Incorporation by Reference in Canadian (Federal) Regulations

Presentation: Thematic Session - Incorporating Standards by Reference

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Patricia Pledge, Department of Justice, Canada
Overview: Activities

1. Use of Incorporation by Reference

2. Standing Joint Committee for the Scrutiny of Regulations

3. External Activities and Working with Partners
Types of Material Incorporated by Reference

- Legislation – Federal, Provincial and Foreign
- Standards – Canadian, American and International
- International Agreements, Conventions and Protocols
- Other Documents produced outside of Government
- Documents produced by the Department that is responsible for the regulations
Implications for Regulators

• Documents incorporated by reference must be accessible

• Over 2600 different documents are incorporated by reference with as many as 3000 references

• Standards may have a cost or may only be available in one official language

• Ambulatory incorporation by reference creates a fluidity with new editions being incorporated, title changes, content to be monitored
18.3 (1) The regulation-making authority shall ensure that a document, index, rate or number that is incorporated by reference is accessible.

18.3 (1) L’autorité réglementaire veille à ce que le document, l’indice, le taux ou le nombre incorporé par renvoi soit accessible.
Standing Joint Committee for the Scrutiny of Regulations (SJCSR)

2017

SJCSR Report No. 90 - Accessibility of Documents Incorporated by Reference in Federal Regulations (March 2017)

- Position on meaning of “accessible” in the Statutory Instruments Act, recommendations to constrain use and listing of documents.

Government Response (July 2017)

- Maintains position and commits to policy development as part of Cabinet Directive on Regulation
Standing Joint Committee for the Scrutiny of Regulations

Fall 2017

• SJCSR demand for list of all documents incorporated by reference
• May 2018 Justice Appearance before the SJCSR and long/short lists

Spring 2018


• Extensive Recommendations
Standing Joint Committee for the Scrutiny of Regulations

Spring 2018

*Government Response (July 2018)*
- Maintain position and policy commitments

2018 – 2019

- List of Documents Incorporated by Reference (under development)
- Treasury Board of Canada Secretariat and Justice – Guide on Incorporation by Reference (pending) and SJCSR Appearance
Other Activities

Standards Council of Canada

*Guidelines for Incorporating Standards by Reference to Support Public Policy Objectives*

Canada School of the Public Service

*Artificial Intelligence for Insights into Regulations*
Other Activities

**Treasury Board of Canada Secretariat** – Regulatory Affairs Sector
- *Cabinet Directive on Regulation, Policy on Regulatory Development*, (Pending) Guide on Incorporation by Reference
- Regulatory Reviews, *Canada Gazette* Notice – International Standards
- Regulatory Cooperation and Harmonization

**Litigation**
- *Keatley Surveying Ltd. v. Teranet Inc.* 2019 SCC 43
References

Standing Joint Committee for the Scrutiny of Regulations

• 2007 SJCSR Report: *Report No. 80 (Incorporation By Reference)*

• 2008 Government Response

• 2017 SJCSR: *Report No. 90 - Accessibility of Documents Incorporated by Reference in Federal Regulations*
  http://www.parl.ca/Content/Committee/421/REGS/Reports/RP8554402/regsrp02/regs rp02-e.pdf
• 2017 Government Response
https://www.parl.ca/content/Committee/421/REGS/GovResponse/RP9072716/421_Regs_Rpt02_GR/421_REGS_Rpt02_GR-e.pdf

• 2018 SJCSR Report No. 92 – Accessibility of Documents Incorporated by Reference in Federal Regulations – Reply to Government Response
https://www.parl.ca/content/Committee/421/REGS/Reports/RP9878911/421_REGS_Rpt04_PDF/421_REGS_Rpt04-e.pdf

• 2018 Government Response
https://www.parl.ca/content/Committee/421/REGS/GovResponse/RP10003510/421_REGS_Rpt04_GR/421_REGS_Rpt04_GR-e.pdf
Statute

*Statutory Instruments Act, S.C. 33, 2015*


Litigation

*P.S. Knight Co. Ltd., et al. v. Canadian Standards Association*, 2018 FCA 222


*Keatley Surveying Ltd. v. Teranet Inc.* 2019 SCC 43

Treasury Board of Canada Secretariat
Regulatory Affairs Sector
https://www.canada.ca/en/treasury-board-secretariat/corporate/organization.html#ras

Regulatory Cooperation

Cabinet Directive on Regulation

Policy on Regulatory Development
Canada Gazette, Part I, Volume 153, Number 26: GOVERNMENT NOTICES


Canada School of Public Service

Artificial Intelligence for Insights into Regulations


Standards Council of Canada

Guidelines for Incorporating Standards by Reference to Support Public Policy Objectives