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# Official Report of Debates (Hansard)

**Wednesday 5 June 2013**

# Journal des débats (Hansard)

**Mercredi 5 juin 2013**

## Standing Committee on Regulations and Private Bills

## Comité permanent des règlements et des projets de loi d'intérêt privé

Chair: Peter Tabuns
Clerk: Tamara Pomanski

Président : Peter Tabuns
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

# STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

# COMITÉ PERMANENT DES RÈGLEMENTS ET DES PROJETS DE LOI D'INTÉRÊT PRIVÉ

Wednesday 5 June 2013

Mercredi 5 juin 2013

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*The committee met at 0901 in committee room 1.*

**The Vice-Chair (Mr. John Vanthof):** Good morning. Will the Standing Committee on Regulations and Private Bills come to order.

The items on the agenda are as follows: Bill Pr17, An Act to revive Triple "D" Holdings Ltd; Bill Pr10, An Act to revive Marsh & Co. Hospitality Realty Inc.; and a briefing from legislative research. We've made one change to the agenda. We'd like to switch the bills due to some traffic problems.

## MARSH & CO. HOSPITALITY REALTY INC. ACT, 2013

Consideration of the following bill:

Bill Pr10, An Act to revive Marsh & Co. Hospitality Realty Inc.

**The Vice-Chair (Mr. John Vanthof):** We'd now like to proceed to the first item of business on the agenda, which is Bill Pr10, An Act to revive Marsh & Co. Hospitality Inc. Ms. Jaczek is the sponsor of the bill; however, Mr. Crack—good morning—is here on her behalf.

Would Mr. Crack and the applicant please come forward? Have a seat, folks. I'd ask the applicant to introduce himself for the purposes of Hansard.

**Mr. Garry Marsh:** Garry Marsh.

**The Vice-Chair (Mr. John Vanthof):** Thank you.

Mr. Crack, do you have any comments on behalf of Ms. Jaczek?

**Mr. Grant Crack:** Thank you very much, Chair. I would just like to say it's a pretty straightforward request, and the government is supportive of this particular piece of legislation.

**The Vice-Chair (Mr. John Vanthof):** Thank you. Does the applicant have any comments?

**Mr. John O'Sullivan:** If I may speak on behalf of the applicant: My name is John O'Sullivan. I am the legal counsel for Mr. Marsh in this matter and for the corporation, and we don't believe there's anything to add to the application material which has been filed before you. As you're aware from that material, the situation is that Marsh & Co. Hospitality Realty Inc. is a corporation that was engaged in the real estate business as a brokerage. It became involved in a lawsuit as a defendant sometime after 1999, when this action was commenced. Ultimately, it dissolved in 2006 in the belief that the litigation had been concluded. It was dissolved in 2009, I'm sorry. Thereafter, it became revived, and upon its revival, the professional insurer for Marsh & Co., declined to continue to conduct a defence on the ground that it had become dissolved. So Marsh & Co.'s choice is either to force the insurer to defend through litigation or else to apply to the committee for reinstatement of the corporation. The insurer is onside and is ready to resume the defence of the corporation as soon as it is revived but takes the position that it can't defend the company until it's revived. That's why we come before you today: to ask for the revival.

**The Vice-Chair (Mr. John Vanthof):** Thank you.

Are there any interested parties in the room who would like to speak to this matter? Seeing none, are there any comments from the government?

**Mr. Grant Crack:** No. I already stated our position. It's fine.

**The Vice-Chair (Mr. John Vanthof):** Thank you very much. Any questions from committee members? Seeing none, are the members ready to vote?

Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Carried.

Okay, thank you.

**Mr. John O'Sullivan:** Many thanks.

## TRIPLE "D" HOLDINGS LTD. ACT, 2013

Consideration of the following bill:

Bill Pr17, An Act to revive Triple "D" Holdings Ltd.

**The Vice-Chair (Mr. John Vanthof):** We'll now proceed to our second item of business on the agenda. The item is Bill Pr17, An Act to revive Triple "D" Holdings Ltd. Mr. Colle will be sponsoring the bill.

**Mr. Grant Crack:** I'm here for Mr. Colle.

**The Vice-Chair (Mr. John Vanthof):** Okay, Mr. Crack will be representing Mr. Colle.

Would the applicant please come forward. I'd like to ask the applicant to introduce herself for the purposes of Hansard.

**Ms. Cynthia Samu:** My name is Cynthia Samu.

**The Vice-Chair (Mr. John Vanthof):** Thank you. Does the sponsor, Mr. Crack, have any comments?

**Mr. Grant Crack:** Once again, thank you, Chair. Again a straightforward bill, and the government is supportive of the legislation to move to the House for passage.

**The Vice-Chair (Mr. John Vanthof):** Does the applicant have any comments?

**Ms. Cynthia Samu:** No.

**The Vice-Chair (Mr. John Vanthof):** Are there any interested parties in the room who would like to speak to this matter?

Seeing none, any further comments from the government? Seeing none, any questions from committee members? Seeing none, are the members ready to vote?

Bill Pr17, An Act to revive Triple "D" Holdings Ltd.: Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the preamble carry? Carried.

Shall the title carry? Carried.

Shall the bill carry? Carried.

Shall I report the bill to the House? Carried.

Done. Thank you.

**Ms. Cynthia Samu:** Thank you.

## DRAFT REPORT ON REGULATIONS

**The Vice-Chair (Mr. John Vanthof):** The third item on our agenda would be a briefing by Karen Hindle from the legislative branch.

**Ms. Karen Hindle:** Good morning, members. I expect that you would have received three memos through the Clerk earlier this week which address three different regulations that the committee discussed when it was looking at the final report on regulations made in 2011.

Specifically, at the back of the report, we had discussed regulations which had been reported in previous years but where action had or had not been taken on them. In this case, there were three regulations where no action had been taken, and the committee had asked me to go back and to look at the ministry's position on those regulations and report back to committee members on the ministry's position and whether or not I felt that it was valid.

What I propose to do is to go through each of the regulations in order, and perhaps if members have any questions on that particular regulation, we will discuss it before moving on to the next. In each case, in your package, you will find a memo that was prepared by me, as well as, attached at the back, correspondence between the committee or its counsel and ministry counsel, so the going back and forth with respect to each of these regulations.

The first regulation that I thought we would deal with is Ontario regulation 273/08, which is under the Child and Family Services Act. This regulation amends Ontario regulation 464/07, which is the adoption information disclosure regulation. This particular regulation addresses circumstances where an individual who has been adopted or given up for adoption or perhaps a birth parent or another person interested in adoption records is—the circumstances under which those individuals can seek information through the records.

**0910**

Now, the regulation, as we discussed a couple of weeks ago, includes a particular provision which seems to suggest that this regulation overrides any notice or disclosure veto in the Vital Statistics Act. As you can see on page 2 of the memo, the section at issue is section 2.1(2), "Any disclosure of information relating to adoptions authorized under this regulation applies despite any notice or disclosure veto in effect under section 48.3, 48.4 or 48.5 of the Vital Statistics Act that may prevent or affect disclosure of information relating to adoptions under that act."

Those particular provisions in the Vital Statistics Act deal with circumstances where an individual has said that they don't want their information disclosed. If members remember, it was an issue a few years back when the issue of disclosure vetoes and notices were discussed in the Legislature.

Now, the counsel for the committee originally wrote to the ministry asking for clarification on this particular section because it appeared that there wasn't sufficient statutory authority to allow a regulation to override provisions in the Vital Statistics Act. The counsel for the ministry wrote back and said, in effect, that it wasn't creating an override because the regulation at issue, which is 464/07, doesn't apply to the Vital Statistics Act.

Now here's the difficulty or the rub—and I think part of the reason why it was reported in the first place is that it's not entirely clear, but there are in fact two disclosure regimes in Ontario. The first one is under the Vital Statistics Act, and that deals with what they call "identifying information." That would be any kind of information that would lead someone to be able to deduce the identity of that person, for instance, a birth mother. That would include things like the person's name, information about the time and date when a baby was born—anything that would, either on its own or together, allow somebody to be able to figure out the identity of someone.

That falls under the Vital Statistics Act, and the disclosure vetoes that I was speaking about only apply to identifying information; in other words, information that falls under the jurisdiction of the Vital Statistics Act.

Now, in comparison, Ontario regulation 464/07 only deals with what they call "non-identifying information," and non-identifying information—you can see on page 4 of my memo—is listed. Non-identifying information is defined as information that would not lead somebody to be able to figure out who someone is. They provide examples in the regulation, so this might be the date of the adoption, the name of the children's aid society that

was responsible for the adoption, background information or medical information on the families.

What the ministry has in fact said is that the particular regulation that is at issue here is not changing the law or creating an override because the disclosure vetoes that fall under the Vital Statistics Act are a completely separate regime than the regime that is considered under 464/07.

Now I know that it's a bit confusing, because I found it quite confusing. It actually took me quite some time to figure out exactly what it was that ministry counsel were in fact getting at, because not only is it different information, but different ministries are responsible depending on what kind of information somebody is seeking.

All told, the committee, when it originally reported on this regulation, agreed that the statutory authority issue didn't necessarily apply in this case, but that it was nonetheless very confusing. I would agree with that.

I think that the difficulty with a regulation such as 464/07 is that this isn't something like a regulation under the Education Act that calculates amounts that are going to be paid to school boards, or a regulation under the Electricity Act that allows companies to be able to determine how much electricity is going to cost in a given year. This is a regulation that an individual who might be interested in seeking adoption disclosure might reference, so somebody who doesn't necessarily have a legal background or an understanding of exactly how the different regimes work.

The difficulty is that with the regulation—the way that it's worded, somebody is going to have a very difficult time understanding exactly what the ministry is getting at, and trying to figure out, "Well, why are they referring to disclosure vetoes? Does that mean that if it wasn't for this regulation, that there could be disclosure vetoes over non-identifying information?"

When we had spoken about the regulation a couple of weeks ago, you had asked for my opinion on whether or not I felt that the ministry's position was valid. I do feel that, having sort of gone through the process of trying to figure out exactly how this all works, the regulation issue is confusing, despite the ministry's assertions otherwise, and that it is something that they could potentially address to make it easier for the average Ontarian who is interested in adoption disclosure issues to be able to read and understand. So there is potential language that they could incorporate that references the fact that the Vital Statistics Act only deals with identifying information, for example. But we would leave that up to legal counsel at the ministry to discuss whether or not the particular regulation at issue should be amended.

In my view, I would recommend to the committee that it write back to the ministry and say, "Several years have passed now. Would the ministry reconsider its position on this particular section?" Or the other option would be—and perhaps the Clerk can provide you with more information, if necessary—you can also invite ministry officials to come in and perhaps give you more information as to why they feel that this particular provision is not imprecise or confusing.

**The Vice-Chair (Mr. John Vanthof):** Any questions? Verifications? Seeing none—

**Mr. Randy Hillier:** There are a couple of suggestions on the floor. It ends up that the regulation is lawful, it meets all the requirements, although it could be worded in somewhat clearer language. The ministry's aware of the concerns—

**Ms. Karen Hindle:** Yes. I believe that this is our regulation from 2008, so it would have been reported about three years ago.

**Mr. Randy Hillier:** I would suggest that we just leave it at that, then.

**The Vice-Chair (Mr. John Vanthof):** Everyone agree with that suggestion?

**Mr. Monte Kwinter:** I agree with that.

**The Vice-Chair (Mr. John Vanthof):** Okay. The next regulation is—

**Ms. Karen Hindle:** All right. The next regulation is Ontario regulation 338/09, which was made under the Nutrient Management Act, 2002, which amends a general regulation under that act.

Now this is a similar situation in that the language of the regulation is not clear, and the committee had asked for the ministry to amend the legislation so that the language would make clear the fact that this is not an exemption.

**0920**

This particular regulation, among other things, addresses the storage and use of NASM, which are non-agricultural source materials. Non-agricultural source materials do not include compost or fertilizer, but rather include other kinds of non-agricultural materials that are used on farms.

On page 2, I provide some examples. There's pulp and paper biosolids, sewage biosolids, anaerobic digestion output and other materials.

In part, I think, due to the nature of these materials, there are some environmental concerns associated with their use. Generally, the Environmental Protection Act requires that anybody who is using what they would call waste would generally have to comply with part 5 of the Environmental Protection Act.

In this particular case, the Environmental Protection Act suggests that certain materials—it's the act plus the regulation that falls under the Environmental Protection Act that suggests that there are certain instances in which particular kinds of materials might be exempt from the requirement in the Environmental Protection Act.

The provision at issue in this case is section 8.3(1) of Ontario regulation 267/03, and you can find it on page 2 of my memo. It reads:

"A NASM plan area that satisfies the following requirements is exempt from part 5 of the Environmental Protection Act and from regulation 347 of the Revised Regulations of Ontario ... (General—Waste Manage-

ment) made under that act." And then there are certain conditions that follow along with this.

The concern arises due to the part of the phrase that says "is exempt from." Originally, counsel had written to the ministry to suggest that there wasn't sufficient statutory authority under their parent act, which is the Nutrient Management Act, to provide for an exception under the Environmental Protection Act.

The ministry wrote back and said: "Well, actually, the exemption falls under the Environmental Protection Act, not under the Nutrient Management Act."

In order to fully understand how this works, one has to read the Environmental Protection Act and its regulation, as well as the Nutrient Management Act and its regulation.

In this case, the concern that was raised is the phrase "is exempt from." It seems to suggest that, in and of itself, this particular regulation is creating an exception. So there are ways in which the ministry could reword it so that it would make it clear that the exemption and the statutory authority for that exemption falls under the Environmental Protection Act. That was the reason why the regulation was reported in the first place. This is similar to the previous regulation in that the issue is clarity of language, not statutory authority itself.

**The Vice-Chair (Mr. John Vanthof):** Any questions? Any suggestions?

**Mr. Randy Hillier:** A suggestion: Make all laws so that we only need to read one act to understand the law.

**The Vice-Chair (Mr. John Vanthof):** Any workable suggestions?

*Interjection.*

**The Vice-Chair (Mr. John Vanthof):** How about we go to the next—

**Ms. Karen Hindle:** In this case, my suggestion would be similar to that of the one with respect to adoption disclosure. There are several options available to the committee.

One is that the regulation has already been reported. It was reported, I believe, a couple of years ago, so the committee can just leave it at that; it could re-write the ministry and say that it remains concerned that, as worded, it seems to create an exemption where none exists, and therefore they should reword the language to make it clear that the exemption actually arises under the Environmental Protection Act; or the committee could invite ministry officials in, in order to speak to the issue further.

**Mr. Randy Hillier:** I would suggest we just leave it as is.

**The Vice-Chair (Mr. John Vanthof):** Any agreement with that? Agreed.

**Ms. Karen Hindle:** The final regulation that I was asked to look at is Ontario regulation 451/10 under the Pharmacy Act, which amends the general regulation under this act.

Committee members might remember this particular regulation in that we discussed it a couple of weeks ago. This is the one where the Ontario College of Pharmacists regulates the registration of members. In this particular case, as committee members might remember, the regulation provides that an individual who has been suspended and has ultimately lost registration due to failure to pay fees, then attempts to apply for reinstatement with the College of Pharmacists—the provision at issue provides that an individual who has not only been convicted of a criminal offence but is subject to a criminal proceeding, or somebody who might have gone through a criminal proceeding but has been found not guilty, is automatically excluded from the ability to apply for reinstatement.

Originally, the committee raised the issue, did this offend the charter—in particular, section 11(d), which provides for the presumption of innocence.

The ministry's position on this particular regulation changed over time. When it originally wrote to counsel before the regulation was reported to the committee, the ministry argued that it did not violate section 11(d) because a member who had previously been a member of the College of Pharmacists, even if they could not seek reinstatement, could apply as a new member—in effect, go through the process that anybody who was seeking to be a pharmacist could go through and reapply for membership. The committee did not agree with that particular argument and it reported the regulation in its report later that year. I believe that the committee asked the ministry for a response.

The ministry wrote back following the report and argued that section 11(d) of the charter did not in fact apply. The reason why it did not apply is that case law around section 11(d) makes it clear that it only applies—the protections in section 11(d)—to individuals undergoing criminal proceedings and that it does not apply to disciplinary hearings, unless there is what they call a true penal consequence—in other words, somebody is facing jail or some kind of punishment that is tantamount to a penal consequence.

I went back and I looked at the ministry's position. I looked at some of the case law surrounding 11(d) and in the end, I believe that the ministry is right. It is clear that the charter does apply to organizations such as the Ontario College of Pharmacists and, in particular, any regulations that it makes. However, you have to go beyond just the issue of whether the charter applies to then look at whether or not the particular section in the charter applies. In this case, I believe that the ministry is right: The courts have made it very clear that section 11(d) rarely would apply to any kind of tribunal hearing or disciplinary hearing, in large part because they don't impose any kind of penal consequence—in other words, jail time. There are exceptions to that, but in general, that seems to be the case.

**0930**

There have been individuals who have attempted to argue that section 11(d) should apply, for instance, to the decision of a particular tribunal to withdraw somebody's licence, and the courts have held that the protections in

section 11(d) do not apply. Therefore, by extension, I think the ministry is right—that because section 11(d) doesn't apply to the decision to remove someone's licence, it also would not apply to the decision to allow somebody to get their licence reinstated.

The difficulty here is that section 11(d) doesn't apply, and it appears that there is nothing wrong with respect to the regulation in terms of violating the standing orders. The committee is sort of stuck. There is very little, if anything, that the committee can do to rectify it. The committee could ask ministry officials and the College of Pharmacists to come in and provide it with a greater debriefing. However, ultimately, this is a policy choice that was made by the College of Pharmacists, and the committee is unable to require or even to recommend, I believe, that they change their policy.

**The Vice-Chair (Mr. John Vanthof):** Any questions? Mr. Kwinter.

**Mr. Monte Kwinter:** I just have a comment. I remember during the discussion that the concern that I had was that if someone had been suspended or whatever it was, and if they wanted to reapply, they had to pay up all of their arrears, but there was no guarantee that, once they did, they were going to be accepted anyway. I thought, why would anyone go to that risk of having to pay all of that money, and then they say, "Too bad; we're not going to reinstate it anyway"? That was the issue that I found disturbing. But as you say, it's now a matter where we don't have any jurisdiction over it anyway. It would seem to me that we have to accept that.

**Ms. Karen Hindle:** Well, Mr. Kwinter, the regulation that you're speaking of—you're right that we had discussed that there was a concern associated with the fact that the college required that members, in order to apply for reinstatement, would have to pay back all of their fees, but that's a different regulation than the one that we're discussing. That was with the College of Chiropractors.

I believe—and I would have to go back into the report—that the committee decided to write back to the ministry in that particular case, suggesting that they reword the language so that it would be made very clear to applicants that this is a risk that you are taking, that it is possible when you apply, you could lose all of your money, all of the fees and penalties that you had paid, if the College of Chiropractors decides that they won't allow you to be reinstated; whereas in this case, it's dealing with whether or not somebody who is subject to any kind of criminal proceeding or drug proceeding can apply for reinstatement at the College of Pharmacists.

Tamara, I don't know if—

**The Clerk of the Committee (Ms. Tamara Pomanski):** I have my report. What reg is it?

**Ms. Karen Hindle:** I would have to find it.

**Mr. Randy Hillier:** Then maybe I'll just make a comment, that this is what it says: A former member is ineligible for reinstatement if there are any criminal charges. They may have been caught with a DUI or whatever. It's not a maybe; they're ineligible, period—

**Ms. Karen Hindle:** Yes.

**Mr. Randy Hillier:** —which, although it might not be considered penal, taking away somebody's livelihood, I would think that that's a pretty significant penalty.

**Ms. Karen Hindle:** And that has been the position that has been taken by some individuals when faced with this kind of situation.

Nobody has challenged this particular regulation. However, there are circumstances in which somebody has argued that section 11(d) should apply in the event that, say, for instance, a police officer is subject to disciplinary proceedings under the Police Services Act; or someone might lose their licence under one of the colleges, and the argument is, "Well, I'm losing my livelihood, my ability to feed myself and my family. That seems to me to be a pretty big consequence." Unfortunately, the courts have said that that is not penal. It is serious and significant, but it still doesn't engage section 11(d).

**Mr. Randy Hillier:** I don't know; I still find it—the former member is ineligible. There's no wiggle room here. It's not "may be" ineligible; it's "is" ineligible.

**Ms. Karen Hindle:** Yes, you're right.

**Mr. Randy Hillier:** And for any criminal offence in any jurisdiction. Those are some pretty broad strokes. I think that is contrary to what any thoughtful person would suggest is reasonable, that anybody accused of any criminal offence in any jurisdiction is ineligible to be a pharmacist again.

**Ms. Karen Hindle:** Well, I guess you're right, and somebody who is found not guilty would still be ineligible under this particular provision. But I think the ministry would take the view that they cannot apply for a reinstatement through that expedited process, but they can submit an application as if they are a brand-new person seeking a pharmacy licence. That option is still available. It's much more cumbersome, and obviously there's no guarantee that someone would be admitted on the basis of that application, but that option is still open to them.

Oh, and Mr. Kwinter, I just want to follow up on your comment. The one that you were referring to is Ontario regulation 137/11, under the Chiropractic Act. That is one that we are reporting in the 2011 regulations report. A letter will be going out to the ministry to ask them for further information and clarification on that particular regulation.

**Mr. Monte Kwinter:** Thank you.

**The Vice-Chair (Mr. John Vanthof):** Any further discussion on this subject? Your advice was to leave it as is?

**Ms. Karen Hindle:** Yes. I guess the only option would be—I think, unfortunately, there is very little that the committee can do at this stage. The only option that might be open to the committee is to invite ministry officials in to meet with the committee and to ask them

some additional questions and maybe seek some further clarification. I think that the committee's mandate with respect to this regulation is pretty limited.

**The Vice-Chair (Mr. John Vanthof):** What would be the advice of the committee?

**Mr. Grant Crack:** Just leave it.

**The Vice-Chair (Mr. John Vanthof):** Leave it?

**Mr. Grant Crack:** Leave it as it is. That's our recommendation.

**The Vice-Chair (Mr. John Vanthof):** All in agreement? Okay. That would end our formal agenda.

Is there any new business to discuss? Seeing none, the meeting is now adjourned.

*The committee adjourned at 0939.*

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