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**Wednesday 9 March 2016**

**Journal  
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**Mercredi 9 mars 2016**

**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

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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 9 March 2016

Mercredi 9 mars 2016

*The committee met at 0903 in committee room 1.*

**DRAFT REPORT ON REGULATIONS**

**The Chair (Ms. Indira Naidoo-Harris):** Good morning, everyone. The Standing Committee on Regulations and Private Bills will now come to order.

We are here this morning to resume consideration of the draft report on regulations made in the first six months of 2015.

**TREASURY BOARD SECRETARIAT**

**The Chair (Ms. Indira Naidoo-Harris):** Last week, the committee chose to invite a representative from the Treasury Board Secretariat to provide us with some further clarification of the secretariat's position regarding O. Reg 143/15.

Joining us today is Mr. Sean Kearney. Mr. Kearney, please come on up and sit down.

**Mr. Sean Kearney:** Where would you prefer that I sit, Madam Chair? Here?

**The Chair (Ms. Indira Naidoo-Harris):** Yes, that's perfect.

Mr. Kearney is the director of the legal services branch. Good morning. Thank you for coming in.

**Mr. Sean Kearney:** Good morning.

**The Chair (Ms. Indira Naidoo-Harris):** Before you begin, I am going to invite our legislative researcher Mr. Andrew McNaught to refresh the committee members' minds with a summary of the regulation that we're discussing. Just so that you're all aware, I believe that the ones we're discussing are on pages 3 and 4. Go ahead.

**Mr. Andrew McNaught:** Good morning. Today, we're continuing our review of a regulation made under the Government Advertising Act, 2004. That regulation is discussed on page 3 of the draft report that we looked at last week, and that's under the heading of Treasury Board Secretariat.

I'll just briefly recap. The Government Advertising Act requires that whenever the head of a government office proposes to pay for an advertisement, he or she must submit a copy of the advertisement to the Auditor General for a preliminary review. The purpose of the review is to ensure that the ad will likely meet the standards set out in the act; for example, that the advertisement is non-

partisan. As set out in the act, the preliminary review requirement applies to four classes or categories of advertising, and we've listed those for you under paragraphs (a) to (d) on page 3 of the report.

The act allows cabinet to make regulations "exempting items from preliminary review." The regulation that was made under this authority exempts any advertisement falling within the first three classes just noted, and that's (a) to (c). As a result, only advertisements that are to be broadcast on radio or television or in a cinema are subject to the preliminary review requirement.

As outlined in the draft report, the concern we have is, given that the regulation-making power in the act speaks of exempting items, one would expect to see exemptions on an item-by-item basis rather than exemptions for entire classes of advertising.

By exempting three of the four classes of advertising that are mentioned in the act, one might argue that the regulation here is, in effect, rewriting the act. I would just stress here that we are making no comment on whether the exemptions that have been made here are good policy. There might very well be good reasons for creating these exemptions, as I'm sure we're going to hear, but the issue before you is whether the regulation-making power in the act as it is currently worded is broad enough to authorize the exemptions that have been made.

Given what we see as uncertainty in the wording of the enabling clause in the act, the recommendation we've proposed, which is towards the bottom of page 4 of the draft report, is that the Treasury Board consider amendments to ensure that there is express authority in the act to prescribe the exemptions that are set out in this regulation.

**The Chair (Ms. Indira Naidoo-Harris):** Thank you, Mr. McNaught. I'm now going to turn the floor over to Mr. Kearney.

Mr. Kearney, do you have any comments about the sections we're discussing?

**Mr. Sean Kearney:** Yes. I sent a letter back on November 9 last year which I think set out the rationale behind the regulation, but I thought I would just touch on what I had in that letter and also some other points that I think respond to Mr. McNaught's comments.

It's important, I think, for everybody to understand that prior to 2015 and prior to these amendments to the act, we had a de facto preliminary review process which

existed operationally outside of the act's parameters. This had basically gone on for about nine or 10 years through the coordinating efforts with the Auditor General's office. It was a voluntary, non-statutory process in which the Auditor General could pre-review early versions of certain types of government ads and signal whether they were likely to meet the act's standards before more costs were incurred to fully produce the ads—mainly talking about television ads because obviously the production costs associated with those ads can be quite expensive.

Just in terms of statistics that the Auditor General has referenced, for the 10-year period—if you took a snapshot—between 2005 and 2015, you're looking overall at 7,237 ads, and the number that went for pre-review works out to about 3%. It's 246. So the vast majority never have gone through a preliminary review process. It's mainly one review which we call a final review.

Again, we had this non-statutory voluntary process. In 2015, the government—obviously there were a number of changes to the statute itself, but in 2015 the government also decided to try and codify this existing preliminary de facto process into the act and into the regulations to make it more transparent.

#### 0910

The act, as amended in 2015, now contemplates a two-stage review process of proposed government advertising by the Auditor General, consisting of a preliminary review, in certain cases, and a final review. The act, as Mr. McNaught pointed out, authorizes that a reg can be made which would exempt various items from preliminary review. Specifically, clause 12(1)(a.3) provides that the Lieutenant Governor in Council can make regs exempting items from preliminary review under sections 2, 3 or 4.

So section 1 of this reg obviously exempts a number of items from preliminary review under section 2 of the act. The only items that are currently not exempt from preliminary review under section 2 are basically television and cinema ads, which again is consistent with the past practice. It's important for committee members to note that any items exempted from preliminary review are always going to be subject to a final review. There's no ad which the Auditor General will not review, at the end of the day. Therefore, even if we have an ad which is now exempt under this reg, it still necessarily has to go under review by the Auditor General. So such ads are basically being reviewed once, as opposed to twice. In fact, this is something that the Auditor General herself has explicitly supported pursuant to consideration of this reg change.

As I indicated in my letter back in November—and hopefully you've had an opportunity to review that letter—it's our understanding that the regulation-making authority in the act is sufficiently broad to allow for the exemption of a wide array of items from preliminary review, and that's particularly true if one takes a purposive approach to interpreting the relevant provisions at issue.

It's our view that subjecting all or even most items to both stages of a two-stage review process would make

little sense in the circumstances. The Auditor General is the expert in this area. She's the one who has said explicitly that doesn't make sense; it makes sense to just have a final review process and preliminary review for certain items, as has been practised in the past—keeping in mind, as well, that she now has purview over all digital advertising, which she didn't prior to 2015.

The real value in having a two-stage process is when we're looking at relatively high-cost items like TV and cinema ads. As I said before, the Office of the Auditor General was consulted on the regulation and specifically agreed with the section on exemption from preliminary review. Therefore, it's the view of TBS that the act as amended and the regulation 143/15 strikes the right balance between making this two-stage review process more transparent, while ensuring that it's actually carried out in a practical, meaningful manner.

So the regulation doesn't change past practice in any material way. It simply eliminates, in our view, the need for a repetitive review process for certain ads. Again, at the end of the day, the Auditor General still will be undertaking a final review of every ad that comes before her.

**The Chair (Ms. Indira Naidoo-Harris):** Questions and comments? MPP Walker.

**Mr. Bill Walker:** I certainly applaud any action that's going to remove needless repetition and something that doesn't add value to the taxpayer and to our legislation, so I think it's great that you've taken that attempt.

The one question I have is about whether it was intended that the regulation-making powers would be used to exempt whole classes. If there's something like a magazine ad or a newspaper ad that's going to be in every weekly newspaper, what you're suggesting is that there's no need to review that twice; it's going to go through a final review before it ever hits the paper. But in the old world, we would have actually had you do a pre-review, then we would have done a final review, even for those classes.

**Mr. Sean Kearney:** It's a good question. Not necessarily. Under the old process—the pre-review process, if you will—it wasn't mandated. It was just a voluntary de facto practice. Typically, most magazine ads, for example, wouldn't have gone to a two-stage review process with the Auditor General. It would have probably been reviewed once. As I said, of the over 7,000 ads, just over 200 went to that sort of pre-review process. So most of the 246—and I'm sorry; I can't speak to every single one—the vast majority were really television or media production ads. Those were most of those ads. Most print stuff wouldn't have gone to a pre-review process. Based on the Auditor General's comments—I can't speak for her, obviously—she would probably say that it would be an administrative burden for her office to have to look at all print ads as well.

**Mr. Bill Walker:** Sure. Okay, thank you.

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

**Mrs. Kathryn McGarry:** Thank you very much for your presentation. From what I understand, you're saying

that nothing escapes review; it's just the TV and cinema ads that need the preliminary and the final review?

**Mr. Sean Kearney:** That's right, and it would go through two stages, yes.

**Mrs. Kathryn McGarry:** Can you just, again, reiterate and just clarify for me what the purpose of the preliminary review process is?

**Mr. Sean Kearney:** Based on the experience over the last number of years, if you wanted to put forward an advertisement for television purposes, there are huge production costs associated with doing that. So you could spend—I'm not in advertising—probably a couple of hundred thousand dollars on an ad. The concern was, if you waited until you finished the ad and then provided it for review to the Auditor General, and she then determined, "No, no, no. This does not pass muster"—for whatever reason—"with the legislation, and you cannot run this ad," then you would have incurred significant costs for an ad that you could never run.

So it was thought that through this de facto pre-review process, the better approach would be for you to be in a position where you could put that ad forward as it was in the production phase, before its near completion, and say to the Auditor General, "This is what the ad will show," or "This is how it will be set out. This is what we intend to speak to in the ad. How do you feel about that?" Then, the Auditor General could respond. If she says, "That's fine," then you could obviously carry on with your production costs. If she says, "No, over my dead body," then you wouldn't continue. If she says, "Well, I'd like to see this addressed or this tweaked" or whatever, then whoever is producing the ad would make those necessary changes. Then, the chances of it being approved, after all of the money has been expended on the ad, would be greatly increased. That's how the two-stage process came into effect.

**Mrs. Kathryn McGarry:** Okay. Again, if you could just confirm what the review process is for items that are exempt from the preliminary review?

**Mr. Sean Kearney:** The items that would be exempt from preliminary review would just simply undergo one final review before approval. It would still be sent to the Auditor General's office, but there would be no statutory or regulatory requirement to provide it very early on and then later on for final review.

**Mrs. Kathryn McGarry:** Okay. And all advertising, therefore, is reviewed, prior to going out, by the Auditor General?

**Mr. Sean Kearney:** Yes.

**Mrs. Kathryn McGarry:** Thank you.

**The Chair (Ms. Indira Naidoo-Harris):** Any further questions or comments on this section? MPP Walker.

**Mr. Bill Walker:** Just to further simplify, is there any reason why we wouldn't have done this in the reverse: that we would have just made television and anything in the cinema mandatory? Because it seems that you're not doing a preliminary for the 99% of it, almost. Maybe the regulation was written a long, long time ago and every-

thing had to be skirted first. But is there any reason why we couldn't have just done it the opposite way?

**Mr. Sean Kearney:** That's a good question. One option would have been to try to explicitly set out specific responsibilities that are attached to certain types of ads. That's always a way of looking at legislation and regulations: You could always have been more specific or more detailed. When the drafters were weighing the appropriate language, they arrived on the language that was provided.

**Mr. Bill Walker:** Have you given any thought to the wave of social media that continues to expand and evolve? Have you given any thought to the regulation, as to how it may pertain to that, or do you believe that the final review is going to catch any of those regardless?

**Mr. Sean Kearney:** I'd be confident in the latter. But just on that point, TBS is constantly in contact with the Auditor General's office. They're always looking at new waves and new types of media. So there's a sort of consultative process about how best to deal with things that change in the future.

**The Chair (Ms. Indira Naidoo-Harris):** Further questions? MPP Walker?

**Mr. Bill Walker:** Just a final thought, and it may be expanding beyond this reg, but if I recall, a number of responsibilities were stripped from the Auditor General in regard to some of the advertising. Can you just give us your view of what the change will be? I remember reading when this all took place that there was going to be less oversight by the Auditor General in regard to third-party advertising and those types of things.

**Mr. Sean Kearney:** I don't know whether there will be less oversight. I think the Auditor General is being quite emphatic in her comments in terms of what she thinks of the legislative changes, so I wouldn't choose to take issue with what she said.

In certain respects, there's a broader mandate because she now has authority over digital advertising, which she and her predecessor, Mr. McCarter, had been requesting for a number of years. She has a lot more scope in terms of what she's actually looking at under the statute now, but most definitely the test that she applies when reviewing legislation has changed. There were some significant statutory changes last year.

**Mr. Bill Walker:** Can you just give us a glimpse of what a specific type of change might have been?

**Mr. Sean Kearney:** There was a change in the definition of "partisan," so that's an example of the way in which she performs the task of reviewing ads has altered.

**Mr. Bill Walker:** Because the interpretation, certainly from many people, was that it was actually being watered down. There was going to be the potential that there could be more partisanship actually happening as opposed to less. I think we would all agree there should be less partisanship than more partisanship.

**Mr. Sean Kearney:** I couldn't comment on that. The regulation and the statutory changes speak for themselves.

**Mr. Bill Walker:** Thank you.

**The Chair (Ms. Indira Naidoo-Harris):** Thank you. Further discussion?

Are we ready to move forward with this recommendation? MPP McGarry?

**Mrs. Kathryn McGarry:** I appreciate the comments and the ability to ask questions of Mr. Kearney, but I think this sounds like a reasonable regulation. It means that all advertising is reviewed currently by the Auditor General, so I would suggest that we move to strike the recommendation from the report.

**The Chair (Ms. Indira Naidoo-Harris):** There's a motion on the floor. Are committee members ready to vote on this motion, a motion to strike this recommendation from the report? MPP Walker?

**Mr. Bill Walker:** Can we have a five-minute recess? I need to understand what she's asking.

**The Chair (Ms. Indira Naidoo-Harris):** Are committee members okay with a five minute recess? Okay, granted. Five minutes.

*The committee recessed from 0923 to 0931.*

**The Chair (Ms. Indira Naidoo-Harris):** I'd like to ask the committee to come back to order. We have a motion on the floor. Please, everybody, take a look at it. Yes, MPP Walker?

**Mr. Bill Walker:** Could I just ask the member who's proposing this motion to give me a bit more clarity of what her reason is to strike it? It seems to me that legislative counsel is really just saying—now that we've had the explanation, I'm very comfortable that what they're doing is following the limited review wherever they can, which is good, it's efficient; we don't need it.

I think the real issue that was brought to this report is the language currently as it sits doesn't necessarily match what the actual process is, and I think they were just suggesting that it be tightened up so that we're doing exactly what it says and we're saying what it does. I'm curious to see why you want that recommendation struck if we can clean this up and make it more clear and clarified for everyone.

**The Chair (Ms. Indira Naidoo-Harris):** MPP McGarry?

**Mrs. Kathryn McGarry:** It is a good question, MPP Walker. I was satisfied with Mr. Kearney's explanation that current practice really covers it all and this is really a redundant regulation. I know that we had questions about it last week and I was satisfied that all advertising is currently reviewed; the only exemption is for TV and cinema, for the reasons that he talked about. It's beneficial to those who are producing the advertising to have a preliminary review in order to go ahead and then a final review will be there after the ad is actually produced.

But I'm satisfied that, on one hand, we're protecting the public, that the Auditor General reviews all the legislation. That is working with the regulations that are currently there, so I didn't feel that it was necessary to change that. I feel that the practice today is adequate, it protects the taxpayers and those producing. Certainly the Auditor General's satisfied.

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

**Mr. Bill Walker:** I fully respect that, but I think our job as legislators is to make sure that legislation is as clear and specific as possible. I think the recommendation is, yes, we've now learned—Mr. Kearney did a great job of assuring us of what the process is, but the actual act doesn't necessarily reflect that. If we didn't have Mr. Kearney in the room, we wouldn't know that it was actually being followed to that explicit letter of detail. I still think it's important that the secretariat can go in and actually clean up and make it more clear so that we have the most effective, most simplistic, clear legislation that we can possibly can.

It's kind of like what I said last week with taking a report but they never do anything with it. Our job is to make sure it's the most efficient system going; that our legislation is easy and transparent, easy to understand and is actually effective. I believe that's what counsel's job is doing. The legislative researchers are saying, "This isn't as clear as it could be. There is an ability to improve."

Certainly Mr. Kearney knows very well how the process is working, so can we tighten up the language to make sure that when he's not here someday and we don't have his counsel, that we all know that, yes, it's being followed to the extent that it was written?

**The Chair (Ms. Indira Naidoo-Harris):** MPP French?

**Ms. Jennifer K. French:** I know that these reports are a record of not just what we do but of any issue that we identify. I think that striking it so that it never happened is problematic. We've been able to see behind the veil and have a better understanding, which we appreciate. But I think that keeping it in the report that we've highlighted this, that it has been part of this committee's journey, is important.

Also, when we're talking about advertising, and to Mr. Walker's earlier point about there will be changes, I think that it's important to keep it official, where we are now. After the federal election and print ads and questions about that, I think it's very important to keep a paper trail of recommendations along the way so that we can keep going back and reviewing regulations as appropriate, with the best interests of Ontario taxpayers in mind.

**The Chair (Ms. Indira Naidoo-Harris):** Thank you, MPP French. MPP McGarry?

**Mrs. Kathryn McGarry:** I think during the course of Mr. Kearney's presentation, he did talk about the AG's office and the fact that the Treasury Board and the AG's office are in constant conversation, and that the AG was satisfied that the work of the AG was under way in an appropriate way: that it protects the taxpayers and makes sure that the advertising has review on all parts, not only the print and the other pieces but also TV and cinema.

So I'm satisfied with the way it is. I know it's the job of the legislative counsel to come up with possible recommendations, but then it's up to us, I feel, as the committee members, to question sometimes legal counsel or the ministries regarding how it's working and everything else.

I'm quite satisfied that the AG is satisfied with the way things are currently written. I think we can strike this from the report and be satisfied that everyone's interests are looked after.

As I said, I'm satisfied that the Treasury Board Secretariat and the AG's office are in constant communication. If I thought that the AG was dissatisfied with the current way things are written, then I would think otherwise. But I think we can move to strike this particular recommendation and still be satisfied that all advertising in the province of Ontario is reviewed and under final review from the AG.

**The Chair (Ms. Indira Naidoo-Harris):** Any further discussion of this motion or are we ready to vote on the motion?

The legislative researcher would like to say something. Go ahead.

**Mr. Andrew McNaught:** I just want to get a clarification. You're proposing to strike the recommendation but not the discussion of the regulation. Is that correct? As written, you're proposing to remove the possible recommendation, but we would still include the discussion of the issue?

**Mrs. Kathryn McGarry:** Yes, or—I'm sorry.

**Mrs. Marie-France Lalonde:** I would say—

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

**Mrs. Marie-France Lalonde:** —from what I'm hearing and even suggesting, no. For me, in a way, I would disagree with keeping this as a possible recommendation or a discussion. For me, it was clear when our host was here explaining that. I'm very satisfied that as a Legislature we are still making sure that for every form of advertising, the AG is seeing the final version.

What we want to make sure of is that we are ensuring that as there is cost incurred as a part of television, cinema and all that, she would be part of ensuring that there is a two-stage process. But other than that, it goes to the final before it goes to print and—like you said, MPP Walker—to our journals. So for me, it's to strike completely this part of the recommendations from this report. That's the way I see it.

**The Chair (Ms. Indira Naidoo-Harris):** MPP McGarry has a motion on the floor. I'm going to ask you for some clarification, MPP McGarry.

**Mrs. Kathryn McGarry:** Thank you very much. I will clarify: I would move that we strike the discussion from the entire thing, too.

**The Chair (Ms. Indira Naidoo-Harris):** Thank you. I've just been consulting with the Clerk, and it appears as if this motion, as it is written up right now, moves to strike the possible recommendation but does not include the issue and the discussion. If we are going to proceed with the striking of the issue and the discussion, that would have to be a separate motion. MPP McGarry.

0940

**Mrs. Kathryn McGarry:** I could either make a friendly amendment to the motion that we strike the

discussion as well, or I can move to strike the discussion in a separate motion.

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

**Mr. Bill Walker:** Madam Chair, before we go to that extent, I would really appreciate the member to very distinctly and clearly articulate why she now wants the whole discussion removed. Her motion said to strike the possible recommendation, and I think I could understand her rationale for just the recommendation coming out of there.

But again—and it goes back to exactly last week—why are we reviewing these reports? Having legislative counsel spend time, energy and resources to review and ensure that they're looking for things that are going to improve our legislation—and then we're just going to throw it totally out the door and sweep it under the carpet. That is not acceptable on behalf of the taxpayers of Ontario.

This is a good report, it's brought an issue up, we've looked it, we've brought in a resource who has very clearly helped us understand what the intent was, and now you're telling me you want to actually take this whole thing and take it out of the report? Wow.

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

**Ms. Jennifer K. French:** So on page 3, currently, of the report, before the suggested friendly or unfriendly amendment of striking this whole section, it says, "Issue: Is the regulation-making power to exempt 'items from preliminary review' sufficiently broad to exempt most types of advertisements from preliminary review?"

That was the issue, that's the question. We've had a meaningful discussion. We don't want to negate the importance of having input from the experts. I've been here; I've been part of the discussion, not just privy to it. I would hate to see it cut out from the report.

Perhaps the government will consider that rather than striking the recommendation or striking the entire conversation and erasing it like it didn't happen—which it did—they would be willing to consider a recommendation that says something along the lines of "We're not taking action," or "We're going to let this be," or "We are satisfied."

In her own words, MPP McGarry has said she's satisfied. Perhaps there could be a recommendation that says something along those lines, that the government is satisfied, that there's no movement that needs to happen, that there's no decision that needs to be made, that the recommendation doesn't need to be followed, rather than just eviscerating the report.

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

**Mr. Bill Walker:** If we're going to go to a vote, I'd like the member, prior to that, to be able to put on the record why she wants the whole portion of this report removed.

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

**Ms. Jennifer K. French:** In the past, when we have looked at these—not summary reports, but when we’ve seen these reports and we’ve seen recommendations, we have voted—not always agreed—as a committee to ignore recommendations or to change them or whatever. We’ve never said, “You know what? Let’s just pretend that this issue didn’t exist. Erase it.”

We’ve addressed the recommendation, so I would encourage the committee to keep having this conversation and figure out a way to—if we’re going to ignore the recommendation, or not ignore, but if we’re not going to keep the recommendation in here, then to come up with a creative way of addressing the recommendation rather than the issue. Because I take issue with taking issue with the issue.

**The Chair (Ms. Indira Naidoo-Harris):** Further discussion? MPP McGarry.

**Mrs. Kathryn McGarry:** The reason that I don’t think the preamble needs to stay in there is that the discussion piece is the preamble to the recommendation. I’m listening to all the comments, and under consideration and advisement at the moment.

Again, it’s a preamble to a recommendation that I’m not prepared to adopt. We’ve had a fulsome discussion. We’ve had the counsel, Mr. Kearney, come in to address our questions about it. As I said in my earlier comments, and I’m going to reiterate them, although legislative research pulls up some of the items that may need some wording changes or possible recommendations—again, it’s up to us as committee members to address it by potentially bringing in ministry staff and counsel staff to come in and address our questions. I feel satisfied, the committee feels satisfied that those are discussed this morning. So I’m listening. I’ll listen to a few more comments, if I may, Chair, before I decide whether I want to move that the preamble and the discussion is struck as well.

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

**Mrs. Marie-France Lalonde:** Madam Chair, is it possible to take a five-minute recess so we can just collect the thoughts that have been discussed, please?

**The Chair (Ms. Indira Naidoo-Harris):** Is the committee open to taking a five-minute recess?

**Mrs. Gila Martow:** If I may make a quick comment before.

**The Chair (Ms. Indira Naidoo-Harris):** Yes. MPP Martow?

**Mrs. Gila Martow:** With all due respect to MPP McGarry, you said that the committee agrees with this. The committee doesn’t all agree with this, because the committee isn’t all the government side. That’s why we’re here. I just wanted to make that comment. That’s why we’re having the discussion.

**The Chair (Ms. Indira Naidoo-Harris):** We will now take a five-minute recess. Thank you.

*The committee recessed from 0946 to 0953.*

**The Chair (Ms. Indira Naidoo-Harris):** Okay. This committee is coming back.

**Mrs. Kathryn McGarry:** A point of order, Chair.

**The Chair (Ms. Indira Naidoo-Harris):** A point of order. Yes, MPP McGarry?

**Mrs. Kathryn McGarry:** Thank you. I just wanted to clarify my record. When I said that committee members agreed, I was meaning we agreed last week to bring the legal counsel down and members from the TBS to answer some of the questions. That’s what I meant by committee members agreeing—to hear out TBS. Thank you.

**The Chair (Ms. Indira Naidoo-Harris):** Thank you for the clarification, MPP McGarry.

MPP Walker?

**Mr. Bill Walker:** Just in the spirit of transparency and accountability, member McGarry has a motion on the floor and I think the original intent—how I read it is: “I move that we strike the possible recommendation from the legislative researcher regarding O. Reg 143/15 from the report.”

I think everyone around the table can at least live with that. I think that was what it was originally. I’m not certain why it evolved to a further point and I would ask her to respectfully reconsider, leave that motion on the table and we can deal with that as an order of business.

**The Chair (Ms. Indira Naidoo-Harris):** Further discussion? MPP Ballard.

**Mr. Chris Ballard:** I’ve listened to the discussion today, Madam Chair, in terms of both the issue at hand and the second proposed amendment by MPP McGarry. I guess I have perhaps a simpler take on this. It sounds like we’re perhaps not moving ahead with voting or we’re voting not to move ahead with the amendment, which in my mind leads me to the question: Why do we need to keep the preamble and all of the rest of it in?

If we’re not moving ahead with it, why do we have the rest of it in? It’s not like it disappears. It is on Hansard. It is searchable. It’s there in the public record, so it’s not like anything will disappear into the ether after today. I’m just thinking in terms of tidiness of the report. If we’re not moving ahead with a possible recommendation, then all of the discussion around it doesn’t need to be there either.

**The Chair (Ms. Indira Naidoo-Harris):** Further discussion of this motion? MPP French.

**Ms. Jennifer K. French:** A couple of things: One, in the past, as I had mentioned earlier, when we have been given recommendations and, as a committee, we have chosen not to go forward with them or to not accept them, when we made that choice at the time, was then the preamble stricken from the report as a result? Was that sort of a by-product of that decision?

**The Chair (Ms. Indira Naidoo-Harris):** Legislative researcher?

**Mr. Andrew McNaught:** When you’re talking about the preamble, are you talking about the “Issue” box here or the—

**Ms. Jennifer K. French:** No. What I mean is that we have sat here before and we’ve had recommendations



before that we have accepted and others that we have rejected—

**Mr. Andrew McNaught:** As I said a couple of weeks ago, the committee basically has three options: You can report a regulation with a recommendation, you can report a regulation without a recommendation, or you can choose to strike it from the draft report altogether. Certainly in the past, you've reported regulations without any recommendations.

**Ms. Jennifer K. French:** And at that time, without any recommendations, was the entire—

**Mr. Andrew McNaught:** The discussion was included as is.

**Ms. Jennifer K. French:** So this would be an exception to what we have been doing report after report, recommendation after recommendation?

**Mr. Andrew McNaught:** No, I wouldn't say that. That's one of your options, to remove the discussion altogether.

**Ms. Jennifer K. French:** Okay. Because we haven't made that choice since I've been on the committee, I'm just asking for clarification if that's common practice or if we've done it.

My other recommendation then is—or question to MPP Ballard's point, that while we're—well, we're not. While the government wants to strike this from the report, is it in order to ask to staple a copy of Hansard from today to the report when we submit it, in the spirit of keeping the discussion alive and on the record and accessible?

**Ms. Indira Naidoo-Harris:** I'm going to ask the Clerk to chime in on this.

**The Clerk of the Committee (Mr. Christopher Tyrell):** It's at the will of the committee. If the committee decides they'd like to include a transcript of Hansard, that's an option. If the opposition decided to go ahead with a dissenting opinion to the report, then that could be included as part of your dissenting opinion.

**The Chair (Ms. Indira Naidoo-Harris):** Further discussion of this motion? MPP Walker.

**Mr. Bill Walker:** So counter to MPP Ballard's comment, if it's so accessible, so easily addressed, why the big issue to get rid of it totally from the report? Why would we not leave it in the report? It seems to me that if you want so adamantly to get rid of it, there's something that you want to hide or something that isn't there. So it's really back to accountability and transparency.

I think what we're saying from this side of the table is that we've discussed it, we've had counsel in and we now understand the issue. There's a motion that suggested striking the possible recommendation, not striking the whole report. To me, there is something else going on here and I want it on the record, and if we go down the path that they're going to strike it, then I will be asking that we are able to provide a dissenting report.

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**The Chair (Ms. Indira Naidoo-Harris):** MPP French?

**Ms. Jennifer K. French:** I appreciate Mr. Walker's point, and I would be pleased to also offer a dissenting opinion in whatever formal means I have.

But also, we have a job at this committee, and we're still learning what that job is. We take counsel from the Clerks and from everyone involved. We've had a recommendation put before us. We have had a fulsome discussion. I would like the people of Ontario to see where we started and where we ended up, and that we've done due diligence. I think that I would like to see that reflected by not striking the discussion, to show that we have indeed been open and transparent. I think any time we're talking about advertising, we should keep it open, transparent and on the record—any conversations we've had.

I would think that the government would also want to show we have had a fulsome, educated, informed discussion on this topic.

**The Chair (Ms. Indira Naidoo-Harris):** Thank you, MPP French. We have a motion on the table. Further discussion of this motion? MPP Ballard.

**Mr. Chris Ballard:** I just will make one final comment. I really didn't want the discussion to go from the ridiculous to the sublime, but I think it has, with assertions of “because the government wants it, it must be trying to hide something”—completely inappropriate, in my perspective. Making a mountain out of a mole-hill—that's fine.

As I said before, Madam Chair, this was a matter of one of the options that this committee has used time and again: to strike from the draft report. It's within the parameters of what this committee is allowed to do. In my mind, it was a simple housekeeping issue. But this seems to have touched a nerve, for whatever reason.

I'll leave it there. Perhaps MPP McGarry can finalize.

**The Chair (Ms. Indira Naidoo-Harris):** MPP McGarry, for the discussion of the motion.

**Mrs. Kathryn McGarry:** I appreciate all comments. All I was going with was one of the three options from our legislative researcher. Option 3 was to remove it from the report and move on. There's not one reason in the world why I'm moving to strike the discussion, except that that has been done in the past—because we have nothing to hide. I would agree with MPP Ballard. It was a housekeeping issue.

If we want to leave the discussion in, I'm fine with that. We'll move to strike the possible recommendation, and we'll move on. Our legislative researcher gave us three options. In all honesty, I thought we were going with option 3. I'm happy that we just strike the possible recommendation.

But I do want to reiterate that this discussion is on Hansard. It's not hidden. It's not being removed. It's not that we haven't had this discussion, and that it goes into the ether. It's on the record. It's on Hansard.

If the rest of the committee feels that we will leave the discussion in, I'm happy to do that. I'm glad that we've had this fulsome discussion. But in all honesty, I thought

we were moving ahead with option 3 that the legislative researcher was talking about. If we leave the discussion in, I'm happy with that. Just move to strike the possible recommendation, and we'll go with that.

**The Chair (Ms. Indira Naidoo-Harris):** Okay. I feel that we've had sufficient discussion of the motion that is on the table right now. Are we ready to vote?

**Ms. Jennifer K. French:** Recorded vote.

**The Chair (Ms. Indira Naidoo-Harris):** Recorded vote. All those in favour of the motion that is on the table, moved forward by MPP McGarry, that strikes the possible recommendation from the legislative researcher regarding O. Reg 143/15 from the report?

#### Ayes

Ballard, Hoggarth, Lalonde, McGarry.

#### Nays

French, Martow, Walker.

**The Chair (Ms. Indira Naidoo-Harris):** The motion is carried.

We have gone through the report now, and we shall move forward.

Shall the draft report on regulations made in the first six months of 2015 carry? Carried.

Who shall sign off on the final copy of the draft? The Chair? Carried.

Shall the report be translated? Yes.

Shall the report be printed? Yes.

Shall I present the report to the House and move its adoption? Yes.

Thank you very much, everybody.

*The committee adjourned at 1005.*



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