**What should be excluded from the Regulatory Count?**

MTO Legal Services has undertaken a preliminary assessment of the burden count conducted by Cabinet Office – Open for Business, which counted the words “must”, “shall”, and “required” in MTO legislation and regulations. Key words should not be counted as regulatory burdens in the following 10 situations:

1. **They appear in parts of MTO legislation that are the responsibility of other ministries.**

MOF – section 7.3, clause 7.4 (a), sections 7.5, 7.6, 7.7, 7.8 and 7.16 of the HTA – 16 shalls, 4 remains

MGCS – Part III of the HTA – 4 shalls

1. **Obligations imposed on Minister, ministry, police, courts or government employees.**

Examples of obligations to be excluded from the count:

HTA 5 (2)  Before taking any action under subsection (1), the Minister shall cause notice to be given to the holder of the vehicle permit or driver’s licence of his or her intention to cancel the permit or licence and the notice shall state that the holder has 60 days from the date of the notice to provide the Minister with the correct information. 2015, c. 27, Sched. 7, s. 2 (1).

HTA 7 (13)  The Ministry shall maintain,

(a) a numerical index record of all permits issued and in force under this section; and

(b) an alphabetical index record of the names and addresses of all persons to whom permits that are in force have been issued. R.S.O. 1990, c. H.8, s. 7 (13).

HTA **48.0.1** (1)  Where a police officer is satisfied that a person driving or having the care, charge or control of a motor vehicle or operating or having the care or control of a vessel meets the criteria set out in subsection (2), and where the officer reasonably believes, taking into account all of the circumstances, including the criteria set out in subsection (2), that the person’s ability to operate a motor vehicle or vessel is impaired by a drug or by a combination of a drug and alcohol, the officer shall request that the person surrender his or her driver’s licence. 2015, c. 14, s. 10.

HTA **210** (1)  A judge, provincial judge or justice of the peace who makes a conviction in respect of an offence listed in subsection (1.1) or the clerk of the court in which the conviction is made shall forthwith notify the Registrar of the conviction. 2017, c. 2, Sched. 17, s. 16.

\*\*Note: Open for Business has advised that a requirement should be counted if it is imposed on private-sector persons or businesses acting in conjunction with or on behalf of government. E.g., When a vehicle is impounded under s. 55.2 of the HTA, the operator of the storage yard has to make personal property in the vehicle available to the owner of the personal property. Because this requirement is imposed on a private-sector person, it should be included in the burden count.

1. **Obligations imposed on individuals in a non-business role.**

Example: S. 5 of O. Reg. 340/94 under the HTA imposes restrictions on novice drivers. These would be excluded from the count, as they are not requirements on businesses—they’re focused on individuals.

1. **Most uses of the word “required”. In most cases, the word is not used to establish a requirement in MTO’s legislation and regulations. It is used to reference another provision.**

Take for example, S. 104 of the HTA (below). In this instance, s. 104(2.1) and (2.2) have three highlighted keywords identified by Open for Business. S. 104(2.1) requires the cyclist to have the correct helmet. S. 104(2.2) forbids the parent from allowing a young person not to wear the correct helmet. There is really only one obligation on the parent. It is identified by “shall” in (2.2). “required” in (2.2) does not add another obligation. It simply identifies the helmet at issue.

Bicyclists to wear helmet

(2.1)  Subject to subsection 103.1 (2), no person shall ride or operate a bicycle on a highway unless the person is wearing a bicycle helmet that complies with the regulations and the chin strap of the helmet is securely fastened under the chin. 2009, c. 5, s. 36 (1); 2015, c. 14, s. 36 (2).

Duty of parent or guardian

(2.2)  No parent or guardian of a person under sixteen years of age shall authorize or knowingly permit that person to ride a bicycle, other than a power-assisted bicycle, on a highway unless the person is wearing a bicycle helmet as required by subsection (2.1). 1993, c. 18, s. 1; 2009, c. 5, s. 36 (2); 2015, c. 14, s. 36 (3).

Other examples of “required” being improperly counted:

s. 190(4) Surrender of daily log

(4)  Every driver who is required under subsection (3) to carry a daily log shall surrender it to any police officer or officer appointed for the purpose of carrying out the provisions of this Act upon demand by the officer. R.S.O. 1990, c. H.8, s. 190 (4).

s. 202 - Every provincial or municipal official or employee, hospital, charitable institution, insurer or other person or organization shall furnish to the Registrar the reports and other information relating to motor vehicle accident statistics and traffic control generally that may be required by the regulations.

1. **Use of a term in a table of contents or marginal note.**

Tables of contents don’t impose requirements. Example from the HTA Table of contents:

|  |  |
| --- | --- |
| [66.](#BK130) | Other equipment |
| [67.](#BK131) | Extended mirrors |
| [68.](#BK132) | Speedometers required in buses |
| [68.1](#BK133) | Speed-limiting systems |

Example from a marginal note in the Dangerous Goods Transportation Act (DGTA):

Insurance required

* 1. (1)  Subject to subsection (2), every person who transports dangerous goods on a highway and who is…

1. **There are many instances in MTO statutes and regulations where “shall” is used as part of a definition or a statement of a legal truth:**

– “shall be considered”

– “shall be deemed”

– “shall be read”

– “shall be construed”

Legal phrases don’t impose any legal obligations on anyone. They are a way of stating a legal truth or telling the reader how to interpret the legislation.

Examples of places where “shall” is used as part of a definition/legal truth:

HTA, s. 1 (3)  For the purposes of Part IX and any regulations or municipal by-laws made thereunder, every overpass and underpass shall be deemed to form part of the highway that it connects. R.S.

HTA. S. 1 - “trailer” means a vehicle that is at any time drawn upon a highway by a motor vehicle, except an implement of husbandry, a mobile home, another motor vehicle or any device or apparatus not designed to transport persons or property, temporarily drawn, propelled or moved upon such highway, and except a side car attached to a motorcycle, and shall be considered a separate vehicle and not part of the motor vehicle by which it is drawn; (“remorque”)

DGTA, s. 1 – “inspector” means any person designated as an inspector by the Minister under this Act, and references to “inspector” in the provisions of the federal Act and the regulations made under it that are incorporated by reference into this Act shall be read as meaning a person designated as an inspector by the Minister under this Act; (“inspecteur”)

HTA, s. 52 (2)  Notice sent by registered mail under clause (1) (a) or by mail under clause (1) (b) shall be deemed to have been given on the seventh day after the mailing unless the person to whom the notice is sent establishes that he or she did not, acting in good faith, through absence, accident, illness or other cause beyond his or her control, receive the notice. 2000, c. 26, Sched. O, s. 4.

1. **There are several sections that involve statements of legal rights with respect to lawsuits or appeals. These don’t seem to create an obligation on business to do something or not. They speak to the availability of legal procedures:**

HTA s. 7.9 (1)  No further appeal or other review shall be available from a decision under subsection 7.8 (2) except as provided in the International Registration Plan. 2002, c. 22, s. 98.

HTA s. 9 (6)  No proceeding for an offence under subsection (1) shall be instituted more than six years after the facts on which the proceeding is based are alleged to have occurred. 2008, c. 17, s. 32 (2).

HTA s. 17 (10)  No action or other proceeding for damages shall be instituted against the Registrar or any employee of the Ministry for any act done in good faith in the execution or intended execution of a duty under this section or for any alleged neglect or default in the execution in good faith of a duty under this section.

1. **Sections that have not yet been proclaimed into force. A section that is not actually in force would not count as a burden. The count that MTO received from OFB included highlighted words in the unproclaimed sections.**

Example of an unproclaimed section:

General rules respecting medical reports

Contents

**204** (1)  A report required or authorized by section 203 must be submitted in the form and manner specified by the Registrar and must include,

(a) the name, address and date of birth of the reported person;

(b) the condition or impairment diagnosed or identified by the person making the report, and a brief description of the condition or impairment; and

(c) any other information requested by the form. 2015, c. 14, s. 55.

1. **The leg and reg documents received from OFB counted the key words in regulation-making sections of legislation. For example, s. 1(11) of the HTA uses the word “must” in various places. This subsection does not itself create any obligations. It only authorizes the LGIC to create obligations of various kinds in regulation. It would be double counting to include both the obligation in regulation and the authority in statute to create such an obligation in reg.**

HTA, 1. (11)  The Lieutenant Governor in Council may make regulations for the purpose of the definition of “road-building machine” in subsection (1),

(a) prescribing classes of vehicles that are or are not road-building machines;

(b) prescribing features and equipment that a vehicle must have or must not have to be a road-building machine;

(c) prescribing uses to which a vehicle must be put or must not be put to be a road-building machine. 2016, c. 5, Sched. 12, s. 1 (2).

In this case, there is a relevant regulation – O. Reg. 398/16. A search for requirements should look at that regulation, not at the statutory section that authorized its making.

1. **There are a few instances of a key word being highlighted when the leg or reg specifically says that something is not required.**

O. Reg. 340/94, s. 14.1 (4)  A person prescribed under subsection (1) is not required under subsection 203 (1) of the Act to report a person whose impairment is, in the prescribed person’s opinion, of a distinctly transient or non-recurrent nature. O. Reg. 38/18, s. 3.

**O. Reg. 199/07 s. 5(4)** (4)  An operator may delete a portion of a schedule respecting the inspection of a specific vehicle component if the vehicle to be inspected under that schedule is not required to have and does not have that component. O. Reg. 199/07, s. 5 (4).

**HTA, 205.20** (1)  The provincial offences officer who used the evidence obtained through the use of a red light camera system to identify the owner or driver of the vehicle involved in the alleged offence and who issued the offence notice and certificate of offence shall not be required to give oral evidence at trial unless a summons requiring the officer to attend is issued at trial under section 39 of the Provincial Offences Act. 1998, c. 38, s. 4.