

YUKON LEGISLATIVE ASSEMBLY

SECOND REPORT
OF THE
STANDING COMMITTEE
ON
STATUTORY INSTRUMENTS

4TH SESSION OF THE
24TH LEGISLATURE

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Your Standing Committee on Statutory Instruments has reviewed 92 Orders-in-Council issued between March 7, 1980 and September 15, 1980.

Your Committee has reviewed and considered the comments of the Minister of Justice from the debates on its First Report together with the McRuer Report Guidelines for review of subordinate legislation, and the handbook How to Prepare Statutory Instruments, and reiterates its comments from its First Report.

Your Committee has had the following witnesses appear before it to discuss the various Orders:

- 1) Padraig O'Donoghue, Esq. Q.C., Deputy Minister of Justice with respect to the various Orders under the Area Development Ordinance, the Financial Administration Ordinance and various problems generally with respect to content and preparation of Orders-in-Council;

- 2) Mr. Mel Smith, Chief Assessor; and

- 3) Mr. Len Imrie, Chief Municipal Services. Messrs. Smith and Imrie answered questions on the Assessment and Taxation Regulations and the Community Assistance Regulations, and assisted the Committee in preparing its recommendations.

In this report your Committee offers the following comments on various Orders-in-Council as set out alphabetically hereunder.

Your Committee has appended a list of all Orders reviewed for which we have no comment or the only comment is the failure to cite authority.

1. Order-in-Council 1980/47 Area Development
(Teslin Development Area established by C.O. 1979/165)

Your Committee is concerned that there may be some question of the legality of zoning in an Indian reserve under the Area Development Ordinance.

2. Order-in-Council 1980/142 Area Development
(Callison Industrial Development Area established by O.I.C. 1980/45)

It is a recommendation of your Committee that the contents of this Order should be properly found in the Area Development Ordinance, and not in regulations as this constitutes an unusual use of the regulation making power.

After having reviewed 11 Orders-in-Council and Commissioner's Orders under the Area Development Ordinance and discussions with the Deputy Minister of Justice, it is your Committee's opinion that substantive legislative review is required of the Area Development Ordinance, and all Commissioner's Orders and Orders-in-Council presently in force with a view to preparing fresh comprehensive legislation.

3. Order-in-Council 1980/223 Brands
(Forms and Fees established by 1969/13)

Your Committee recommends that a conflict between the forms prescribed in the regulations and the Ordinance should be corrected.

The title of "Director of Wildlife" in Section 1 of the Order reads, "Director of Game" in the Ordinance.

4. Order-in-Council 1980/141 Community Assistance
(Frontage Rates for 1980)

Section 1 of this Order should be amended to read Sections 35, 37 and 41 and not 12, 37, and 41 as it presently reads.

5. Order-in-Council 1980/181 Community Assistance
(Collector Roads - Faro)

Your Committee found this Order to be an example of a well drafted Order with its format and authority well presented.

6. Order-in-Council 1980/96 Dawson Historic Sites Aid Grants
(1980 Tax Year)

This Order does not state the grant per parcel as required by Section 3.3 of the parent Ordinance.

There is no authority in the parent Ordinance for Section 2 of this Order which attempts to reword subsection 2(2) of the Ordinance to conform with the new method of tax calculation.

7. Order-in-Council 1980/127 Daycare
(General)

After extensive review of these comprehensive regulations, it is your Committee's recommendation that the content creates substantial new policy, and as such it should be contained in the Ordinance and not in the regulation.

8. Order-in-Council 1980/216 Financial Administration
(Government Employee Housing)

Your Committee recommends that the contract with the Yukon Housing Corporation should be part of the Financial Administration Ordinance and not the regulations, and further that the rules and regulations for the tenancy of the premises may be better placed in other legislation.

9. Order-in-Council 1980/231 Financial Administration
(Ambulance Unit established by C.O. 1977/144)

In your Committee's opinion this Order constitutes an unusual use of the general regulation making power.

Sections 1 and subsection 2 of Schedule 1 should be rewritten for clarity.

After having reviewed a number of Orders under the Financial Administration Ordinance, it is your Committee's recommendation that a consolidation of all Orders presently in force under the Financial Administration Ordinance should be undertaken, possibly divided into parts and indexed.

10. Order-in-Council 1980/151 Forest Protection
(General established by 1971/254)

Since the changes in this Order involve more than one quarter of the Sections in two previous Orders, it is your Committee's recommendation that in future the two old regulations should be repealed and a new regulation passed.

11. Orders-in-Council 1980/134, 170, 217, 218, 219, 220, 244
Labour Standards
(exemptions to Ordinance)

O.I.C. 1980/134 and 170 did not cite their full authority.

None of the Orders reviewed, indicated whether the application for an exemption had been reviewed by the Advisory Board as required by the Ordinance.

O.I.C. 1980/220 and 244 are completely open ended, and in future, some form of time restriction should be considered.

12. Order-in-Council 1980/147 Lands
(Transfer of Lot - Mayo)

This Order should be transferring the land to Her Majesty the Queen in right of Canada and not to "Indian and Inuit Affairs."

13. Order-in-Council 1980/154 Liquor
(Proclamation)

The title of this Order should be "An Ordinance to Amend the Liquor Ordinance" and the Section reference should be Section 3(1) of "An Ordinance to Amend the Liquor Ordinance."

This Order should be amended to conform to the handbook, How to Prepare Statutory Instruments.

14. Order-in-Council 1980/208 Liquor
(General established by 1977/37)

After thorough review, it is your Committee's recommendation that this material creates substantial new policy and should be contained in the Liquor Ordinance.

15. Order-in-Council 1980/100 Liquor Tax
(Proclamation)

The title of this Order should be "An Ordinance to Amend the Liquor Tax Ordinance, and the section reference should read Section 2(1) of "An Ordinance to Amend the Liquor Tax Ordinance."

16. Order-in-Council 1980/90 Local Improvement District
(Carmacks L.I.D.)

It is your Committee's recommendation that this Order should be amended so that Section 6 of the Order specifically states the requirements set out in the Ordinance at Sections 4(1)(d), (e) and (f).

17. Order-in-Council 1980/206 Medical Profession
(General)

It is your Committee's recommendation that since this order creates substantial new policy, all of the sections contained in this Order should be in the Ordinance save and except the provisions dealing with applications from Sections 26 - 28.

18. Orders-in-Council 1980/171, 178, 179, 180, 182, 190
Miscellaneous Statute Law Amendment 1980
(Proclamations)

In reviewing the 6 Orders cited above, your Committee found:

a) three different styles with various wording have been used to accomplish the same purpose of bringing various sections of the amendment into force. Your Committee recommends a proper precedent in conformity with the handbook How to Prepare Statutory Instruments be prepared and followed; and

b) 1980/190 contains three sections (15(1), 16(1), 26(1)) which have already been proclaimed into force by Order-in-Council 1980/182.

19. Order-in-Council 1980/102 Public Health
(Embalmers and Embalming)

After thorough review, your Committee has the following recommendations:

- 1) Section 19 of these regulations entitled "Disinterment" would be easier to locate in the Vital Statistics Ordinance or Coroners Ordinance, and in any event should be cross-referenced;
- 2) Section 19(1) of the Public Health Ordinance does not create a minimum fine or a fine on a daily basis as set out in Section 10(1) of these regulations and, therefore, Section 10(1) is without authority;
- 3) Section 18(b) of these regulations attempts to double the maximum fine prescribed in the parent Ordinance and is, therefore, beyond the authority of the parent Ordinance.

20. Order-in-Council 1980/166 Yukon River Base and Study Agreement
(Proclamation)

It is helpful with Orders of this nature to have the Proclaiming Order signed ahead of the date they come into force.

21. Commissioner's Order 1979/207 Worker's Compensation
(Accident Prevention established by 1963/1)

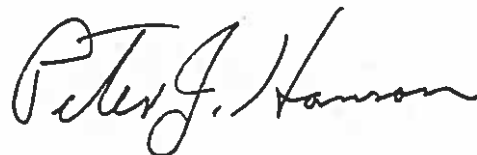
Your Committee recommends that these regulations be thoroughly reviewed by the department responsible with consideration to the type of facilities available at various locations in this Territory, and with consideration being given to amending some of the requirements, if local facilities are adequate.

Of the other 57 Orders reviewed and which are listed in the Appendix, 41 did not cite their authority.

Your Committee recommends again, that all orders drafted must cite their authority. If officials considering or drafting new regulations are forced to cite their authority, they will be less likely to draft orders which exceed the authority of the parent Ordinance.

Your Committee further recommends that a report outlining the Government's response to this Committee's findings and recommendations be forwarded to the Committee. This feedback will be beneficial to your Standing Committee on Statutory Instruments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Peter J. Hanson". The signature is written in dark ink and is positioned above the printed name.

Peter Hanson, Chairman

A P P E N D I X

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