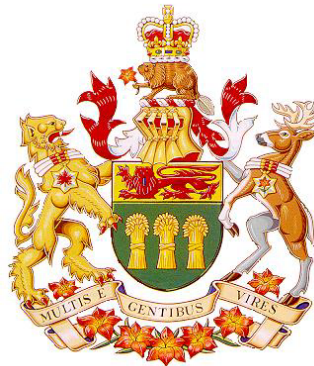


# **SPECIAL COMMITTEE ON REGULATIONS**



## **FINAL REPORT**

**June 4, 2003**

**4<sup>th</sup> SESSION of the 24<sup>th</sup> LEGISLATURE**

**LEGISLATIVE ASSEMBLY OF SASKATCHEWAN**

Mr. Toth, Chair of the Special Committee on Regulations, presents the Committee's Final Report of the Twenty-Fourth Legislature.

## **I. INTRODUCTION**

### **A. Business Conducted**

A focus of this 24<sup>th</sup> Legislature has been parliamentary reform. A significant component of this reform has been the reorganization of the Assembly's committee system to enhance its effectiveness and to increase public participation in the process.

On April 3, 2003, the Assembly adopted a resolution that revised the Order of Reference for the Special Committee on Regulations. The resolution directed the committee to prepare and present a final report on its work. The deadline for presenting the report was no later than 30 days past the date of implementation of the new rules recommended in the Third Report of the Special Committee on Rules and Procedures.

This report reflects the work of the committee during the Fourth Session of the 24<sup>th</sup> Legislature. The observations, conclusions and recommendations contained in this report are based upon the committee's examination of regulations and bylaws carried out until the end of its final meeting on May 29, 2003.

### **B. Membership**

The work of your committee would not have been possible without the service of its members. Mr. Don Toth and Mr. Kevin Yates continue to serve in the positions of Chair and Vice-chair respectively. Your committee expresses its gratitude to Ms. Brenda Bakken who stepped down from the committee on December 10, 2002. Mr. Ben Heppner joined the committee on the same day. In addition to the Chair and the Vice-chair, six Members – Mr. Graham Addley, Mr. Denis Allchurch, Mr. Ron Harper, Mr. Glen Hart, Ms. Carolyn Jones and Ms. Judy Junor - have served on the committee throughout the period covered by this report.

### **C. Acknowledgements**

The work of the Special Committee on Regulations depends largely on the reviewing of regulations and bylaws and the advice it receives from the Office of the Legislative Counsel and Law Clerk. The Committee would like to acknowledge this important legal advisory role played by Mr. Ken Ring and his staff.

The committee expresses its appreciation to the Office of the Clerk for the administrative support and procedural advice provided, to the Hansard Branch for the production of the verbatim record and to the other branches of the Assembly that contributed their own expertise that enabled the proceedings to operate smoothly.

In its last report, the committee recommended that permitting a Member to authorize another Member to substitute for them at a meeting would facilitate the efficient operation of the committee. The Assembly agreed with the recommendation and authorized the transferability of membership, other than that of the Chair, on July 10, 2002. To date, no Member of the committee has availed themselves of this authority.

## **II. HISTORY OF THE COMMITTEE**

The implementation of the reorganized committee system will result in the dissolution of the Special Committee on Regulations. The mandate previously carried out by the Special Committee on Regulations will be transferred to, and divided amongst, the four policy field committees.

In recognition of this, it is your committee's belief that the history and operating practices and procedures of the Special Committee on Regulations should be recorded in order to provide a starting reference point for the policy field committees. Your committee feels strongly that the ongoing effective review of delegated legislation necessitates a consistent approach across all policy field committees.

### **A. History of the Committee**

The origins of the Special Committee on Regulations can be found in the practice of the Legislative Assembly of Saskatchewan to delegate certain legislative powers to the Lieutenant Governor in Council, Ministers, boards, commissions and professional associations. The regulations and bylaws made by these bodies have the force of law – they confer legally enforceable rights and obligations on Saskatchewan citizens. The Legislature prescribes the general policy of an Act but often only in a skeleton framework. It is left to the appropriate Minister or body to fill in the details through the use of regulations and bylaws. Non-elected public servants in various government departments and agencies develop the policy of the regulations, which in turn forms the basis upon which Department of Justice lawyers draft the delegated legislation. The amount of delegated legislation now surpasses the amount of ordinary legislation in force.

When the Legislative Assembly authorizes another body to make delegated legislation (regulations), it is parceling the Assembly's authority to make rules for society. An important component of delegating this authority is the Assembly's ongoing oversight and scrutiny of it to ensure it is used responsibly and within the parameters of the delegation. This is recognized in The Regulations Act, 1995 which requires all regulations and bylaws to be tabled with the Legislative Assembly for its consideration.

In order for the Legislative Assembly to maintain sufficient control over this large area of legislation, a control mechanism was set up in the form of the Special Committee on Regulations. The committee had its origins in a December 1961 cabinet planning conference. The conference was held to discuss civil rights issues and the use and abuse of government powers. Among the issues raised were the problems citizens were experiencing from the inconsistent drafting and publications of regulations. A committee on "The Citizen and Government Administration" consisting of senior civil servants was established to formulate proposals on how to address these concerns arising from the regulations.

The Clerk of the Legislative Assembly, Dr. C. Beverley Koester, was invited to join the committee to provide advice on those areas that might affect the practices and procedures of the Legislative Assembly. He set about to canvass the other Canadian jurisdictions to determine what procedures they had in place for the parliamentary scrutiny of delegated legislation. Only Manitoba had procedures to review delegated legislation in their recently formed (1961) legislative Regulations Committee. The Manitoba provisions were largely based upon the practice of the British House of Commons. A review of both practices formed the basis of Dr. Koester's proposal for the "Legislative Review of Delegated Legislation" to Premier Woodrow S. Lloyd in September 1962.

The committee on “The Citizen and Government Administration” also made recommendations late in 1962. These called for the passing of legislation to provide for the central filing and publishing of regulations, the review of regulations by a legislative committee, and a mandate for the Legislative Assembly to require the amendment or revocation of regulations that did not conform to the prescribed requirements.

The government moved quickly to introduce a Regulations Act in the 1963 spring session of the Legislature. The Assembly referred the bill to the Standing Committee on Law Amendments and Delegated Powers with instructions to recommend a structure and procedures for reviewing regulations. The committee’s report was adopted on April 5, 1963 and prompted the immediate creation of a Special Committee on Regulations. The Regulations Act also provided for a copy of all regulations to be filed with the Clerk of the Legislative Assembly and further, for all regulations to be permanently referred to a committee of the Legislature for review. The committee’s status as a special, as opposed to a standing, committee ensured that it had the authority to conduct hearings outside of the legislative session, an authority that standing committees of the day did not possess.

The terms of reference of the committee have not changed substantially since 1963. The committee was empowered to review all regulations but not other statutory instruments such as Ministerial Orders. The only significant change to the terms of reference occurred when responsibility to scrutinize the regulations and bylaws of professional associations was transferred to the committee in 1966. From 1946 until 1966, the Law Amendments and Delegated Powers Committee reviewed professional bylaws. This duty was transferred to the Regulations Committee where the assistance of legal counsel was available.

The Special Committee on Regulations therefore provided the mechanism whereby the Assembly reviews all regulations and bylaws which have been passed to ensure, amongst other things, that they have been properly drafted, that they do not go beyond the powers conferred by the parent Act and that they have been properly published. The committee was empowered to review bylaws to ensure that they were properly drafted and to determine whether or not they were “in the public interest”. A decision of the committee concurred in by the House, to refuse to ratify a bylaw results in the bylaw becoming null and void.

## **B. Terms of Reference**

The terms of reference of the Special Committee on Regulations is set out in a resolution of the Assembly, adopted during the first session of a new Legislature. On December 14<sup>th</sup>, 1999, your committee was tasked with examining regulations and bylaws to determine whether they should be brought to the attention of the Assembly on any of the following grounds:

- a) that it imposes a charge on the public revenues or prescribes a payment to be made to any public authority not specifically provided for by statute;
- b) that it is excluded from challenge in the courts;
- c) that it makes unusual or unexpected use of powers conferred by statute;
- d) that it purports to have retrospective effect where the parent statute confers no express authority to do so;
- e) that it has been insufficiently promulgated;
- f) that it is not clear in meaning.

In addition to these terms of reference, your committee routinely continues its follow-up on a number of outstanding items since its last Report.

The committee is further mandated to review the bylaws of professional associations and any amendments made to them to determine whether or not they are in any way prejudicial to the public interest. The bylaws and amendments are annually tabled in the Assembly and referred to this committee for review. Any bylaws and amendments not ratified during a previous Legislature are carried over to successive sessions.

Your committee is aware that the Special Committee on Rules and Procedure reviewed these terms of reference as part of its review of all facets of the committee system. It was the recommendation of the Rules Committee that the terms of reference of the Special Committee on Regulations be incorporated into the mandate of the proposed Policy Field Committees and that the Special Committee on Regulations be disbanded. The Special Committee on Rules and Procedures further recommended that these terms of reference be redrafted to reflect “plain language” and that the terms be codified into the Rules and Procedures of the Legislative Assembly (the “Rule book”). Both the Legislative Counsel and the committee clerk were consulted on these matters.

Your committee is in agreement with these recommendations and hopes that they will facilitate the ongoing efficient review of regulations and bylaws.

### **C. Overview of the Committee’s Practice and Procedures**

The normal review procedure followed by the Law Clerk consists of him reviewing all new regulations as they appear in the Saskatchewan Gazette and all new bylaws as they are tabled in the Assembly. The parameters set out in the committee’s terms of reference are used as the guide for identifying any issues or concerns that warrant the attention of the committee members. The Committee then directs the Law Clerk to correspond with the appropriate department, agency or professional association to seek their opinions on the concern identified. In some circumstances, the committee has invited officials to appear before it to permit a broader discussion to ensue. Alternatively, in cases where the concern is minor or where further action is not deemed warranted, the committee could direct that the file not be further proceeded with. Those concerns that the committee is not able to resolve to its satisfaction may be reported to the Assembly for it to consider and possibly revoke.

In more recent years, your committee considered how it might streamline its procedures by authorizing the Law Clerk to initiate correspondence with departments, agencies and professional associations so that the committee might consider both his concerns and the responses from these entities simultaneously. In furtherance of these aims, your committee adopted guidelines that granted the Law Clerk greater discretion in order to streamline the committee’s review of regulations.

These new guidelines permit the Law Clerk:

- a) To seek written clarification from departments and agencies where questions or concerns exist.
- b) To initiate correspondence on behalf of the committee with departments and agencies that identifies the concern arising in the regulation or bylaw, and to bring the correspondence and reply before the committee at its next meeting.
- c) Where it is not clear what action the committee may want, the Law Clerk is to consult with the Chair and the Vice-chair, who could direct:
  - i) That correspondence be initiated on any matter enumerated, or
  - ii) That the matter be brought to the attention of the whole committee for consideration before further action is taken.

- d) The authority to request that departments and agencies respond to correspondence from the committee within 60 days whenever possible. Where a response has not been received in that time, the Law Clerk is directed to bring the matter to the attention of the Chair and the Vice-chair.

Your committee was pleased with how these guidelines contributed to improving the efficiency and quality of the deliberations and hopes that they will be continued by the Policy Field Committees once they inherit the work of the Special Committee on Regulations. Your Committee therefore makes the following recommendation:

**RECOMMENDATION 1**

That the guidelines adopted by the Special Committee on Regulations be adopted and continued by the Policy Field Committees in carrying out their review of the regulations and bylaws of professional associations.

**III. STATUS OF BUSINESS BEFORE THE COMMITTEE - REGULATIONS**

**A. Regulations in which no Concern was Identified**

In carrying out his review, the Law Clerk compiled a list of those regulations in which no concern was identified. These regulations were periodically recorded in lists appended to the minutes of the committee. Unless a member of the committee identified an issue that they wished to raise with the whole committee, no further review was undertaken in regards to these regulations.

**B. Regulations in which Issues have been Resolved**

Your committee is pleased to report that the outstanding issues and concerns pertaining to the following regulations have been resolved to your committee's satisfaction:

**1988 Regulations**

*The Water Power Amendment Regulations, 1998*

**1994 Regulations**

*The Helium and Associated Gases Amendment Regulations, 1994*

*The Milk Pasteurization Regulations - 1994*

*The Petroleum and Natural Gases Amendment Regulations, 1994*

*The Public Accommodation Regulations – 1994*

**1995 Regulations**

*The Canadian Electrical Code (Saskatchewan Amendments) Regulations, 1995*

*The Dairy Producers Regulations, 1995*

*The Livestock Dealers Regulations, 1995*

*The Private Vocational Schools Regulations, 1995*

**1996 Regulations**

*The Alcohol and Gaming Amendment Regulations - 1996*

*The Komis Project Surface Lease Agreement Regulations - 1996*

*The Outfitters and Guide Regulations, 1996*

*The Saskatchewan Gaming Corporation Casino Regulations - 1996*

*The Securities Amendment Regulations, 1996*

*The Use of Electricity in Mines Regulations, 1996*

**1997 Regulations**

*The Municipal Police Discipline Amendment Regulations, 1997*

**1998 Regulations**

*The Provincial Court Amendment Regulations, 1998*

**1999 Regulations**

*The Forest Resources Management Regulations - 1999*

*The Swimming Pool Regulations, 1999*

**2000 Regulations**

*The 2000 Transitional School Grant Regulations - 2000*

*The Hospital Standards Amendment Regulations, 2000*

**2001 Regulations**

*The Canada-Saskatchewan Assistance Program (CSAP II) Regulations - 2001*

*The District Health Boards election Amendment Regulations, 2001*

*The Irrigation Amendment Regulations, 2001*

*The Prisoner Escort and Prisoner Security Regulations, 2001*

*The Saskatchewan Assistance Amendment Regulations, 2001*

*The Vehicle Inspection Regulations, 2001*

*The 2000-2001 School Grant Regulations – 2001*

**2002 Regulations**

*The Assessment Appraisers Regulations – 2002*

*The Crop Insurance Amendment Regulations, 2002 (No. 2)*

*The Domestic Game Farm Animal Regulations, 2001 - 2002*

*The Emergency Protection for Victims of Child Sexual Abuse and Exploitation Regulations -  
2002*

*The Freedom of Information and Protection of Privacy Amendment Regulations, 2002*

*The Minimum Wage Board Amendment Order, 2002*

*The Municipal Hail Insurance Amendment Regulations, 2002*

*The Municipal Tax Sharing (Potash) Amendment Regulations, 2002*

*The Pension Benefits Amendment Regulations, 2002*

*The Public Employees Pension Plan Amendment Regulations, 2002 (No. 2)*

*The Saskatchewan Student Direct Loans Amendment Regulations, 2002*

*The Securities Commission (Local Instruments) Amendment Regulations, 2001 (No. 2) – 2002*

**C. Regulations in which Issues Remain Unresolved**

Your committee is continuing to seek satisfactory resolution to its concerns with respect to issues relating to the following regulations:

**2002 Regulations**

*The Personal Care Homes Amendment Regulations, 2002*

*The Wildlife Amendment Regulations, 2002*

In regards to the regulations listed above, your committee has initiated correspondence with the appropriate department but was not able to resolve the outstanding issues prior to this committee's dissolution. Your committee therefore makes the following recommendation:

**RECOMMENDATION 2**

That those regulations in which the legislative review remains unresolved, along with any correspondence received in regards to them, be referred to the appropriate Policy Field Committee in order to permit an ongoing consideration and resolution.

**IV. STATUS OF BUSINESS BEFORE THE COMMITTEE - BYLAWS**

**A. Bylaws in which no Concern was Identified**

In carrying out his review, the Law Clerk compiled a list of those bylaws in which no concern was identified. These bylaws were periodically recorded in lists appended to the minutes of the committee. Unless a member of the committee identified an issue that they wished to raise with the whole committee, no further review was undertaken in regards to these bylaws.

**B. Bylaws in which Issues have been Resolved**

Your committee is pleased to report that the outstanding issues and concerns pertaining to the following bylaw has been resolved to your committee's satisfaction:

**From Sessional Paper No. 73 – 4<sup>th</sup> Session of the 22<sup>nd</sup> Legislature**  
The Saskatchewan Society of Occupational Therapists

**C. Bylaws in which Issues Remain Unresolved**

Your committee is continuing to seek satisfactory resolution to its concerns with respect to issues relating to the following bylaw:

**From Sessional Paper No. 69 – 2<sup>nd</sup> Session of the 23<sup>rd</sup> Legislature**  
The Saskatchewan Veterinary Medical Association

In regards to the bylaw listed above, your committee has initiated correspondence with the appropriate professional association but was not able to resolve the outstanding issues prior to this committee's dissolution. Your committee therefore makes the following recommendation:

**RECOMMENDATION 3**

That the bylaw in which the legislative review remains unresolved, along with any correspondence received in regards to it, be referred to the appropriate Policy Field Committee in order to permit an ongoing consideration and resolution.

**D. Bylaws Not Reviewed**

Since 1995, there have been four lawyers carrying out the duties of the legal counsel to the Special Committee on Regulations. The resources provided to the Office of the Legislative Counsel and Law Clerk has not been sufficient to permit the timely review of bylaws. As a result, a significant backlog of review exists.

All bylaws filed with the Assembly between the years 1997 to 2002 have not been reviewed nor presented to the committee. The Law Clerk has conducted a preliminary overview of these bylaws and notes that certain possible issues have been carried over a number of years and in some cases persist in existing bylaws. It was further noted that the raising of issues arising from bylaws first filed in the late 1990s might have become "dated" by 2003.



Your committee discussed how best to address this backlog of review. It was the conclusion of the committee that it would not be a prudent allocation of limited resources to direct the Law Clerk to devote the time and effort to review all of these bylaws. Accordingly it was agreed that the review of all bylaws filed in 1999 and earlier would not be reviewed by the legislative counsel. The Law Clerk was directed to resume the review of bylaws for the years 2000 onward and to raise any issues identified with the appropriate professional association. The Law Clerk was then directed to raise the issues and responses with the appropriate Policy Field Committee. Your committee was confident that this course of action would ensure that advances made in the drafting of bylaws would be maintained and that the important review of bylaws would be continued under the new committee structure.

## **V. REVIEW BY THE LEGISLATIVE ASSEMBLY**

In carrying out its review, your Committee has identified no regulations or bylaws that merit being recommended to the special attention of the Assembly.

Respectfully submitted,

Don Toth, Chair  
Special Committee on Regulations