Where it goes back to the original part of this draft, where it outlines the issue, it says that this regulation “provides that the board of Stewardship Ontario is to be composed of nine elected members and one appointed member.” That is as it is written in regulation. It “permits regulations to be made,” as you said, “governing the composition and appointment...”

I’m looking at the very beginning, under “Issue,” where it says “nine elected members and one appointed member.” In the actual act, it only provides for the appointment and not the election, as you’ve said here.

Outside of this, is the board of Stewardship Ontario elected and appointed? Is it that makeup of nine elected and one appointed? That is still current?

Ms. Tamara Hauerstock: I believe so. Actually, I don’t know the current makeup of the board, but that’s what the regulation provides for.

Ms. Jennifer K. French: Because, to Mr. Walker’s point, I don’t want to make a change or a recommendation in this room about regulating just the one appointed person if there are nine elected. I don’t know why we would remove a word if we don’t know the context. My concern is, I’d like to know the context. I’d like to know how that board is decided. If it’s elected and appointed, if that has changed—I won’t pretend that any of our decisions in here actually—I don’t want a decision in here to have unintended consequences.

Second to that, you brought this up to the ministry—I’m looking here, where you’ve quoted the ministry—and the ministry responded: “‘Appointment’ can be read broadly to include any manner of selection—whether by appointment, by election, or ex officio by virtue of holding another office.” Is that true anywhere else, or was that just an answer specific to this? Do we find that “appointment” actually means election, appointment, or whatever other manner of selection, in any other place in this government that you’ve come across?

Ms. Tamara Hauerstock: What I noted in the top paragraph of page 7 is that, generally, the two terms are used separately—distinctly.

Ms. Jennifer K. French: I wasn’t sure what “generally used ... as distinct,” means, because it was sort of opposite words there.

Ms. Tamara Hauerstock: Again, generally—because I have not reviewed the entirety of the legislation—an act will say that a member will be elected or appointed.

Ms. Jennifer K. French: Here, it’s saying, “We’re not going to take the time to fix it, because we’ll just say that ‘appointment’ covers any manner of sin or selection.” Okay.

Well, I would disagree, because I think the people of Ontario recognize that “appointment” is an appointment; “election” is an election.

The Chair (Mr. Ted McMeekin): I think you had noted that, generally, there is a distinction.

Ms. Jennifer K. French: Yes, but the ministry here has said that it can be read to mean whatever, and that’s inappropriate.

Ms. Tamara Hauerstock: Just to clarify, the perspective that we take when we look at the regulations is from the standing orders. Precision of language and avoidance of ambiguity is the perspective that we take when we review.

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

Ms. Daiene Vernile: Just in response to some comments made by Mr. Walker, it’s not the government that’s making this recommendation. This is coming from Legislative Research Services.

It would appear that you are trying to provide clarity to what’s here, and we support this recommendation.

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

Mr. Bill Walker: My point was exactly that: Who did recommend that this change happen? Because I’m still confused. It says, “Stewardship Ontario is to be composed of nine elected members and one appointed member,” yet we’re going to remove references to the election. If we’re supposed to be clear and unambiguous, it’s not hitting the mark.

If what you’re saying is that the original legislation suggested that you should be appointed, not elected, yet the regulation states that it should be elected, not appointed, and you’re trying to clear that up, I understand that piece, I think. But at the core, where did the change come from? Why did the regulation get written as “elected” and the act state that it will be “appointed”? Somebody had to have issued that. Someone had to have

made that regulation. That's what I'm trying to figure out: Where did that emanate from? If an act says that you should be appointed, why would the regulation not state the exact same thing? Is it the ministry that changed it? Was it the government of the day? I mean, this might be 20 years ago, who knows.

It's the point my colleague Madam French suggests, that people from the public want to understand: Are we electing officials or are we appointing them? There's very much a concern that appointments generally lead to someone being stacked on a board in favour of whoever's doing that action.

The Chair (Mr. Ted McMeekin): So just for clarity, the way it appears now, there's one appointed member and eight elected people?

Mr. Bill Walker: Nine.

The Chair (Mr. Ted McMeekin): One of which is appointed.

Mr. Bill Walker: No. Nine elected members and one appointed member.

The Chair (Mr. Ted McMeekin): Oh, okay.

Mr. Bill Walker: So when it says "nine elected," and yet we're going to remove the reference to "elected"—again, that's ambiguity at its best or worst, depending on which way you look at it.

The Chair (Mr. Ted McMeekin): Okay. Ms. Vernile.

Ms. Daiene Vernile: Perhaps our legislative researcher could bring clarity to and explain how we're trying to bring the regulation in line with the legislation that we have. We're merely trying to bring the regulation in line—

The Chair (Mr. Ted McMeekin): We've having trouble hearing you here. Can you speak a little closer to the mike?

Ms. Daiene Vernile: Okay. Perhaps the legislative researcher could explain how it is that we are trying to bring the regulation in line with the legislation.

The Chair (Mr. Ted McMeekin): Perhaps.

Ms. Tamara Hauerstock: There would be essentially two ways that this could be done. The first is what appears in the box as the possible recommendation, which is to amend the regulation so that the board composition corresponds with what the act provides for. The other way this could be done would be, in a sense, the opposite, which would be to recommend amending the statute so that it provides for the type of board composition that the regulation sets out.

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

Ms. Jennifer K. French: The first option, amending the regulation so that it's in keeping with the goals of the act: I look back to this first section here that says, "As the act provides for the appointment, not the election," but we—okay. So that would be in keeping with that. The act only provides—

The Chair (Mr. Ted McMeekin): What's in the box.

Ms. Jennifer K. French: Uh-huh. But, when I asked about the nine elected and one appointed, we don't know if that's still current. So I get that, as it's written in the act

or the regulation, they should use the same language. But if it says right here, "Nine elected members and one appointed member," I would like to know—and I don't know how we find that out, since we don't have it here today. I would like to know if the board is still nine elected members and one appointed member, because in that case, neither the act nor the regulation is in keeping with that.

So I take your point that perhaps it was different, that the original regulation was different because the original composition was different. I just feel like that's a pivotal piece that we need—

The Chair (Mr. Ted McMeekin): Let me try to be helpful here, Ms. French, because I understand your point. One of the options that we have would be to ask research to go back and in fact get answers to the very questions that you and Mr. Walker have raised.

0940

Ms. Jennifer K. French: Yes, because I'm content to also make the second suggestion: If the original regulation is still correct, because the board composition is nine elected plus one appointed, then by all means, let's change the act. I would go with that recommendation of legislative research. But I would appreciate having that additional—if we can ask for that, I'm happy to vote on either of those recommendations at a future date.

The Chair (Mr. Ted McMeekin): Okay, and you could move that at an appropriate point, if you'd like.

Ms. Jennifer K. French: How would I make that?

The Chair (Mr. Ted McMeekin): Let's hear from Mr. MacLaren first and then we'll come to you, if you have a motion.

Mr. Jack MacLaren: I guess my question here is that there's almost a little confusion over what is best, whether they are appointed or elected. We have inconsistencies here between the statute and the regulation. I guess I'd like to hear a little more in-depth study as to: Which is better? Who is right? Should they be elected or should they be appointed? Who would do the voting to elect? Who would do the appointing? All those kinds of questions—because right now we're trying to make the regulation consistent with the legislation, which it has to be. What is the right thing to do?

The Chair (Mr. Ted McMeekin): I appreciate your point. The difficulty with that is that we were informed by the Clerk that we do not have the authority to actually change the intent of the legislation. We do have the authority to ensure that this clarification—which is the point, I think, that Mr. Walker and Ms. French were making.

Mr. Jack MacLaren: Right. I understand. Okay.

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

Mr. Lou Rinaldi: If the researcher needs time to go out and get those answers, I think it would be appropriate. We don't have an issue with that.

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

Ms. Jennifer K. French: Before I move anything, I just, in our quick sidebar here—I guess there are different options. I could ask Ms. Hauerstock for that piece of

information. We could move that, or we could also invite someone from the ministry to come and discuss. I just think that that piece of information—because, as you said, we can't debate the merits of it, but I would like that piece of clarification. Do you guys have a thought on ministry or homework for Ms. Hauerstock?

Mr. Lou Rinaldi: I think what we're asking for is that the research should be information readily available. I'm not sure if we want to engage ministry folks at this time, because the research part of it—I think it's a straightforward question.

Ms. Jennifer K. French: I'm just saying that if I'm going to put a motion on the table and other people want to have the ministry come to discuss other things—I don't really feel that way, but if anyone else did, we had that choice.

Mr. Lou Rinaldi: I'm with you.

The Chair (Mr. Ted McMeekin): So you're suggesting, Ms. French, if I'm hearing you correctly—and I'm having some difficulty, medically, with this ear, so I'm turning this way—you're suggesting that we have Ms. Hauerstock go back and do the research.

Ms. Jennifer K. French: The will of the room—either of those options.

The Chair (Mr. Ted McMeekin): In the absence of a motion, then—

Ms. Jennifer K. French: I'll make the motion, if that's what we'd like to do.

The Chair (Mr. Ted McMeekin): It would be helpful to have a motion.

Ms. Jennifer K. French: I move that this be given to Ms. Hauerstock as homework.

The Chair (Mr. Ted McMeekin): Deferred pending additional information.

Ms. Jennifer K. French: That sounds great. Thank you.

The Chair (Mr. Ted McMeekin): Okay. Always willing to help.

We have a motion that it be deferred, pending Ms. Hauerstock getting us some additional information.

The motion should be that we ask legislative research to seek out that information that we're—

Ms. Jennifer K. French: I move that legislative research find the answers on the composition of the committee and that we defer this discussion.

The Chair (Mr. Ted McMeekin): Clear? Clear. Any discussion? All those in favour? Carried. Thank you for this good work, team.

Please continue.

Ms. Tamara Hauerstock: Let's move to the next regulation—a little more straightforward, I think. This is O. Reg. 325/16. The issue that came up with this regulation relates to incorporation by reference. Incorporation by reference is a technique whereby outside documents are referred to by a regulation and in that manner become a part of or are incorporated into the regulation. When this technique is used, the Legislation Act, 2006, requires that when a document is incorporated by reference, the minister responsible for the administration of

the act must ensure that the document is readily available to the public.

We inquired about a number of documents that are incorporated by reference into the parent regulation, actually, of this regulation. That parent regulation is O. Reg. 282/98. The ministry responded that all the documents are available to the public and it indicated where they could be found, but it also noted that, with respect to one of the documents, the regulation as it stands refers to a 2002 version of the document but that in administering this regulation the ministry actually uses an updated 2014 version of that particular document. I've noted that a regulation should incorporate by reference the relevant version of a document and I've included as a possible recommendation that the Minister of Finance amend paragraph 1 of section 25(2) of the regulation to incorporate the updated version of the document which is actually in use.

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

Mr. Bill Walker: So again, my question would be—

Ms. Daiene Vernile: Pardon me, Chair. I've had my hand up for quite a long time.

The Chair (Mr. Ted McMeekin): I'm sorry. Will you yield to—

Mr. Bill Walker: I'll definitely defer.

The Chair (Mr. Ted McMeekin): Ms. Vernile, with apologies from the Chair, who stepped out to get coffee.

Ms. Daiene Vernile: Sorry to interrupt. Chair, we are looking for some clarity on this recommendation so I would like to move a motion, if I could.

The Chair (Mr. Ted McMeekin): Yes.

Ms. Daiene Vernile: I move that the Ministry of Finance appear before this committee to explain or respond to the possible recommendation in this draft report regarding Ontario Regulation 325/16 made under the Assessment Act, amending Ontario Regulation 282/98.

The Chair (Mr. Ted McMeekin): Okay. Would you second that motion, Mr. Walker?

Mr. Bill Walker: I would be pleased to second that.

The Chair (Mr. Ted McMeekin): Okay, moved and seconded.

Ms. Daiene Vernile: Thank you.

Interjection.

The Chair (Mr. Ted McMeekin): We don't need it seconded but it was a courtesy because it sounded so much like what I thought Mr. Walker might say. Okay. Any discussion? Yes, Ms. French?

Ms. Jennifer K. French: Not so much on the motion, but I have a question about "readily available." I understand the need for and certainly appreciate the concept of documents available and needing to be referred to in regulations. That's fine. I like the idea of it being the most up to date and all of those things. Great. But "readily available to the public as required"—the "as required," is that as it is laid out in each act or is there—I'm getting technical but my concern is "readily available."

If you, as legislative research, had to flag a whole truckload of documents you couldn't find in your legislative research, then how readily available is it to the general public looking for these documents? I appreciate that the government was able to say, "No, no, here they all are, save one that needs to be updated." I'm a bit concerned that "available" versus "readily available" needs to be a recommendation we make to the government, if legislative research was not readily able to find readily available documents.

The Chair (Mr. Ted McMeekin): Okay. We have a motion on the floor. Does everybody understand the motion?

Mr. Bill Walker: Finance is coming to present more information.

The Chair (Mr. Ted McMeekin): Yes.

Mr. Bill Walker: Absolutely.

Ms. Jennifer K. French: On that specific one; right?

The Chair (Mr. Ted McMeekin): Yes.

Ms. Jennifer K. French: Okay. So should I not have been allowed to go off on my diatribe?

The Chair (Mr. Ted McMeekin): We are so open-minded here. We just want to make sure everybody gets a chance to speak. If you want to make an amendment—

Ms. Jennifer K. French: Should I have waited until after the motion?

The Chair (Mr. Ted McMeekin): —consistent with what you describe as your diatribe, you're welcome to do that.

Ms. Jennifer K. French: Because I know she's ready to answer.

The Chair (Mr. Ted McMeekin): Does anybody need a copy of the motion? I thought it was pretty clear, but we can adjourn and get copies if you need that.

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Mr. Bill Walker: No.

Ms. Jennifer K. French: I'm going to pause my comment until after the vote.

The Chair (Mr. Ted McMeekin): Okay. All right, so let's vote. All those in favour of the motion? Opposed, if any? Carried without dissenting vote.

Back to you, Ms. French. You wanted to make another comment.

Ms. Jennifer K. French: I would then ask Ms. Hauerstock, as she was so patiently waiting to answer.

Ms. Tamara Hauerstock: My only comment on that was that in this particular instance—and I review a lot of regulations, so this is my recollection—there are many documents or several documents referred to in this regulation. From time to time, I do ask the ministries, just as a general confirmation, are all those documents available? I may have looked for all of them; I may have looked for some of them. It may have been a general kind of check.

Ms. Jennifer K. French: So I may have generalized, then, that you couldn't find them. It was just a confirmation that these documents are indeed up to date and available.

Ms. Tamara Hauerstock: That may be the case.

Ms. Jennifer K. French: Okay. So I might take back some of what I said.

The Chair (Mr. Ted McMeekin): Are you satisfied with that, Ms. French?

Ms. Jennifer K. French: Yes.

The Chair (Mr. Ted McMeekin): Okay. Ms. Hauerstock, you're on, if there is any additional recommendation you want to touch on.

Ms. Tamara Hauerstock: I am prepared to move on to the next regulation.

The Chair (Mr. Ted McMeekin): That's on page—

Ms. Tamara Hauerstock: That's on page 8. This one is very straightforward.

Interjections.

Ms. Tamara Hauerstock: This is O. Reg 306/16. The regulation indicates that it was made on September 13, 2016, and indicates that it was approved by the minister on the previous day, September 12, 2016. We inquired with the ministry whether the ordering of the dates affected the validity of the regulation.

Ms. Jennifer K. French: Is that a typo?

The Chair (Mr. Ted McMeekin): What did they say?

Interjection.

The Chair (Mr. Ted McMeekin): Yes, go ahead, Mr. Walker.

Mr. Bill Walker: They're committing to remake it. May I place a motion? Is it appropriate to place a motion that we, as a committee, ask the ministry for a timeline of when this will be completed?

The Chair (Mr. Ted McMeekin): Okay.

Mr. Bill Walker: It's great that they're going to do it, but if it's four years down the road, it still is not complying with the law.

The Chair (Mr. Ted McMeekin): Fair enough. Does everybody understand the motion? All those in favour? Opposed, if any?

Mr. Bill Walker: Would you like me to repeat the motion?

The Chair (Mr. Ted McMeekin): Why don't you? We seem to be—

Mr. Bill Walker: I'm just asking if the committee can make a request to the ministry for a timeline of when this revision will take place. They've committed to remake the reg, but there's nothing saying when that's going to be completed. I think it's appropriate that we ask and say, "When will that be completed?" It seems like a pretty simplistic thing; it's just dates.

The Chair (Mr. Ted McMeekin): You're asking for the committee to write a letter to the ministry?

Mr. Bill Walker: Yes, just simply asking, "You've committed to do this. Can we have a timeline of when it will be completed?"

The Chair (Mr. Ted McMeekin): That's pretty straightforward. Any discussion? Mr. Rinaldi.

Mr. Lou Rinaldi: Do I get what Mr. Walker is asking—

The Chair (Mr. Ted McMeekin): Can you speak closer to the mike, please?

Mr. Lou Rinaldi: I'm sorry. So if I get it right, Mr. Walker is asking for you, as Chair, to write a letter to folks—

Mr. Bill Walker: To the ministry. They've committed to remaking this reg, so just asking for a timeline of when that will be complete.

Mr. Lou Rinaldi: Thank you. I just wanted to clarify it.

The Chair (Mr. Ted McMeekin): I think that's a very reasonable request. Any further discussion? All those in favour, please? If so, indicate. Opposed, if any? It's carried with three affirmative votes.

Ms. French.

Ms. Jennifer K. French: I appreciate that they're changing it, but your question here and the issue of does the ordering of the dates affect the validity of the regulation—what's the answer to that? I get that there's an inconsistency and they're going to remake it, but by saying, "We've made it the day after it was approved"—does that actually change the validity?

Ms. Tamara Hauerstock: I don't know from—

Ms. Jennifer K. French: Did they write back and say, "Oops, just kidding. None of this is valid. We'd better change it," or did they say, "Thanks for catching that. All is good, but we'll change it anyway"?

Ms. Tamara Hauerstock: Well, their view is that it's valid because it was duly made and approved, but they acknowledge that it could cast doubt. They've proposed a solution, so I left it at that.

Ms. Jennifer K. French: Okay.

The Chair (Mr. Ted McMeekin): I think we need to note with one or t'other or more ministries that this committee is not their enemy; it's their friend. Our job is to catch these things and to make sure that, legislatively and from a regulatory perspective, we're doing things in proper order.

Ms. Jennifer K. French: Yes, proper order, that's right. We're not approving it before we've made it.

The Chair (Mr. Ted McMeekin): That's right. That's the point here.

Ms. Jennifer K. French: Exactly.

The Chair (Mr. Ted McMeekin): All in favour—oh, we carried it already. Anything else?

Ms. Tamara Hauerstock: I've got the final regulation that I'm raising today.

The Chair (Mr. Ted McMeekin): That's on page—

Ms. Tamara Hauerstock: That's on page 9. That's O. Reg. 444/16 made under the Registry Act. This regulation contains references to provisions of the Registry Act that were repealed on September 1, 2016. So they've got references to sections of the act that no longer exist. We raised that with the ministry, and the ministry indicated that reference to those causes should be removed. They said that this will be done as part of a larger project to amend various regulations. They note that the anticipated completion date would be the end of 2017 to the beginning of 2018.

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

Mr. Lou Rinaldi: Chair, we certainly support the recommendation from the researcher.

The Chair (Mr. Ted McMeekin): Okay. Make that a motion?

Interjection.

The Chair (Mr. Ted McMeekin): Oh, there's no recommendation. It's easy to support regulations when they're not—

Interjections.

The Chair (Mr. Ted McMeekin): Okay, so what do we do? Nothing, thank you.

Yes?

Mr. Bill Walker: Mr. Chair, just for more clarity and less ambiguous information: I don't understand what "the beginning of 2018" means, so could we, again, as a committee, ask for more specific, clear timelines of when that will be expected to be presented to the committee?

The Chair (Mr. Ted McMeekin): Yes, we can do that. Will you make that a motion?

Mr. Bill Walker: Absolutely.

The Chair (Mr. Ted McMeekin): Does everyone understand the motion?

Ms. Daiene Vernile: Could Mr. Walker please repeat his motion?

The Chair (Mr. Ted McMeekin): Please repeat your motion.

Mr. Bill Walker: I would make a motion that the committee request a firm timeline as opposed to "the beginning of 2018," so we can expect to know when that will be presented to our committee.

The Chair (Mr. Ted McMeekin): Good, okay. All those in favour? Anybody opposed? Again, that's carried without dissenting vote.

Ms. Tamara Hauerstock: Go on?

The Chair (Mr. Ted McMeekin): That's it?

Ms. Tamara Hauerstock: No, I've got some updates on prior reports; those are on page 10 of the draft report. When the committee looked at the last report that it filed, which related to regulations filed in the first six months of 2016, the committee asked for updates from two ministries with respect to how they were going to address the issues that the committee had raised in its report. Some correspondence went to the ministry, and we received responses.

In the first case—this is the Ministry of Education, O. Reg. 226/16—the issue related to notice of a regulation that had not been given. The ministry indicated that the amendment in question was a technical amendment only, but that it had neglected to provide notice of the change as required.

The letter that was provided by the ministry, which I believe you have in front of you, dated May 5, 2017, indicates how the ministry went ahead and provided that notice that the committee had requested. If you look at the second paragraph of the letter—that's the letter dated May 5, 2017, from the legal director of the Ministry of Education—they've sent a memo to the child care sector, which is the sector affected, explaining the context and

need for this change and pointing to a posting on the regulatory registry website.

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

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Mr. Bill Walker: Just a point of clarification: I see that the memo is telling them they're going to do it. Can we clarify whether that's complete? Have they actually corrected the oversight?

Ms. Tamara Hauerstock: They've indicated that they sent that memo on April 21, 2017. They have attached a copy of that memo in both English and French. So my understanding is that it has been done.

Mr. Bill Walker: Thank you.

The Chair (Mr. Ted McMeekin): You're okay with that, Mr. Walker?

Mr. Bill Walker: Yes.

The Chair (Mr. Ted McMeekin): Okay. Anything further?

Mr. Bill Walker: Similarly, the other one on page 10.

Ms. Tamara Hauerstock: I can move on to the next one?

The Chair (Mr. Ted McMeekin): Yes.

Ms. Tamara Hauerstock: Moving on to the second regulation that's noted on page 10: The committee also requested an update from the ministry on how they were going to address the issue relating to O. Reg 114/16. That was also an issue of not providing the public notice required. A copy of that letter has also been placed before you. It's the letter dated April 6, 2017, and it sets out how the ministry did provide that notice as raised by the committee. They also note that they've revised their internal operating procedures to ensure that all requirements under section 47 of the Planning Act are adhered to.

The Chair (Mr. Ted McMeekin): Okay. Any discussion? Hearing none, move on, please.

Ms. Tamara Hauerstock: Moving on: This is page 11, halfway down in the draft report. This is O. Reg 136/15 under the Ambulance Act. The concern that the committee raised with respect to this regulation was that it was made by the Lieutenant Governor in Council instead of the minister. We asked for an update on this matter. The ministry indicated that the regulation has been remade and signed by the minister as required under the act.

The Chair (Mr. Ted McMeekin): Okay. Any questions? Hearing none, proceed.

Ms. Tamara Hauerstock: Okay. Moving on to page 12: This is also an update on a regulation made under the Collection and Debt Settlement Services Act. There were a couple of concerns under this regulation related to the authority to impose certain record-keeping requirements and certain requirements around trust accounts.

We inquired with the ministry on what they were doing in response to those issues. They've indicated that both those issues are addressed under Bill 59, Putting Consumers First Act. That act received royal assent on April 13, 2017, and the particular provisions they're referring to have not yet been proclaimed, but they are included there.

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

Mr. Bill Walker: Mr. Chair, just a clarification again: Can we find out why they have not been proclaimed into force? I'm suggesting that we again hold them accountable and send a letter proactively to say that if they have not, what's the holdup? Why can't we, and what's the timeline to have them proclaimed into force? It seems like they want to. The intent is to make the changes, so what's the holdup?

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

Ms. Jennifer K. French: It's my understanding that on the issues that we had identified, the ministry has said, "Don't worry about those, because it has been changed by this new Bill 59, which has now come into force, so it's covered under that." Does that then make not just the original issues, but the original regulations—do they still exist? Have they now been replaced by this, or—

The Chair (Mr. Ted McMeekin): Yes, they supersede.

Ms. Jennifer K. French: Nobody needs redundancy, but I would like—not just clarification. You had just commented that you weren't familiar with the specifics. I have to admit that I don't remember the specifics of our issues, but can we double-check that indeed it's covered off or has been replaced or repaired or whatever?

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

Mr. Bill Walker: My interpretation of reading it is that the individual collection of information is not required now that it's all by an organization or a group, so they've removed that individual reporting requirement, and that's covered in the new Bill 59, which has received royal assent. Is that clear?

Ms. Tamara Hauerstock: My understanding is that the registration requirement for collectors has been amended. But I can, perhaps, prepare a more detailed summary of the changes and, if I understand your inquiry correctly, whether any corresponding amendments to the regulation would be required.

Ms. Jennifer K. French: If I understood what you said from all of this, that the government has said the issues have been addressed by this, I would just like you to ensure that they do indeed align and there isn't something—

The Chair (Mr. Ted McMeekin): That that is, in fact, the case; right?

Ms. Jennifer K. French: Yes.

The Chair (Mr. Ted McMeekin): All right. Fair enough. The committee has no issue with that. We'll just proceed on that basis.

Mr. Bill Walker: But we are going to seek a reason why.

The Chair (Mr. Ted McMeekin): Yes.

Mr. Bill Walker: Why it hasn't been proclaimed into force.

The Chair (Mr. Ted McMeekin): Yes.

Mr. Bill Walker: Do you want a motion?

The Chair (Mr. Ted McMeekin): Sure. Why not?

Mr. Bill Walker: Again, in the spirit of making sure we're clear: We understand that it received royal assent on April 13 and we would like to understand why it has not been proclaimed into force and when it will be.

The Chair (Mr. Ted McMeekin): Okay. Ms. French, on the motion?

Ms. Jennifer K. French: I have an additional motion after that motion.

The Chair (Mr. Ted McMeekin): All right.

The Clerk of the Committee (Mr. Christopher Tyrell): Just for clarification, is it that you want the committee to write to the ministry asking that question?

Mr. Bill Walker: Yes, just seeking clarification. It has been proclaimed, so why is it not—

The Chair (Mr. Ted McMeekin): Let's vote on that first.

Ms. Jennifer K. French: Can I make a friendly amendment to his motion?

The Chair (Mr. Ted McMeekin): Sure.

Ms. Jennifer K. French: I hear you, Bill, and let's do that. But I also want to ensure that once it has been proclaimed into force, that indeed the changes in Bill 59 do address the original issues.

The Chair (Mr. Ted McMeekin): Yes, okay. Fair enough. Any debate?

The Clerk of the Committee (Mr. Christopher Tyrell): You're asking that of the ministry or of research to figure that out?

Ms. Jennifer K. French: Ministry, while we're at it. Go big or go home.

The Clerk of the Committee (Mr. Christopher Tyrell): Okay.

The Chair (Mr. Ted McMeekin): All those in favour? Carried, again without dissenting vote. Thank you.

Ms. Tamara Hauerstock: I've got nothing else, unless there are questions.

The Chair (Mr. Ted McMeekin): Okay. Well, you did good, Ms. Hauerstock.

Ms. Tamara Hauerstock: Thank you.

The Chair (Mr. Ted McMeekin): I thank you for leading us through that.

If there's no other business, we should recess the committee until we get the answers that we have requested in our deliberations. So be it? We're adjourned.

The committee adjourned at 1008.

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