scribing "the portion of the terms of imprisonment that inmates shall serve before parole may be granted". Since the word "portion" is singular, and not plural, and the words "terms" and "inmates" are plural, this power extends only to setting general rules applicable to all inmates, that is to say to promulgating portions of terms which will be of general application amongst inmates. Consequently, there is no power to set a portion of a term for a particular inmate or to provide by regulation that notwithstanding the Parole Regulations a particular inmate may be paroled before the term of imprisonment applicable to him under the Regulations has expired.

The Special Parole Regulations No. 1, 1973, which are the first and only such regulations to have been made, purported to dispense from section 2 of the Parole Regulations in favour of one Jacques LeBlanc, permitting his parole after a term of imprisonment not of ten but of "five years minus the time spent in custody from the day he was arrested and taken into custody ... to the day ... sentence was imposed". The Legal Adviser to the National Parole Board, who is not an officer of the Department of Justice, made freely available to the Committee all the background material to this matter, from which it appeared that this extraordinary course was adopted on the suggestion of one of the Legal Advisers to the Privy Council Office, who himself drafted the Special Regulations. It appeared that M. LeBlanc was convicted of complicity to commit murder and was sentenced to life imprisonment while those who were convicted of the murder itself, being juveniles, were sentenced to eighteen months in the Mt. St. Antoine Institution for Boys. The Quebec Court of Appeal, while rejecting M. LeBlanc's appeal, recommended that some action be taken by other authorities in light of the disparity between the sentences. The Associate Deputy Minister of Justice for Quebec made representations to the National Parole Board, which recommended to the Solicitor General that an exception be made to subsection 4 of section 2 of the Parole Regulations in M. LeBlanc's favour. That exception was duly purported to be made by SOR/74-29.

The Committee was unable to see this course of proceeding as anything but an unlawful dispensation from the Parole Regulations since the Parole Act confers no power of dispensation on anyone and section 9 (a) itself authorizes only general rules and not particular rules applying to individual inmates. The Committee is not, of course, unmindful of the hardship which it was sought to avert by making these Special Parole Regulations, but considers that the proper course—and a course possibly more beneficial to M. LeBlanc—would have been, and still is, an exercise of the Royal Prerogative of Mercy. (The Committee understands that M. LeBlanc, while originally on day parole, is still on full parole.) These views were pointed out to the National Parole Board which advised the Committee that it considered itself bound "by the procedure recommended to it and by the acceptance of that procedure by the Governor in Council". It was, of course, precisely that procedure and its consequent acceptance by the Governor in Council which the Committee objected to as amounting to an illegal act of dispensing with the law in favour of M. LeBlanc.

The Committee realizes that what is now critical is not the illegality of the manner in which M. LeBlanc was released from custody in 1973 but the gaining of an assurance that no further Special Parole Regulations will be made reducing the portions of terms of imprisonment that must be served by particular inmates before they may be granted parole. The Committee notes that the proposed section 9 of the Parole Act, contained in clause 22 of the Bill for a Criminal Law Amendment Act (No. 1) 1976 introduced in the last Session, reproduced the present phrase—"portion of the terms of imprisonment"—and that, even if that Bill is reintroduced and carried, precisely the same situation could arise in the future under the same statutory provision as applied in the case of M. LeBlanc.

(iii) SOR/73-439, Section 1 of Schedule A to the Steamship Machinery Construction Regulations, amendment

Section 1 of Schedule A to this amending regulation purports to give the Board of Steamship Inspection a power to dispense in individual cases with the properties of steel laid down in the balance of the Schedule as being of general application. In doing so, it simply echoes section 4 (1) of the principal Regulations which, being made in 1955, [31] lie beyond the Committee's reference. When advised of the Committee's concern at the granting by the Governor in Council to the Board of a power to dispense with a part of the regulations made by the Governor in Council, the Ministry of Transport replied that the power to grant a dispensation to the Board was conferred upon the Governor in Council by section 400 (1) (*b*) of the Canada Shipping Act which reads:

> "The Governor in Council may make regulations respecting the construction of machinery."

The Committee was told that the power to dispense flowed from the word "respecting". This the Committee can not accept, for reasons discussed at length in Appendix III.

The Committee is more than ever convinced that the word "respecting" and subject-matter enabling clauses have been given an interpretation by the Department of Justice wholly erroneous and dangerous. The Committee wishes to adopt the words of Chillingworth:

> "He that would usurp an absolute lordship over any people, need not put himself to the trouble of abrogating or disannulling the laws made to maintain the common liberty, for he may frustrate their intent, and compass his design as well, if he can get the power and authority to interpret them as he pleases, and to have his interpretation stand for laws."

100. Because of the tenacity with which the belief is held in the Department of Justice that such dispensations as have been described are lawful, the Committee has felt obliged to canvass this issue fully in Appendix III the more so since the power is being widely used (168 instances have come to the Committee's notice) and a great deal of ingenuity and mental effort appears to have been devoted to justifying this pretended power. The arguments in favour of its existence are diverse and each might have been addressed acceptably to the Court of King's Bench in the time of Charles I. They all, however, accord with the discredited reasoning of Lord Chief Justice Herbert in *Godden* v. *Hales* (1686). [32]