

The Standing Committee on Statutory Instruments has the honour to present its

#### EIGHTH REPORT

on all Regulations and Orders presently in force under the Labour Standards Ordinance.

At present there are no consolidated Labour Standard Regulations in existence. A series of Commissioner's Orders exercising some of the Regulation making powers or power to make "Orders" exist and are reviewed hereunder.

The Regulation Ordinance defines the word "regulation" to mean:

"any regulation, proclamation, rule, order or by-law made under the authority of any Ordinance of the Yukon Territory but does not include

- (a) an order or decision of a judicial tribunal,
- (b) a rule, order or regulation governing the practice or procedure in any proceedings before a judicial tribunal,
- (c) a rule, order, regulation, resolution, or by-law made by a local authority, or
- (d) a rule, regulation or by-law of a company incorporated under the laws of the Territory..."

In your Committee's opinion this definition includes all Commissioner's Orders made or purported to be made under the authority of the Labour Standards Ordinance whether they are called "regulations" or "orders". Your Committee believes all these "orders" to be a proper subject for review by this Committee.

Your Committee recommends that new comprehensive Labour Standard Regulations be drafted. All forms should be prescribed and rates established as schedules to these regulations.

Your Committee recommends that all existing orders be reviewed and repealed or amended as necessary as per our specific recommendations hereunder. As your Committee has previously mentioned, your Committee recommends that the new regulations contain direct reference to the specific statutory authority relied upon. The necessity for this will be seen in the orders analyzed hereunder.

Your Committee will now proceed to analyze the existing Commissioner's Orders under the Labour Standards Ordinance.

C.O. 1968/116

Section 1. This section is authorized by the present section 14(1)(b) & (c) of the Ordinance and is within that power. Your Committee would recommend review and redrafting of this section.

Section 2. This section is authorized by the present section 23(1)(d). The wording is ambiguous and requires redrafting.

Section 3. This section purports to give an "inspector" all the responsibilities of the Labour Standards Officer. While technically correct under sub-section 40(1)(h) your Committee considers the order as contrary to the spirit of the Ordinance, which differentiates quite carefully between the Labour Standards Officer and inspectors. Such an attempt to amend the Ordinance by Regulations is not acceptable.

Section 4. Authorized by paragraph 49(1)(a) however for continuity the section should be included in the Ordinance with similar sections.

Section 5. Authorized by section 49(1)(f) and acceptable.

C.O. 1969/289

This Order excludes three companies from "the maximum hours of work" as is provided for by the Ordinance. It is not clear from the Order whether it is made under section 5(3)(f) or under section 6(2). C.O. 1978/86 amends this Order by adding an additional company, again, the authority is not cited.

Under section 6(2) the matter must be referred to the Advisory Board first however there is no reference to this having been done. Your Committee recommends the use of this power be carefully and thoroughly reviewed by the Special Committee on Labour Standards. Further any such Order should reflect the precise section under which it is made.

C.O. 1972/304

The authority for this Order exempting "persons engaged in the business of Guiding and Outfitting" from Part I of the Ordinance (Hours of Work) is section 5(3)(f). Your Committee recommends that this and similar total exemptions from "Hours of Work" be thoroughly reviewed by the Special Committee on Labour Standards.

C.O. 1973/156

The authority for this Order is section 49(1)(e). The Order should be reviewed for clarity and completeness before consolidation.

C.O. 1974/115

This Order states no authority on its face. Its purpose is to define "continuous operation".

It is the view of your Committee that the administration has tried to use the general regulation making power to amend the Ordinance. The words "continuous operation" are used in section 31 of the Ordinance. These words are not defined in the Ordinance. Your Committee does not consider this to be a proper use of a regulation making power. Your Committee considers legislative amendment to be the proper course for such a definition and recommends this Order be immediately repealed.

C.O. 1974/175

This Order also finds its authority in section 6, section 40 and section 49(1). The Order while granting an exemption attempts to retain some limits. Your Committee recommends this and similar orders be thoroughly reviewed by the Special Committee on Labour Standards before the Regulations are consolidated.

Your Committee further recommends the Order be amended to reflect its authority.

C.O. 1974/240

This Order was passed in order to permit employees to provide a four day work schedule. Although no specific statutory authority exists such action is at least partially contemplated by section 5(3)(f), 6(1) and 49(1) of the Ordinance. Your Committee considers this Order to be a reasonable use of a general regulation making power. Any future legislation should carefully consider such a concept and make provision for it in the Ordinance.

C.O. 1975/264

This Order is in your Committee's opinion based in section 5(1)(f) of the Ordinance, although no authority is cited in the Order, since it is only by totally removing the employees designated from the provisions of Part I "Hours of Work" that it is permissible to require employees to work 12 hours per day.

Since Part I does not apply the approval of the Advisory Committee is not required.

C.O. 1975/16

Sets fees and travel expenses for Labour Standards Advisory Board. The only authority is the general regulation making power contained in section 49(1). Section 47 provides for the appointment of such a Board but makes no provision for allowances or expenses.

This is in your Committee's opinion an acceptable use of a general regulation making power to fill in the obvious "legislative gap". Your Committee considers this case to be entirely separate from C.O. 1974/115 above in that here the legislature provided for such a Board but simply made no provisions for allowances or expenses. In C.O. 1974/115 the definition involved substantially alters the existing law without reference to this House.

C.O. 1976/52

This Order exempts employees in the industries of exploration and security from the provisions of Part I of the Ordinance "Hours of Work" where it is a provision of a collective agreement or by the consent of the majority of the employees. The authority for this Order is section 5(3).

C.O. 1976/265

This Order purports to exempt Whitehorse Copper Mines Ltd. from the provisions of section 9(2) of the Ordinance which reads as follows:

"9(2) No employer shall require or permit an employee engaged in mining operations underground in a shaft or tunnel to be at his disposal for work in excess of the standard hours of work."

No authority for this Order is cited or could be found by your Committee.

In your Committee's view this Order is an attempt to amend the Ordinance by use of the general regulation making power contained in section 49(1) which states:

"49(1) The Commissioner may make such regulations as he deems necessary for carrying out the provisions of this Ordinance..."

Your Committee considers this Order to be an improper attempt to amend the Ordinance by Regulations. Your Committee recommends this Order be immediately revoked and that such abuses of the general regulation making power cease forthwith.

C.O. 1977/102

This Order purports to create a basis for determining minimum wages to be paid to taxi drivers paid on a commission basis.

No authority for this Order is cited.

Since section 4 of the Order permits drivers to be employed up to 12 hours per day the Order must be made under section 5(3)(f) which would exempt drivers from the application of Part I of the Ordinance.

No where in the Order are the number of "regular hours" of work for taxi drivers stated.

Your Committee recommends immediate review of this Order. Your Committee recommends the Order be amended to reflect its authority and all other necessary information to enable it to be properly applied.

C.O. 1977/124

The Order purports to exempt Cogasa Mining Corporation from the provisions of section 6(1) of the Ordinance "to the extent of permitting its employees to work 144 hours in a 12 day period, provided that the employees are granted 2 days of rest in each period of 14 days."

Section 6(1) states:

"An employee may be employed in excess of the standard hours of work but, subject to section 10 (dealing with emergencies) the total hours that may be worked by an employee shall not exceed ten hours in a day, sixty hours in any week and two hundred and sixty hours in any month or such fewer number of hours..."

Since obviously a Cogasa Mining Corporation employee would be working well in excess of the maximum hours permitted by section 6 the Order is illegal and must be immediately repealed. Further although section 6 permits an excess to the standard hours of work it does not make provision for an "exemption" from the Ordinance.

C.O. 1977/134

This Order attempts to do for Territorial Gold Placers Ltd. what C.O. 1977/124 does for Cogasa Mining Corporation.

Your Committee makes the same comments as apply to C.O. 1977/124 and recommends its immediate repeal.

C.O. 1977/151

This Order authorized Elvins Equipment Sales to average the standard hours of work for Partsman and Janitor.

The authority for this Order is section 7(1) of the Ordinance.

The face of the Order does not indicate whether the Commissioner consulted with the Advisory Board before implementing the Order as section 7 requires.

Your Committee recommends the Order be amended to reflect its authority, the necessary consultation and be consolidated.

C.O. 1977/152

This Order authorizes Alas/Kon Lodges Ltd. to average the weekly standard hours of its employees.

Your Committee questions how 12 days work plus 3 days off (or 15 days) can be considered averaging over a two week (14 day) period.

Your Committee recommends this Order be reviewed for compliance with section 7, amended to reflect its authority, the necessary consultation and be consolidated.



C.O. 1977/159

This Order exempts Foothills Pipeline Yukon Ltd. from section 6(1) of the Ordinance for completing an investigation of fish resources.

This Order appears to be invalid and illegal in that section 6(1) does not permit an "exemption" from the hours of work but only permits certain excesses under certain conditions of the standard hours of work.

Possibly what was intended was an exemption under section 5(3)(c).

Although this Order would appear to be a dead issue in 1978 (it was revoked by C.O. 1978/12) your Committee recommends the administration review the file, determine what was required and correct their internal procedures to ensure such errors are not repeated.

This Order is an excellent example of errors which are made when the specific authority for a regulation or order is not cited on its face.

C.O. 1977/188

Permits Carmacks Hotel Limited to average hours of work over 2 weeks. The authority for this Order is section 7. The Order should be amended to reflect its authority, the consultation required and then consolidated and your Committee so recommends.

C.O. 1977/201

This Order authorizes K. Viney Contracting Ltd. to exceed the maximum hours of work to the extent of six, eleven hour shifts per week in October and November 1977.

The wording of the Order implies it is made under section 6(1) however since the 10 hour per day maximum of section 6(1) is exceeded it must be presumed the Order is made under section 5(3)(f).

Your Committee strongly recommends the authority for all regulations and Orders be cited in the text to eliminate such confusion. Your Committee further recommends the administration review this Order and its procedures to ensure such problems do not arise again.

C.O. 1977/228

This Order permits Adero Drilling & Engineering Co. Ltd. to exceed the standard hours of work. Your Committee re-iterates its comments on C.O. 1977/201.

Your Committee recommends this Order be reviewed, amended to cite its authority and consolidated.

C.O. 1978/12

See comments on C.O. 1977/159.

C.O. 1978/13

This Order permits Yukon News Ltd. to average hours of work over 2 weeks.

The authority for this Order is section 7.

Your Committee recommends this Order be amended to properly reflect its authority, the consultative process required by section 7 and then be consolidated.

C.O. 1978/86

See comments on 1969/285.

Your Committee has reviewed a number of Orders made under section 5(3)(f) which permits "a person or class of persons as may be designated by the Regulations as persons or classes of persons to which this Part does not apply."

The word Part as used here refers to section 5-10 inclusive being Part I "Hours of Work".

When an employer or industry is exempted by Regulation from Part I "Hours of Work" there is no process by which such action can be reviewed.

Your Committee considers that such broad power must be used sparingly and precisely.

When an Order is made under section 5(3)(f) that fact should be clearly reflected on its face.

Your Committee has also found a number of Orders which appear to be made under section 6. Your Committee recommends the administration review carefully the requirements of section 6 and ensure that existing Orders are suitably amended and new Orders written so that

- (1) they reflect their authority,
- (2) the recommendation of the Advisory Board as required is included; and
- (3) the maximum hours specified in section 6(1) are observed.

Your Committee further recommends that when Orders permitting "averaging of standard hours of work" are being amended or created they

- (1) reflect their authority;
- (2) reflect the consultative process required;
- and
- (3) comply with the limitations of section 7 in all respects.

Your Committee recommends that Orders 1968/116, section 3, 1974/115 and 1976/265 which attempt illegally to amend the Ordinance by Regulations be immediately repealed and that the practice of attempting to amend the legislation of this House by Regulation cease forthwith.

Your Committee finally recommends that C.O.'s 1977/124, 134 and 159 be repealed and replaced by Orders made under the appropriate sections as they are illegal on their faces at present in the opinion of your Committee.

Your Committee believes this report illustrates exactly why it is so important that the specific authority for a regulation be stated in the face of the regulation if it is fairly short or perhaps as a marginal note in longer set of regulations such as those made under the Public Service Commission Ordinance. It is your Committee's opinion that the stating of the authority will force regulation drafters to review it sufficiently to reduce substantially the number of improper or vague regulations or sections of regulations.

Your Committee recommends that this report, its comments and recommendations be considered by the Special Committee on Labour Standards in the preparation of any new legislation.

Also, that a copy of the Report be transmitted to Dr. J. Hibberd,  
Minister of Consumer & Corporate Affairs, for his consideration and  
action.

Respectfully submitted

June 28th, 1978

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Bob Fleming,  
Chairman