

Statutory Instruments

under the Migratory Birds Convention Act the following powers be given:

The governor in council may make such regulations as are deemed expedient to protect the migratory game... that inhabit Canada during the whole or any part of the year.

The word "expedient" confers wider scope than the word "necessary". Whoever administers the Migratory Birds Convention Act has the power, by regulation, to shut down any industry the smoke of which threatens the flight or nesting habits of migratory birds. I suppose the minister could do almost anything imaginable to protect a species which seemed to be declining. There is my quiz; I am sure nobody has answered it. I would not have been able to answer it had I not turned to the excellent report submitted to parliament on October 22, 1969, by the hon. member for Windsor-Walkerville (Mr. MacGuigan). He was in charge of the committee and thus submitted the report. That report can be said to be the grandfather of the statutory instruments committee which exists in parliament today. It is a very lengthy and learned document. It is a report that members who are interested in this field must turn to at some time because it is the source of a great deal of information on the subject and it gives one an idea of what is being done in other jurisdictions.

This year, the statutory instruments committee is a joint committee. My counterpart in the other place is Senator Eugene Forsey. The committee has been meeting once a week, at 9.30 on Thursday mornings, generally in room 112-N, to consider orders in council and regulations which come within its purview. This involves a substantial number. I will be informing the House, in a few minutes, of the size of the undertaking. We have counsel, Mr. Eglington and Miss Mayrand, who are familiar with the regulatory process. In the new year we will undoubtedly be looking for a specialist in taxation matters if at that time there is a deficiency in the expertise available to the committee within the realm of income tax, excise tax and other taxation matters. However, we do not have to worry; our plate is more than full when we meet each week, because we are not only dealing with the regulations which come from government departments each week—this is a flow of between 10 and 15—but we are trying to catch up with all those passed since January 1, 1972.

It may interest hon. members to know that if all goes well and we hold 30 to 36 meetings a year, by the end of this parliament—that is, in the magic, election year 1978—we probably will have had a go at all the regulations passed since 1972. I do not know how large a shelf these regulations will require, but my suspicion is that it will make the famous 30-foot shelf of classics that one of the American universities published a few years ago look rather small.

Regulations may come in a variety of ways. One way is by the exercise of the royal prerogative. I suppose in these days in Canada one would call it the prerogative of the Governor General. Her Majesty's representative enters into the field of regulations when he proclaims a holiday for school children. I am sure this is the most popular method of pronouncing regulations. By and large, we are concerned with—and we would never dare question His Excellency's granting of holidays to school children—the

[Mr. McCleave.]

regulations made by His Excellency the Governor General; that is, really, by cabinet or by various government departments, certain Crown corporations and the like.

These regulations, properly drafted, have the force of law. In effect, they are a legal process which exists, in a way, side by side with what we do in our legislative capacity. More and more it has become the practice of government departments and those drafting our laws to be considered as having the right to make regulations.

What are the reasons for granting such powers? I wish to refer to page 8 of the report of the hon. member for Windsor-Walkerville. I am sorry I do not have the *Votes and Proceedings* of that day to make the comparison more meaningful. However, the quotation will be found in the preface to the report which was set forth in *Votes and Proceedings* of October 22, 1969. It states the reasons usually given to justify the delegation by parliament of the power to make laws. These are, lack of parliamentary time, lack of parliamentary knowledge on technical matters, the necessity of rapid decisions in cases of emergency, the need to experiment with legislation, especially in a new field, the need for flexibility in the application of laws, and unforeseen contingencies which may arise during the introduction of new and complex pieces of legislation. It also seems that the force of precedent has some bearing on it; sections conferring powers in respect of delegated legislation now tend to be considered standard clauses by the draftsmen of statutes.

That there has been an awesome growth of delegated legislation can be seen from the report of the MacGuigan committee, if I may use the name of a member in an adjectival sense. The report states that 6,892 regulations, covering 19,972 pages, were published in the *Canada Gazette* during the period January 1, 1956, to December 31, 1968. This was an average of 530 regulations a year. It does not take into account those regulations which are expressly exempted from publication or documents which are in fact of a legislative nature but are not officially considered to be so by the regulation-making authority.

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That was the situation up to the time the report was presented in 1969. I turn, now, to the second report of the Joint Committee on Regulations and other Statutory Instruments, page 31, where a Mr. Eglington is explaining to the committee what he, Miss Mayrand and six temporary legal assistants—they were law students—had accomplished in their review of regulations and other statutory instruments.

Approximately 1,900 instruments for the years 1972, 1973 and 1974 have received an initial examination, a preliminary report being prepared on each questionable, dubious or objectionable instrument. Final comments for submission to the standing joint committee have been prepared in respect of approximately three-fifths of the instruments which fall into that class.

One is reminded, by that passage, of the words used by Lewis Carroll in "Alice in Wonderland," or maybe "Alice Through the Looking Glass":

If forty maids with forty mops swept it for half a year,
Do you suppose, the Walrus said, that they would get it clear?

It is an awesome task indeed, and it continues. During the summer, when the law schools are not in operation, it is expected that a few more students will be employed to