

Statutory Instruments Act

Mr. Knowles (Winnipeg North Centre): How many are there in that category?

Mr. Baldwin: I am not on the roster to answer questions today, otherwise I would. But I am sure the smelling-salts would have been brought down from their resting place in the cabinet room when the report of the committee was first circulated and read, because it contains recommendations and proposals which, while not going as far as I or some of my colleagues would have liked—those in my party and in the NDP—nevertheless it did make a very substantial beginning in dealing with this problem which we in Canada have neglected for a great many years.

I think on that point we can all reach agreement, Mr. Speaker. Other jurisdictions have dealt with it—the United Kingdom, the U.S., Australia, New Zealand, and so on—but in Canada we have not done anything about it. So when the committee laboured and finally produced what I thought was a pretty good report, I wondered how far it would get in cabinet and in the senior ranks of the civil service. Obviously there are recommendations in it which must be repugnant to senior civil servants for many years—I do not say this uncharitably and unkindly—have been used to having their own way, when it comes to the enactment of regulations and Orders in Council, without too much challenge in this House or in Parliament. I fully expected that some of the minister's colleagues who take the same position as civil servants would have felt the same way—but I did not think the minister would. I think he was just kidding me a little when he tried to intimate that so far as this bill is concerned it is a fair and accurate reflection of the committee's proposal.

It is true that the clause in respect of which my amendment has been moved does to a very limited extent follow the proposals of the committee. But I would say, Mr. Speaker, that it was one of those compromises which all committees have to work to achieve. I wanted the committee of scrutiny, which was to be set up by clause 26, to go a lot further in dealing with questions which were thought suitable for discussion and action by a parliamentary committee. But because we in the committee obtained agreement to other things, I was prepared to go along with this clause. As a foundation for my argument I would read the pertinent parts of clause 26 as follows:

Every statutory instrument issued, made or established after the coming into force of this act, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph (d) of section 27, shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments.

● (8:10 p.m.)

The first point that engages our attention is that there is an exemption; that is the exemption set out in the next clause, clause 27, which deals with regulations that affect international relations, national defence, security or federal-provincial relations. There is obviously a very strong case to be made for a government to be entitled to say

that in its opinion as a government the regulations it is proposing to promulgate do have an impact on and concern national security; that in those circumstances there is every reason for the government to exempt the regulations from the need for publication and, I suppose, ultimately from being considered by a committee of Parliament.

Certainly that is not the case with federal-provincial relations. As a matter of fact, if we consider the last two or three communiqués issued by the constitutional conference I can think of very little in those communiqués that would entitle the government to withhold them from the public view. The conference has done so little that there would not be much value in their communiqués and I do not think any parliamentary committee would be very anxious to discuss them. However, this is beside the point. The main purpose behind my motion does not relate to that particular aspect but to what will be the powers of this parliamentary committee. What will the committee have the right to do? What recommendations will it be able to make?

The report of the special committee which was the foundation for this legislation is very interesting. At page 86 of the report there is a very useful observation made about the report of the delegated legislation committee of New Zealand, and also an inquiry into civil rights which I think was brought about by the province of Ontario. I shall read the first paragraph:

If Parliament is accepted as the sole legislative authority, and if by force of circumstances it must delegate some of its authority to others, then it stands to reason that the public will expect the Parliament to exercise something more than a merely nominal supervision over the work of those to whom law-making powers have been delegated.

I do not think anybody would quarrel with that observation. The second quotation I should like to make from the report of the inquiry into civil rights in the province of Ontario is as follows:

It is a primary function of the legislature to make the laws, and it is responsible for all laws it makes or authorizes to be made. A failure by the legislature to find some specific place in the legislative calendar for supervision of subordinate legislation is, in our view, a dereliction of duty on its part and a failure to protect the fundamental civil rights of the individual.

Seven years ago this House, through one of its committees, took virtually the same position. The special committee that was charged with the responsibility of looking into the organization and procedure of the House, in a 1964 report made a categorical and unanimous recommendation urging the House—and, I assume, through the House, ultimately the government—to establish what it then called a committee on delegated legislation, which is simply another term for the same sort of committee of scrutiny envisaged in the legislation we are now considering, and giving to that committee very substantial powers.

Although that was the unanimous recommendation of a committee of this House, there was no opportunity to debate it: it was not the subject of any motion in the House. However, the government of the day took no exception to it. Members of Parliament had an oppor-