

I think we should have an explicit answer to my question so that the Committee may consider what action should be taken with respect to the Bill.

You further state "I believe that the operations of the Parliamentary Standing Committees and the Joint Committee on Regulations and Other Statutory Instruments provide the necessary check to the exercise of Ministerial discretion".

You seem to have been misinformed as to the powers of that Committee. It can only criticize regulations after they have been enacted. If the regulations are *ultra vires*, then this can be drawn to the attention of the relevant Minister, Parliament and the public. If the enabling clause has the effect of widening the regulation-making power to the extent that you apparently believe, then the Committee will have no power to criticize a regulation enacted as being *ultra vires*.

I received a short letter dated May 16 from Mr. Fraser, signed by somebody in his office, acknowledging receipt of my letter and saying in part:

You can be assured that I will be responding to your letter in the near future.

I mentioned to Senator Marshall yesterday that I was still awaiting a reply to my letter. Senator Marshall informed me that he had been advised by the minister that a letter had been sent to me in reply and was being delivered to me.

Senator Marshall: The office of the minister.

Senator Godfrey: Yes, the office of the minister. The letter still has not arrived. However, Senator Marshall very kindly gave me a draft of the letter which the minister was sending to me with a few corrections, and I should like to read the draft of the letter which, I presume, is correct, and if it is not, we will make the necessary corrections. It reads as follows:

Dear Senator Godfrey:

Thank you for your letter of May 9, 1985, in which you reviewed the testimony provided by departmental officials at the meetings of March 26th and April 2nd, 1985, concerning Bill C-32 and, in particular, the effect of the purpose clause on regulation-making power.

At that time, it was the department's understanding, based on past practice, that regulations would have to be confined to the enumerated heads of section 34. Following your request that I undertake to confine future regulations to those enumerated heads and prior to giving you my earlier answer, I asked that the scope and impact of options available to me be reviewed, including additional amendments to the Fisheries Act. Upon reviewing these options, I learnt from the Privy Council Office that your point regarding the introduction of a purpose clause and its impact on regulation-making powers was indeed valid.

However, inasmuch as the enumerated heads under section 34 do not include allocation for the social and economic benefit of the people of Canada, I concluded that it would be futile to pursue the amendments to the

Fisheries Act if I were to commit myself not to seek regulations designed to achieve that purpose, which is central to the legislation now before the House. I therefore regret to confirm that I cannot make the commitment that you seek.

I would suggest that finally the minister came clean in that letter, although we had testimony that it was not intended when they passed the original amendments to the act to increase the regulatory-making power. Now that they discovered that it has that effect, they want to use it.

Furthermore, the cabinet directive, which I read into the record, said that if you want unnecessarily wide powers, you must write a memorandum to cabinet and get their approval on the enabling clauses of the bill. Obviously, such a memorandum was never written because they did not even know that it was having this effect until I drew it to their attention.

What concerned me about it primarily, and with the opinion that we got from our counsel, was that the result of this wide regulation-making power with practically no limit at all is that the minister or the government would never have to come back to Parliament, would never have to consult Parliament, would never have to amend the Fisheries Act in the future and they would have complete power to do it by regulation. Parliament would not have any input into it whatsoever.

However, there was a development today, which I learned of for the first time today from Senator Marshall, that there is a time limit on this bill of a year and a half, and that there will, therefore, be a review. They cannot postpone this forever and do whatever they want. I see the necessity and the merits of this bill and I understand that Senator LeBlanc and Senator Marshall say that this bill should be passed on its merits, so I am not inclined to propose, as I was so inclined before I heard there was a limitation, that it be referred to committee. It would be very interesting in the next year and a half to see what regulation—making power the minister does use. If he uses unnecessarily wide-ranging ones, in my humble opinion, then we have a good argument to restrict him when he comes back a year and a half from now and wants to amend the bill. If he does not use very wide-ranging powers, then he will have shown there is no necessity for them.

In closing, I should like to point out one thing: I do believe that this question of committees looking at regulation—making powers in bills is very important. It has been completely overlooked in the past. The Standing Senate Committee on Agriculture, Fisheries and Forestry had a researcher of the Research Branch of the Library of Parliament look into this bill and yet there was not one mention about the increase in the regulation—making power. It would not have come to the attention of the the Department of Fisheries and Oceans at all if it had not been picked up by the counsel for the Standing Joint Committee on Regulations and other Statutory Instruments. This proves the value of its new role. If they can draw attention to it, these things will not slip through without people noticing. I think we should make it quite clear that if in the future they try to introduce this kind of wide regulation—