then there are a few departments where we have little or no success at all.

Schedule II lists six instances where the minister concerned has not even had the courtesy to reply to our original letter or the follow-up one. Three of these instances involve the Department of Fisheries and Oceans, and one each for the Department of Finance, the Department of Industry, Trade and Commerce and the Department of Indian Affairs and Northern Development. Incidentally, of these, it is only the Department of Finance and the Department of Industry, Trade and Commerce that I would put in the third group as departments where the committee has had little or no success.

Schedule I lists eight instances where departments have given undertakings to the committee to take action, but nothing has been done so far. Two of these go back to August 1980, two to February 1981, two to March 1981, and one each to April 1981 and May 1981. Three involve the Department of Indian Affairs and Northern Development, and one each for the Department of National Revenue, the Department of Energy, Mines and Resources, the Department of Agriculture, the Department of National Defence, and the Department of Fisheries and Oceans. Of these, it is only the Department of Energy, Mines and Resources that I would place in the unco-operative third group, whereas the Department of National Revenue, the Department of Agriculture and the Department of National Defence would definitely be placed in the first group because they co-operate by responding promptly, and almost always either do what the committee wants or convince us that we are wrong.

Schedule III records the outcome of all matters raised with ministers and heads of agencies during this session of Parliament. It is to be noted that these total 50, and of these 50 there are 34 instances where the minister either took the action requested by the committee or gave an undertaking to do so. This shows that we have been successful in 68 per cent of the cases in which we have dealt with ministers—which is not bad, considering that the committee's only power is persuasion and, if necessary, exposure in a report to Parliament. This latter remedy apparently has considerable influence on many ministers; there are a few, however, who apparently could not care less and presumably they will continue not to care, unless the media give more publicity to our reports.

I should also point out that the committee has been successful in many other cases where our counsel has dealt with the designated instruments officer only and it has not been necessary to appeal to the minister.

On motion of Senator Macdonald, for Senator Doody, debate adjourned.

TENTH REPORT OF STANDING JOINT COMMITTEE—MOTION FOR ADOPTION—DEBATE ADJOURNED

The Senate proceeded to consideration of the tenth report of the Standing Joint Committee on Regulations and other Statutory Instruments which was presented on Wednesday, December 16, 1981.

Hon. John M. Godfrey moved that the report be adopted.

He said: Honourable senators, the tenth report of the Standing Joint Committee on Regulations and other Statutory Instruments was presented to this house on December 16, 1981. I did not make a speech on the report at the time because, frankly, I could not think of anything to say that was not already in the report. However, I think now is the time to remind honourable senators and the government of what is in that report and why we were critical of the government for enacting three sections of the Claims Regulations.

Two of these sections involve what employees of the federal government must do when they are involved in an incident that may give rise to a claim against the Crown for damages.

One of the legal points that often arise, for example, where a Crown-owned motor vehicle is involved, is whether or not the employee was acting within the scope of his duties or employment at the time the incident occurred. A judge trying such a case would consider the factual evidence as to what the employee's duties are and the evidence as to what the employee was actually doing when the incident occurred, and then arrive at the legal decision as to whether he was or was not acting within the scope of his duties or employment, and thus whether the Crown was liable.

These two sections referred to in our report actually require the employee, who is usually not a lawyer, to state what is essentially a legal conclusion, namely, whether or not he was, in his opinion, acting within the scope of his duties or employment when the incident occurred.

As stated in our report, the committee considered this to be unfair and wrong in principle. The employee should be asked factual questions concerning factual matters. The legal conclusions that can be drawn from the facts should be left to the lawyers and the courts. Employees should not be asked questions beyond their competence to answer.

The other section to which exception was taken is section 8(a) of the Regulations which requires the Deputy Attorney General to give "his opinion on the position the Crown should adopt respecting liability" arising out of an incident where an employee is involved. The Deputy Attorney General in section 8(b) must also give "his opinion as to whether or not"

> (i) the incident was occasioned by the negligence of an officer or servant of the Crown, and
>
> (ii) the officer or servant of the Crown involved was acting within the scope of his duties or employment at the time the incident occurred—

The opinion given under section 8(b) is, of course, perfectly proper and necessary.

The committee felt very strongly that the opinion required in section 8(a) was improper because the Crown should govern itself by the highest possible standard of conduct in litigation.

It is outrageous, if the Crown has a legal opinion under section 8(b) that it is liable because the incident was occasioned by the negligence of an officer or servant of the Crown who was acting within the scope of his duties or employment,