

YUKON LEGISLATIVE ASSEMBLY

FOURTH REPORT

OF THE

STANDING COMMITTEE

ON

STATUTORY INSTRUMENTS

5TH SESSION OF THE

24TH LEGISLATURE

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TABLE OF CONTENTS

| | <u>PAGE</u> |
|---------------------------------------|-------------|
| PREFACE | 1 |
| GENERAL COMMENTS AND CONCERNS | 2-5 |
| GENERAL RECOMMENDATIONS | 5-7 |
| APPENDIX A | 8 |
| APPENDIX B | 9-14 |
| Area Development Ordinance | 9 |
| Assessment and Taxation Ordinance | 9 |
| Electrical Public Utilities Ordinance | 10 |
| Financial Administration Ordinance | 10 |
| Game Ordinance | 10 |
| Health Care Insurance Plan Ordinance | 10 |
| Highways Ordinance | 10 |
| Hospital Insurance Services Ordinance | 11 |
| Lands Ordinance | 11 |
| Liquor Ordinance | 12 |
| Municipal Ordinance | 12 |
| Public Printing Ordinance | 13 |
| Public Service Commission Ordinance | 13 |
| School Ordinance | 13 |
| Transport Public Utilities Ordinance | 14 |
| Workers' Compensation Ordinance | 14 |
| APPENDIX C | 15 |
| APPENDIX D | 16 |
| APPENDIX E | 17 |

P R E F A C E

The Standing Committee on Statutory Instruments has reviewed fifty-three Orders-in-Council signed between May 19, 1981 and February 1, 1982.

The reporting format will continue as in the Third Report:

- a) A narrative of the Committee's general comments and concerns with the regulations it has reviewed and a number of Appendices.
- b) The first appendix consists of a code or key which has been developed by the Committee to cover most of the standard problems encountered by the Committee in reviewing the regulations.
- c) Appendix B lists thirty-four Orders-in-Council by Ordinance title and Order-in-Council number with numbers from the key outlining problems found in the regulations and where necessary, additional comments, and recommendations.
- d) Appendix C lists fifteen Orders-in-Council by Ordinance title and Order-in-Council number on which our only comment is that they fail to cite their authority.
- e) Appendix D lists four Orders-in-Council by Ordinance title and Order-in-Council number for which we have no comment.

GENERAL CONCERNS

Your Committee is pleased to have observed:

a) Some improvement in the effort to cite authority for the regulations by some departments. The fact that the authority cited is incomplete on some occasions is believed to be, at least partially a problem of the fact that apparently most of the Orders-in-Council are drafted by public servants in various departments, often without legal advice, and secondly, confusion in attempting to determine, where a number of possible authorities exist, exactly which authorities are being relied upon by the regulation drafters.

b) It is the observation of your Committee that if consideration were given to the Justice Department to develop General Guidelines for the content of regulation making sections, and their consistent placement in the various Ordinances, it would be of assistance to the officials who must draft the regulations thereunder, and to the public.

We recognize that on occasion with certain large pieces of legislation, it is necessary to have regulation making powers at the end of each specific part of the legislation together with a regulation making section governing the general administration of the Ordinance. In such cases, we suggest that consideration be given to cross-referencing, the sections for user convenience.

Your Committee notes that on seventeen occasions in Appendix B in this report, your Committee has noted that the handbook "How to Prepare Statutory Instruments" has not been followed.

The Committee has been unable to obtain any specific information as to when and where this handbook was last directed to be used in the preparation of statutory instruments. If the Government is not satisfied with the handbook, the handbook could be updated or an alternative provided.

Your Committee notes that on the occasion of this report, there seems to be an increase in the number of problems with an attempted delegation of authority which is unsupported by the parent Ordinance. Your Committee must emphasize this since this House is ultimately responsible for all regulations made under the auspices of legislation passed by this House, this is a matter of serious concern to which great attention must be paid.

The last area which is of concern to your Committee is the number of occasions regulations are passed where in the content of the regulation either exceeds the specific regulation making power or general regulation making power of the parent Ordinance.

It may take many years before an individual or a group with the determination and sufficient funds to mount a legal challenge to the regulations appears, however, wherever a regulation of questionable validity exists it acts as an invitation to individuals or groups to not only challenge the Government of the day but to question the competence of the House.

Your Committee has repeatedly suggested that a consolidation and review of all existing regulations should be undertaken department by department, particularly where major amendments to existing regulations are being made. In the long run, the department would have a better product and more certainty, together with a better understanding of the tools available to them to deal with a specific problem, if a review and consolidation of the regulations was undertaken at the same time as major amendments.

Wherever an Ordinance is being amended, care must always be taken to ensure that authority necessary to support existing practices under the regulations exist; or if the decision is made to remove that authority, later there must not be an attempt to use the authority, or to abuse the general regulation making sections. Specific reference here is made to the amendments to the Lands Ordinance, and the subsequent vagueness in authority for certain regular activities with respect to transfer of lots for certain public or quasi-public purposes between the Territorial and Federal Governments.

With respect to the Area Development Ordinance your Committee would reiterate of all its previous comments with respect to the flagrant abuse of the regulation making powers, the consistence exceeding of the authority of regulation making powers in the Ordinance, the consistent abuse of the delegation of powers within the regulations, unsupported by the parent Ordinance and the general style and content of the regulations.

Your Committee would refer the House to the "Clegg Report" not only for its comments and analysis of the Area Development Ordinance and the regulations but also its comments with respect to general use of regulation making powers, problems with delegation powers in the regulations, and alternatives where offensive regulations are found. Copies of the Clegg Report are available to interested parties from the secretary of this Committee.

Throughout the British Commonwealth more and more attention is being paid to the importance of Committees for the review of subordinate legislation. Your Committee has been considering "Delegated Legislation Bulletin, No. 2", which is published by the Secretariat of the Commonwealth Delegated Legislation Committee.

Your Committee has added as Appendix E, the recent comments in the bulletin concerning powers of the Regulations Review Committee in Tasmania which actually have the power to suspend regulation intersessionally when the House is not immediately available to raise a problem and seek relief.

GENERAL RECOMMENDATIONS

Your Committee hereby asks this House to consider broadening the powers of this Committee in several areas:

- 1) The terms of reference of this Committee are restricted to reviewing regulations which are passed between the time of its inception and the life of this House. One of the difficulties faced by your Committee has been in attempting to comment on amendments to regulations which are themselves defective. Government has taken the position that it is only within our terms of reference to comment on the actual amendment. Future committees, your Committee strongly recommends should have power to comment on the original regulations which are being amended when it is necessary.

2) Your Committee would ask for consideration being given to including in the terms of reference for future committees a provision that where defects are found in amendments to or regulations under a particular ordinance, and it is known that other regulations under that ordinance exist a comprehensive review be initiated, and a report made to the House without having to request permission in advance.

3) Your Committee recommends that any new committee should commence its reports with the first Order-in-Council passed after the last report of this Committee.

4) Your Committee would ask this House to consider asking this or the next Standing Committee on Statutory Instruments, to review the Regulations Ordinance and the regulations thereunder, any other and necessary ancillary legislation or regulations, and reporting back to the House on the viability of the existing legislation and regulation making powers and procedures, and make recommendations as to any improvements which could be incorporated into the system.

5) Your Committee would recommend that it be adopted as policy of the House that wherever major legislation is being presented to the House, particularly legislation which would entail substantial regulations for its administration and enforcement, that the regulations be tabled in the House together with the parent ordinance so that the two may be reviewed together.

6) Where faulty regulations are found, the power to suspend the effect of the regulations until the matter can be debated in the House. As you can see from the comment in Appendix E this is a position taken in Tasmania. This may sound like a strong remedy but your Committee can think of no better way of bringing to the attention of each and every member of this House, their ultimate responsibility for subordinate legislation, and the fact that this must be reviewed regularly, and dealt with at a time when the House may not be sitting.

Finally, your Committee requests that a report outlining the Government's response to the Committee's findings and recommendations be forwarded to the Committee, and this be implemented as a policy for future Committees.

Respectfully submitted,



Peter Hanson, Chairman

APPENDIX A
Numerical Code to the Fourth Report

Code

- 1: Failure to cite authority.
- 2: Beyond a specific authority granted in the parent Ordinance.
- 3: Beyond the general regulation making power granted in the parent Ordinance.
- 4: Unusual or unexpected use of regulation making power.
- 5: Initiates new policy not presently contained in the Ordinance.
- 6: Vague - requires redrafting.
- 7: Order has been passed retroactively which should not have been done.
- 8: Attempts to exclude Court's jurisdiction.
- 9: Creates an offence, fine, imprisonment or other penalty not specifically authorized by the parent Ordinance.
- 10: Creates a reverse onus by regulation not specifically authorized by the parent Ordinance.
- 11: Effectively creates new tax by regulation. Such activity should be left for legislation. This would not include license fees.
- 12: General power used to create judicial or administrative tribunal.
- 13: Conflicts within the regulation sections as written.
- 14: Authority is found in various sections of the parent Ordinance and should be cited in marginal notes as is presently done by some departments.
- 15: This is a regular function for which a specific precedent should be developed and followed.
- 16: Recommended that the Ordinance be amended for whatever reason is given after the code.
- 17: General comments of previous reports apply to this regulation.
- 18: Format in handbook, "How to Prepare Statutory Instruments" should be followed.
19. Delegation of authority not supported by parent legislation.

APPENDIX B

To be interpreted with the key in Appendix A

RECOMMENDATIONS

Area Development Ordinance

1981/225: 1, 2, 4, 17, - Your Committee expressed concern about the ramifications of a time limit such as contained in this order and its effect on the property values in a small community.

/268: 1, 6 - Section 8(2), 19 - Section 8(3)(4) - Your Committee finds it unacceptable that an attempt should be made to bind a future Government or Minister in subsection 8(6). Your Committee further reiterates the comments of the Clegg Report.

/270: 1, - That the map attached to this and other similar orders should contain a statement as to where readable copies of the map may be obtained.

1982/12: 1, 18 - To provide clarity, the terms R2 and R2 Multi Family used in Sections 1 and 3 of this order should be made uniform and consistent.

/13: 18 - Although the authority for this order has not been fully cited, your Committee is pleased to note the attempt to cite authority.

Assessment and Taxation Ordinance

1982/18 - 21 inclusive, Code 1: While an effort was made to cite authority in these Orders, other Sections applicable to the Orders are Sections 24(1) and 32(1) of the Ordinance.

Electrical Public Utilities Ordinance

1981/292: 1,18 - Your Committee recommends that the relevant portion of policy directive 3/7 should be quoted in the Order.

Financial Administration Ordinance

1982/10: In your Committees view all of the outstanding Orders-in-Council and Commissioner's Orders under this Ordinance are badly in need of review and consolidation.

A full review of both the Ordinance and the regulations should be undertaken by the appropriate department to determine what should be properly in legislation, and what is both appropriate and necessary in regulations.

Game Ordinance

1982/04: 1,18

Health Care Insurance Plan Ordinance

1981/277: 1,6, 18 - Section 25(2)(b) of this order is unclear in the meaning of taxable income.

Highways Ordinance

1982/11: 1, 6, 18

Hospital Insurance Services Ordinance

1981/265: 1, 18 - That this Order state the correct title of the regulations.

Lands Ordinance

1981/227: 1,18 - The location referred to should be clearly marked on the map attached to this Order.

1981/255: 1,6, See Clause 2, 18, 19

Clauses 4 and 5 of this Order should be amended to account for the previous Order which added subsection 27(3)

/259: 1, 19 - Since the recent amendments to the Land Ordinance, the authority for this type of transfer is now vague and can only be found by the broadest reading of Section 13, 14 and 34 of the Ordinance. The view of your Committee is this now constitutes an unusual use of a regulation making power.

/271: 1 - That this Order be amended to include the other sheets of the map prescribed under O.I.C. 1981/227 for consistency in style.

/272: Your Committee reiterates its comments with respect to O.I.C. 1981/259.

/284: 4, 15 - Your Committee considers it impossible to enforce that all future use of this property will necessarily be for public use.

Liquor Ordinance

1982/07: 1 - These amendments must be considered in light of the overlap of powers in the regulation making sections of the Ordinance and the powers of the Corporation and Board as set out in the Ordinance.

The authority, which is not cited, for this order is found in a broad reading of sections 8, 22, 23, 44 & 105 of the Ordinance.

Section 27(3) would be better drafted if it referred to the Corporation.

Section 27(4) appears to continue to allow the use of cheques while prohibiting the use of credit cards.

1982/08: 1,2,3,4,5,6,18,19 - Your Committee strongly recommends that this Order be completely redrafted.

1982/09: That this new form be reviewed together with the regulations and the regulation making sections.

Municipal Ordinance

1981/229: 1,7 - Your Committee recommends this Order should specify that it is made pursuant to the new Municipal Ordinance by reference, at least, to its date of assent and year of passage for purposes of clarity. The Order, further, requires redrafting in a manner consistent with the Ordinance, quoting the Ordinance, if necessary, instead of haphazard paraphrasing.

Public Printing Ordinance

1981/269: In the opinion of your Committee this Order exceeds the authority of the parent Ordinance.

1982/05: 1, 18 - This Order replaces 1981/269.

Public Service Commission Ordinance

1981/136: The specific authority for this is difficult to locate in either the Public Service Commission Ordinance or the Territorial Court Ordinance. With respect to the Public Service Commission Ordinance there are a number inconsistencies within the regulations and parent Ordinance which your Committee recommends should be corrected.

/235: 1 - This Order should make reference to the amending Order number. We reiterate inconsistencies between the regulations and parent Ordinance should be corrected.

School Ordinance

1981/245: - This Order should indicate that the necessary Petition was received.

/294: 1,6 - The drafting of this Order could be improved.

Transport Public Utilities Ordinance

1981/293: 1 - This Order should quote the relevant portion of policy directive 3/7.

Workers' Compensation Ordinance

1981/256: 1, 18

1981/261: 1, 18 - Particularly with reference to Clause 3.

APPENDIX C

Orders reviewed for which the Committee's Only Comment is
"Failure to Cite Authority"

Area Development Ordinance: 1981/276

Financial Administration Ordinance: 1981/250

Game Ordinance: 1981/215

Health Care Insurance Plan Ordinance: 1981/232, 233, 263, 264
1982/06

Labour Standards Ordinance: 1981/251

Lands Ordinance: 1981/254 and 273

Motor Vehicles Ordinance: 1981/283

Reciprocal Enforcement of Maintenance Orders Ordinance: 1981/236

School Trespass Ordinance: 1981/234

Summary Convictions Ordinance: 1981/241

APPENDIX D

Orders received for which the Committee has no comment

Financial Administration Ordinance: 1981/224

Motor Vehicles Ordinance: 1982/22

Summary Convictions Ordinance: 1981/237 and 238

APPENDIX E

Excerpt from: DELEGATED LEGISLATION

Bulletin No. 2

Published by the Secretariat of the
Commonwealth Delegated Legislation Committee

Tasmania: Power to suspend regulations

In the Report of the Canberra Conference and in the first Bulletin reference was made to the remarkable provisions in Tasmania whereby delegated legislation adversely reported upon by the Tasmanian Joint Committee in a parliamentary recess must be suspended or amended until the Parliament next meets. A recent report from the Tasmanian Committee indicates that this is no mere theoretical power; two recent cases were cited of the exercise of the power by the Committee.

