

YUKON LEGISLATIVE ASSEMBLY

THIRD REPORT
OF THE
STANDING COMMITTEE
ON
STATUTORY INSTRUMENTS

4TH SESSION OF THE
24TH LEGISLATURE

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P R E F A C E

The Standing Committee on Statutory Instruments has reviewed 154 Orders-in-Council signed between September 29, 1980 and September 12, 1981.

The reporting format has been altered to include:

- 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 72 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 63 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 19 Orders-in-Council by Ordinance title and number for which we have no comment.

Since the inception of its work on November 6, 1979, your Committee has observed:

- a) Some improvement in the general quality of the Orders coming to it for review; and
- b) In some departments, an effort is being made to comply with the handbook "How to Prepare Statutory Instruments."

Area Development Ordinance

In the past, your Committee has commented extensively on the various orders under the Area Development Ordinance which it has reviewed. As indicated in Appendix B, we reiterate all of our previous comments about the orders exceeding the scope and purpose of the regulation making powers set out in the Ordinance which does not include a general regulation making power.

Your Committee has requested and received a report from Michael Clegg, Barrister & Solicitor, who strongly supports our view that the entire Ordinance and its regulations should be reviewed and new legislation drafted.

His report also contains extensive discussion and bibliography of the accepted criteria for Parliamentary review of delegated legislation.

To summarize, it is your Committee's view that the Orders under the Area Development Ordinance:

- a) Exceed the authority of the parent Ordinance;
- b) Create a development officer with delegated powers which are offensive and improper and are in excess of the specific powers of the parent Ordinance;
- c) Create, contrary to good practice, offences and punishments by regulation without specific authority in the parent Ordinance;

- d) Are vague and badly drafted in many places; and
- e) Contain sections which conflict within specific orders and with the parent Ordinance.

The maps circulated are so poorly reproduced as to be almost unreadable.

If a system cannot be developed to make maps easily readable, each and every regulation map should contain a reference to the location where a proper map can be obtained.

Financial Administration Ordinance

Again your Committee is concerned with the numerous orders reviewed under this Ordinance which are:

- a) without authority; or
- b) the regulation constitutes an unusual use of the regulation making power.

All of the existing orders under this Ordinance are in urgent need of review and consolidation.

Your Committee recommends that both the Ordinance and the regulations be assessed to determine what should properly be in legislation and what is appropriate for regulations.

Game Ordinance

From the time your Committee has been functioning it has noted large numbers of amendments to regulations under the Game Ordinance. Your Committee recommends:

- a) For public information, it is necessary that these amendments be consolidated on a regular basis; and
- b) That when amendments are being prepared the department do the consolidation themselves.

Labour Standards Ordinance

Your Committee notes the general style of these orders are improving and effort is being made to to cite authority.

Your Committee recommends:

a) That when authority of several sections is being relied on the department cite the full authority; and

b) the recommendation of the advisory board be stated in each and every order under this Ordinance which creates an exception to the Ordinance.

Lands Ordinance

Your Committee recommends:

a) Under this Ordinance, (as well as several others detailed in our report) precedents should be developed and then consistently applied for routine functions; and

b) When substantial amendments are passed, consolidations - are undertaken.

Our general comments may be summarized as follows:

1. Your Committee recommends strongly that the Government:
 - a) Immediately adopt the current handbook, "How to Prepare Statutory Instruments" or any other appropriate manual;
 - b) Take steps to insure that it is used in the preparation of all Statutory Instruments;
 - c) Require that the legislative authority for the regulation be cited either in the Order-in-Council, or if more appropriate, in the regulations attached thereto;

- d) Require that where a number of legislative sections are being relied on, the various authorities be cited as marginal notes beside the substantive regulations; and
- e) Require that where forms are being prescribed, the forms themselves reflect their legislative authority.

In your Committee's experience in the last two years we have consistently found that:

- a) where authority has been cited in the material it is rare that the material exceeds the legislative authority of the parent Ordinance; and
- b) where quotations from the parent Ordinance have been used instead of paraphrasing, the regulations have been clear and concise without:
 - (i) abusing the regulation making powers, or
 - (ii) exceeding the regulation making powers of the parent Ordinance.

Your Committee strongly recommends that direction be given to the Government to implement a major review, and consolidation of all regulations by the departments responsible with emphasis placed on repealing and replacing existing regulations 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 forwarded to the Committee. This will be beneficial to your Standing Committee on Statutory Instruments.

Respectfully submitted,


Peter Hanson, Chairman

APPENDIX A
Numerical Code to the Third 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 re-drafting.
- 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.

APPENDIX B

To be interpreted with the key in Appendix A

Area Development Ordinance

1980/257: 1, 2, 4, 5, 9, 13
/263: 1, 2, 4, 5, 6, 13
/313: 17

1981/12/81/155/164/179: 17

Assessment and Taxation Ordinance

1981/34/35: 1, 14
/36: 1, 15
/39: 1, 15 - The Committee prefers the drafting of this order for use as a precedent.
/79: 1, 3, 16 - Legislation should be amended to provide specific section for payment of board members.

Boiler and Pressure Vessels Ordinance

1980/303: 1, 16 - Legislation should be amended to include all policy presently set out in the regulations.

Community Assistance Ordinance

1981/135: 1, 6, 14

Elections Ordinance, 1977

1981/25: 18

Financial Administration Ordinance

1980/261: 1, 18
/276: 1, 3, 18 - Where a benefit is being conferred on a small group it should be publically debated as it constitutes new policy.
/282: 4
/320: 4 - Regulations Ordinance should have a special section for orders of this nature which are really a public record of a declaration, or where the Commissioner is exercising a power granted by the Yukon Act or other Federal legislation.

APPENDIX B

1981/90: 1, 18 - Typographical error should read O.I.C. 1981/90 not 1980/90.

/92 and /182 (which amends 92): 1, 3

/117: 1, 18 - Order should be amended in the title to refer to the Income Tax Ordinance as well.

/174: 1 - Section 1 of this order should read "Schedule 1 of Order-in-Council 1981/160"

/198 - Recommendation made in Second Report: "Committee recommends that the contract for the Yukon Housing Corporation should be part of the 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" is adopted and repeated.

Fuel Oil Tax Ordinance

1980/316: 18 - Whenever exact phraseology of the Ordinance is directly cited in an Order, quotation marks are to be used at the beginning and end of the quotation. The Order should state the proper title of the Ordinance.

Game Ordinance

1980/262: 7

1981/49: 1, 18 - Year order signed should be stated.

/50: 1, 18 - Year order signed should be stated.

/72: 1, 18 - Corrections: Section 2, line 12 "meters" should read "metres"; Subsection 13(3), vague and needs re-drafting for clarity with Section 53(2). When major changes are being made as in this case, the whole part should be repealed and replaced.

It is your Committee's view that the Sections dealing with firearms exceed the authority of the Game Ordinance.

Health Care Insurance Plan Ordinance

1981/148 and /177 which amends 148: 1 and 18

Hospital Insurance Services Ordinance

1981/204: 1, 18

APPENDIX B

Justice of the Peace Court Ordinance

1981/180: 1 - Authority should be cited on each form for convenience.
/184: 1, 18, - Marginal notes citing authority for these sections should be included in the regulations. Orders-in-Council 1981/180 and /184 should have been combined into one order.

Labour Standards Ordinance

1980/259

1981/37, /121, /127, /128, /129, /167, /168, /201:
1, 17 - Each order should cite the full authority being relied upon. Every order should reflect the recommendation of the Advisory Board as required by the Ordinance.

O.C. 1981/127 and /129. These orders should not be made retroactively.

Lands Ordinance

1980/311/312: 1, 14, 15, 18

1981/08/106/140/146/147/157/212/214

A general precedent for land transfers should be developed in conformity with the handbook "How to Prepare Statutory Instruments."

The wording of the Ordinance and the wording of the Sections of regulations should be compatible and in conformity.

Where major changes are being made, regulations should be repealed and replaced.

Liquor Ordinance

1980/290

The wording of the preamble should conform with the Liquor Ordinance and the Local Improvement District Ordinance.

APPENDIX B

Miscellaneous Statute Law Amendment Ordinance, 1980

1980/307/326: 1, 15, 18

1981/27: 1, 15, 18 - Section 10 of the 1980 Ordinance has been proclaimed twice (1980/326 and 1981/27)

Motor Vehicles Ordinance

1980/329: 18

1981/24: 18

/56: 1, 18 - Sections 82 to 84 be re-drafted to correct typographical errors and eliminate conflicts within Section 84.

Municipal Ordinance

1981/209: 1, 7

Optometry Ordinance

1981/220: 1, 2, 5 - This Ordinance has no general regulation making power and no definition of what a resident is within the Ordinance itself, therefore order exceeds authority of Ordinance.

Recreation Development Ordinance

1981/05: 1, 7

School Ordinance

1980/272: 1 - The use of the word "delegated" makes this order defective, and it should be re-drafted.

Social Assistance Ordinance

1981/124: 1, 15, 18

Summary Convictions Ordinance

1981/76/77/139: 1, 18

The various orders should have been reduced to one or possibly two in conformity with the handbook, "How to Prepare Statutory Instruments".

APPENDIX B

Transport Public Utilities Ordinance

1980/297 is amended by 1980/314: 1 - References to sections both in the Ordinance and within the regulation are not in conformity with the handbook, "How to Prepare Statutory Instruments".

APPENDIX C

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

Assessment and Taxation Ordinance: 1980/323
1981/23/80/86/87/120/216

Cancer Diagnosis Ordinance: 1981/119

Child Welfare Ordinance: 1981/125

Community Assistance Ordinance: 1980/315

Condominium Ordinance: 1981/29

Co-operative Associations Ordinance: 1980/301

Corrections Ordinance: 1981/32/107

Dependants' Relief Ordinance: 1981/193

Elections Ordinance, 1977: 1980/328

Electrical Public Utilities Ordinance: 1981/173

Financial Administration Ordinance: 1981/160/205

Frustrated Contracts Ordinance: 1981/28

Game Ordinance: 1980/266
1981/99

Garnishee Ordinance: 1981/190/191

Health Care Insurance Plan Ordinance: 1981/210

Highways Ordinance: 1981/165/166

Income Tax Ordinance: 1980/318

Insurance Ordinance: 1981/144

Lands Ordinance: 1980/280/281/285
1981/145

Legal Aid Ordinance: 1981/33/101

Liquor Ordinance: 1981/07/16/22/41/45/68

APPENDIX C

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

Matrimonial Property and Family Support Ordinance: 1981/192

Medical Profession Ordinance: 1980/265

Motor Vehicles Ordinance: 1980/293
1981/57/213

Municipal Aid Ordinance: 1981/126

Municipal Employees Benefits Ordinance: 1980/325
1981/137

Partnership Ordinance: 1980/321

Public Service Commission Ordinance: 1980/270/271

Real Estate Agents' Licensing Ordinance: 1981/14

Reciprocal Enforcement of Judgments Ordinance: 1980/283

Reciprocal Enforcement of Maintenance Orders Ordinance: 1980/294/308
1981/19/20

School Ordinance: 1981/118

Securities Ordinance: 1980/273

Social Assistance Ordinance: 1980/268

Transport Public Utilities Ordinance: 1980/298
1981/172

APPENDIX D

Orders received for which the Committee has no comment

Area Development Ordinance: 1980/267

Assessment and Taxation Ordinance: 1981/202/203

Community Assistance Ordinance: 1981/74/93

Council of the Yukon Territory, An Ordinance Respecting the: 1981/46

Elections Ordinance, 1977: 1981/01/26

Financial Administration Ordinance: 1981/211

Game Ordinance: 1981/03

Liquor Ordinance: 1981/02/21

Municipal Employees Benefits Ordinance: 1981/51

Public Service Commission Ordinance: 1980/284

Social Assistance Ordinance: 1980/260

Students' Financial Assistance Ordinance: 1981/09

Workers' Compensation Ordinance: 1980/300/319
1981/60

