

for the proper management of that resource. At the same time, I think it is crucial that there be adequate safeguards against the arbitrary or capricious exercise of those powers, through a requirement for ex post facto accountability to Parliament for discretionary decisions. 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, particularly in light of the opportunities now available to MPs to question the Minister when they scrutinize Annual Reports and other departmental documents. I hope that these explanations will serve to allay your concerns with the provisions of Bill C-32.

To that letter I replied on May 9 as follows:

Dear Mr. Fraser:

I have your letter of May 7, and I must say that the explanations do not serve to allay my concerns with the provisions of Bill C-32.

In the meeting on Tuesday, March 26, 1985, the following exchange took place with Mr. Pierre Asselin, Director of Legal Services of your department:

"SENATOR GODFREY: Is it usual to have a 'purposes' clause in acts?"

MR. ASSELIN: No, it is not.

SENATOR GODFREY: And when one combines the 'purposes' clause with the enabling clause, there is no area that isn't covered in terms of the making of regulations.

MR. ASSELIN: That is correct.

SENATOR GODFREY: Ten years from now something might crop up that could be pulled in under the 'purposes' clause. Under this clause, ten years from now you could be making regulations in respect of how fishermen should build their houses.

MR. ASSELIN: The regulation-making power would always be subject, of course, to our constitutional jurisdiction over fisheries.

SENATOR GODFREY: Yes. Did you do this deliberately so that you would have the widest possible regulation-making power, or was your mind turned more in other directions?

MR. ASSELIN: I do not believe we thought of it in those terms. We thought of it in terms of trying to modify the act so that it would reflect current practices in administering the fisheries. The Fisheries Act is an antiquated piece of legislation and one which does not reflect what is currently being done in terms of administration.

SENATOR GODFREY: But you have chosen a method which has this incidental effect, an effect that you had not considered."

In the meeting of April 2, 1985, Mr. Louis Tousignant, Assistant Deputy Minister, Policy and Planning of your

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department, took a completely different position when he stated "the purpose clause confers no additional authority. The regulations to carry out the purposes of the act have always been required to fall within the 13 paragraphs of section 34, to which Senator Godfrey referred last time. Indeed, the legal adviser to the Privy Council Office often has rejected proposed regulations which, notwithstanding that they may have been within the general concerns of the act, have been found to be not specifically authorized by one of the 13 paragraphs of section 34. Simply stated, if there is no explicit authorization there will be no approval. This serves to demonstrate that the purpose clause does not in fact enhance any power not already specifically created."

The following further exchange took place:

"SENATOR GODFREY: It is my understanding that the purposes clause does not widen the regulation-making authority—that is the position of the department—that, in effect, it has to come under the specific headings, including the new paragraph (m) of section 34. Am I right in that? Is that the position you are taking?"

MR. TOUSIGNANT: That is correct.

SENATOR GODFREY: Then I have a suggestion to make. In the Banking, Trade and Commerce committee and other committees, when there has been a problem as to whether we should amend a bill, we have received an undertaking from the minister, and this has satisfied the concerns of the committee. My suggestion is that we have an undertaking from the minister with respect to this bill. Will he give us something for the record that the purposes clause will not be used to widen the regulation-making authority; that in fact whatever regulation is made will be in conformity with the position you have taken here—on which the Department of Justice has advised you—namely, that it must come under one of the specific headings in section 34."

● (1710)

Nothing could be clearer than Mr. Tousignant's statement of the department's position. Yet in your letter you have refused to give the undertaking because you do not want any limitation "on the discretionary powers, including regulatory powers." In spite of the explicit assurance given by Mr. Tousignant to the Committee, you appear to be taking a different position by your refusal to give the undertaking. Am I correct in assuming that you do not agree with Mr. Tousignant, or with the advice you have received from the Department of Justice, as to the legal effect of the new purpose clause combined with section 34? If you do not, it would appear that the Committee was misled by his evidence given before the Committee as quoted above, and that the bill in your opinion (and incidentally mine) does provide for much wider regulation-making power than he led us to believe.