

Committee Reports

the Minister to set fees but we, as a committee, have always felt that, if a fee is quadrupled or multiplied by 10 or 20 times, that is the sort of initiative under a regulation or other statutory instrument on which we ought to focus the attention of the Government and ask it to take another look at it to see whether the enabling authority or prerogative, whichever of the two it is, might be used in a more expected and defensible manner.

Our fifth criterion calls upon us to ascertain that the regulation or other statutory instrument does not trespass unduly on the rights and liberties of the subject. This can happen sometimes. We are now looking at some regulations under the postal Act which allow, or appear to allow, very abrupt rights of entry to officials working for the postal corporation, to ascertain whether the stamping machines are being used properly, whether the fees have been paid and so on. We are focusing on that in our committee to try to encourage the post office to develop more normal, usual and safeguarded methods of providing for entry, which could sometimes take place into someone's home, as the Act is presently written and as the regulations presently provide.

Mr. Wilson (Etobicoke Centre): Why don't you use the telephone book, Bob?

Mr. Kaplan: That is not the criticism that we have of the regulation which is the subject of this report.

Our sixth criterion is one to which we have very frequent recourse in our committee. It is the criterion by which we criticize regulations and other statutory instruments that tend, directly or indirectly, to exclude the jurisdiction of the courts without explicit authorization therefor in the enabling statute, or that make the rights and liberties of the subject dependent upon administrative discretion rather than upon the judicial process.

This is an area in which I should like to congratulate those responsible for the production of regulations and other statutory instruments. Over the last few years there has been a considerable decline in the use of phrases like "in the opinion of the director", "in the opinion of the officer" or "in the opinion of the Minister". Leaving those expressions out gives the citizen more rights, because the citizen can go to court and ask it to determine whether the interference with his decision-making or his conduct is justified or unjustified.

I will give an example. The regulations which govern cemeteries in national parks have been before our committee on several occasions.

Mr. Wilson (Etobicoke Centre): Earth shattering.

Mr. Kaplan: I hear the Minister's observation. In those circumstances we have seen a discretion awarded to an official with which we happen to agree. We looked at it and decided after some consideration not to criticize giving the official discretion. Because the Minister has expressed interest in it, I should like particularly to tell him what that discretion was. The regulation provides that tombstones have to meet the test

of the discretion of the director as to whether they are in good taste and not offensive to people who have their loved ones buried in the cemetery and might be visiting. We could have written to the Minister responsible and told him to set out criteria on how large the tombstones have to be, what shape they have to be, what colour they have to be and what sorts of language on them would be acceptable or unacceptable. If we had been doing that, we would have been rigorously applying this criterion. We decided not to do that, because it struck us that such discretion of a director of a cemetery would likely be used in a reasonable way and that it would be justified to allow him some type of discretion, because we were told stories about people who wanted to mark their graves by planting an automobile on its side or some marker which they might consider to be appropriate but which would be found offensive to other persons who had their loved ones buried in the cemetery. However, it is an important criterion.

Mr. Speaker: It being one o'clock p.m., I do now leave the chair until two o'clock this day.

At 1 p.m. the House took recess.

AFTER RECESS

The House resumed at 2 p.m.

Mr. Deputy Speaker: When the House rose at one o'clock, the Hon. Member for York Centre (Mr. Kaplan) had the floor.

Mr. Kaplan: Thank you, Mr. Speaker. I know I only have another four minutes left today—

Some Hon. Members: Hear, hear!

Mr. Kaplan: I had many criteria to discuss, and out of the 15 I had only managed to cover six. I am uncertain that I would receive unanimous consent to continue if I sought it, but I hope that the few brief remarks I was able to make this morning gave Hon. Members of the House a—

[*Translation*]

As I said earlier, Mr. Speaker, what we do in our committee is not an examination, it is not something we do because we are personally motivated, but it is very important because, just as laws can even prescribe death and restrict the rights and privileges of the citizens, so can regulations and other initiatives taken pursuant to the royal prerogative have similar implications. It falls within the responsibility of our committee which, as I said, is an all-party committee with representation from all House parties and both sides of the other place. We do our best to correct the Government and other authorities which do have legislative powers, indirect though they may be, through authority granted pursuant to the statutes and the royal prerogatives.