

There is a general presumption in law that legislation is not retroactive, except in budgetary cases. In the Budget you can announce what you are going to do and then you enact the legislation. It is legal for Parliament to enact legislation that is retroactive, although there is some problem in criminal matters. Generally, we do not like enacting retroactive law in criminal matters because someone could do something which did not seem illegal when he or she did it.

The Government can clearly enact retroactive legislation, but that is not what happened in this case. People should not be misled by the Government if it tries to say otherwise and I hope the Government will not try to say that. It is clear from common law that regulations may not be made retroactively unless the enabling legislation specifically permits this. In other words, if we pass the law and say the regulations under the law can be made retroactive, that is fine. I do not think in this case there was any legislation passed that enabled regulations to be passed retroactively. If there was, I challenge the Government to show us. There is no mention in the Canadian Home Insulation Act and the Oil Substitution and Conservation Act, the two enabling pieces of legislation pertaining to CHIP, and I have looked at them, that regulations can be made retroactively. Therefore, the regulations are *ultra vires* because there was no authority for them to be made retroactively.

I do not want to say that the regulations made on January 18 were illegal in that the program was to be cut to a grant of only 33-1/3 per cent from a grant of 60 per cent, because in my view that is legal. After regulations are gazetted they are legal. But in the period between December 31 to January 18 there was no law on the books to allow the Government to send back those applications. The Government has to act according to the law. It should have taken the applications for the full 60 per cent. In order for the Government to have proceeded legally, the regulation would have had to be gazetted on Decemebr 31, 1984.

[Translation]

Mr. Speaker, in Parliament it is very important to be fair to all Canadians. The law must apply to the Government of Canada as it does to the average Canadian. And I feel that these regulations were neither legal nor fair in covering the period from December 31, 1984 to January 18, 1985.

[English]

Despite the fact that the press release was issued, the public is deemed aware of a regulation only after the time it is published in *The Canada Gazette*. As I said, Mr. Speaker, we do not stay up all night reading the *Gazette* but this is the legal jurisprudence of Canada, the law of Canada. It is not fair not to give the public proper notice that their rights are being affected. December 31 was not early enough. There should have been earlier notice, that is, publication in *The Canada Gazette*. That should have been done one month in advance.

There are two other points. One deals with conservation. Conservation is a very important area for Canadians. While oil

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prices are going down, let us not forget that we should continue with conservation. That is why this particular statute is very important. Second, the jurisdiction, the scope of this Committee, has been expanded. The Standing Joint Committee on Regulations and Statutory Instruments will now be able to bring one regulation to this Parliament under the new rules and this Parliament will have the power to throw out the regulation. That is an important power. It is indicative of a non-partisan attitude in all parts of the House from the Conservative benches right through.

Let us look at what is happening with regulations outside of the statutes that are running people's lives. I expressed the opinion that I would like to see even the scope of the statutory and regulations committee expanded to include Government agencies as well as the Cabinet. Direct cabinet regulations, the ones that Cabinet just approve and do not make are not subject to the scrutiny of our committee. If you think about it, Mr. Speaker, TV and cable, regulation of your fees, telephone, transportation, airlines, what you watch on TV and what you hear on the radio are all covered. There are a lot of orders and regulations not covered.

It is not ironic that the Department of Energy was caught in this matter. The Department has become a touch arrogant. It might be because it has had so much legislation in the past six years with the National Energy Program, then its dismantling. The Department has been used to doing things very quickly. In this case it did something illegally and was caught by this committee. I do not want to give the impression that I am really berating the Department of Energy, Mines and Resources, because this is a lesson of which all Government Departments should take heed. This could happen to any Government Department. They must be more responsible in passing regulations. They will be scrutinized more by Parliament. The feeling throughout the House is that we want accountability and control over regulations which are affecting people's lives. I think that is healthy.

• (1140)

I ask the Government to welcome this report from an all-Party committee in the spirit in which it was offered; that is, that the Government should accept that there is a regulatory problem. It should announce that in the future it will act differently. It should also consider the matter of those people who applied between December 31, 1984, and January 18, 1985. By law those people should have received the full grant of 60 per cent rather than the half grant of 33 per cent. This is a very important case and I ask the Government to accept it in the spirit in which the committee brings it to its attention.

Mr. Kaplan: Mr. Speaker, in my own remarks I expressed the hope that the House would support the committee rather than the Minister in the up-coming vote on this matter. What would my colleague's view be if the House failed to support the committee? How would that affect his own attitude and that of the NDP toward the future work of the committee?