

*Committee Reports*

service and some association with the committee in the past, has never been at all in the public limelight. The limelight does not assist this committee in doing its work. Remarkably, over the past years we have been able to operate, I believe, almost completely by unanimity, not only unanimity among all Parties in the House but unanimity among members of the committee and the other place.

I want to pay tribute to members of the committee, who have served without very much public attention over the years, in keeping this important committee going. I want particularly to refer to my predecessor, the present Solicitor General (Mr. Beatty) who was a distinguished House Chairman of that committee for several years.

The practice has always been that the House joint chairman should be a member of the opposition Party. During the time when the present Secretary of State for External Affairs (Mr. Clark) was Prime Minister, the House chairman was Mr. Ken Robinson, a former colleague of ours, a former Liberal Member of Parliament who also performed a distinguished function as joint chairman of the committee.

I want to say a few words about the composition of the committee. More important, Mr. Speaker, I would like to tell you about our mandate and what it is that has brought us to our criticism of the oil carriage regulations to which I have referred and which our report addresses.

The committee's mandate has developed over the near decade the committee has been in existence. The mandate has been developed in consultation with interested parties across the country and in consultation with other democratic parliamentary institutions around the world, which have also been developing a form of review of the regulations and other statutory instruments generated pursuant to statute and pursuant to prerogative in those countries.

I wish we had the time to look at all our criteria, but the criteria have developed. There are 15 of them. I would like to tell the House something about each and every one of the 15 criteria that we use in examining regulations and other statutory instruments, particularly those criteria having to do with the oil carriage limitation regulations, the subject of this report.

Some of our criteria are very obvious. We are first mandated to examine regulations and other statutory instruments to see whether or not they are authorized by the terms of the enabling statute. Or, if there is no enabling statute, if such regulations are an exercise of the royal prerogative, that the terms of the exercise of the royal prerogative are in conformity with the common law. We have added to that first of our 15 terms of reference the additional observation that we expect the regulation or other statutory instrument to state clearly the precise authority for the making of the instrument.

That is the weakness of the regulation which is before us, Mr. Speaker. The regulation is purported justified by a section of the Canada Shipping Act. In the unanimous view of our committee, it is bolstered by the very competent legal advice we received from the Library of Parliament, for which we are

most grateful. Those regulations are not justified by the section of the Act which the regulations claim justify their creation.

● (1250)

We also examined regulations and other statutory instruments to see whether they complied with the Statutory Instruments Act in respect of transmittal, recording, number or publication. I remind the House that the Statutory Instruments Act was a great step forward in the development of this area of public policy. It established tight criteria, designed to ensure that, almost like legislation itself, regulations and other statutory instruments would come to the attention of the public, particularly those affected by them. Also it would ensure that by looking at them, they would be able to understand them, where they come from and what they were intended to do. As I indicated, that is one of the failings of the subject of the fourth report on which I am moving concurrence.

Our third criterion is to require—and this is another requirement of the Statutory Instruments Act—that the instrument with which we are dealing has complied with any tabling provision or other condition set forth in the enabling statute. This criterion was needed because very often—in fact, more often than one would expect or more often than was really required—a particular statute sets out its own internal code for regulations which are to be created and are to emanate under the statute. We want not only to ensure that the regulation complies with the Statutory Instruments Act as to those formalities—I call them “formalities”, but they are important for the citizen; that is the whole object of our efforts—but to ensure that it complies with any requirements of a similar sort which may be put out under its enabling statute.

Under the third of our 15 conditions, we want to assure ourselves, in doing our job as a joint committee, that the time and manner of compliance with the enabling statute are clearly set out.

Our fourth criterion is somewhat more controversial. It is that in doing our work, and eventually making our reports, we seek to ascertain whether the regulation or other statutory instrument makes some unusual or unexpected use of the powers conferred by the enabling statute or by the prerogative. Mr. Speaker, you and other Hon. Members might think that this criterion could give rise to partisanship and to some criticism based upon ulterior motives by one or another of the members of the committee. That has never been the case. When the royal prerogative or the legislative authority has been used in some unusual or unexpected manner, there has been unanimity within the committee that it ought to be brought to the attention of the Minister responsible and that hopefully the concern of the committee can be allayed by some action which the Minister might take.

For example, we have been occasionally concerned when fees have been increased by a very substantial amount. This can be done under the regulation. The regulation authorizes