

Honourable senators will notice that nothing is said in that section as to the purpose of the review. Why should this committee be scrutinizing?

Some hint of what was in the mind of the draftsman may be found in section 3 of the Statutory Instruments Act, which states:

(1) Where a regulation-making authority proposes to make a regulation it shall cause to be forwarded to the Clerk of the Privy Council three copies of the proposed regulation in both official languages.

(2) Upon receipt by the Clerk of the Privy Council of copies of a proposed regulation pursuant to subsection (1), the Clerk of the Privy Council, in consultation with the Deputy Minister of Justice, shall examine the proposed regulation to ensure that

(a) it is authorized by the statute pursuant to which it is to be made;

In other words, to ensure that it is *intra vires*, and not *ultra vires*.

(b) it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

(c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Bill of Rights*; and

(d) the form and draftsmanship of the proposed regulation are in accordance with established standards.

• (1410)

Then subsection (3) reads as follows:

When a proposed regulation has been examined as required by subsection (2), the Clerk of the Privy Council shall advise the regulation-making authority that the proposed regulation has been so examined and shall indicate any matter referred to in paragraph (a), (b), (c) or (d) of that subsection to which, in the opinion of the Deputy Minister of Justice, based on such examination, the attention of the regulation-making authority should be drawn.

Therefore, there is no provision, after the draft regulation has been read and considered by the Deputy Minister of Justice, for anything further to be done except that the attention of the regulation-making authority must be drawn, if necessary, to any matter referred to in paragraph (a), (b), (c) or (d) of subsection (2). Section 3 makes it quite obvious that any committee established under the Statutory Instruments Act should consider those four matters in connection with regulations that have already been passed. In addition, the committee, when it was first established about eight or nine years ago, decided there should be eleven additional criteria. For example, Criteria No. 8 is:

appears for any reason to infringe the rule of law or the rules of natural justice;

I should also point out that under section 29 of the Statutory Instruments Act section 3 of the Canadian Bill of Rights was repealed, and the following substituted therefor:

The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the *Statutory Instruments Act* and every Bill introduced in or presented to the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this part—

That is, the Bill of Rights.

—and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

As far as I know, the Minister of Justice has never reported to the House of Commons any regulation as offending the Bill of Rights, and has only once reported a bill, and that was in connection with an amendment that the Senate made to the Feeds Act in 1975. The Minister of Justice reported it as being inconsistent with the Bill of Rights and it was, therefore, turned down.

It can be seen that under the present system there are regulations that are looked at after they are drafted by the Deputy Minister of Justice and the Clerk of the Privy Council—that is the executive branch of the government—and then, after they are enacted, looked at by the Minister of Justice himself who, if he finds there is any infringement of the Bill of Rights, is supposed to report that infringement to the House of Commons. In addition to those two safeguards, there is the third safeguard from the legislative branch of government in that the Standing Joint Committee on Regulations and other Statutory Instruments also looks at the regulations after they have been passed, and reports on any that are inconsistent with the Bill of Rights.

The Canadian Charter of Rights and Freedoms is not mentioned, of course, in the Statutory Instruments Act, and there is no statutory provision for the Clerk of the Privy Council and the Deputy Minister of Justice to look at draft regulations to see whether or not they are inconsistent with the new Charter. I am sure that eventually the Statutory Instruments Act will be amended to provide for this machinery, and also machinery for the Minister of Justice to report. In the meantime, our committee wishes to carry on with the Canadian Charter of Rights and Freedoms, as far as regulations are concerned, in exactly the same way as we have with the Bill of Rights.

To distinguish the motion that stands in my name on the Order Paper, I will say that it concerns any bill that is presented to Parliament. There is nothing corresponding to section 3 of the Canadian Bill of Rights, and no statutory provision whereby the Minister of Justice draws the attention of the House of Commons to any infringement.

Therefore, I, as an individual and not as joint chairman of the committee, will move that bills be referred to the committee. I do this to draw to the attention of other committees, and so on, the fact that there may be an infringement of the Canadian Charter of Rights and Freedoms.