

Statutory Instruments

other body which recommends the regulations to the governor in council.

The final recommendation of the committee with respect to the Statutory Instruments Act is that section 32 should be amended to require the publication of regulations registered under that section. With few exceptions, the publication of these regulations has now been carried out. I think the committee in its report mentions, for example, among the remainder which have not been published, regulations which govern the Royal Canadian Mounted Police. With respect to all of these, the Department of Justice will publish this summer a complete consolidation including all regulations and other statutory instruments enacted since 1955. This consolidation would include all regulations registered under section 32, which will give effect in practice to the recommendation of the committee.

In section H of the report the committee recommends that any subdelegation of rule-making powers should be expressly spelled out in the establishing statute. This recommendation, like many of those in the report, raises what is essentially a fine question of law involving the extent of the authority granted by the general words which are traditionally employed when conferring regulation-making powers. After considerable research and consideration of the matter, Professor E. A. Driedger, Q.C., a well known Canadian authority on legislation, has concluded that the results of the court decisions to date "would appear to be that there is no rule or presumption for or against subdelegation and that in each case it is a question of interpretation of the language of the particular statute". The committee rejects this conclusion and I suggest one can only await the final decision of the courts on this matter.

With regard, however, to the general question of the desirability of subdelegation, it should be noted that the combination of the complexity of contemporary regulations and the need for flexibility in applying them in the field has created what is, indeed, an inescapable need for subdelegation as discussed in this section and sections I, J and K of the report. In my discussion of these sections I will attempt to demonstrate this necessity. In section I of the report the committee deals with the language of delegation. My officials are now studying, for future use, the general recommendations contained therein. Hopefully, hon. members will bear the committee's recommendations in mind in enacting forthcoming legislation. It should be noted, however, that it would not be desirable to impose a straitjacket on the words used in legislation by forbidding, as the committee recommends, the use of particular terms such as "respecting".

● (1640)

Section K of the report concerns enabling powers which are granted by the use of Appropriation Acts, the so-called "dollar items". This was a topic of considerable debate and a ruling by you, Mr. Speaker, last week. I do not intend to repeat all that was said at that time. I follow the example of the co-chairman who moved the motion before us today. One can understand

[Mr. Basford.]

the concern which was debated last week to which Your Honour's ruling adds a new perspective. I will leave it simply to the debate that was held last week and to the effect of the ruling of Your Honour with regard to that matter.

Section S of the report deals with the power of officers of agricultural agencies. In this regard I would like, first of all, to state that, as the committee itself points out, the regulations setting out the powers of officers of agricultural agencies are within the terms of the acts of parliament governing these matters. Second, I should point out that there does not seem to be evidence that agricultural agencies are presently trampling on the civil liberties of citizens. As the committee has recognized, the Department of Agriculture has co-operated willingly in removing objectionable features of regulations when these have been brought to its attention.

I would like now to turn to a section of the report which I understand has given rise to a fair amount of controversy amongst the members of the committee. It was touched upon by the hon. member for Greenwood. A good portion of the committee's report deals with regulations that exempt one or more individuals from the application of general regulations. Part J of the report gives examples of such regulations, and appendix III of the report sets out at considerable length why the committee considers such regulations to be illegal.

It is the committee's opinion that such regulations have been outlawed by the "revolutionary settlement" embodied in the English bill of rights of 1689. The report sets out the history surrounding the passage of the act in Britain and concludes, in essence, that the so-called "dispensing regulations" cannot validly be made unless each and every case is expressly authorized in the body of the statute itself. This particular matter was mentioned by the hon. member for Greenwood and my name has been linked with those who in times past have "lost their heads" over the issue. I have read speeches made in the other place by the co-chairman from that place wishing to give me the title "latter-day Stuart"—a title which I reject.

Mr. Knowles (Winnipeg North Centre): Maybe you are a Latter Day Saint.

Mr. Basford: This would seem to be an issue which, in the final instance, involves a subtle point of statutory interpretation. It is not extraordinary that there is disagreement between the lawyers on the committee and those of the Department of Justice as to the interpretation of the sections which provide for the creation of regulations. Justice's view is simply that all the regulation-making powers in question include the power to limit the application of the regulations. Since the regulation-making power is itself a parliamentary enactment, the "revolutionary settlement" principle is not infringed upon.

The report also indicates, in section N, the committee's disagreement with the practice of departing from the language of the statutes when the same idea is repeated in the instruments made thereunder. On the very few occasions where this has occurred, the responsible departments acknowledged that it was not a proper practice. Certainly, the officers in the Department of Justice will endeavour to assist the committee