

statutory instrument. The Committee believes that the most convenient method is the use of the footnote to show the place and date of publication and the registration number, if one exists. The former Registrar of Statutory Instruments at the Privy Council Office undertook to provide footnote references only for those instruments which can not be traced by reference to the Index to Part II of the Canada Gazette. (These are usually Orders in Council which were not regarded as regulations under the old Regulations Act or have not been regarded as statutory instruments after 1972 under the Statutory Instruments Act). The Committee does not accept that the subject must have access to and know how to use the Index to Part II of the Canada Gazette before he can ascertain the reference to another instrument mentioned in a statutory instrument. This knowledge is peculiarly within the competence of the departmental officials who draft statutory instruments and of the officers of the Registry of Statutory Instruments who are expert in the use of the Index. Consequently, the Committee believes that the trifling expense involved should be incurred so that footnote references are given for the Ontario Milk Order, for example, which is the intermediate enabling authority for numerous regulations made ultimately under the Agricultural Products Marketing Act. The newly appointed Assistant Clerk of the Privy Council (Orders in Council) and Registrar have agreed to review their Office's position.

62. Similarly, the Committee believes that where an enabling power in a statute has been amended since the last Revision of Statutes (1970) the preamble to the statutory instrument made in reliance on that power should recite not only the relevant section number or numbers and the name of the Act but also the reference to any amending statute which has amended that enabling power. The Committee is aware that in terms of section 32 of the Interpretation Act it is legally *sufficient* to recite only the name of the statute, leaving the subject to hunt for any relevant amendments in the Index to Part III of the Canada Gazette. But the Committee does not regard legal sufficiency as the relevant consideration. The Committee wishes statutory instruments, on their face, to be as comprehensible and self-contained and to reveal as much information about themselves as is possible. The governing consideration in the Committee's view is not whether a lawyer, or one well versed in the art of statutory instruments, will find all the relevant material he needs in the several indices and parts of the Gazette, but whether the layman will be able to identify not only all the relevant documents but their place of publication also.

63. The Principal Legal Adviser to the Privy Council Office has offered to suggest to the Registrar of Statutory Instruments that when next the guidelines for submission of recommendations to the Governor in Council are revised he might insert a provision that reference be given to any statute which amends an enabling power and which is subsequent to the then latest Index to Part III of the Gazette. The Committee can not regard this proposal as acceptable. First, it is merely an offer to suggest. Secondly, the guidelines, even if amended as suggested, relate only to Orders in Council and not to any other statutory instruments. Thirdly, it is still predicated upon the

availability of the Index to Part III of the Canada Gazette to ordinary folk and the assumption that they will know how to use it. The Committee can not accept either assumption and notes the difficulties its own counsel have faced from time to time in procuring copies on a regular basis of the Canada Gazettes, whether Parts II or III, and the relevant indices.

64. In conformity with its view that a published statutory instrument should be as complete in its form as possible the Committee has requested that a different method be adopted of referring to the existing text of a statutory instrument in an amending instrument. The present practice is to give a footnote reference to the registration date and place of publication of the original statutory instrument and of the last amendment, whether or not that last amendment is relevant to that part of the statutory instrument to be amended. The problem posed, even to experienced legal practitioners and government officers, in ascertaining the present text of any statutory instrument, or of any part of it, can be immense as the last consolidation of the Regulations was in 1955 and even statutory instruments made well after that date may have been amended many times. The former Registrar of Statutory Instruments advised the Committee that it is up to the subject, in attempting to identify the present text of say section 4 of a particular instrument which is now to be amended to have resort to the Index to Part II of the Canada Gazette and to check every single amendment there listed to see which ones, if any, amended section 4. The reference to the latest amendment is given simply to put the subject on notice of the latest amendment to the entire instrument, whether relevant to section 4 or not, so that he can tell whether there is an amendment in existence published since the last quarterly index to the Gazette. The then Registrar, together with the then Assistant Clerk of the Privy Council, declined to make any change in policy (despite the Committee's repeated representations) citing expense and shortage of labour

65. The Committee finds this position totally unacceptable. Its view, put simply, is that the footnotes to an amending statutory instrument should disclose all the relevant amendments to the statutory instrument as originally made. Yet, only amendments relevant to the text now to be amended should be cited. If the last was in 1971, it should be the last one referred to. If the particular text is being amended for the first time, there should be no reference to amendments and the footnote to the words "as amended" should so state. Consequently, where there is a reference in an instrument to an earlier instrument which has been amended by one or more other instruments, the words "as amended" should be used as at present and there should be a footnote to those words on the following lines:

- (i) If all the amendments are relevant to the matters dealt with in the new instrument, then they are all to be mentioned in the footnote
- (ii) If not all of them are so relevant, then the footnote should read: "The relevant amending (regulation(s)) (instrument(s)) is(are) ...".
- (iii) If there is no relevant amendment, the footnote should read: