"There is no law whatsoever but may be dispensed with by the supreme law-giver; as the laws of God may be dispensed with by God himself; as it appears by God's command to Abraham, to offer up his son Isaac: so likewise the law of man may be dispensed with by the legislator, for a law may either be too wide or too narrow, and there may be many cases which may be out of the conveniences which did induce the law to be made; for it is impossible for the wisest lawmaker to foresee all the cases that may be, or are to be remedied, and therefore there must be a power somewhere, able to dispense with these laws."

Just as that polluter of the temple of justice, in his desire to facilitate administrative convenience, confused God's Regent with God himself, so too the Department of Justice appears to confuse a delegate or sub-delegate of Parliament with the supreme law giver.

101. In case it might be thought that it has become unduly excited about a trifle which facilitates the administration of the realm the Committee wishes it to be recalled that it was just such a facilitation of policy which cost James II his throne. And it was just such an insistence on supra-legal powers which in some small measure led to the execution of his father. The Committee believes that the laws are to be obeyed by all. The nature of a dispensation is to favour some, to set some at liberty from the obligations or restrictions of the law, but to leave others under those same obligations and restrictions, and in many instances liable to penalty if they transgress. Once given or assumed a power of dispensation knows no limit in time, number or reason.

If it is desired to have a power to exempt in hard cases, Parliament must be asked to grant it. Livy wrote:

"The laws alone are they that always speak with all persons, high or low, in one and the same impartial voice. The law knows no favourites."

It is to be regretted that certain laws of Canada appear otherwise, and in contradiction of Aristotle's precept:

"That the law is a mind without affection; that is, it binds all alike, and dispenses with none; the greatest flies are no more able to break through the cobwebs than the smaller."

102. Should there persist in any quarter the view that the dispensing power exists, the Committee conceives as the most expeditious remedy the passage of a Bill for a Dispensing Power (Abolition) Declaratory Act.

103. As a final point, the Committee wishes to note the extraordinary nature of the constantly appearing "Immigration Special Relief Regulations" which purport, under sections 57 and 27 (3) of the Immigration Act, to dispense with certain requirements of the Immigration Regulations in favour of named individuals. The number of persons so exempted runs into hundreds, even thousands, every year. The Committee rejects the argument that a power to exempt categories of persons from the Regulations extends to exempting individuals. Moreover, it is not convinced that there is power under the Act to exempt categories of individuals. It was on this point that the Committee was first refused a "legal opinion" by a Designated Instruments Officer who was an officer of the Department of Justice serving as Legal Adviser to the Ministry of Manpower and Immigration.

On humanitarian grounds there may be need of a power to waive certain immigration requirements in individual cases. The proper course is to take this power by statute and this is the course the Committee has urged upon the Department of Manpower and Immigration and upon the Joint Parliamentary Committee on Immigration. On an initial reading of the proposed new Immigration Bill (1976) now before Parliament—and recognizing that it has no direct mandate to debate that Bill in detail at this particular stage—the Committee cannot find in that Bill any explicit power to waive immigration requirements on humanitarian grounds in individual cases, otherwise than by Ministerial permit.

K.—ENABLING POWERS IN APPROPRIATION ACTS

104. In the review of statutory instruments the Committee has been struck by the number of instances of the use of Votes in Appropriation Acts as vehicles for the conferring of subordinate law-making powers, usually upon the Governor in Council. From 1st January 1972 to 30th June 1976 at least one hundred and four items of delegated legislation have to the knowledge of the Committee, been made pursuant to Votes. (The task of adding up the number is not easy since spent regulations are removed from the Index to Part II of the Canada Gazette at the end of each calendar year in which their effect became spent.) The Committee fears that many, many more examples exist which have not been classed by the Crown's legal advisers as statutory instruments and of the existence of which the Committee has neither knowledge nor the means of knowledge.

105. The type of power to which the Committee is referring arises when moneys are voted by Parliament to be disbursed for a stated purpose but *all* the rules governing that expenditure, the determination of eligible recipients and so on, are left to be made by a subordinate authority. Parliament simply hands a sum of money to a subordinate with authority to spend it for a particular purpose, often vaguely stated, as that authority sees fit. The authority then makes a set of rules, often very elaborate, governing the expenditure of the money and, in effect, defining the purpose and objects of Parliament's bounty. Often the financial basis which gives the legal justification for the use of a Vote in an Appropriation Act is a fiction since the money voted is only one dollar.

106. At first, though disquieted by the extent of the granting of enabling powers in Votes, and those in distressingly vague and all-encompassing terms, the Committee did not take a stand against this means of providing for delegated legislation. Rather, the Committee concerned itself with remarking upon clear abuses of the practice and in drawing its objections to the attention of the Legal Advisers to the Privy Council Office and of the President of the Privy Council.

107. The first of these abuses was the frequent drawing of the enabling power in terms which, in the view of the Crown, would exclude the delegated legislation from the definition of a