

Statutory Instruments Act

origins of the Canada Gazette. The decision on the question whether the Canada Gazette, as printed and published since April 1, 1969, to the present, is the official gazette of Canada, is for the determination by the courts. The Minister of Justice, the Privy Council, this House or Parliament cannot assume that constitutional jurisdiction. What this House must properly inquire into, what the Minister of Justice should fully disclose, is the necessity for and the consequences of including clause 10 in Bill C-182. Why is it there? If the Canada Gazette has not existed as the official gazette of Canada since April 1, 1969, what are the consequences?

The Regulations Act, section 6(1), requires that every regulation shall be published in the Canada Gazette. Section 2(a) defines "regulations" as including a "proclamation". Section 6(3) provides that no regulation is invalid by reason only that it was not published in the Canada Gazette but no person shall be convicted for an offence consisting of a contravention of any regulation at the time of the alleged contravention that was not published in the Canada Gazette. There is an exception in paragraphs (a) and (b) of subsection (3). These paragraphs read:

(a) the regulation was, pursuant to section 9, exempted from the operation of subsection (1), or the regulation expressly provides that it shall operate according to its terms prior to publication in the Canada Gazette, and

(b) it is proved that at the date of the alleged contravention reasonable steps had been taken for the purpose of bringing the purport of the regulation to the notice of the public, or the persons likely to be affected by it, or of the person charged.

As a matter of fact, those paragraphs contain some of the wording of section 11 of the present act. By way of an aside, it is interesting to note that even the alternative method of notice provided for in paragraph (b), is of no avail where a person is tried on a retroactive offence; that is, it is impossible to give him notice of a regulation (including a proclamation) where the alleged offence was committed before the proclamation was issued or the regulation made.

Section 6 of the Regulations Act hangs upon the meaning to be given to the words "Canada Gazette". The exception to the necessity of publishing penal regulations hangs upon the meaning of "Canada Gazette". Under the Canada Evidence Act, section 18, the courts must take judicial notice of all acts of the Parliament of Canada. The courts are under notice that there is now no statutory authority for the printing and publishing of an official gazette of Canada. I want to draw that to the particular attention of the minister. As it now stands, the courts are under notice that there is now no statutory authority for the printing and publishing of an official gazette of Canada. It is for the courts to determine whether they should convict persons who appear before them on an offence created by regulation, or under authority of a proclamation that proclaims a penal statute to be in force, on and after April 1, 1969, or whether they should convict persons charged with retroactive offences created after April 1, 1969.

I pause to bring to the attention of the minister the effect these words could have on a recent action taken by

[Mr. Lambert (Edmonton West).]

the government. A proclamation, special measures under the War Measures Act and regulations appeared in the Canada Gazette, but the Canada Gazette had no statutory effect. What this House should not do, and what the Minister of Justice should not lead this House into doing, is to pass a provision that may have retroactive penal effect on criminal cases now before the courts.

As well as clause 10, the Minister of Justice should explain to the House the change that this bill proposes to make to the exception in paragraph (b) of subsection (3) of section 6 of the present Regulations Act.

Mr. Turner (Ottawa-Carleton): That is a different amendment.

Mr. Lambert (Edmonton West): This is the proposal contained in clause 11(2)(b), to which I also have an amendment. I will leave my discussion with regard to that particular point until we get to my amendment to clause 11. Briefly, Mr. Speaker, the purport of my amendment is to fully bring out in the open the fact that it is incumbent upon the minister to explain to this House why he wishes to make a change, and the purport of the change. Therefore, I say to him, clause 10, which purports to classify or to qualify the Canada Gazette as the official gazette of Canada, deserves a fuller explanation. Why is it being done? I suggest, and the minister himself confirmed this, that in the course of the preparation of the government reorganization bill of April, 1969, something was inadvertently done which removed the statutory authority which gave the Canada Gazette its status as the official gazette of Canada. This entrains consequences, and the consequences are those which the courts may have to consider. The minister owes it to the House to give a full explanation of the changes which are proposed and also, as far as possible, to answer the questions I have raised concerning the validity or otherwise of the official status of the Canada Gazette.

• (4:00 p.m.)

Hon. John N. Turner (Minister of Justice): Mr. Speaker, I reply merely in the terms of the submission I attempted to make before the committee. The purpose of this clause is simply to confirm the Canada Gazette as the official gazette of Canada. In the repeal of section 27 of the Public Printing and Stationery Act effective April 1, 1969 and the subsequent government reorganization measure, authority over the Queen's Printer was transferred to the new Department of Supply and Services—nothing more. The Department of Supply and Services now reports to the House concerning the estimates of the Queen's Printer. The Queen's Printer continues to exercise the functions he always exercised and among those functions was, and is, the publication of the Canada Gazette. The statutes which refer to the Canada Gazette refer to it as the Canada Gazette. I submit that the continuity of the Canada Gazette has existed in practice as endorsed in the estimates of the House. This clause does not provide that the Queen's Printer shall continue to publish the Canada Gazette as the official gazette of Canada; it simply provides it shall be continued as the official gazette of Canada.