

YUKON LEGISLATIVE ASSEMBLY

FIRST REPORT
OF THE
STANDING COMMITTEE
ON
STATUTORY INSTRUMENTS

3RD SESSION OF THE
24TH LEGISLATURE

THE STANDING COMMITTEE ON STATUTORY INSTRUMENTS
HAS THE HONOUR TO PRESENT ITS

F I R S T R E P O R T

On October 22, 1979, the Yukon Legislative Assembly ordered:

"THAT, pursuant to Standing Order 45, a Standing Committee on Statutory Instruments be established;

THAT the Honourable Members Mr. Tracey, Mr. Falle, and Mr. Fleming be appointed to the said Committee;

THAT the said Committee be empowered to sit during intersessional periods and to report from time to time;

THAT the Clerk of the Legislative Assembly be responsible for providing the necessary support services to the said Committee;

THAT the said Committee review all new regulations as they are published; and

THAT the said Committee review such other existing or proposed regulations as are referred to it by Order of the Assembly."

Your Committee has reviewed 55 Commissioner's Orders and Orders-in-Council issued between October 22, 1979 and February 25, 1980 and respectfully submits its findings to this House.

Your Committee has adopted, to assist it in its work, the guidelines of the McRuer Report for the review of subordinate legislation¹. A synopsis of the guidelines are appended to this report for the information of Members of this House as Appendix I.

Commissioner's Orders and Orders-in-Council are reviewed alphabetically under the name of their parent Ordinance and numerically where there is more than one Order under an Ordinance.

Of the 55 Orders reviewed by your Committee, 42 Orders involve some substantive change or addition to the regulations under the parent Ordinance. The handbook entitled How to Prepare Statutory Instruments, (last revised June 1979) requires that where new regulations are being promulgated under an Ordinance or substantive amendments are being made to regulations, that the enabling sections in the parent legislation be set out in the Order-in-Council or regulations as may be appropriate. Of the 42 substantive changes to regulations reviewed three Orders-in-Council - 1980/02 Interpretation Ordinance, 1980/46 Game Ordinance, and 1979/14 Plebiscite Ordinance, set out the legislative authority as required in the handbook.

Where your Committee has no other comment or recommendation with respect to a particular Order, other than the fact that its legislative authority has not been noted, the Order has been listed and this fact reflected.

¹Report of the Royal Commission on Civil Rights, Ontario, 1968, commonly called the McRuer Report.

AREA DEVELOPMENT ORDINANCE

1. Commissioner's Order 1979/204 under the Area Development Ordinance

Your Committee has no recommendation with respect to this Order.

2. Order-in-Council 1979/53 under the Area Development Ordinance

This Order amends a previously existing Commissioner's Order 1978/110 made under the same Ordinance - permitted uses of lands and premises.

In your Committee's opinion, this Order, together with several others under this Ordinance, creates new policy rather than giving effect to a policy which is established by the Ordinance. This Order also, in your Committee's view, makes an unusual and unexpected use of the regulation power permitted within the Ordinance which is limited and specific. The Area Development Ordinance contains no general regulation making power. In the opinion of your Committee, this regulation stretches the authority of the Ordinance to its absolute limit, contrary to the McRuer Report guidelines.

At subsection 4(2) of the Ordinance, the Commissioner is empowered to designate a person by name or class to make certain decisions or hear certain appeals under the Ordinance. The powers given to the Director of Local Government at subsections 3, 4, 5, and 7 of the Order are not in compliance with the regulation making powers of the Area Development Ordinance.

3. Order-in-Council 1980/14 under the Area Development Ordinance

Your Committee has no recommendation with respect to this Order.

4. Order-in-Council 1980/45 under the Area Development Ordinance

This Order establishes the Callison Industrial Development Area.

Your Committee has the following comments with respect to this Order:

- (a) The title page at Section 1, the word "declared" should read "designated" for conformity with its parent legislation.
- (b) The numbering and paragraphing of the regulations attached to this Order is inconsistent with the style prescribed in the handbook entitled How to Prepare Statutory Instruments.
- (c) There is no authority in the Area Development Ordinance for the appointment of a development officer.
- (d) In your Committee's opinion in (Interpretation), items 4.1, 4.8.3, part of 4.9, 4.10, are all beyond the powers set out in the Area Development Ordinance.

While the Ordinance provides for certain designations by the Commissioner, there is no authority for a person designated by the Commissioner to then designate a third person to carry out functions.

In the view of your Committee, these sections are beyond the powers conferred by the Ordinance. Even if they were not, would:

1. Constitute an unusual and unexpected use of regulatory power; and
2. Introduce major policy which would be properly found in legislation.

- (f) In the view of your Committee Sections 5, 6, and 7 are all beyond the powers conferred by the Ordinance wherever they speak of development permits and officers.
- (g) Section 8 of this Order on enforcement is a paraphrase of Section 5 of the Area Development Ordinance. Such haphazard rewriting of existing legislation is totally unnecessary and

dangerous in that even small errors can create confusion and misinterpretation.

- (h) It is the view of your Committee that where a criminal penalty exists in regulations as is done in Section 9 of these regulations, reference should be made to the section of the Ordinance permitting such a penalty. In this case it is Section 6(1) of the Area Development Ordinance.
- (i) Section 11 of this Order, in your Committee's view is unacceptable in that by regulation it attempts to reduce the use of a non-conforming building and there is no specific authority for this in the Ordinance.
- (j) Section 12 (Miscellaneous Provisions), of this Order is entirely beyond the intent of the regulation making provisions of the Area Development Ordinance.
- (k) Section 13.3.4 (Establishment of Zones and Uses), is, in your Committee's view, beyond the authority of the Area Development Ordinance.

5. Order-in-Council 1980/47 under the Area Development Ordinance

Your Committee is reserving comments on this Order at the present time and will make a recommendation to this House in the future.

Your Committee recommends that Orders-in-Council 1979/53 and 1980/45 be amended to reflect the regulation making authority of the Area Development Ordinance and to conform to the handbook, How to Prepare Statutory Instruments.

In the view of your Committee from the regulations under the Area Development Ordinance which have been reviewed to date, your

Committee believes that there may be substantial irregularities in other regulations under this Ordinance. Your Committee asks this House to consider whether the House wishes to authorize the Committee to examine in depth all regulations under the Area Development Ordinance.

In the opinion of your Committee, it would appear that the proper solution may be a new Area Development Ordinance wherein the government's policy can be properly debated in the forum of this House.

EXECUTIVE COUNCIL

6. Orders-in-Council 1979/02 and 1979/08
Executive Council of Yukon

Your Committee has no recommendation with respect to these Orders since they are beyond the terms of reference of your Committee.

FINANCIAL ADMINISTRATION ORDINANCE

7. Commissioner's Order 1979/202 under the
Financial Administration Ordinance

Your Committee has no recommendation with respect to this Order.

8. Order in Council 1979/41 under the Financial Administration Ordinance

This Order amends Commissioner's Order 1979/71 setting out signing authorities.

The introductory paragraph of this Order is incorrectly written and should be corrected to reflect its authority under the Financial Administration Ordinance, not an act by the Commissioner on the

instructions of the Minister of Indian Affairs and Northern Development, pursuant to Section 4 of the Yukon Act.

Your Committee recommends that this Order be amended to conform to the handbook How to Prepare Statutory Instruments.

9. Order-in-Council 1979/45 under the Financial Administration Ordinance

The purpose of this Order is to provide for the emergency sale of goods and services at the Ogilvie River Maintenance Camp on the Dempster Highway.

The Financial Administration Ordinance does contain a general regulation making power at subsection 49(1) and further at subsection 8(1) allows for the setting of fees for services available to the public.

In the view of your Committee, while this might be a unique use of the power of subsection 8(1) of the Ordinance, it is not contrary to the McRuer Report guidelines and when combined with the general regulation making power in subsection 49(1) there is adequate authority.

On this Order, under the title "Order-in-Council", we recommend it be amended to read "Financial Administration Ordinance" not "Executive Council of Yukon".

10. Order in Council 1980/60 under the Financial Administration Ordinance

This Order amends an existing Commissioner's Order 1977/144, Schedule I, to provide for payments to Ambulance Drivers and Attendants.

The only possible authority for this Order is subsection 49(1), the general regulation making power of the Ordinance.

In the view of your Committee, this Order constitutes an unusual use of the general regulation making power, contrary to the McRuer Report guidelines.

Your Committee recommends Section 1 & Subsection 2 of Schedule I should be rewritten for clarity.

FIRE PREVENTION ORDINANCE

11. Order-in-Council 1980/59 under the Fire Prevention Ordinance

Your Committee has no recommendations with respect to this Order.

GAME ORDINANCE

12. Order-in-Council 1980/46 under the Game Ordinance

This Order sets up the Wildlife Advisory Committee.

Section 2 of these regulations is unnecessary and redundant. Section 8 of the regulations is self-evident and unnecessary. In general the wording with the regulations is unclear and ambiguous. For example, matters referred to in Sections 11 and 12 are obviously linked together and yet the drafting does not reflect this. Section 16 should make reference to both the Commissioner and Director.

In the view of your Committee it should be obligatory on the Director at Section 22 to provide back up and support services to the Committee if it is to have any meaningful existence.

In the view of your Committee, the purpose of these regulations is to fix the remuneration that be paid to the Committee and for transportation and other related expenses, and these items should be set out in Section 24.

Your Committee recommends that this Order be reviewed and amended.

HOSPITAL INSURANCE SERVICES ORDINANCE

13. Order-in-Council 1980/56, under the Hospital Insurance Services Ordinance

Your Committee has no recommendations with respect to this Order.

14. Order-in-Council 1980/57 under the Hospital Insurance Services Ordinance

This Order sets out-patients fees.

The style of this Order is not consistent with the handbook, How to Prepare Statutory Instruments:

- (a) In the Order itself, the paragraphs are not numbered.
- (b) In the Schedule attached the paragraphs are not numbered or properly subparagraphed.
- (c) The authority for this Order is not set out.

Your Committee recommends this Order be amended to conform with existing standards.

INCOME TAX ORDINANCE

15. Order-in-Council 1980/13, under An Ordinance Respecting Income Tax

Your Committee has no recommendation with respect to this Order.

INTERPRETATION ORDINANCE

16. Order-in-Council 1980/02 under the Interpretation Ordinance

Your Committee has no recommendation with respect to this Order.

JUSTICE OF THE PEACE COURT ORDINANCE

17. Order-in-Council 1979/56 Justice of the Peace Court Ordinance

Your Committee has no recommendation with respect to this Order.

LABOUR STANDARDS ORDINANCE

18. Order-in-Council 1979/34 under the Labour Standards Ordinance

This Order exempts the City of Whitehorse Firefighters from Part 1 of the Ordinance.

The introductory paragraph of this Order is incorrect in referring to the Commissioner exercising powers under Section 4 of the Yukon Act

and should reflect its proper authority under the Labour Standards Ordinance.

This Order is an example of why the handbook, How to Prepare Statutory Instruments, requires regulations to reflect the Section of the Ordinance on which they rely for their authority.

19. Order-in-Council 1980/28 under the Labour Standards Ordinance

Your Committee has no recommendation with respect to this Order.

20. Order-in-Council 1980/61 under the Labour Standards Ordinance

This Order exempts Foothills from Part 1 of the Ordinance.

Your Committee recommends that the authority for the regulation be reflected in the Order.

Your Committee recommends with respect to this Order and Order-in-Council 1979/34 and 1980/28 that such matters be reviewed by the Advisory Board set up under the Labour Standards Ordinance and that if this step has been taken, it should be reflected in the Order.

LANDS ORDINANCE

21. Commissioner's Order 1979/203 under the Lands Ordinance

Your Committee has reviewed this Order in detail and its parent Ordinance and can find no specific authority allowing the Commissioner to authorize anyone to exercise his powers under the Ordinance. In the view of your Committee, at best the authority for this Order is a combination of the powers set out in subsection 7(1) which states no person may claim an interest in Yukon Land because of negotiations, arrangements or agreements carried on or entered into by the Commissioner or on his behalf with respect to Yukon Lands prior

to execution of an agreement for sale and subsection 34(1) being a general regulation making power.

In the view of your Committee the most that Messrs. Livingstone and Freisen could be authorized to do is to execute on behalf of the Commissioner the documents listed in cases where the Commissioner has authorized such dispositions and the terms thereof.

In the opinion of your Committee even this would constitute an unexpected use of the regulation making power contrary to the principles laid out in the McRuer Report. Your Committee recommends this Order be reviewed and amended.

22. Commissioner's Order 1979/206 under the Lands Ordinance
Your Committee has no recommendation with respect to this Order.
23. Orders-in-Council 1979/62, 1979/63, 1979/64, 1979/65 and 1980/11 all under the Lands Ordinance

These Orders provide for transfers of lots from the Territorial Government to the Federal Government and its agents.

Authority for these Orders is subsection 14(4) of the Lands Ordinance.

The wording of the these Orders varies and since this would appear to be a reasonably regular function, your Committee recommends a proper precedent should be drafted in conformity with the handbook, How to Prepared Statutory Instruments, which can then be used as required.

Your Committee believes from the regulations already reviewed under the Lands Ordinance that there may be substantial irregularities in other regulations under this Ordinance and your Committee asks this House to consider whether the House wishes to authorize the Committee to examine in depth all regulations under the Lands Ordinance.

In the opinion of your Committee it would appear that the proper solution may be a new Lands Ordinance wherein the Government's policy can be properly debated in the forum of this House.

LIQUOR ORDINANCE

24. Order-in-Council 1979/55 under the Liquor Ordinance

This Order amends an existing Order, Commissioner's Order 1977/37 by prescribing a new Personal History Report Form.

Your Committee recommends unnecessary items including the requesting of a Social Insurance Number, whether the applicant or spouse has ever been arrested, demanding details of other business interests unrelated to a liquor outlet should be deleted from this form.

LOCAL IMPROVEMENT DISTRICT ORDINANCE

25. Order-in-Council 1979/47 under the
Local Improvement District Ordinance (Teslin)

Your Committee has no recommendation with respect to this Order.

MAGISTRATE'S COURT ORDINANCE

26. Order-in-Council 1979/58 under the Magistrate's Court Ordinance

Your Committee has no recommendation with respect to this Order.

MEDICAL PROFESSION ORDINANCE

27. Order-in-Council 1980/32 under the Medical Profession Ordinance

Your Committee has no recommendation with respect to this Order.

28. Order-in-Council 1980/34 under the Medical Profession Ordinance

Your Committee has no recommendation with respect to this Order.

MINING SAFETY ORDINANCE

29. Order-in-Council 1979/19 under the Mining Safety Ordinance

Your Committee has no recommendation with respect to this Order.

MUNICIPAL ORDINANCE

30. Order-in-Council 1979/40 under the Municipal Ordinance

This order provides for the appointment of an Administrator for the City of Dawson.

In the opinion of your Committee, Sections 2(c) and 3(b) are without any authority in the parent Ordinance.

Regulations should quote their authority in the parent Ordinance.

The style and drafting of this Order is not up to the usual standards prescribed by the handbook, How to Prepare Statutory Instruments.

31. Order-in-Council 1980/64 under the Municipal Ordinance

Your Committee has no comments with respect to this regulation.

Since Orders 1979/40 and 1980/64 have served their purpose, your Committee is not recommending amendments.

NOTARIES ORDINANCE

32. Commissioner's Order 1979/201 under the Notaries Ordinance

This Order sets fees and makes provisions for Notaries who are government employees.

Your Committee recommends that subsection 2 of this Order be removed as it is redundant to Section 17 of the Notaries Ordinance.

PARKS ORDINANCE

33. Order-in-Council 1979/72 under the Parks Ordinance

Your Committee has no recommendation with respect to this Order.

PLEBISCITE ORDINANCE

34. Order-in-Council 1979/14 under the Plebiscite Ordinance

This order provides for a plebiscite in Old Crow on drinking.

In view of the fact that this Order has served its purpose and is now a dead issue, your Committee's comments are made solely for the purpose of improving any new regulations which may be made for future plebiscites.

Consistent with the wording of the parent Ordinance, your Committee recommends that in future, such Orders be drafted so that the opening

paragraph reads "Pursuant to the Provisions of Section 3 of the Plebiscite Ordinance, the Commissioner and Executive Council is please to and doth hereby direct as follows:".

In the view of your Committee, Section 6 should have been much more specific as to which Federal Election Voters' List was being referred and more precise in setting out the qualifications for an elector in the plebiscite.

In the view of your Committee, the provisions of Section 12 should be seriously reconsidered for any future plebiscite and should require:

(a) That the electoral officer explain the mode of voting to every elector automatically, not just when requested to do so;

(b) That where electors are unable to read or incapacitated by blindness or other physical handicaps, either the electoral officer or a friend or relative assist in the manner of voting consistent with our own Elections Ordinance;

(c) That for future elections the provisions of Section 22 be reconsidered and clarified.;

(d) That in future the provisions of Section 26 should be dealt with in the regulations calling for the plebiscite and not left to be provided at some indefinite time in the future;

(e) That the provisions of Section 27 be seriously reconsidered and that any forms required for the purpose of the regulations should be prescribed at the time the regulation comes into force.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ORDINANCE

35. Order-in-Council 1979/73 under the Reciprocal Enforcement of Maintenance Orders Ordinance

Your Committee has no recommendation with respect to this Order.

SCHOOL ORDINANCE

36. Order-in-Council 1980/04 under the School Ordinance

This Order alters criteria for the Teacher Qualification Board.

Your Committee recommends this Order be redrafted to conform with the handbook, How to Prepare Statutory Instruments.

ASSESSMENT AND TAXATION ORDINANCE

37. Commissioner's Order 1979/205 under the Taxation Ordinance

Your Committee has no recommendation with respect to this Order.

38. Orders-in-Council 1979/28, 1979/30, 1980/17, 1980/18, 1980/19, 1980.20 1980/21 and 1980/31 under the Assessment and Taxation Ordinance

Your Committee has no recommendation with respect to any of the above noted Orders.

39. Order-in-Council 1980/22 under the Assessment and Taxation Ordinance

This Order extends the sitting of the Assessment Review Board for the Teslin area.

Your Committee recommends that where one Order-in-Council is amending another, specific reference should be made to the Order-in-Council

being amended in conformity with the handbook, How to Prepare Statutory Instruments.

40. Order-in-Council 1980/23 under the Assessment and Taxation Ordinance

This Order sets the annual fees for assessors' services.

Since the Order was made on January 25, 1980 the parent Ordinance should be referred to as the Assessment and Taxation Ordinance both where the title of the Ordinance appears and where the reference is made in the opening paragraph and not the Taxation Ordinance as it presently appears.

Your Committee recommends that when this Order is amended, the wording be corrected.

WORKER'S COMPENSATION ORDINANCE

41. Commissioner's Order 1979/207 under the Worker's Compensation Ordinance

This Order brings into force new first aid regulations.

Your Committee understands that a major revision of these regulations is in process and will wait the specific direction of this House to review the present draft or any proposed draft pursuant to our terms of reference.

42. Order-in-Council 1980/01 under the Worker's Compensation Ordinance

Your Committee has no recommendation to make with respect to this Order.

43. Order in Council 1980/62 under the Worker's Compensation Ordinance

This Order sets the amount of compensation payable in 1980.

There is authority for this Order under subsection 79(4) of the Worker's Compensation Ordinance. The drafting of this Order is defective:


- (a) The Schedule is not numbered;
- (b) Its style is inconsistent with the format established by the handbook, How to Prepare Statutory Instruments;
- (c) The Order should reflect its authority on its face.

Your Committee recommends:

- (a) This type of regulation be drafted in such a way it can be understood without complicated reference to the Ordinance;
- (b) That as the fees are set annually, the Order prescribing the 1981 payments be drafted in conformity with the handbook, How to Prepare Statutory Instruments.

Your Committee further recommends that a report outlining the Government's response to this Committee's findings and recommendations be tabled in the Assembly as soon as possible. Intersessionally the report may be transmitted to the Chairman of the Standing Committee on Statutory Instruments but, as well, should still be tabled at the next sitting of the Assembly. This feedback will prove very beneficial to your Standing Committee on Statutory Instruments.

Respectfully submitted,


Howard Tracey, Chairman

April 10, 1980.

APPENDIX I

SYNOPSIS OF GUIDELINES FOR THE REVIEW OF SUBORDINATE LEGISLATION: Chapter 26, Royal Commission on Civil Rights, Ontario, 1968.

- (a) They should not contain provisions initiating new policy, but should be confined to details to give effect to the policy established by the statute.
- (b) They should be in strict accord with the statute conferring power, particularly concerning personal liberties.
- (c) They should be expressed in precise and unambiguous language.
- (d) They should not have retrospective effect unless clearly authorized by statute.
- (e) They should not exclude the jurisdiction of the Courts.
- (f) They should not impose a fine, imprisonment or other penalty.
- (g) They should not shift the onus of proof of innocence onto a person accused of an offence.
- (h) They should not impose anything in the way of a tax (as distinct from fixing the amount of a licence fee or the like)
- (i) They should not make any unusual or unexpected use of delegated power.
- (j) General powers should not be exercised to establish a judicial tribunal or administrative tribunal.

