

SPECIAL COMMITTEE ON REGULATIONS

June 29, 1998

MINUTE NO. 4

9:00 a.m. - Room 10

1. **PRESENT:** Mr. Toth in the Chair and Members D'Autremont, Jess, Murrell, Ward and Whitmore.

Staff to the Committee

Ms. Margaret Woods, Clerk to the Committee

Mr. Bob Cosman, Legislative Counsel and Law Clerk

REGULATIONS FOLLOW - UP

2. **The Regulations Act Repeal (Part III) Regulations, 1995 – *The Regulations Act, 1989* – April 7, 1995**

It had been agreed at the Committee's February 20, 1997 meeting that no further action was necessary. However the Committee took note of the Minister's response in which he acknowledged the work of the Committee.

3. **The Rural Municipality Road Relief Assistance Program Regulations – *The Department of Highways and Transportation Act* – June 2, 1995**

Issue #1:

Subsection 4(1) of the regulations appears to grant the Minister an unguided discretion to approve or disapprove a claim for financial assistance.

The Committee noted that the deadline for submission of claims under this program had passed, rendering the section at issue largely inoperable. The Committee agreed to consider this issue resolved but further agreed to take notice of this issue in light of the possibility that a new similar program may be established in the future.

Issue #2:

Section 6 of the regulations stipulates that the municipality shall provide certain proof to the satisfaction of the Minister. The issue concerns the possibility that the Minister's decision will be insulated from review by the courts, in light of the latter's stated reluctance to "go behind a Minister's statement". Normally the authority to restrict appeals from a Minister's decision is expressly granted in the parent Act, and not authorized through a provision granting the power to prescribe terms and conditions.

The Committee took note of the Minister's response and the legal opinion from the Department of Justice which held that the regulations do not exclude the right of a superior court to review the decisions of the Minister. The Committee agreed to consider the matter resolved.

4. The Mental Health Services Amendment Regulations, 1995 – *The Mental Health Services Act* – June 9, 1995

Issue #1:

Section 3 of the regulations establishes nine mental health regions while the accompanying map details eleven mental health regions.

Issue #2:

The regulations failed to express the connection between the mental health regions established by sections 3(a) to (i) and the numbered areas shown on the map. Additionally, the map was not of sufficient scale or detail to enable a person to know where the boundaries actually fall on the ground.

The Committee reviewed the response from the Minister of Health in which he indicated that a review of the regulations in their entirety had begun to bring them in line with changes in health governance and the provision of health services and that a complete revision of the regulations was expected to be in place by the fall of 1997.

The Committee directed the legislative counsel to correspond with the Minister to remind him of the outstanding issue and to question the delay in putting into place the revised regulations.

5. The Canadian Electrical Code (Saskatchewan Amendments) Regulations, 1995 – *The Electrical Inspection Act, 1993* – September 22, 1995

Issue:

The issue concerns whether the enabling provisions of the Act authorize the making of regulations governing who was to pay for the electrical installations required by the regulations.

The Committee took note of the Minister's response, which indicated that sections 92 – 100(2) of the regulations had been identified as requiring amendment and then outlined what those changes would entail. The Committee then noted the opinion of the legislative counsel that the proposed changes effectively did indirectly what the regulations were not authorized to do directly.

The Committee accepted the recommendation of the legislative counsel and directed him to correspond with the Minister to raise its concerns and to seek further clarification of the proposed changes.

6. The Mineral Disposition Amendment Regulations, 1995 – *The Crown Minerals Act* – October 20, 1995

Issue:

Section 99.1(1) of the regulations authorize the Minister, under certain conditions, to grant an exemption from any expenditure requirements. The issue considered by the Committee was why the factors that are to be considered with respect to this exemption were not set out in the regulations.

The Committee reviewed the response of the Minister in which he stated that the Department of Energy and Mines had developed a guideline to judge the validity of applications and that the industry has been very supportive of the manner in which the regulations were administered. The Committee accepted the recommendation of the legislative counsel to consider the matter resolved.

7. The Water Power Amendment Regulations, 1988 – *The Water Power Act* – January 22, 1988

Issue:

The regulations provided for a calculation of water rental under a formula commencing January 1, 1987, which was retroactive to the creation of the regulations on January 22, 1988. There was no authorization in the Act for retroactive regulations to be made.

The Committee reviewed the response from the Minister in which he indicated that SaskWater was aware of the Committee's concern and was discussing the best way to bring about corrective legislative change. The legislative counsel advised the Committee that to date no legislative amendments have been enacted and undertook to monitor their enactment. The Committee further directed the legislative counsel to correspond with the Minister to follow-up on the status of the corrective action.

8. The Victims of Domestic Violence Regulations – *The Victims of Domestic Violence Act* – December 2, 1994

Issue:

The issue concerns whether the emergency intervention order form set out in the regulations sufficiently informs the respondent named in the order of his/her rights of re-hearing or appeal. The concern arises from the difference in emphasis granted to the rights of re-hearing or appeal, which are set out in lowercase type facing, in contrast to the matter of obeying the provisions of the order, which is set out in bold type.

The Committee considered the response from the deputy minister in which he stated that when the forms are re-ordered for printing, the changes previously suggested by the Committee to highlight the respondent's rights would be put into effect. The legislative counsel noted that to date, new forms have not been printed. The Committee requested the legislative counsel to correspond with the Minister to inquire whether interim measures could be taken to highlight the rights of respondents (i.e. by affixing an attachment to the form) until the new forms are printed.

BYLAWS FOLLOW - UP

9. The Saskatchewan Society of Occupational Therapists – *The Registered Occupational Therapists Act* – February 18, 1994

Issue #1:

Section 11, article 4 of the 1993 Bylaw permits the Council by majority vote to remove a member from the council, for reasons such as the member's absence at more than three council meetings between annual general meetings. The issue is whether this violates the rules of "natural justice" in that the member being removed is not granted an opportunity to state his/her case before the removal takes place.

Issue #2:

A further issue arises from the contradictory provisions of Article 11, rule 2, clause (d), which provides that "With this information the council shall determine the need to pursue the complaint with a hearing," and of clause (f), which provides "... the member is entitled to be heard and represented by counsel during this hearing." If there is an entitlement to be heard, should the council have the discretion to determine whether or not a hearing takes place?

The Committee noted that the society has not responded to the legislative counsel's letter of April 11, 1997. The Committee directed the legislative counsel to review the bylaws of the society to determine if the Committee's concerns have been addressed. If the concerns persist, then the legislative counsel was directed to correspond with the society to remind them of the outstanding issues and to seek clarification on what they have done to address the Committee's concerns.

MONITORING ACTIVITY

10. The Helium and Associated Gases Amendment Regulations, 1994 – *The Crown Minerals Act* – December 2, 1994

The Committee had previously directed the legislative counsel to monitor the revision and consolidation of the regulations as agreed to by the Minister. To date, no such revision or consolidation have taken place.

The Committee directed the legislative counsel to correspond with the Minister to follow-up on the status of the consolidation and revision action.

11. The Petroleum and Natural Gas Amendment Regulations, 1994 – *The Crown Minerals Act* – December 2, 1994

The Committee had previously directed the legislative counsel to monitor the revision and consolidation of the regulations as agreed to by the Minister. To date, no such revision or consolidation have taken place.

The Committee directed the legislative counsel to correspond with the Minister to follow-up on the status of the consolidation and revision action.

The Committee further directed that The Helium and Associated Gases Amendment Regulations, 1994 and The Petroleum and Natural Gas Amendment Regulations, 1994 could be addressed together in a single letter to the Minister.

12. The Association of Dental Technicians of Saskatchewan – *The Dental Technicians Act* – December 4, 1991

The Committee had previously directed the legislative counsel to monitor the anticipated legislative amendments to the Act which would permit the Association to raise its fees beyond the maximum of \$25.00 per annum as initially set out in the Act. Section 15(1)(l) of *The Dental Disciplines Act*, S.S. 1997, c. D-4.1 remedies the problem.

The Committee accepted the recommendation of the legislative counsel to consider the matter resolved.

13. The Committee recessed from 9:55 a.m. until 10:10 a.m.

1996 REGULATIONS

14. The Livestock Dealers Regulations, 1995 – *The Animals Products Act* – January 5, 1996

Issue #1:

Section 5(4) of the regulations authorizes the Minister to withhold the issuance of a licence to carry on a business as a livestock dealer until “the full nature of the applicant’s business can be ascertained.” The issue concerns identifying how the Minister determines he/she has “sufficient” knowledge of the “full” nature of the applicant’s business.

Issue #2:

The regulations also states that the Minister “may refuse any application for a new licence or the renewal of an existing licence where an applicant has failed to comply with any provisions of the act or these regulations”. The issue concerns the appearance of an open-ended discretion afforded the Minister to determine whether the act or regulations have not been complied with.

The Committee directed the legislative counsel to correspond with the Minister and request that he/she inform the Committee as to the criteria he/she uses in determining firstly, when the full nature of the applicant’s business is satisfactorily ascertained, secondly, when the act or regulations have not been complied with and thirdly, whether environmental impact concerns are taken into consideration. The legislative counsel was also directed to review what impact the legislative amendments made to the Act in the last session may have on the regulations.

15. The Private Vocational Schools Regulations, 1995 – *The Private Vocational Schools Regulation Act, 1995* – January 5, 1996

Issue:

Section 24(4) of the regulations requires each private vocational school to provide the Minister with certain specified information regarding each of the instructors it employs. However Form G attached to the regulations requires additional information that is not specified in the regulation to be given, notably the instructor’s social insurance number. A related concern is the allocation of space on the form, with important required information being granted less space than information that is not required by the regulations.

The Committee accepted the recommendation of the legislative counsel that he correspond with the Minister to raise its concerns that the inclusion of an instructor’s social insurance number on Form G is optional and that the allocation of space on the form more closely reflect the relative importance of the information sought. The legislative counsel was further directed to inquire whether the forms used under these regulations are consistent with those used for other school systems.

16. The Saskatchewan Gaming Corporation Casino Regulation – *The Alcohol and Gaming Regulation Act* – February 2, 1996

Issue:

Section 12 of the regulations, which states that “No person under the age of 19 years of age shall enter a Casino.” conflicts with the provisions of *The Age of Majority Act*, which provides that a person reaches the age of majority at the age of eighteen. Furthermore, section 12 does not meet the exceptions under *The Age of Majority Act*, by including a definition of the word “person” or by stating a contrary intent in the regulations.

The Committee accepted the recommendation of the legislative counsel that he correspond with the Minister to raise this concern and to suggest that the definition used in *The Liquor Act* be used as a guide when revising the section 12.

17. The Use of Electricity in Mines Regulations, 1996 – *The Electrical Inspection Act, 1993* – March 8, 1996

Issue:

The regulations provide that the design and location of emergency stopping means for electrically driven conveyors shall be as prescribed in *The Mines Regulations*. The issue is whether *The Mines Regulations*, being Saskatchewan Regulations 284/78 and promulgated in 1978, would be readily available in those who would be applying the regulations at mine sites.

The Committee accepted the recommendation of the legislative counsel that he correspond with the Minister to determine whether the text of regulation 284/78 is readily available to those employed at a mine site, and if not, to recommend that the text of regulation 284/78 be reproduced in *The Use of Electricity in Mines Regulations, 1996*.

18. The Komis Project Surface Lease Agreement Regulations – *The Forest Act and the Provincial Lands Act* – March 22, 1996

Issue:

Pursuant to section 7(2) of *The Regulations Act, 1989*, the appendix to this regulation is exempt from publication in the *Saskatchewan Gazette*. In its place a notice is included that states that the appendix may be viewed at the office of the Registrar of Regulations, at the Legislative Building. The issue concerns whether a member of the public would be able to locate or contact the office, given that the notice does not specify a room number nor a telephone number, and neither the identity nor the location of the Registrar was known to the staff manning the information kiosk at the Legislative Building.

The Committee accepted the recommendation of the legislative counsel that he correspond with the Registrar of Regulations to suggest that where regulations were exempted from publication, the contact notice include a telephone number and a room number for this office.

19. The Alcohol and Gaming Amendment Regulations – *The Alcohol and Gaming Regulation Act* – May 3, 1996

Issue:

Section 4 of the amending regulation adds an additional subsection (being subsection 8) to section 19 of the original regulation. The new subsection creates an entitlement for an organization or association who have a majority of their membership over 55 years of age, to apply for a special occasion permit for use on an ongoing basis, rather than on an occasion by occasion basis. The issue arises as to whether this provision is an age discrimination against those groups whose have a majority of members below 55 years of age.

The Committee directed the legislative counsel to correspond with the Minister to seek further information on the rationale for the age specific provision.

20. The Outfitter and Guide Regulations, 1996 – *The Natural Resources Act* – May 17, 1996

Issue:

Sections 11 and 12 of the regulation authorizes the Minister to amend, suspend or revoke an outfitter's licence where certain contraventions have taken place. An appeal from a licence suspension or revocation is made to the Minister and not to another body or person.

Additionally, section 11(3) provides that a decision by the Minister to revoke a licence or to prohibit an individual from making a licence application is final. These provisions appear to attempt to oust the jurisdiction of the courts and thereby violate the principles of "natural justice". The issue is whether there is a legitimate appeal process.

The Committee directed the legislative counsel to correspond with the Minister to seek further information on the status of the department's review of the issuance of licences and whether the Committee's concerns have been, or could be, addressed.

21. The Securities Amendment Regulations, 1996 – *The Securities Act, 1988* – May 17, 1996

Issue #1:

Form 18.2 is prescribed by the regulations as a certificate of independent advice indicating that a lawyer has been consulted regarding the purchase of securities covered by these regulations. The issue concerns the appropriateness of the form requiring advice on the nature of and risks involved with a major financial transaction to be given only by a lawyer. Any other professional with financial expertise, particularly an accountant as is contemplated by the definition in section 99.2 of the regulations, is excluded from given this advice.

Issue #2:

The second issue arises from an anomaly between the body of the form which includes a list of what could be described as five "statements" and the instructions found at the bottom of the form, which make reference to "question 1".

Issue #3:

The third issue concerns the uncertainty whether Form 18.2 of the regulations would be required for those distributions in securities falling under section 81(1) of *The Securities Act, 1988* or whether the provisions of that section operate to exempt the need for a certificate of independent advice.

The Committee directed the legislative counsel to correspond with the Minister to recommend that the provisions of Form 18.2 be expanded to include financial in addition to legal advice and to seek clarification on the other issues.

22. The Public Accommodation Regulations – *The Public Health Act, 1994* – July 26, 1996

Issue #1:

Section 9(a)(i) permits the local authority to issue a licence and include provisions with the licence that set out terms and conditions that the local authority considers appropriate. There is no requirement for the giving of reasons for the establishment of these terms or conditions or for the refusal of a licence. There is only the requirement that the local authority notifies the applicant of its decision.

Issue #2:

Section 13(1) of the regulations grants the local authority the power to cancel a licence where, in its opinion, the licensee has contravened the Act or the regulations. Additionally, there is no requirement for the reasons for such a refusal to be given.

Issue #3:

The regulations do not appear to have an appeal mechanism in place.

The Committee directed the legislative counsel to correspond with the Minister to seek clarification on what areas and circumstances these sections are meant to address. The Committee agreed to postpone any decisions or recommendations on these issues until it has received the Minister's response.

23. The Milk Pasteurization Regulations – *The Public Health Act, 1994* – August 2, 1996

Issue #1:

The regulations concern milk pasteurization and the issuance of licences by a local authority. Section 6(a)(ii) grants the local authority the power to revoke or refuse to issue a licence without giving reasons for the revocation or refusal.

Issue #2:

The regulations do not appear to contain an appeal mechanism in place.

The Committee directed the legislative counsel to correspond with the Minister on this issue and to seek clarification on whether the regulations reflect the changes that have taken place in the industry and the current national standards.

1996 BYLAWS

24. The legislative counsel advised the Committee that he had reviewed the 1996 Bylaws. In his opinion, the bylaws appeared to be within the framework of the legal authority authorized by the Act under which they were made and that no provisions contained therein appear to be against the public interest of the Province.

25. It was moved by Mr. Jess:

That this Committee do now adjourn.

The question being put, the motion was agreed to.

26. The Committee adjourned at 11:20 a.m. to the call of the Chair.

Margaret A. Woods
Committee Clerk

Don Toth
Committee Chair