

*Regulations and other Statutory Instruments*

I should stress to members of the House and to members of the public as well who are not aware of the committee's practices that a committee can offer an opinion as it relates to the legality of what the government is doing. In no way is that opinion binding; it is simply an opinion by a parliamentary committee that it feels the government is acting in a way that is illegal, in a way not authorized by law. Ultimately, the only institution that can decide whether or not the government has acted legally is the court.

Through evolution and development of the committee over the years the decision was made by members of the committee, and it was supported by Parliament, that the committee had an obligation to take a look at statutory instruments that were passed from the point of view of vires, of legality, and to offer an opinion, and that the government had the responsibility—and I should stress responsibility—where there was doubt, to bend over backwards to stay within the letter and the spirit of the law. Surely we should expect a standard of behaviour from government, which not only matches that which we expect of people in the private sector, but which surpasses it. Unless the government itself indicates that it has respect for the rule of law, it is impossible for us to expect that ordinary Canadians and institutions in the private sector would share that respect that all of us, as parliamentarians, feel is essential.

One of the reasons we felt it essential that the committee look at the question of vires and one of the reasons why the issue of vires, or legality, has been looked at by similar committees in the Commonwealth is that it is often extremely costly for individuals to go to court when their rights have been infringed upon by a government acting illegally. In addition to that, Parliament has a responsibility to keep an eye on what the government is doing to ensure that, when we delegate authority to the government to act by regulation, it acts in a way that is legal and proper and within the spirit intended by Parliament. If we do not do that, then we have no right to delegate this authority to the government; we are then simply negligent in terms of discharging our responsibility to the people of Canada.

For those two reasons the committee of long standing has taken the position that it had a responsibility to look at the question of vires to ensure that the government was acting in a way that was legal.

In our opinion, making the change in the way the minister did, trying to bring in through the back door something he could not do through the front door, does not make legal what would otherwise be illegal. Again I stress that only the courts would have the authority to make a final decision on that matter. But the minister is not disposed to send this question to the courts for a ruling. For anyone else to take the minister to the court would, of course, be a costly procedure, and it is one which Parliament cannot do. What Parliament can do is to look at it, to get advice from counsel, to seek opinions as broad as possible from people skilled in the law, and to advise Parliament to advise the minister when it believes that the minister and the government are acting in a way that goes beyond the law.

I believe this is a minister who is committed to the rule of law and who would not want to act in a way which could be found to be illegal. Nor would the minister—and I fully accept his sincerity on this—want to take an action which could be demonstrated to be beyond the intent of Parliament at the time Parliament passed legislation. It is not enough to say simply that it is legal, even if one accepts—and we do not—that it was legal. But if it were an action beyond the intent of Parliament, if Parliament had intended that this statute be used in a very different way from the way being used by the minister, then obviously the minister would have a moral responsibility and obligation, as head of a department, as the person charged with the responsibility by Parliament, holding a very important responsibility and trust for the people of Canada, to act within the spirit of what Parliament intended and would not simply try to do an end run on Parliament. Surely if the consent of government and if the consent of the representatives of the people of Canada is to mean anything, the government has a responsibility first to consult fully with Parliament about its intentions and, second, to ensure that Parliament consents to what it is doing.

This is why the committee took the position that we believed that for the government to do indirectly what it could not do directly was beyond the powers which were given to it under the law. Second, that is why we make the decision to report to the House that even if the minister were to go to court and to find that he had acted legally, this sort of indefinite prohibition running for 365 days a year, for 366 days during a leap year, was clearly not something contemplated by Parliament; otherwise Parliament would have written the legislation in a way which made that explicit.

I do not think that it is asking too much to expect the government to bring what is relatively a minor technical amendment before Parliament. I suspect that if the government were to do that and bring the law into conformity with the wishes of Parliament, we would find that Parliament could pass that amendment very quickly.

The argument is often made by ministers of the Crown that it would be very time consuming to be proposing a whole series of amendments to legislation. But, Mr. Speaker, clearly the government has two options that it could consider when a committee has found that the government is acting in a way that is ultra vires and it has recommended that if it wants to act in a particular fashion it could change the law. First, it could introduce the legislation in the Senate. If House time is at a premium, then it is certainly possible for the government to introduce the legislation in the Senate, have the debate take place largely in the Senate and have committee study take place in the Senate, where the time of that House is much less at a premium than it is here. When that consideration has taken place, if the amendment being made is relatively unobjectionable, and in particular if a parliamentary committee with members of all three parties and with representation from both the House of Commons and the Senate have recommended it, and if it has been made at the request of a parliamentary committee, then it is reasonable to expect that the government