



LIBRARY of PARLIAMENT
BIBLIOTHÈQUE du PARLEMENT

BACKGROUND PAPER



Parliamentary Committee Review of Regulations

Publication No. 2005-63-E
18 December 2008
Revised 4 May 2015

Peter Bernhardt
Michael Dewing

Legal and Social Affairs Division
Parliamentary Information and Research Service

Library of Parliament ***Background Papers*** provide in-depth studies of policy issues. They feature historical background, current information and references, and many anticipate the emergence of the issues they examine. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2015

Parliamentary Committee Review of Regulations
(Background Paper)

Publication No. 2005-63-E

Ce document est également publié en français.

CONTENTS

1	INTRODUCTION.....	1
2	WHAT ARE REGULATIONS?	1
3	HOW ARE REGULATIONS CREATED?	1
4	WHAT ROLE DO PARLIAMENTARY COMMITTEES HAVE IN REVIEWING REGULATIONS?	2
4.1	The Standing Joint Committee for the Scrutiny of Regulations	3
4.2	Review of Proposed Regulations by Parliamentary Committee	3
4.2.1	The <i>Official Languages Act</i>	4
4.2.2	The <i>Emergencies Act</i>	5
4.2.3	The <i>Firearms Act</i>	5
4.2.4	The <i>Referendum Act</i>	6
4.2.5	The <i>Tobacco Act</i>	6
4.2.6	The <i>Canada Small Business Financing Act</i>	7
4.2.7	The <i>Immigration and Refugee Protection Act</i>	7
4.2.8	The <i>Assisted Human Reproduction Act</i>	8
4.2.9	The <i>Citizenship Act</i>	8
4.2.10	The <i>Quarantine Act</i>	9
4.2.11	The <i>Human Pathogens and Toxins Act</i>	9
4.2.12	The <i>Canada Consumer Product Safety Act</i>	9
5	ARE THERE MECHANISMS FOR PARLIAMENTARY COMMITTEES TO DISALLOW A REGULATION?.....	10
6	THE <i>USER FEES ACT</i>	11
7	SUMMARY	12
8	CONCLUSION	13

PARLIAMENTARY COMMITTEE REVIEW OF REGULATIONS

1 INTRODUCTION

To deal with increasingly complex and technical issues, Parliament has tended to enact legislation that sets out key principles but leaves the details to be spelled out in regulations.¹ 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, “[i]t remains the responsibility of the legislature to ensure that the executive is accountable for its use of ‘law-making’ powers.”²

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 regulations, or to review proposed regulations before they are made. As well, Parliament has the power to review proposed user fees that are to be imposed by regulations.

2 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 bylaws.

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.

3 HOW ARE REGULATIONS CREATED?

Regulations are created through a 14-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.³ In addition, federal government departments and agencies use their websites to give public notice of regulatory proposals that they intend to introduce; these “Forward Regulatory Plans” describe the expected changes and provide information about planned consultations.⁴

Proposed regulations are reviewed by Justice, the PCO, and the Treasury Board, and in some cases are tabled in Parliament and reviewed by the appropriate committees. The regulatory process also includes a period, usually 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. In the case of regulations made by the Governor in Council, after a final review and approval by a Cabinet committee⁵ the Governor General makes the regulations by signing them.⁶

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 *Cabinet Directive on Regulatory Management*⁷ imposes certain additional requirements. Among these is consultation with stakeholders, such as industry, labour, consumer groups, professional organizations, other governments, and interested individuals.⁸ In addition, the *Red Tape Reduction Act*⁹ now requires that each increase in the administrative burden imposed on businesses by regulations be offset by a corresponding change to decrease the administrative burden; however, no regulation can be deemed invalid on the sole grounds of failing to comply with the Act.

4 WHAT ROLE DO PARLIAMENTARY COMMITTEES HAVE IN REVIEWING REGULATIONS?

Parliamentary review of regulations dates back to the 1970s. Although the government's use of regulations expanded extensively during World War II, it was a long time before Parliament had a mechanism to review regulations. The *Regulations Act* of 1950 provided for the tabling of regulations in Parliament, but not for any parliamentary review. During the 1960s, a number of parliamentary committees recommended that a regulations review committee be established. Finally, in 1970, the government announced that a parliamentary committee would be established to scrutinize regulations.¹⁰ In 1971 the Senate and the House of Commons established the Standing Joint Committee on Regulations and Other Statutory Instruments.¹¹

Even though Parliament now had a means 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) stated that "a great deal remains to be done to assure effective parliamentary control."¹² 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 Standing Joint Committee for the Scrutiny of Regulations.¹³ Although these recommendations were not adopted, parliamentarians began to insist in some cases that proposed regulations be tabled in Parliament before they were made.

4.1 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 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 *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 procedural aspects of the regulations, not their merits or 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*.¹⁴ The committee has the power to review all new regulations and any regulation that is included in the *1978 Consolidated Regulations of Canada*.¹⁵ It also has the power to recommend the disallowance of a regulation, as discussed later in this paper.

4.2 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 a notice of intent to make proposed regulations be tabled in the House of Commons.¹⁶ Members of the committee, however, insisted that the actual wording of the proposed regulations be tabled.¹⁷ Ultimately, the bill was amended in committee to require 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*.¹⁸

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 – 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.¹⁹ 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.”²⁰ 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.²¹

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

- the *Referendum Act*,
- the *Tobacco Act*,
- the *Canada Small Business Financing Act*,
- the *Immigration and Refugee Protection Act*,
- the *Assisted Human Reproduction Act*,
- the *Citizenship Act*,
- the *Quarantine Act*,
- the *Human Pathogens and Toxins Act*, and
- the *Canada Consumer Product Safety Act*.

The provisions for reviewing proposed 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.

4.2.1 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 must be laid before the House of Commons at least 30 days before a copy of that proposed regulation is published in the *Canada Gazette*.²² 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.²³

As noted above, these 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 1991.²⁴

Proposed regulations amending the *Official Languages Regulations* were laid before the House of Commons on 17 May 2006. They were prepared in response to a Federal Court judgment. After the proposed regulations were published in the *Canada Gazette* on 7 October 2006, they were studied by the Standing Senate Committee on Official Languages; in February 2007 the Committee tabled a report in which it made

several recommendations.²⁵ None of these recommendations were acted upon, however, and the regulations were made in their original form on 31 July 2007. The Regulatory Impact Analysis Statement accompanying these regulations noted that representations had been received from a number of parties, including the Standing Senate Committee on Official Languages. It went on to note, however:

All the parties recommended, if not a complete overhaul of the Regulations, at least much greater amendments than are being proposed. However, the goal of this amendment is to respond to the Court order, namely to ensure that the official languages obligations of the RCMP detachment in Amherst, Nova Scotia, as set out in the Regulations, are compatible with subsection 20(1) of the Charter.²⁶

4.2.2 THE *EMERGENCIES ACT*

The *Emergencies 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. Regulations 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.²⁷

The provisions for parliamentary review of regulations were introduced by the government at first reading. The bill's sponsor, the Honourable Perrin Beatty, 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.²⁸

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.²⁹

The *Emergencies Act* has never been invoked, and no regulations have been made pursuant to it.

4.2.3 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).³⁰ 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."³¹ 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.³²

Committee review of proposed regulations under the *Firearms Act* has been the most extensive of this type of review. 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 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. In June 2012, neither the Senate nor the House of Commons committee made recommendations.

4.2.4 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 at least seven days before the day on which the regulations are proposed to be made. These regulations must be deposited with the Clerk of each house of Parliament and stand referred to the appropriate Senate or House committee, which may make such recommendations with respect to the regulations as it considers appropriate.³³

The provision was introduced during committee hearings by the legislative committee that reviewed the bill. The committee heard from then Chief Electoral Officer of Canada, Jean-Pierre Kingsley, who said that, as a parliamentary officer, he would “welcome the opportunity for parliamentarians to pass judgment on the regulations” that the Chief Electoral Officer might propose.³⁴

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.

The most recent set of proposed regulations was tabled in June 2009 and was not considered by a committee in either the Senate or the House of Commons.

4.2.5 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.³⁵

The House of Commons agreed to the provision at report stage when it approved a motion by Rose-Marie Ur (Lambton – Kent – 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.”³⁶

Proposed regulations under the *Tobacco Act* have been examined by the House of Commons Standing Committee on Health in 1998, 2000, 2004, 2005, and twice in 2011. It made no amendments the first three times, but made one in February 2005 and several in February 2011.

4.2.6 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.³⁷

The provision was introduced as an amendment during legislative review by the House of Commons Standing Committee on Industry by Walt Lastewka (St. Catharines), who said the intention was that the appropriate committees be notified of any proposed regulatory changes.³⁸

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

Proposed regulations were tabled in 2002, 2006, 2009 and 2012, but were not considered by a committee in either the Senate or the House of Commons.

4.2.7 THE *IMMIGRATION AND REFUGEE PROTECTION ACT*

The *Immigration and Refugee Protection Act*, which was enacted in 2001, provides for a regulation proposed under specified sections of the Act to 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.”³⁹

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.⁴⁰

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.

Since 2002, more than 30 proposed regulations have been tabled pursuant to the *Immigration and Refugee Protection Act*. None has been considered by a committee in either the Senate or the House of Commons.

4.2.8 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. 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.⁴¹

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."⁴²

On 19 September 2005, Health Canada introduced the first proposed regulations under the Act. The proposed regulations – which concerned Section 8 (Consent) – were referred to the Standing Senate Committee on Social Affairs, Science and Technology and the House of Commons Standing Committee on Health. The Standing Senate Committee on Social Affairs, Science and Technology tabled its report on 14 February 2007. It expressed concerns that certain aspects of the proposed regulations could be better addressed and recommended that a number of proposed revisions be reviewed and that appropriate adjustments be made.⁴³ The House of Commons Standing Committee on Health reported on 31 January 2007. It did not make any recommendations, but made two observations.⁴⁴ The regulations were made on 14 June 2007.⁴⁵ The regulatory impact analysis statement reported:

During Parliamentary review, most of the concerns raised were related to issues outside of the scope of these section 8 regulations. Although there were a few comments respecting the research use of embryos, it was acknowledged by the Parliamentary Committees that these are very complex issues and that some of the concerns could be addressed in future regulatory proposals under the Act. Further, it was stressed that these Regulations and the section 8 prohibitions need to be brought into force as soon as possible.⁴⁶

4.2.9 THE CITIZENSHIP ACT

The *Citizenship Act* was amended in June 2007 to provide that proposed regulations made under paragraph 27(d.1), which pertain to various criteria that may be applied to determine whether a person has adequate knowledge of one of the official languages of Canada, be laid before each house of Parliament. Each house must refer the proposed regulation to the appropriate committee. The Governor in Council may make the regulation at any time after the proposed regulation has been laid before each house of Parliament.⁴⁷ This provision was added by the House of Commons Standing Committee on Citizenship and Immigration during its study of Bill C-14, An Act to amend the Citizenship Act (adoption).⁴⁸ This bill amended the *Citizenship Act* to allow for the granting of citizenship to non-Canadian children adopted abroad.

4.2.10 THE *QUARANTINE ACT*

The *Quarantine Act*, which was enacted in 2005, provides that a proposed regulation may not be made under the Act unless it has been laid before both houses of Parliament. Proposed regulations are automatically referred to the appropriate committee of each house. If neither house has concurred in a report from its committee after the earlier of 30 sitting days or 160 calendar days after the proposed regulation was laid before that house, the regulation may be made in the form in which it was laid. If both houses concur in reports from their committees approving the proposed regulation, or a version of it is amended to the same effect by both committees, the regulation may be made only in the form concurred in. These provisions were added by the House of Commons Standing Committee on Health during its study of the bill.⁴⁹

No regulations have been made pursuant to the *Quarantine Act*.

4.2.11 THE *HUMAN PATHOGENS AND TOXINS ACT*

Enacted in 2009, the *Human Pathogens and Toxins Act* provides that regulations must be laid before each house before they are made. Proposed regulations must be referred to the appropriate committee of each house, and the committee may review the proposed regulation and report its findings. In the case of the House of Commons, the Act states that the Standing Committee on Health is the appropriate committee.

A regulation may not be made before the earliest of 30 sitting days after the proposed regulation is laid before Parliament, 160 calendar days after the proposed regulation is laid before Parliament, and the day after each appropriate committee has reported its findings with respect to the proposed regulation.

The minister is required to take into account any report of the committee of either house. If a regulation does not incorporate a recommendation of the committee of either house, the minister must lay before that house a statement of the reasons for not incorporating it.⁵⁰

These provisions were added by the House of Commons Standing Committee on Health during its study of the bill.⁵¹

Proposed regulations were laid before the Senate and the House of Commons in June 2014. They were not considered by a committee in either House.

4.2.12 THE *CANADA CONSUMER PRODUCT SAFETY ACT*

The *Canada Consumer Product Safety Act* was enacted in 2010. It requires that proposed regulations granting exemptions from the Act or its regulations or amending the schedules to the Act be laid before each House of Parliament. In the Senate, a proposed regulation may be referred to an appropriate committee, which may review the proposed regulation and report its findings to the Senate. In the case of the House of Commons, the Act provides that the Standing Committee on Health is the appropriate committee.

A regulation may not be made before the earliest of 30 sitting days after the proposed regulation is laid before both Houses of Parliament, 90 calendar days after the proposed regulation is laid before both Houses of Parliament, and the day after each appropriate committee has reported its findings with respect to the proposed regulation.

The minister must take into account any report of the committee of either house. If a regulation does not incorporate a recommendation of the committee of either house, the minister shall cause to be laid before that house a statement of the reasons for not incorporating it.⁵²

Proposed regulations were laid before both houses in 2013 and 2014. They were not considered by a committee in either the Senate or the House of Commons.

5 ARE THERE MECHANISMS FOR PARLIAMENTARY COMMITTEES TO DISALLOW A REGULATION?

With the exception of the special powers provided for under a very few statutes, such as 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). The committee first gained this power in 1986, when the *Standing Orders of the House of Commons* conferred upon it the power to make a report containing a resolution for the disallowance of certain statutory instruments. In 2003, Parliament amended the *Statutory Instruments Act*, extending the committee's disallowance power 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 (Surrey Central).

In cases where a government body does not agree to committee requests to amend a regulation, the committee may table a report in the Senate and the House of Commons containing a motion for the disallowance of all or part of the regulation. If the responsible 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 responsible minister requests a debate on the motion and the motion is defeated in either the Senate or the House of Commons, then the regulation stands.⁵³ The disallowance procedure put in place in 1986 through the *Standing Orders of the House of Commons* was invoked on nine occasions by the Standing Joint Committee. The first disallowance report was not dealt with in accordance with the procedure set out in the Standing Orders, but was referred back to the Committee for further consideration. In the next eight instances, the Committee's reports were concurred in without debate and the government complied with orders that the relevant provisions be revoked.

To date, two disallowance reports have been tabled under the *Statutory Instruments Act*. In each instance, the House of Commons voted not to proceed with 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."⁵⁴ However, the Minister of Fisheries and Oceans filed a motion in the House of Commons that the committee's report not be adopted, but rather be referred back to the committee. The House agreed to the motion and the regulation was not revoked.⁵⁵

6 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."⁵⁶ In addition, every year ministers must table 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."⁵⁷

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.⁵⁸

The *User Fees Act* was a private member's bill sponsored by Roy Cullen (Etobicoke North).

During the 38th Parliament, two committee reports recommending that user fees proposals be approved were deemed presented in the House of Commons. One was for the Parks Canada User Fees Proposal⁵⁹ and the other was for the Industry Canada User Fees Proposal Relating to Telecommunications and Radio Apparatus.⁶⁰

During the 39th Parliament, three user fee proposals were referred to parliamentary committees. Two proposals were from Industry Canada (User Fees Proposal Relating to Telecommunications and Radio Apparatus and User Fee Proposal for a Spectrum Licence Fee for Broadband Public Safety Communications in the Frequency Band 4940–4990 MHz). These proposals were the subject of reports by the Standing Senate Committee on Transport and Communications, which recommended that the first proposal be approved⁶¹ and raised a number of concerns about the second.⁶² In the House of Commons, committee reports recommending that the proposals be approved were deemed reported.⁶³

The other user fee proposal referred to a parliamentary committee was contained in the Department of Foreign Affairs User Fee Proposal and related to the International Youth Program. The Standing Senate Committee on Foreign Affairs and International Trade tabled a report in which it approved the proposal and made a number of observations.⁶⁴ In the House of Commons, a committee report recommending that the proposal be approved was deemed reported.⁶⁵

During the 40th Parliament, six user fee proposals were referred to parliamentary committees. These concerned fees under the *Explosives Act* and fees related to the activities of the Explosives Regulatory Division, fees relating to the Esquimalt Graving Dock, Parks Canada user fees, fees pertaining to the Human Drugs and Medical Devices Program, fees imposed under the *Canada Not-for-profit Corporations Act* and National Parole Board user fees. The Esquimalt Graving Dock user fees proposal was the subject of reports by the Standing Senate Committee on Transport and Communications⁶⁶ and the House of Commons Standing Committee of Government Operations and Estimates.⁶⁷ Both reports recommended that the proposal be approved. In the House of Commons, a committee report recommending that the proposal be approved was deemed reported in the case of the other five proposals.⁶⁸ Such a report was also deemed reported in the Senate in the case of the Parks Canada user fee proposal.

The user fees proposals concerning fees under the *Explosives Act* and fees related to the activities of the Explosives Regulatory Division, fees pertaining to the Human Drugs and Medical Devices Program, fees imposed under the *Canada Not-for-profit Corporations Act* and National Parole Board user fees were also the subject of Senate committee reports that recommended that the proposals be approved.⁶⁹ In connection with the National Parole Board user fees, the report of the Standing Senate Committee on Legal and Constitutional Affairs also made a number of observations concerning the proposed fees.

In the 41st Parliament to date there have been six fees proposals. These concerned National Parole Board fees,⁷⁰ fees relating to Passport Canada,⁷¹ Canada Grain Commission fees,⁷² Canadian Food Inspection Agency importer licensing fees,⁷³ Canadian Food Inspection Agency overtime user fees⁷⁴ and fees pertaining to aquaculture licensing.⁷⁵ The Canadian Food Inspection Agency importer licensing fees were the subject of committee reports recommending approval in both the Senate and the House of Commons.⁷⁶ The Passport Canada fees, Canadian Food Inspection Agency overtime fees and fees pertaining to aquaculture licensing were all the subject of Senate committee reports recommending approval,⁷⁷ although in the case of the Passport Canada fees the committee made a number of observations.

7 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.

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 that the regulations not be approved. 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. The *Tobacco Act*, in addition to setting similar time limits, stipulates that 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 adhering 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.

8 CONCLUSION

Parliament has become more involved in reviewing regulations in recent decades. 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.

NOTES

1. Donald J. Savoie, *Breaking the Bargain: Public Servants, Ministers, and Parliament*, University of Toronto Press, 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.
3. Privy Council Office, [Guide to Making Federal Acts and Regulations](#), 2nd ed., 2001.
4. Treasury Board of Canada Secretariat, [Cabinet Directive on Regulatory Management](#), 2012.
5. Since 2003, the Treasury Board has carried out this function.
6. Treasury Board of Canada Secretariat, [Guide to the Federal Regulatory Development Process](#), 2014.
7. Treasury Board Secretariat (2012).
8. Ibid.
9. [Red Tape Reduction Act](#), S.C. 2015, c. 12.
10. At the same time, it replaced the *Regulations Act* with the *Statutory Instruments Act* and set out new procedures for making and publishing regulations.

11. Robert Marleau and Camille Montpetit, eds., "[Delegated Legislation: Standing Joint Committee for the Scrutiny of Regulations](#)," Chapter 17 in *House of Commons Procedure and Practice*, 2000
12. 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.
13. *Ibid.*, pp. 35–36.
14. [Statutory Instruments Act](#), R.S.C. 1985, c. S-22, s. 19.
15. Marleau and Montpetit (2000).
16. 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*, 2nd Session, 33rd Parliament, 25 May 1988, p. 16:7.
17. *Ibid.*, pp. 17:25–17:33.
18. [Official Languages Act](#), R.S.C. 1985, c. 31 (4th Supp.), s. 85.
19. William C. Bartlett, *Gun Control: Notes on the Draft Regulations*, Publication no. BP-296E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, April 1992, p. 1.
20. Office of the Auditor General of Canada, Chapter 27, "Gun Control Program," in *1993 Report of the Auditor General of Canada*, 1993.
21. House of Commons, Legislative Committee on Bill C-17, An Act to amend the Criminal Code and the Customs Tariff in consequence thereof, *Minutes of Proceedings and Evidence*, 3rd Session, 34th Parliament, 9 October 1991, p. 9:7.
22. *Official Languages Act*, s. 85.
23. *Ibid.*, s. 87.
24. Parliament of Canada, Standing Joint Committee on Official Languages, *Minutes of Proceedings and Evidence*, 2nd Session, 34th Parliament, 2 May 1991.
25. Senate, Standing Committee on Official Languages, [Interim Report on the proposed Regulations introduced in response to the Federal Court decision in Doucet v. Canada](#), 1st Session, 39th Parliament, February 2007.
26. *Canada Gazette*, Part II, Vol. 141, No. 17, 22 August 2007, p. 1818.
27. [Emergencies Act](#), R.S.C. 1985, c. 22 (4th Supp.), s. 61. Similar provisions, though not common, can be found in the [Old Age Security Act](#), R.S.C. 1985, c. O-9, s. 42; the [Safe Containers Convention Act](#), R.S.C. 1985, c. S-1, ss. 8–12; the [Electricity and Gas Inspection Act](#), R.S.C. 1985, c. E-4, ss. 40–43; and the [James Bay and Northern Quebec Native Claims Settlement Act](#), S.C. 1976–77, c. 32., s. 5.
28. House of Commons, *Debates*, 2nd Session, 33rd Parliament, 16 November 1987, p. 10812.
29. 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*, 2nd Session, 33rd Parliament, 12 April 1988, pp. 9:15–9:16.
30. William Bartlett, *Bill C-68: An Act Respecting Firearms and Other Weapons*, Publication no. LS-217E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 July 1995, p. 17.
31. [Firearms Act](#), S.C. 1995, c. 39, s. 118.
32. *Ibid.*

33. [Referendum Act](#), S.C. 1992, c. 30, s. 7.
34. 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*, 3rd Session, 34th Parliament, 25 May 1992, p. 2:9.
35. [Tobacco Act](#), S.C. 1997, c. 13, s. 42.1.
36. House of Commons, [Debates](#), 2nd Session, 35th Parliament, 4 March 1997, p. 8611.
37. [Canada Small Business Financing Act](#), S.C. 1998, c. 36, s. 14(3).
38. House of Commons, Standing Committee on Industry, [Evidence](#), 1st Session, 36th Parliament, 5 November 1998.
39. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 5.
40. Jay Sinha and Margaret Young, [Bill C-11: The Immigration and Refugee Protection Act](#), Publication no. LS-397E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 January 2002.
41. [Assisted Human Reproduction Act](#), S.C. 2004, c. 2, s. 66.
42. House of Commons, Standing Committee on Health, [Assisted Human Reproduction: Building Families](#), December 2001, Recommendation 18.
43. Senate, Standing Committee on Social Affairs, Science and Technology, [Ninth Report](#), 1st Session, 39th Parliament, 14 February 2007.
44. House of Commons, Standing Committee on Health, [Fifth Report](#), 1st Session, 39th Parliament, 31 January 2007.
45. *Canada Gazette*, Part II, Vol. 141, No. 13, 27 June 2007, p. 1520.
46. *Ibid.*, p. 1540.
47. [Citizenship Act](#), R.S.C. 1985, c. C-29, s. 27.1.
48. House of Commons, Standing Committee on Citizenship and Immigration, [Evidence](#), 1st Session, 39th Parliament, 28 September 2006.
49. House of Commons, Standing Committee on Health, [Evidence](#), 1st Session, 38th Parliament, 8 December 2004.
50. [Human Pathogens and Toxins Act](#), S.C. 2009, c. 24, s. 66.1.
51. House of Commons, Standing Committee on Health, [Evidence](#), 2nd Session, 40th Parliament, 31 March 2009.
52. [Canada Consumer Product Safety Act](#), S.C. 2010, c. 21, s. 38.
53. Marleau and Montpetit (2000).
54. Parliament of Canada, Standing Joint Committee for the Scrutiny of Regulations, [Second Report](#), 1st Session, 38th Parliament, 5 May 2005, p. 1.
55. François Côté and Sebastian Spano, [Bill C-52: An Act to Amend the Fisheries Act](#), Publication no. LS-507E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 June 2005.
56. [User Fees Act](#), S.C. 2004, c. 6, s. 5.
57. *Ibid.*, s. 6(1).
58. Paul Salembier, *Regulatory Law and Practice in Canada*, LexisNexis Canada, Markham, Ont., 2004, pp. 111–112.
59. House of Commons, [Journals](#), 1st Session, 38th Parliament, 10 May 2005, p. 735.

60. House of Commons, [Journals](#), 1st Session, 38th Parliament, 31 October 2005, p. 1235.
61. Senate, Standing Committee on Transport and Communications, [Fifth Report](#), 1st Session, 39th Parliament, 26 October 2006.
62. Senate, Standing Committee on Transport and Communications, [Third Report](#), 2nd Session, 39th Parliament, 7 February 2008.
63. House of Commons, [Journals](#), 1st Session, 39th Parliament, 20 October 2006, p. 558; and House of Commons, [Journals](#), 2nd Session, 39th Parliament, 3 March 2008, p. 503.
64. Senate, Standing Committee on Foreign Affairs and International Trade, [Thirteenth Report](#), 1st Session, 39th Parliament, 6 June 2007.
65. House of Commons, [Journals](#), 1st Session, 39th Parliament, 11 May 2007, pp. 1394–1395.
66. Senate, Standing Committee on Transport and Communications, [Fifth Report](#), 2nd Session, 40th Parliament, 4 June 2009.
67. House of Commons, Standing Committee on Government Operations and Estimates, [Fifth Report](#), 2nd Session, 40th Parliament, 29 May 2009.
68. House of Commons, [Journals](#), 2nd Session, 40th Parliament, 3 March 2009, p. 205; House of Commons, [Journals](#), 3rd Session, 40th Parliament, 3 May 2010, p. 324; House of Commons, [Journals](#), 3rd Session, 40th Parliament, 10 May 2010, p. 363; and House of Commons, [Journals](#), 3rd Session, 40th Parliament, 25 October 2010, p. 802, in the last two cases.
69. Senate, Standing Committee on Energy, the Environment and Natural Resources, [Third Report](#), 2nd Session, 40th Parliament, 12 March 2009; Senate, Standing Committee on Social Affairs, Science and Technology, [Fourth Report](#), 3rd Session, 40th Parliament, 13 May 2010; Senate, Standing Committee on Banking, Trade and Commerce, [Fifth Report](#), 3rd Session, 40th Parliament, 3 November 2010; and Senate, Standing Committee on Legal and Constitutional Affairs, [Twelfth Report](#), 3rd Session, 40th Parliament, 23 November 2010.
70. Senate, [Journals](#), 1st Session, 41st Parliament, 27 September 2011, p. 165; and House of Commons, [Journals](#), 1st Session, 41st Parliament, 19 September 2011, p. 236.
71. Senate, [Journals](#), 1st Session, 41st Parliament, 29 March 2012, p. 1003; and House of Commons, [Journals](#), 1st Session, 41st Parliament, 29 March 2012, p. 1046.
72. Senate, [Journals](#), 1st Session, 41st Parliament, 7 February 2013, p. 1899; and House of Commons, [Journals](#), 1st Session, 41st Parliament, 7 February 2013, p. 2745.
73. Senate, [Journals](#), 1st Session, 41st Parliament, 27 February 2013, p. 1953; and House of Commons, [Journals](#), 1st Session, 41st Parliament, 15 February 2013, p. 2773.
74. Senate, [Journals](#), 2nd Session, 41st Parliament, 3 April 2014, p. 647; and House of Commons, [Journals](#), 2nd Session, 41st Parliament, 31 March 2014, p. 763.
75. Senate, [Journals](#), 2nd Session, 41st Parliament, 1 October 2014, p. 1209; and House of Commons, [Journals](#), 2nd Session, 41st Parliament, 25 September 2014, p. 1489.
76. Senate, Standing Committee on Agriculture and Forestry, [Tenth Report](#), 1st Session, 41st Parliament, 21 March 2013; and House of Commons, Standing Committee on Agriculture and Agri-Food, [Ninth Report](#), 1st Session, 41st Parliament, 5 March 2013.
77. Senate, Standing Committee on Legal and Constitutional Affairs, [Fifth Report](#), 1st Session, 41st Parliament, 3 November 2011; Senate, Standing Committee on Agriculture and Forestry, [Fourth Report](#), 2nd Session, 41st Parliament, 30 April 2014; and Senate, Standing Committee on Fisheries and Oceans, [Sixth Report](#), 2nd Session, 41st Parliament, 26 November 2014.