



ISSN 1180-4319

**Legislative Assembly
of Ontario**

First Session, 41st Parliament

**Assemblée législative
de l'Ontario**

Première session, 41^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 18 February 2015

**Journal
des débats
(Hansard)**

Mercredi 18 février 2015

**Standing Committee on
Regulations and Private Bills**

Draft report on regulations

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

Rapport préliminaire
sur les règlements

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

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 18 February 2015

Mercredi 18 février 2015

The committee met at 0900 in committee room 1.

DRAFT REPORT ON REGULATIONS

The Chair (Ms. Indira Naidoo-Harris): Okay, good morning, everyone. I'm Indira Naidoo-Harris. The Standing Committee on Regulations and Private Bills will now come to order.

We're here to resume deliberation and consideration this morning of the draft report on regulations made in 2013. When we last considered the draft report, the committee agreed to invite representatives from the Ministry of Education and the Ministry of Transportation to comment and answer questions on the regulations in question.

MINISTRY OF EDUCATION

The Chair (Ms. Indira Naidoo-Harris): First we're going to start off with the Ministry of Education. So I'd like to ask those representatives to please come up and take a seat.

Good morning, and thank you for coming in today. Before I ask you to start your presentation, I'm actually going to turn to our legislative researcher right here, Tamara Hauerstock, and ask her for a summary of the regulation that we're discussing this morning, just so that everybody has a good sense of what's going on. Tamara.

Ms. Tamara Hauerstock: Good morning. Just to very briefly recap the regulation that we discussed at our last meeting, the one with respect to the Ministry of Education is O. Reg 288/13. The issue we raised with the ministry was the regulation-making authority. This regulation was made by the minister, but it appears, under the Education Act, that the authority to make the regulation rests with the Lieutenant Governor in Council.

When we raised this issue with the ministry, they indicated that, in fact, it had been made by the minister through an oversight. They noted that it did ultimately receive the approval of the Lieutenant Governor in Council.

The Chair (Ms. Indira Naidoo-Harris): Thank you. Just to go over again for committee members here, we are now looking at regulation 288/13 on pages 4 and 5 of the draft report. Once you're there, I'm going to ask the Ministry of Education folks to begin.

Please start off by introducing yourselves for the purposes of Hansard. Following that, you may make a statement on the ministry's position regarding this.

Mr. Prabhu Rajan: Yes. Good morning, Madam Chair and members of the committee. My name is Prabhu Rajan. I'm the legal director for the Ministry of Education's legal branch. To my left is Elisabeth Scarff, who is a senior counsel at the branch. To my right is Jill Worthy, who is the acting manager of the Early Years Division.

Let me just start off by thanking the committee for inviting me, on behalf of the Ministry of Education, to attend before you to explain an issue identified by your counsel, Ms. Hauerstock, regarding a regulation made in 2013 by the Minister of Education. I note that it was approved by the LG after it was made by the Minister of Education.

As Ms. Hauerstock has noted, she sent a letter in October 2014 indicating that counsel were not able to locate the regulation-making authority for the Minister of Education to make Ontario regulation 288/13, made under the Education Act. I'd like to start off by acknowledging that counsel's concerns, as identified in her letter and as she just identified in her remarks, are fair and that we acknowledge that this particular regulation in fact should have been made as a Lieutenant Governor in Council regulation rather than a Minister of Education regulation with the approval of the LGIC.

So we do concede that this was an oversight, and we thank the committee for bringing this oversight to our attention. On behalf of the ministry, I can assure you that we will make every effort to ensure that this does not happen again. But we would like to note that we believe that the error was technical in nature and not substantive and that there was no prejudice to any party.

It might be useful now just to provide a brief overview of the history of the regulation, which will, hopefully, provide you with a bit more context as to the making of this regulation. In 2010, the Legislature passed amendments to the Education Act to implement the full-day kindergarten program in Ontario's public elementary schools. This program was phased in over the course of five years beginning in 2010-11—the school year.

There are two primary elements to the full-day kindergarten program: (1) school boards have a duty to offer full-day junior kindergarten and kindergarten generally; and (2) a duty to ensure that there is a before- and after-school program for pupils in full-day kindergarten programs in every school required to offer full-day kindergarten. This before- and after-school program is

referred to as the Extended Day Program. That's the regulation that you have before you that refers to or deals with the Extended Day Program.

The amendments to the act include authority for regulations related to both elements but established in two different parts of the Education Act. The regulatory authority relating to full-day kindergarten was established by amending existing subsection 11(1) of the act, which provides authority for the Ministry of Education to make various regulations, subject to the approval of the LGIC.

The regulatory authority relating to the Extended Day Program was set out in new section 260.5.2 in the new Part IX.1 of the act. This authority was established as direct LGIC authority. So one was a minister's reg subject to the approval of the LGIC; the other was for the LGIC to make.

Over the five-year phase-in period, the regulations were updated regularly to add to the list of schools that were subject to the duty as specified by school year. So not every school had to provide full-day kindergarten from day one. It was phased in over the course of five years, which is why the regulation was continuously updated. Matching amendments to both regulations—both full day and the extended day—were made simultaneously.

In October 2013, Ontario regulation 289/13 amending the full-day kindergarten regulation, and a parallel Ontario regulation 288/13 amending the Extended Day Program regulation, were made—the latter, of course, being the one at issue here today. As you know, the latter regulation should have been made as a direct LGIC regulation as had all the previous Extended Day Program. That's an important point to make. This is the only one out of the many that were made that was not done appropriately. We would like to note also that the Lieutenant Governor approved the regulation in question in the same manner as he would have if the regulation had been made by him.

Reflecting the end of the five-year transition period, the schedule of the school set out in Ontario regulation 288/13 was revoked in its entirety effective September 1, 2014, reflecting the fact that all boards now are required to effectively provide full-day kindergarten and Extended Day Programs in all elementary schools, with some limited exceptions.

The only remaining provision in Ontario regulation 288/13 simply duplicated the same provision, which remains in the full-day kindergarten regulation amendment.

These parallel provisions provide that the obligations under this regulation with respect to a school terminate upon the closure of the school, which is fairly self-evident, but this was put in the regulation regardless.

This section was intended as a matter of simply clarification and, in our opinion, had no substantive impact on obligations under the regulation. This is especially so since there is no issue with the provision as set out in the full-day kindergarten regulation, and if a

board has no duty to provide full-day kindergarten at a particular school, of course it has no duty to provide the Extended Day Program.

As I've tried to highlight, while an oversight was made, it was technical in nature. Unfortunately, under the Education Act, it can be a bit confusing at times, given that there are three different types of reg-making authority. There are three different types of reg, actually. There's a minister's reg, there's a minister's regulation with LG approval, and there are also LG regs.

0910

So we acknowledge the oversight and do not expect to make such an error in the future.

Subject to any questions—I have my expert colleague next to me as well; we're happy to answer any questions. But thank you for your time.

The Chair (Ms. Indira Naidoo-Harris): Thank you very much for your presentation.

I'd now like to turn it over to our committee members. Does anybody have a question, and who would like to start? Daiene Vernile.

Ms. Daiene Vernile: Thank you very much for coming and speaking to our committee this morning.

Just to clarify, during all of this technical issue, at no point was the rollout of full-day kindergarten or before- or after-school supervision—none of that was ever affected?

Mr. Prabhu Rajan: No, I don't believe so. I can turn to a client.

Ms. Jill Worthy: Absolutely correct. School boards were required to submit annually to us in the Early Years Division a listing of all of the schools and the locations where they were providing before- and after-school programs. So that was a secondary requirement not in legislation. We have clear evidence that every single school that offered full-day kindergarten also was required to offer an extended day program. They didn't necessarily run in every school, because it's a question of cost recovery and the programs have to be considered viable in order to be offered. But each school board had to survey the community to determine whether or not there was sufficient interest for a program to be offered on a cost-recovery basis.

Ms. Daiene Vernile: So this was just a technical oversight that did not affect the rollout of this program in any way?

Ms. Jill Worthy: Not at all. Not at all.

Mr. Prabhu Rajan: That's correct.

The Chair (Ms. Indira Naidoo-Harris): Thank you. I understand MPP French has a question. Go ahead.

Ms. Jennifer K. French: Yes, thank you, and again, thank you for coming to present to us this morning.

Actually, my question is a specific question about the draft report and some wording in it. On page 5, just before the possible recommendations on this section, it says, "The committee has addressed a similar issue (where regulations were made [by] the Lieutenant Governor in Council instead of by the minister) in both its April 2011 and April 2012 reports."

My question to you is, was that also through the Ministry of Education, those regulations?

The Chair (Ms. Indira Naidoo-Harris): I believe the legislative researcher—

Ms. Tamara Hauerstock: I don't have those reports in front of me, but it was not the intention to imply that that was the Ministry of Education. That's not clear, so I will amend that and I can clarify which ministries it was. The intention in putting that sentence in the draft was to point out that this is an issue that has arisen in the past, that we've raised and commented on in the past.

Ms. Jennifer K. French: Thank you, because I didn't think that was consistent with what they were saying, that there had been many made but only one done incorrectly. I didn't know.

Ms. Tamara Hauerstock: Yes, that's a good thing.

The Chair (Ms. Indira Naidoo-Harris): Thank you, MPP French. Now MPP Bill Walker.

Mr. Bill Walker: Thank you very much, Madam Chair. I'm not certain who I'm directing my question to, but it's from this perspective: It's a technicality—I get that—but we now have two parallel regulations. Would the typical practice not be to remove and correct? Because otherwise, we still have these two, even though it's a technicality.

Ms. Elisabeth Scarff: Actually, it has already been addressed, because these regulations have been updated regularly. So in 2014, the schedule in the suspect—I'll call it that—regulation was entirely repealed and a new regulation was made in which the full implementation of full-day kindergarten and extended day programs—which reversed the onus, because the transition period was over. Now the core regulations say in every school, subject to exceptions. Those regulations were made totally in accordance with the relative regulatory authority. That's the other reason why the error has really become quite redundant, because the main substance of that regulation was repealed by an LGIC regulation.

Mr. Prabhu Rajan: Yes. Prior to 2014, the regulations set out the list of schools that were to provide full-day kindergarten, extended day; 2014, as my colleague has noted, flipped it around, saying all schools must provide except for particular schools. As Ms. Scarff has indicated, it's become redundant.

Mr. Bill Walker: My follow-up question then is—the possible recommendation is that we remake, but I'm hearing we've done it.

Ms. Elisabeth Scarff: This regulation was actually amending what I'll call the core Extended Day Program, which was regulation—I think it's 224/11. So 224/11 remains, so it didn't have to be remade. But the amendments to that regulation have been updated so that the regulation made in 2013 didn't have to be remade because its contents were no longer applicable.

Mr. Bill Walker: Does legislative research agree with that?

Ms. Tamara Hauerstock: As I understand it, there's that one provision that remains, the clarification provision—not the long table, but that one section.

Ms. Elisabeth Scarff: Yes, the one section. It's already in the FDK regulation, and our position is that it was pure clarification anyway and has no—it has some effect, but it's really for clarification. It already exists in the other regulation.

The Chair (Ms. Indira Naidoo-Harris): We have another question. MPP Amrit Mangat.

Mrs. Amrit Mangat: It's just for my own clarification. Thank you very much for your presentation. On page 5, you said that the regulation was not made by the correct authority. I would like to know, who is the correct authority?

Mr. Prabhu Rajan: This one should have been made by the Lieutenant Governor; rather, in this case, it was made by the minister with the approval of the Lieutenant Governor. What I indicated was, the effect is the same. The Lieutenant Governor looked at the reg, regardless, and approved it, but he didn't make it; the minister made it with his approval. The effect, frankly, is the same, but it's not—

Mrs. Amrit Mangat: That's what I was trying to understand, how it's different. If it's approved by the LG, how is it different? That's what I was trying to understand.

Mr. Prabhu Rajan: It's a technicality in the way regs are made. I didn't draft it, but that's how it was set up in the act. The legislative counsel was accurate in noting the discrepancy, but we would say to all of you that the effect is essentially the same.

Mrs. Amrit Mangat: Thank you.

The Chair (Ms. Indira Naidoo-Harris): Any further questions? MPP French.

Ms. Jennifer K. French: Yes, and you'll have to forgive me: I've been jotting down numbers, but I don't have them in front of me.

The original recommendation of remaking, as you have said, doesn't make sense, because it's almost redundant. There is one part about the FDK, as we've heard, that is duplicated elsewhere. In that case, to Mr. Walker's point, is there any reason to have it at all, then? If it's elsewhere, shouldn't it just be withdrawn or taken away?

Ms. Elisabeth Scarff: We can do that, and I will probably take this under consideration with legislative counsel, or in fact remake it whenever we go in. If we remake it, it's not because it's legally required; it's just to have the same consistency across both regulations. It is a suggestion that we can take under consideration. The next time we make the regulation, we can remake that simple section.

The Chair (Ms. Indira Naidoo-Harris): MPP Walker.

Mr. Bill Walker: Just for a point of clarification, because I'm still relatively new and learning all of this legislative technicality stuff. I'm a little amiss as to why we would not correct it. If it is something that someone has noted—I get that it's not having any real cause and effect, but at the end of the day it is still confusing for people if there's two. So would we not either accept the

recommendation to fix it, or would we not make a recommendation to amend going forward to clean it up? There's nothing I hate worse in government than having duplication and waste.

Ms. Elisabeth Scarff: I agree. Obviously, that is something that the ministry would seriously consider and probably follow through on.

Mr. Bill Walker: Can I just be pedantic and ask why you would only "seriously" and not right off the bat say, "I want to fix this and make it right"?

Ms. Elisabeth Scarff: Because I'm legal counsel, and I take instructions.

0920

Mr. Prabhu Rajan: It's not our call.

Mr. Bill Walker: You're sounding like a politician here. Welcome to our world.

Mr. Prabhu Rajan: One of the benefits of being a lawyer.

Mr. Bill Walker: There you go.

The Chair (Ms. Indira Naidoo-Harris): All right. Just one final call: Any further questions or clarifications, or are committee members satisfied? MPP Walker?

Mr. Bill Walker: This is for you, Chair, because, again, I'm learning some of this protocol. At this point, can we put a motion on the table that we, as the committee, would like to see this rectified in whatever manner is acceptable and the most timely?

The Chair (Ms. Indira Naidoo-Harris): At this point, it's not normal that we would do it. We're going to listen to the next presentation and then talk about both presentations at the end.

Mr. Bill Walker: Thank you. I'll just note my recommendation.

The Chair (Ms. Indira Naidoo-Harris): All right. Thank you.

Thank you very much for coming in and thank you very much for your presentation.

Mr. Prabhu Rajan: Thank you very much for your time.

MINISTRY OF TRANSPORTATION

The Chair (Ms. Indira Naidoo-Harris): We now have a representative from the Ministry of Transportation, if you'd please take your seat. This is regarding regulation 169/13. For committee members, this is on pages 7 and 8 of the draft report. However, before we begin with the presentation and your introduction, I will ask our legislative researcher, Tamara Hauerstock, to just summarize for us what the regulation is about.

Ms. Tamara Hauerstock: This regulation, O. Reg 169/13, was made under the Highway Traffic Act, and it relates to school buses. The issue we raised with respect to this regulation was a definition that was put into the regulation which incorporates by reference a standard and also incorporates future changes to that standard into the regulation. This is known as incorporation by reference. Under the Legislation Act, when outside documents are incorporated into a regulation, they should be in-

corporated as they stand on the date that they are incorporated, and future changes should not be incorporated unless the act allows them to be.

In this case, we did not see that the Highway Traffic Act permitted rolling incorporation—in other words, future changes—so that was the issue we raised with the ministry. They responded, just to summarize, that their view was that the rolling incorporation of the standard is something the Legislature would have intended to authorize in this circumstance.

The Chair (Ms. Indira Naidoo-Harris): Thank you. I now would like you to introduce yourself. Welcome. Good morning. Thank you for being here.

Mr. Patrick Moore: Good morning, Madam Chair. My name is Patrick Moore and I'm a lawyer with the Ministry of Transportation.

I could perhaps just give a little bit of background as to the regulation that is in play here. The regulation with which the committee took issue was 169/13. That was actually an amendment to regulation 612, under the Highway Traffic Act, which is the regulation that deals with equipment and design standards for school buses.

The amendment that occurred in 2013 was designed to take some standards that applied in another regulation dealing with what are called accessible vehicles—those are vehicles designed for the disabled—and to move those standards that were applicable to school buses into regulation 612 to have all of the standards applicable to school buses in one place. That would be regulation 612.

Now, what was retained from regulation 612 was what the legislative research counsel has indicated as being the issue, and that is what is sometimes known as a rolling incorporation of a standard that was developed by the Canadian Standards Association. The Canadian Standards Association has developed standards over the years for school buses going as far back to the early 1970s, and that has been amended from time to time—roughly every four to five years, sometimes more frequently. That's done through the work of committees of the Canadian Standards Association that typically involve representatives from all of the provincial governments in Canada, as well as representatives from the private sector and manufacturing.

What the ministry did in regulation 612, as I said, was that the amendment to it was to retain this rolling incorporation such that if there were any further amendments to the Canadian Standards Association standard, those would automatically become the law in Ontario without the need for a further regulation change or another regulation by the Lieutenant Governor in Council to adopt the new standard. In other words, it wouldn't be necessary every time there was a change made by the Canadian Standards Association to come back to cabinet, essentially, to request a regulation change.

In terms of the legalities of that, I understand Ms. Hauerstock has referenced some of the parts of the Legislation Act. There is a provision dealing with the incorporation of outside documents. That's probably the provision that's subject to interpretation in some sense

before this committee. What the Legislation Act indicates is that unless a contrary intention is indicated by the legislation, incorporated documents will be incorporated as of the time of the incorporation and not on a continuing basis.

The ministry's position is essentially that the nature of the Highway Traffic Act, in its scheme for regulating the designs for school buses—the regulation-making powers given in the statute, which include authorities to make regulations dealing with design, the colour of school buses, the equipment on school buses—although there's not an explicit reference in the statute to rolling incorporation and that being authorized, there is impliedly an authorization from the Legislature that regulations could be adopted that would be rolling in nature.

Then it becomes a question: Is this type of regulation the subject matter that the Legislature would have impliedly intended for rolling incorporation? In our view, it is. These are scientific or very technical standards dealing with the batteries on a school bus, the engine and the design of the chassis and so forth. This is the type of material where it would be logical for the Legislature to have intended for there to be a rolling incorporation of what is in effect an expert, a cross-Canada standard, especially when it's been developed by what is in effect an outside expert body like the Canadian Standards Association.

That's the ministry's view with respect to the application of the Legislation Act. Understand there perhaps could be different opinions with respect to the interpretation of the act and the extent to which it allows rolling incorporation, but our view is that, in view of the nature of the act, the regulation-making authorities, the fact that these standards are very technical in nature and they're made by an independent outside body, they are the types of standards where rolling incorporation is permitted. In fact, it is the norm in Canada and other provinces that these Canadian Standards Association standards for the school buses would be adopted on a rolling basis as they are changed, and that helps to have some harmonization across the province for these to be adopted as they are changed at a national level.

0930

I think there was a question raised as well—I'm not sure if it's still standing—with respect to the accessibility of the standards. They are accessible through the Canadian Standards Association. There's a website where you can go and click and buy the standards. They also have archived standards, which one can access through a customer service representative, in order to obtain any kind of archived standards.

I hope that, in a gist, explains the ministry's position with respect to these standards that have been adopted on a rolling basis.

The Chair (Ms. Indira Naidoo-Harris): Thank you very much for your presentation. I'd now like to turn it over to committee members. Does anyone want to start off with any questions? Yes, MPP Baker.

Mr. Yvan Baker: Thanks very much, Chair.

If I can summarize what I think you've told us, it is that you're trying to make sure that the regulations reflect the CSA standards and that that be done immediately as those standards change—

Mr. Patrick Moore: Yes.

Mr. Yvan Baker: —on a live basis. So it sounds like your intent was to make sure that you didn't have to go back and amend regulations or create new regulations every time the CSA standards change. On that front, that sounds a little bit—I'm just going back to my colleague MPP Walker's point for the previous witness, a little bit about alleviating waste and duplication in government. Is that fair?

Mr. Patrick Moore: I think that is quite fair. It does alleviate the need to come back to cabinet to ask for a regulatory change. In effect, we have an established policy in Ontario of approving these standards as they are changed from time to time. To come back to cabinet to decide again whether it's going to approve a standard change that might have been a technical change with respect to the chassis of a school bus, for instance, doesn't seem to be a worthwhile exercise just from a practical point of view and also creates the possibility of a time lag between the time that the standard becomes effective and the time that it's adopted by cabinet and then becomes the law in Ontario.

Mr. Yvan Baker: Thank you.

The Chair (Ms. Indira Naidoo-Harris): Next, MPP Walker: Go ahead.

Mr. Bill Walker: I fully support that. I think we also have to think of the people providing the service in those buses who could get caught in the middle if there is that time lag. So my question, I guess, for legislative counsel is: Is it really a technicality that if they were to change and make similar language to comply with requirements—steps to amend—if they had just said “from time to time” you wouldn't have even had an issue with this, or are you really wanting them to go exactly the opposite: “You've got to come back to and review every single reg”? To me, if a motor changes or brake styles change, if I ever have the luxury of being in cabinet, that's not what I want to be talking about.

Ms. Tamara Hauerstock: The issue that I raised was that technically, under the act, the ability to create a regulation with rolling incorporation isn't there. It is there in other parts of the act; other sections of the act do provide explicit permission to do this. Under the regulation-making authority for this type of regulation, the permission is not there.

Mr. Bill Walker: So if we were to incorporate that as an amendment, that would appease what you're trying to accomplish, I believe, and take this all away?

Ms. Tamara Hauerstock: That would be an amendment to the act.

Mr. Bill Walker: Yes.

Ms. Tamara Hauerstock: The regulation-making authority in the Highway Traffic Act would have to be amended to permit rolling incorporation to deal with this technical issue.

Mr. Bill Walker: Understood, but if that's going to resolve the issue, why wouldn't we do that? I definitely want where you're going. I want that to happen. But if we're going to come back to committee again in another year and talk about this again, to me that's just another colossal waste of our time and energy. We could be on to another issue. So if that can clean it up, I would then ask why we wouldn't do that or why we would have real pushback on that. If it gets you what you want, why wouldn't we do it? Conversely, if he's saying no, how hard are we going to push this to make it happen?

The Chair (Ms. Indira Naidoo-Harris): I think that's something that we'll discuss perhaps after the presentation.

Next, MPP French.

Ms. Jennifer K. French: I've heard a lot of my thoughts already kind of echoed around the room—but so I can be on the record. Thank you very much for your presentation. I think, to everyone's point, there doesn't seem to be a question of the importance of the technical or scientific details needing to be updated. I think we recognize that things change, and we want to be current and safe.

So just to reiterate, the change that would ultimately need to happen for anything in future to be in compliance with the Legislation Act is that the act itself needs to be changed. What section are we talking about? I don't see that here.

Mr. Bill Walker: Section 62.

Ms. Jennifer K. French: Ah. I beg your pardon. So section 62 of the Legislation Act would be the target, then, for a legislative change. Is that correct?

Ms. Tamara Hauerstock: I believe so.

Ms. Jennifer K. French: The right change would then provide for this and for other scenarios so that things stay current and we don't have to go back. It's not a matter of static incorporation versus this rolling incorporation—is that it?

Ms. Tamara Hauerstock: That's the issue.

Ms. Jennifer K. French: So rolling incorporation isn't a thing, but we would like it to be. Is that a fair point?

Ms. Tamara Hauerstock: Sometimes the act doesn't keep up with the day-to-day needs of a ministry in administering the act.

Mr. Patrick Moore: I think probably there are some sort of different interpretations that are available. The ministry's interpretation is that currently the Legislation Act permits rolling incorporation in a circumstance like this, dealing with a technical standard by an outside body. I believe, though, that Ms. Hauerstock, and perhaps other views on the committee, would indicate that explicit authorization would be needed in the Highway Traffic Act to permit rolling incorporation. So there are different legal interpretations, I guess, of the requirement under the Legislation Act, as I understand legislative research counsel's view.

Mr. Bill Walker: Who's the judge?

Ms. Jennifer K. French: I was going to say.

Mr. Patrick Moore: Ultimately, if it came down to it, it would be a matter for a court to decide.

The Chair (Ms. Indira Naidoo-Harris): I'm going to stop you there and just give some of our other committee members a chance to chime in on this. Yes, MPP Vernile.

Ms. Daiene Vernile: Forgive me for asking such an obvious question, and I do so on behalf of Ontarians who may follow what is said in this committee; they read up on what we're up to and what you have said. For those folks, can you please give us some insight into what is meant by "rolling incorporation"?

Mr. Patrick Moore: Yes, I'm sorry; I think I threw that term around a few times. There are two types of incorporation, Madam Vernile. One is called a static incorporation. The regulation would incorporate, in this case, the school bus standards as they were on the date that the cabinet made their regulation, February 20, 2015. The state of those Canadian standards and regulations as of that date would be fixed. Those would be the standards that would be applicable and that Ontarians would need to comply with until further notice in a new regulation.

By way of a rolling incorporation, which is the ministry's preferred position, if the standards were changed by the Canadian Standards Association, in consultation with all of the provinces and so forth, they would then become the law as of the date of the change to the standard. If a school bus were manufactured in 2017, the manufacturer would need to comply with, for instance, a Canadian Standards Association standard that came into effect in 2016 or 2017, rather than the Canadian Standards Association standard that had come into effect years earlier.

0940

Ms. Daiene Vernile: So your intention is to ensure that school buses in Ontario have a standard for design and complement of equipment they have on board?

Mr. Patrick Moore: Design and equipment. Both are very important, whether it be the mirrors, the first aid kits, the lighting, the roof hatches. All of those different things come into play. We want all of those to be up to date so that the most current standard in effect is the law.

Ms. Daiene Vernile: Thank you.

The Chair (Ms. Indira Naidoo-Harris): Thank you. I know several things have been raised, but I think some of those topics may be more appropriate for us to discuss after your presentation. Just before we leave this here, any further questions from the committee members for this Ministry of Transportation representative? Yes, MPP Walker.

Mr. Bill Walker: Thank you, Chair. May I just ask for a point of clarification? Outside of the technical equipment, if you will, if the standards association came up and said, "We're going to change the colour of school buses from yellow to neon green because it's safer, like they've done in the UK with fire and emergency vehicles," is that something that would not be part of this as a rolling—or is that something that would be incorporated, if they said, "Yes, we're going to do that in all other provinces" and Ontario was a dissenting voice?

Mr. Patrick Moore: That would be a bit of a show-stopper, actually. Chrome yellow is an essential aspect of a school bus in North America, and so that's built right into our legislation. That would be an example where that would be an issue—

Mr. Bill Walker: To come back to cabinet. Okay.

Mr. Patrick Moore: It would go so much against the grain that it's kind of unimaginable that the standards association would make such a drastic change.

Mr. Bill Walker: And I see that as much different than, again, changing a mirror, changing a safety arm, changing the size of the chassis. I mean, those things—again, just get on with it and keep it up to date.

Mr. Patrick Moore: Yes.

Mr. Bill Walker: Thank you.

The Chair (Ms. Indira Naidoo-Harris): Thank you very much for your presentation, Mr. Moore. Thank you for coming in this morning. It's very much appreciated.

Mr. Patrick Moore: Thank you. Have a good day.

The Chair (Ms. Indira Naidoo-Harris): I would now like to turn the discussion over to committee members. Moving forward, I understand that some clarification may have been asked for. The legislative researcher wants to clarify some things. Go ahead.

Ms. Tamara Hauerstock: I just wanted to take us back for a moment to the mandate of the standing committee, which is the review of regulations. We've had some discussion here about the issue with this provision out of the Highway Traffic Act, and if that section of the Highway Traffic Act read differently, there wouldn't be this issue with our regulation. But that is a step beyond the mandate of the standing committee, because we're at the regulation level.

The Chair (Ms. Indira Naidoo-Harris): Thank you. MPP Walker?

Mr. Bill Walker: Again, expressing my naïveté, I struggle at times on why we are here if we can't move some of the stuff forward. If I have to come back and talk about this again in another year, I'm going to go crazy. I appreciate and respect fully that there's a difference, but can you then express to me how we, from this committee, get that to change so that we don't have to do this? Because to me, it's just like a continual evolution of bureaucracy and administration, that we go around and around and we don't ever get on to some of the things that we should be talking about.

Ms. Daiene Vernile: Point of order, Madam Chair.

Mr. Bill Walker: And I don't mean that in any disrespect to you or your job.

Ms. Daiene Vernile: Just a point of order: It has not been a year.

Mr. Bill Walker: Well, whatever. "If" it's a year; let's put it that way.

Ms. Daiene Vernile: It has not been a year. We should be accurate for the record.

Mr. Bill Walker: Fair enough. I was using that as an expression, that I don't want to be here in another year talking about the same issue. Is there a way that we can

resolve and move these forward with actionable recommendations?

The Chair (Ms. Indira Naidoo-Harris): Well, I think we're at a point in this discussion where we may want to consider the recommendations that are on the table. I think there are two ways that we could proceed from here on, so let's go back to the matter of the Ministry of Education, the first issue that we discussed, which was regulation 288/13.

I'd like to find out from the committee members if they would recommend that we have further discussion on this and have some time to get more information on it before we move forward with solid recommendations. I get the sense that that particular topic was something that people were requiring a little more information about. MPP Vernile?

Ms. Daiene Vernile: I would agree with Mr. Walker that we don't want this to linger on and on, but I would beg your indulgence just for us to have one more week, if we can return next week and be prepared to move forward on this.

The Chair (Ms. Indira Naidoo-Harris): MPP Lalonde.

Mrs. Marie-France Lalonde: I would concur with my colleague, and the only reason—I very much appreciate your point, and actually I think we see very much eye to eye on many things. But there was a comment made that you could answer regarding the education component. I read the same regarding—I think MPP French mentioned the 2011 and 2012 reports. It may be nice just to explore that and I would say maybe come back next week with that and then a decision can be rendered.

The Chair (Ms. Indira Naidoo-Harris): Okay. So we have a recommendation on the table that we come back with more information next week and make a solid recommendation to the committee then.

All those in favour? Okay. We'll come back next week and discuss the Ministry of Education issue.

All right. Regarding the issue with the Ministry of Transportation, which is regulation number 169/13: Once again, there were concerns raised about further information. Is there a recommendation on the table to get further information regarding this and perhaps consider this next week? Yes, MPP French.

Ms. Jennifer K. French: I'd be interested, rather than more information about what this means specifically—and as MPP Walker had said, I'm new to the process. So I understand that what we were talking about before is a legislative change. As this committee operates, when is it appropriate or how does it work for us to make recommendations—I don't know to whom—about, "Hey, this isn't a regulation issue; this is a legislative issue," or is it just a matter of someone from this room drops a private member's bill? If we can maybe be advised how we as a committee make recommendations for actual legislative changes that need to happen, I would value that information. Because to MPP Walker's point, in a year from now or in a month from now, we'll see not this but another

issue with the same lack of provision for rolling incorporation.

The Chair (Ms. Indira Naidoo-Harris): I've consulted with the Clerk. Thank you for your comments. She's recommending that she and the legislative researcher look into that possibility and get back to us next week with further information.

Ms. Jennifer K. French: Great.

The Chair (Ms. Indira Naidoo-Harris): I guess I'll put this to a vote again for those committee members who are here today. When it comes to regulation 169/13, all those in favour of continuing this discussion next week, raise your hands. Thank you. Motion carried.

All right. That's it. Thank you very much, everybody, for coming in. We'll meet next week and discuss some of these topics further. I appreciate your attendance.

MPP Walker?

Mr. Bill Walker: At the risk of belabouring, Chair, I just want to put on the record: None of what I've said is anything directed to legislative research or the Clerk. It's just more, I think, exactly what MPP French is saying. Most of us are relatively new, as I look across. Maybe my friend Mr. Bailey here has been around for a little bit. My frustration is just if we go around in circles and never change anything. If we're only here to do that, maybe I need a different committee. I think there is value in what we do, but let's do the actionable stuff and just explain to us how we do that. If this isn't the format, I'm okay with

that. But maybe I just didn't understand that we couldn't make those changes here as a recommendation.

The Chair (Ms. Indira Naidoo-Harris): Thank you. MPP Kathryn McGarry.

Mrs. Kathryn McGarry: Thank you, MPP Walker. I believe we all feel the same way, but if we look at the work that we completed at the end of the last session, there were a number of recommendations and a number of issues that were brought forward through this process that were resolved before they came back to the committee. I'm satisfied that the work is advancing quite quickly. It was just these two outstanding that we've already got a deadline or plan to move forward to next week. I don't think any of us expect that this will linger. But I do speak to the past few weeks. Some of these issues have already been resolved and had the answer back to the satisfaction of legislative research.

Ms. Daiene Vernile: I would concur with Mrs. McGarry and say that, in the last session, I was actually quite surprised, as a new person, at the long list of regulations and bills that we managed to get through quite easily and quickly in this committee. So thanks to our Clerk's office for helping us with that.

The Chair (Ms. Indira Naidoo-Harris): Thank you very much, MPPs. Thank you very much, committee members. We'll meet again next week. Thanks. Adjourned.

The committee adjourned at 0950.

CONTENTS

Wednesday 18 February 2015

Draft report on regulations	T-27
Ministry of Education	T-27
Mr. Prabhu Rajan	
Ms. Jill Worthy	
Ms. Elisabeth Scarff	
Ministry of Transportation	T-30
Mr. Patrick Moore	

STANDING COMMITTEE ON REGULATIONS AND PRIVATE BILLS

Chair / Présidente

Ms. Indira Naidoo-Harris (Halton L)

Vice-Chair / Vice-Présidente

Mrs. Kathryn McGarry (Cambridge L)

Mr. Robert Bailey (Sarnia–Lambton PC)
Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)
 Ms. Jennifer K. French (Oshawa ND)
 Mr. Monte Kwinter (York Centre / York-Centre L)
Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)
 Mrs. Kathryn McGarry (Cambridge L)
 Ms. Indira Naidoo-Harris (Halton L)
Ms. Daiene Vernile (Kitchener Centre / Kitchener-Centre L)
 Mr. Bill Walker (Bruce–Grey–Owen Sound PC)

Substitutions / Membres remplaçants

Mr. Yvan Baker (Etobicoke Centre / Etobicoke-Centre L)
Mrs. Marie-France Lalonde (Ottawa–Orléans L)

Clerk / Greffière

Ms. Valerie Quioc Lim

Staff / Personnel

Ms. Tamara Hauerstock, research officer,
Research Services