can no longer be taken for granted but must be constantly demonstrated. Governmental systems which do not take this new attitude seriously are apt to find public confidence in them diminishing rapidly. Obviously a continuing demonstration of justice of the system necessitates an opening of the processes and products of delegated legislation to the light of publicity. Fourth, your committee has been able to find no reason, either theoretical or practical, except the force of tradition, why there should not be publicity in the making of regulations. Canadian governments appear to have remarkably little to hide, and therefore nothing to lose, from openness except their psychological investment in existing practices. Indeed, publicity can have the positive value for administrators of helping them to improve weaknesses in their system. Fifth, since regulations have the force of laws, they should be made by processes which as far as possible approximate the openness of the general legislative process.

Based on some of the points to which I have just referred, among the views and recommendations of the committee at that time was the suggestion that a regulatory process should start with a government department telling the public what it is trying to do, getting feedback and then making regulations. This is a commendable objective and some day, if we ever have time to catch our breath in the committee, we should turn our attention to the philosophical implications of this, especially when we have witnesses from government departments before the committee. But given the great flood of regulations and the fact that some of them are very technical indeed, I do not think this could be regarded as an overriding approach to the matter.

What I am asking the House to do today, Mr. Speaker, on behalf of the committee, is to approve the criteria that the committee have adopted for the consideration of statutory instruments. To the best of our knowledge, these criteria encompass, in the form in which we have presented them, all the criteria now existing in all jurisdictions in Canada, in the jurisdiction of the United Kingdom and in the jurisdictions of other countries of the Commonwealth where this sort of overview, this review and study of regulatory instruments, has been going on for some time.

We think we have everything in here, though it is possible we have not. We are a committee that cheerfully looks for advice from all corners. If, on reading my words in *Hansard*, people think we should add to our study, then I ask them to send along suggestions either to me or to another member of the committee and we will consider whether those points of view should be added to our criteria. However, in effect, these are what we have accepted as our criteria and they are what I am moving, seconded by the hon. member for Toronto-Lakeshore.

I might just mention that in the French version of the report which I presented there were some technical errors and we decided to represent the French version of the report. This work was done by Mrs. Morin, Mr. Pelletier at the table, the hon. member for Bonaventure-Îles-de-la-Madeleine (Mr. Béchard), and perhaps others. The revised French version of the report is to be found in *Votes and Proceedings* for Tuesday, December 3.

With regard to the English version, I must pay tribute to the law counsel of the other place, Mr. Hopkins. It was his work that went into what I think is a really excellent piece of draftsmanship, one for which we in the committee have thanked him, and I hope others will also pay their respects for what he has done. This is our report:

Your committee reports that the criteria it will use are the following:

[Mr. McCleave.]

Whether any regulation or other statutory instrument within its terms of reference, in the judgment of the committee:

(1)(a) is not authorized by the terms of the enabling statute, or, if it is made pursuant to the prerogative, its terms are not in conformity with the common law, or

(b) does not clearly state therein the precise authority for the making of the instrument . . .

This, by the way, is perhaps the one ground that we find most commonly missing when we study statutory instruments. I imagine this problem will correct itself when government departments are advised by the Clerk of the Privy Council, Mr. Robertson, of the existence of this committee and our criteria. I think that those who draft orders in council from this point on will make this correction themselves.

(2) has not complied with the provisions of the Statutory Instruments Act with respect to transmittal, recording, numbering or publication;

(3) (a) has not complied with any tabling provision or other condition set forth in the enabling statute; or

(b) does not clearly state therein the time and manner of compliance with any such condition;

(4) makes some unusual or unexpected use of the powers conferred by the enabling statute or by the prerogative;

(5) (a) tends directly or indirectly to exclude the jurisdiction of the courts without explicit authorization therefor in the enabling statute; or

(b) makes the rights and liberties of the subject dependent on administrative discretion rather than on the judicial process . . .

I think the hon. member for Greenwood, the hon. member for Toronto-Lakeshore and other members taking part in this debate will bring forward some examples that we have found in this particular field.

(6) purports to have retroactive effect where the enabling statute confers no express authority so to provide or, where such authority is so provided, the retroactive effect appears to be oppressive, harsh or unnecessary;

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

(8) provides without good and sufficient reason that it shall come into force before registration by the Clerk of the Privy Council;

● (1250)

(9) in the absence of express authority to that effect in the enabling statute or prerogative, appears to amount to the exercise of a substantive legislative power properly the subject of direct parliamentary enactment, and not merely to the formulation of subordinate provisions of a technical or administrative character properly the subject of delegated legislation;

(10) without express provision to that effect having been made in the enabling statute or prerogative, imposes a fine, imprisonment or other penalty, or shifts the onus of proof of innocence to the person accused of an offence;

(11) imposes a charge on the public revenues or contains provisions requiring payment to be made to the Crown or to any other authority in consideration of any licence or service to be rendered, or prescribes the amount of any such charge or payment, without express authority to that effect having been provided in the enabling statute or prerogative;

(12) is not in conformity with the Canadian Bill of Rights.

I might say here that the Bill of Rights embodies a duty upon the Minister of Justice to examine regulations and ascertain whether they are offensive within the meaning of the Bill of Rights. It may be that after we have had some experience in the committee, the Bill of Rights should be altered to give this particular jurisdiction to the committee. I am not sure how we could do that, but at