



**PARLIAMENTARY COMMITTEE REVIEW  
OF REGULATIONS**

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## PARLIAMENTARY COMMITTEE REVIEW OF REGULATIONS

### INTRODUCTION

To deal with increasingly complex and technical issues, Parliament has tended to enact legislation that sets out key principles, but leaves the procedural details to be spelled out in regulations.<sup>(1)</sup> Parliament delegates the power to make these regulations to the executive branch of government. While regulations are useful tools for governing, concerns have been raised about accountability. As pointed out by Elizabeth Weir, a former member of the New Brunswick Legislative Assembly, “It remains the responsibility of the legislature to ensure that the executive is accountable for its use of ‘law-making’ powers ... .”<sup>(2)</sup>

In order to ensure the executive is accountable, Parliament has ways of reviewing regulations. The Standing Joint Committee for the Scrutiny of Regulations has the power to review most government regulations after they are made, and can recommend their disallowance. In addition, some Acts allow parliamentary committees to review proposed regulations before they are made. As well, Parliament has the power to review user fees that are imposed by regulations.

### WHAT ARE REGULATIONS?

Regulations are a form of law. They fall under the category of statutory instruments – also referred to as delegated or subordinate legislation – which includes instruments such as rules, orders, ordinances, and by-laws.

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(1) Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament*, University of Toronto Press Incorporated, Toronto, 2003, p. 232.

(2) Elizabeth Weir, “Delegated Legislation: The Weak Link of Parliamentary Accountability,” *Canadian Parliamentary Review*, Vol. 20, No. 3, Autumn 1997, p. 2,  
<http://www.parl.gc.ca/infoparl/english/issue.htm?param=64&art=65>.

Parliament does not make regulations, but delegates the authority to do so to persons or bodies, such as the Governor in Council (Cabinet), a minister, or an administrative agency. The Act of Parliament delegating this authority – the enabling Act – may set out the framework of the regulatory scheme or simply delegate the authority to make regulations.<sup>(3)</sup>

## HOW ARE REGULATIONS CREATED?

Regulations are created through a ten-step approval process that begins in the sponsoring department and is overseen by the Department of Justice, the Privy Council Office (PCO), and the Treasury Board Secretariat. Each spring, departments list their major planned regulatory initiatives in their Reports on Plans and Priorities, which are tabled in Parliament.<sup>(4)</sup>

The proposed regulations are reviewed by Justice, PCO, and the Treasury Board, and in some cases they are tabled in Parliament and reviewed by the appropriate committees. The regulatory process may also include a period of at least 30 days during which the public may make comments on the proposed regulations. Comments by either a parliamentary committee or the public may result in changes being made to the regulations. Following a final review and approval by a Cabinet committee,<sup>(5)</sup> the Governor General makes the regulations by signing them.<sup>(6)</sup>

Those responsible for drafting regulations must take into account a number of legal constraints, including those imposed by the enabling Act, as well as those found in the Constitution and the *Statutory Instruments Act*. The drafters must also follow the *Government of Canada Regulatory Policy*,<sup>(7)</sup> which imposes a number of additional requirements. Among these is consultation with stakeholders, such as industry, labour, consumer groups, professional organizations, other governments, and interested individuals.<sup>(8)</sup>

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(3) Privy Council Office, Regulatory Affairs and Orders in Council Secretariat, “About Regs,” 2000, <http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=aboutregs>.

(4) *Ibid.*

(5) Usually the Special Committee of Council, the Cabinet committee that is responsible for regulatory policy.

(6) Privy Council Office, Regulatory Affairs and Orders in Council Secretariat (2000).

(7) Privy Council Office, *Government of Canada Regulatory Policy*, November 1999, <http://www.pco-bcp.gc.ca/raoics-srdc/default.asp?Language=E&Page=Publications&Sub=GovernmentofCanadaRegula>.

(8) Privy Council Office, Regulatory Affairs and Orders in Council Secretariat (2000).

## WHAT ROLE DO PARLIAMENTARY COMMITTEES HAVE IN REVIEWING REGULATIONS?

Parliamentary review of regulations dates back to the 1970s. Although the government began using regulations extensively during World War II, it was a long time before Parliament got a chance to review them. The *Regulations Act* of 1950 provided for the tabling of regulations in Parliament, but not for any review of them. During the 1960s, Parliament asked repeatedly to be able to review regulations. Finally, in 1970, the government announced that a parliamentary committee would be established to scrutinize regulations.<sup>(9)</sup> Accordingly, in 1971 the Senate and the House of Commons established the Standing Joint Committee for the Scrutiny of Regulations.<sup>(10)</sup>

Even though Parliament was now able to review regulations after they were made, parliamentarians remained concerned about their lack of control over them. The 1985 *Report of the Special Committee on Reform of the House of Commons* (the McGrath Report) said, “a great deal remains to be done to assure effective parliamentary control.”<sup>(11)</sup> Noting that “many regulations contain matters of policy that are never debated in the House of Commons,” it recommended that “a mandatory procedure for affirming or disallowing delegated legislation and regulations” be adopted and that all regulations be referred to the appropriate standing committee in addition to the Joint Committee for the Scrutiny of Regulations.<sup>(12)</sup> Although these recommendations were not adopted, parliamentarians began insisting in some cases that proposed regulations be tabled in Parliament before they were made.

### A. The Standing Joint Committee for the Scrutiny of Regulations

As its name implies, the Standing Joint Committee for the Scrutiny of Regulations is responsible for reviewing regulations after they are made. Composed of Senators and

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(9) At the same time, it replaced the *Regulations Act* with the *Statutory Instruments Act* and set out new procedures for drafting and publishing regulations.

(10) Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, McGraw-Hill, Toronto, 2001, pp. 686-687. The standing committee was originally known as the Standing Joint Committee on Regulations and Other Statutory Instruments.

(11) House of Commons, Special Committee on Reform of the House of Commons, *Report of the Special Committee on Reform of the House of Commons*, June 1985, p. 35.

(12) *Ibid.*, pp. 35-36.

Members of the House of Commons, every year the Committee reviews hundreds of regulations to ensure that, among other things:

- the government has the authority to make the regulation;
- the regulation complies with the law, including the *Canadian Charter of Rights and Freedoms*; and
- the government has followed the proper procedure in enacting the regulation.

In its first report at the beginning of each parliamentary session, the Committee spells out the criteria it will use for reviewing regulations. It considers only the legal and the procedural aspects of the regulations, not their merits nor the policies on which they are based.

The mandate of the Committee is spelled out in the *Rules of the Senate* and the *Standing Orders* of the House of Commons, as well as in the *Statutory Instruments Act*.<sup>(13)</sup> The Committee has the power to review all new regulations and any regulation that is included in the *1978 Consolidated Regulations of Canada*.<sup>(14)</sup> It also has the power to recommend the disallowance of a regulation, as discussed later in this paper.

## **B. Review of Proposed Regulations by Parliamentary Committee**

In response to concerns raised by parliamentarians and the public about the widespread use of regulations, Parliament has passed several Acts that provide for parliamentary review of proposed regulations. One of the first Acts to include such a provision was the *Official Languages Act* of 1988. During committee study of the bill (Bill C-72), witnesses and members of the committee expressed concerns that the regulatory powers in the controversial bill were too broad. The government proposed that the notice of intent to make proposed regulations be tabled in the House of Commons.<sup>(15)</sup> Members of the committee, however, insisted that the wording of

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(13) R.S., 1985, c. S-22, s. 19, <http://laws.justice.gc.ca/en/S-22/>.

(14) Parliament of Canada, Standing Joint Committee for the Scrutiny of Regulations, “About this Committee,” <http://www.parl.gc.ca/committee/CommitteeList.aspx?Lang=1&PARLSES=381&JNT=1&SELID=e20&COM=8991>.

(15) House of Commons, Legislative Committee on Bill C-72, An Act respecting the status and use of the official languages of Canada, *Minutes of Proceedings and Evidence*, 33<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, 25 May 1988, p. 16:7.

the proposed regulations be tabled.<sup>(16)</sup> Ultimately, the bill was amended in committee to provide that the draft of a proposed regulation be tabled in the House of Commons at least 30 sitting days before it is published in the *Canada Gazette*.<sup>(17)</sup>

The *Emergencies Act*, which was enacted the same year, also includes provisions for parliamentary review of regulations. These provisions – which were introduced by the government – are unique, and allow Parliament to revoke regulations made in the event of a national emergency.

When gun control legislation (Bill C-17) was passed in December 1991, it too included a provision for parliamentary review of proposed regulations. The legislation was controversial and included expanded regulation-making powers, and the provision was adopted to allay the fears of firearms owners.<sup>(18)</sup> Parliamentary review of proposed regulations was proposed during committee study of a predecessor bill (Bill C-80), which died on the *Order Paper*. The committee recommended the review “in order to make the regulation-making process as transparent as possible and to ensure that the interests and expertise of firearms owners are duly taken into account when regulations are both made and amended.”<sup>(19)</sup> Although Bill C-17 did not originally provide for parliamentary review of proposed regulations, the legislative committee amended the bill to provide for such a review.<sup>(20)</sup>

Subsequently, similar provisions were included in a number of other Acts, including:

- the *Referendum Act*;
- the *Tobacco Act*;
- the *Canada Small Business Financing Act*;

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(16) *Ibid.*, pp. 17:25-17:33.

(17) R.S., 1985, c. 31 (4<sup>th</sup> Supp.), s. 85.

(18) William C. Bartlett, *Gun Control: Notes on the Draft Regulations*, BP-296E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, April 1992, p. 1.

(19) Auditor General of Canada, *1993 Report of the Auditor General of Canada*, Chapter 27, 1993, <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/ch9327e.html>.

(20) House of Commons, Legislative Committee H on Bill C-17, An Act to amend the Criminal Code and the Customs Tariff in consequence thereof, *Minutes of Proceedings and Evidence*, 34<sup>th</sup> Parliament, 3<sup>rd</sup> Session, 9 October 1991, p. 9:7.



- the *Immigration and Refugee Protection Act*; and
- the *Assisted Human Reproduction Act*.

The provisions for reviewing regulations are different in each of these Acts (see below). Some require only that proposed regulations be laid before Parliament and be referred to the appropriate committee, while others specify how the government must deal with any recommendations the committee may make.

### **1. The *Official Languages Act***

The *Official Languages Act*, which was enacted in 1988, provides that when the Governor in Council proposes to make any regulation under the Act, a draft of the proposed regulation be laid before the House of Commons at least 30 days before a copy of that regulation is published in the *Canada Gazette*.<sup>(21)</sup> Furthermore, regulations related to the designation of bilingual regions or sectors must be tabled in each House of Parliament 30 sitting days before the proposed effective date. In this case, if a certain number of Senators or Members of the House of Commons sign a motion to the effect that the regulation not be approved, the motion must be voted on. If the motion is adopted by both Houses of Parliament, the proposed regulation may not be made.<sup>(22)</sup>

As noted above, the provisions were introduced during committee study of the bill.

Draft regulations were laid before Parliament in November 1990. They were considered by the Standing Joint Committee on Official Languages, which issued a report in May 1991.<sup>(23)</sup>

### **2. The *Emergencies Act***

The provisions for parliamentary review of regulations under the *Emergencies Act* are unique. The Act, which was enacted in 1988, gives Parliament the opportunity to revoke special orders and regulations made pursuant to the declaration of a national emergency.<sup>(24)</sup> Regulations

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(21) R.S., 1985, c. 31 (4<sup>th</sup> Supp.), s. 85.

(22) *Ibid.*, s. 87.

(23) Parliament of Canada, Standing Joint Committee of the Senate and of the House of Commons on Official Languages, *Minutes of Proceedings and Evidence*, 34<sup>th</sup> Parliament, 2<sup>nd</sup> Session, 2 May 1991.

(24) Public Safety and Emergency Preparedness Canada, “Fact Sheets: Highlights of the *Emergencies Act*,” 2 March 2005, [http://www.ocipep.gc.ca/info\\_pro/fact\\_sheets/general/L\\_high\\_emer\\_e.asp](http://www.ocipep.gc.ca/info_pro/fact_sheets/general/L_high_emer_e.asp).

made pursuant to the Act must be tabled before each House of Parliament within two sitting days of being made. Ten members of the Senate or 20 members of the House of Commons may file a motion with the Speaker that the regulation be revoked or amended, and if both Houses of Parliament concur with the motion, the regulation is revoked or amended, as the case may be.<sup>(25)</sup>

The provisions for parliamentary review of regulations were introduced by the government at first reading. The bill's sponsor, the Hon. Perrin Beatty (Progressive Conservative, Wellington-Dufferin-Simcoe) said:

As a past Co-Chairman of the Standing Joint Committee on Regulations and Other Statutory Instruments, I have joined with others in the House and in the Senate in pressing to have Governments include parliamentary scrutiny and control over delegated legislation. This Bill gives Parliament a virtually unprecedented degree of control over the use of the powers contained in it.<sup>(26)</sup>

The provisions were amended by the legislative committee to, among other things, reduce the number of days before the regulations must be tabled in Parliament and to reduce the number of parliamentarians who would have to sign a motion to revoke or amend a regulation.<sup>(27)</sup>

The *Emergencies Act* has never been invoked.

### 3. The *Firearms Act*

The *Firearms Act*, which was enacted in 1995, retained the parliamentary review of proposed regulations that had been introduced in the gun control legislation of 1991 (see above).<sup>(28)</sup> The *Firearms Act* stipulates that proposed regulations be laid before each House of Parliament and be referred to an appropriate committee, which “may conduct inquiries or public hearings with respect to the proposed regulation and report its findings to that House.”<sup>(29)</sup>

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(25) *Emergencies Act*, R.S., 1985, c. 22 (4th Supp.), s. 61.

(26) House of Commons, *Debates*, 16 November 1987, p. 10812.

(27) House of Commons, Legislative Committee on Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, *Minutes of Proceedings and Evidence*, 33<sup>rd</sup> Parliament, 2<sup>nd</sup> Session, 12 April 1988, pp. 9:15-9:16.

(28) William Bartlett, *Bill C-68: An Act Respecting Firearms and Other Weapons*, LS-217E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 July 1995, p. 17.

(29) *Firearms Act*, 1995, c. 39, s. 118, <http://laws.justice.gc.ca/en/f-11.6/60008.html>.

However, the recommendations made by the committee are not binding on the government. The government may make the regulations 30 sitting days after they have been laid before Parliament or after the committees report to their respective Houses or decide not to conduct inquiries or public hearings.<sup>(30)</sup>

As noted above, parliamentary review of regulations was introduced when the previous firearm control legislation was passed in 1991.

Committee review of proposed regulations under the *Firearms Act* has been the most extensive of this type of review. Three sets of proposed regulations have been considered by the Standing Senate Committee on Legal and Constitutional Affairs and the House of Commons Standing Committee on Justice and Human Rights. In February 1997, the Senate Committee made seven recommendations, while the House of Commons Committee made 39 recommendations. In December 1997, the Senate Committee made no recommendations, while the House of Commons Committee made 39 recommendations. In fall 2003, the Senate Committee made two recommendations, while the House of Commons Committee made no recommendations.

#### **4. The Referendum Act**

The *Referendum Act*, which was enacted in 1992, provides that the Chief Electoral Officer may propose regulations to adapt the *Canada Elections Act* for the purpose of a referendum. These regulations must be deposited with the Clerk of each House of Parliament and referred to the appropriate Senate or House committee, which may make such recommendations with respect to the regulations as it considers appropriate.<sup>(31)</sup>

The provision was introduced during committee hearings by the legislative committee that reviewed the bill. The committee heard from the Chief Electoral Officer of Canada, Jean-Pierre Kingsley, who said that, as a parliamentary officer, he would “welcome the opportunity for parliamentarians to pass judgement on the regulations” that the Chief Electoral Officer might propose.<sup>(32)</sup>

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(30) *Ibid.*

(31) *Referendum Act*, 1992, c. 20, s. 7.

(32) House of Commons, Legislative Committee on Bill C-81, An Act to provide for referendums on the Constitution of Canada, *Minutes of Proceedings and Evidence*, 34<sup>th</sup> Parliament, 3<sup>rd</sup> Session, 25 May 1992, p. 2:9.

Four sets of proposed regulations have been considered by the Standing Senate Committee on Legal and Constitutional Affairs and the House of Commons Standing Committee on Procedure and House Affairs. Each time – in June 1995, April 1997, December 1997, and November 2001 – the proposed regulations were considered and found satisfactory.

### **5. The *Tobacco Act***

The *Tobacco Act*, which was enacted in 1997, requires that regulations made under certain sections of the Act be laid before the House of Commons only, where they are automatically referred to the appropriate committee. If after 30 sitting days the committee has reported, but the House has not concurred in the report, the regulations may be made. If, however, the House concurs in a committee report that amends a proposed regulation, the government may make only the amended version of the regulation.<sup>(33)</sup>

The House of Commons agreed to the provision at report stage when it approved a motion by Rose-Marie Ur (Liberal, Lambton-Middlesex). Ms. Ur said that committee review of the proposed regulations “would go a long way toward legitimizing any proposed regulations precisely because it would allow stakeholders the opportunity to propose in public improvements to the regulations.”<sup>(34)</sup>

Proposed regulations under the *Tobacco Act* have been examined by the House of Commons Standing Committee on Health in 1998, 2000, 2004, and twice in 2005. It made no amendments the first three times, but made one in February 2005 and one in March 2005.

### **6. The *Canada Small Business Financing Act***

The *Canada Small Business Financing Act*, which was enacted in 1998, provides only that each proposed regulation be laid before each House of Parliament before it is made and be referred to the appropriate committee.<sup>(35)</sup>

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(33) *Tobacco Act*, 1997, c. 13, s. 42.1, <http://laws.justice.gc.ca/en/T-11.5/106293.html>.

(34) House of Commons, *Debates*, 4 March 1997, p. 8611.

(35) *Canada Small Business Financing Act*, 1998, c. 36, s. 14 (3).

The provision was introduced as an amendment during legislative review by the House of Commons Standing Committee on Industry by Walt Lastewka (Liberal, St. Catharines), who said the intention was that the appropriate committees be notified of any proposed regulatory changes.<sup>(36)</sup>

On 18 February 1999, the Standing Committee on Industry considered proposed regulations and reported the same without recommendations.

### **7. *The Immigration and Refugee Protection Act***

The *Immigration and Refugee Protection Act*, which was enacted in 2001, provides that a regulation proposed to be made under specified sections of the Act be laid before each House of Parliament and be referred to the appropriate committee. It also says that the regulation may be made “at any time after the proposed regulation has been laid before each House of Parliament ... .”<sup>(37)</sup>

The provision was added as an amendment by the House of Commons Standing Committee on Citizenship and Immigration in response to concerns that the regulation-making authority contained in the bill was too broad. The Committee removed the authority to make any regulation considered necessary to carry out the provisions of the Act and added the review provision.<sup>(38)</sup>

The House of Commons Standing Committee on Citizenship and Immigration tabled reports on proposed regulations with 76 recommendations in March 2002 (before the Act came into force) and with 17 recommendations in December 2002.

### **8. *The Assisted Human Reproduction Act***

Under the *Assisted Human Reproduction Act*, which was enacted in 2004, proposed regulations (with a few exceptions) must be laid before each House of Parliament. The government may not make the regulations before the earliest of 30 sitting days, 160 calendar days, or the day after the appropriate committee of each House has reported its findings.

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(36) House of Commons, Standing Committee on Industry, *Evidence*, 5 November 1998, <http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=51372>.

(37) *Immigration and Refugee Protection Act*, 2001, c. 27, s. 5.

(38) Jay Sinha and Margaret Young, *Bill C-11: The Immigration and Refugee Protection Act*, LS-397E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 January 2002.

Furthermore, the Act provides that the Minister must take into account any committee report; and if a regulation does not incorporate a committee recommendation, the Minister must explain the reasons for not incorporating it.<sup>(39)</sup>

Parliamentary review of proposed regulations was recommended by the House of Commons Standing Committee on Health when it reviewed the draft legislation. After expressing concerns about the government's "broad and largely unfettered regulation-making power," the Committee recommended provisions similar to those in the *Tobacco Act*, saying: "Given that assisted human reproduction and related research is such a highly sensitive and controversial area, we strongly feel that a parliamentary safeguard of this nature is necessary."<sup>(40)</sup>

On 19 September 2005, Health Canada introduced the first proposed regulations under the Act. Following a period of 75 days for public comment, "appropriate changes will be made and the proposal will be reviewed by Parliament."<sup>(41)</sup>

## **ARE THERE MECHANISMS FOR PARLIAMENTARY COMMITTEES TO DISALLOW A REGULATION?**

With the exception of the special powers provided for under the *Emergencies Act*, only the Standing Joint Committee for the Scrutiny of Regulations has the power to trigger a process by which a regulation may be disallowed (or revoked). In 1986, the *Standing Orders* of the House of Commons gave the Committee the power to recommend the disallowance of certain statutory instruments. In 2003, Parliament amended the *Statutory Instruments Act*, extending the Committee's power to recommend disallowance to all regulations referred to the Committee. The bill that amended the *Statutory Instruments Act* (Bill C-205) was a private Member's bill sponsored by Gurmant Grewal (Canadian Alliance, Surrey Central).

How is this power exercised? In cases when a government body does not respond to Committee requests to amend a regulation, the Committee may table a report in the Senate and the House of Commons advocating the disallowance of the regulation. If the responsible

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(39) The *Assisted Human Reproduction Act*, 2004, c. 2, s. 66.

(40) House of Commons, Standing Committee on Health, *Assisted Human Reproduction: Building Families*, December 2001, <http://www.parl.gc.ca/infocomdoc/37/1/HEAL/Studies/Reports/healrp01/03-cov-e.htm>.

(41) Health Canada, News Release, "Health Canada introduces first proposed regulations under the *Assisted Human Reproduction Act*," 19 September 2005, [http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/2005/2005\\_100\\_e.html](http://www.hc-sc.gc.ca/ahc-asc/media/nr-cp/2005/2005_100_e.html).

Minister does not respond within 15 sitting days, the report is deemed to be adopted by Parliament, and the appropriate authority must revoke the regulation. If, however, the Minister proposes a motion in support of the regulation and the motion is passed by either the Senate or the House of Commons, then the regulation stands.<sup>(42)</sup>

There have been several occasions when the Committee has recommended disallowance. For example, in April 2005 the Committee adopted a report that resolved “that subsection 36(2) of the *Ontario Fishery Regulations*, 1989, as enacted by SOR/89-93, be revoked.”<sup>(43)</sup> However, the Ministry of Fisheries and Oceans filed a motion in the House of Commons on 3 June to the effect that the Committee’s report not be adopted. The House agreed to the motion and the regulation was not revoked.<sup>(44)</sup> To give further examples, the Committee has recommended the revocation of provisions of other regulations, including the *Northwest Territories Reindeer Regulations* (2001), the *Narcotic Control Regulations* and the *Food and Drug Regulations* (1999), and the *National Capital Commission Traffic and Property Regulations* (1995).<sup>(45)</sup>

## **THE USER FEES ACT**

Another way in which Parliament may review the government’s regulatory activity is by reviewing user fees imposed under regulations. The *User Fees Act*, which was enacted in March 2004, provides that proposals by a regulating authority to fix or change the rate of a user fee be tabled in each House of Parliament and referred to the appropriate committee. That committee may review the proposed user fee and submit “a report containing its recommendation as to the appropriate user fee.”<sup>(46)</sup> In addition, every year Ministers must table

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(42) Parliament of Canada, Standing Joint Committee for the Scrutiny of Regulations, “About this Committee.”

(43) Parliament of Canada, Standing Joint Committee for the Scrutiny of Regulations, *Second Report*, 38<sup>th</sup> Parliament, 1<sup>st</sup> Session, 21 April 2005.

(44) François Côté and Sebastian Spano, *Bill C-52: An Act to Amend the Fisheries Act*, LS-507E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 June 2005, [http://www.parl.gc.ca/common/Bills\\_ls.asp?lang=E&source=library\\_prb&Parl=38&Ses=1&ls=C52](http://www.parl.gc.ca/common/Bills_ls.asp?lang=E&source=library_prb&Parl=38&Ses=1&ls=C52).

(45) Parliament of Canada, Standing Joint Committee for the Scrutiny of Regulations, “Past Work of the Committee,” <http://www.parl.gc.ca/infocomdoc/38/1/parlbus/commbus/house/REGS/webdocs/WD1420336//REGS-HISTORY-38-1/REGS-PAST-E.htm#reports>.

(46) *The User Fees Act*, 2004, c. 6, s. 5.

in Parliament reports setting out all user fees in effect under existing regulations, and these reports are referred to the appropriate committees.

When a proposed user fee is referred to a committee, that committee has 20 sitting days in which to submit a report, after which it is deemed to have submitted a report approving the proposed fee. If the committee makes a report recommending an appropriate fee to the Senate or the House of Commons, that House “may pass a resolution approving, rejecting or amending the recommendation made by the Committee ... .”<sup>(47)</sup>

It is unclear, however, what effect a parliamentary resolution might have on the user fee proposal. The Act does not say what the consequences of such a resolution would be. According to regulations expert Paul Salembier, the regulation-making authority could theoretically proceed to enact the regulations containing the proposed fee, but in practice, it may feel politically constrained from proceeding.<sup>(48)</sup>

The *User Fees Act* was a private Member’s bill sponsored by Roy Cullen (Liberal, Etobicoke North).

During the 38<sup>th</sup> Parliament, two reports recommending that user fees proposals be approved were deemed presented in the House of Commons. One was for the Parks Canada User Fees Proposal<sup>(49)</sup> and the other was for the Industry Canada User Fees Proposal Relating to Telecommunications and Radio Apparatus.<sup>(50)</sup>

## SUMMARY

Since the 1980s, Parliament has improved its ability to review regulations. The Standing Joint Committee for the Scrutiny of Regulations has the power to review most government regulations and to recommend disallowance. In addition, Parliament has passed a number of Acts that provide for the parliamentary review of proposed regulations. In most cases, improvements in Parliament’s ability to review regulations came about as a result of pressure by parliamentarians and the public, not as a result of a government initiative.

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(47) *Ibid.*, s. 6(1).

(48) J. Paul Salembier, *Regulatory Law and Practice in Canada*, LexisNexis Canada Inc., Markham, 2004, pp. 111-112.

(49) House of Commons, *Journals*, 10 May 2005, p. 735.

(50) House of Commons, *Journals*, 31 October 2005, p. 1235.



The provisions for parliamentary review of proposed regulations vary. Some Acts merely provide for review of the proposed regulations by the appropriate committee, without specifying how the government would have to deal with any recommendations. These include the *Official Languages Act*, the *Referendum Act*, the *Canada Small Business Financing Act*, and the *Immigration and Refugee Protection Act*. In addition, the *User Fees Act* provides for a review of proposed user fees, but does not specify how the government would have to respond to a parliamentary resolution amending or rejecting a proposed fee.

On the other hand, several Acts spell out how or when the government must respond to parliamentary recommendations. Regulations under certain sections of the *Official Languages Act* may not be made if both Houses of Parliament adopt a motion to that effect. The *Emergencies Act* gives Parliament the power to revoke special orders and regulations made by the government in the event of an emergency. The *Firearms Act* sets time limits before the government may make the regulations. Under the *Tobacco Act*, in addition to similar time limits, if the House of Commons concurs in a committee report recommending that a regulation be amended, then the regulation may be made only in the amended form. Finally, under the *Assisted Human Reproduction Act*, in addition to similar time limits, the Minister must take committee reports into account, and if a regulation does not incorporate a committee recommendation, the Minister must explain why it does not.

## CONCLUSION

Parliament has become more involved in reviewing regulations, and this trend could well continue. Parliamentary committees' interest in regulations has not gone unnoticed. A review of Canada's regulatory framework – the Smart Regulation Initiative<sup>(51)</sup> – was begun in 2003, and the External Advisory Committee on Smart Regulation noted that:

... parliamentary committees are currently involved in the review of legislation, primarily statutes and some subordinate legislation. In recent years, they have expressed increased interest in regulation. Many stakeholders have suggested that parliamentary committees could assist and be involved in reviews of specific regulatory

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(51) Government of Canada, Government of Canada Regulation Web site, <http://www.regulation.gc.ca/>.

programs. The government may want to give consideration to this idea.<sup>(52)</sup>

Committees have the ability to review regulations because parliamentarians insisted they be more involved in the process. The degree to which committees use this ability will depend largely on their willingness to develop expertise and to devote the necessary time.

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(52) External Advisory Committee on Smart Regulation, *Smart Regulation: A Regulatory Strategy for Canada*, September 2004, p. 63, <http://www.pco-bcp.gc.ca/smartreg-regint/en/08/index.html>.