

For reasons of administrative efficiency, we delegate power to certain arms of government to draw up regulations to statutes. Unfortunately, in the past we have not paid sufficient attention to the way in which subordinate legislative bodies have carried out their tasks.

There have been instances in which the regulations did not reflect the spirit of the law. We have had examples of authoritarian and capricious regulations which imposed a serious and unnecessary burden upon the citizen and which represented, indeed, legislation by order in council.

Delegated authority has given government the opportunity to incorporate into the law under regulations items which Parliament would never have tolerated had they been presented as part of the actual bill. For these reasons, we need a parliamentary body to oversee the work of those responsible for drafting regulations.

Successful administrators do not assign tasks and then completely disregard the manner in which they are carried out; yet Parliament has done this for too long. I am pleased that we are now accepting the full scope of our responsibility as legislators and will look into the manner in which delegated authority is used. We must protect the human rights and civil liberties of Canadians and also the rights of Parliament. Power to delegate legislative authority could be used to put an end to constitutional government. Parliament, which means the majority, could delegate its law-making power to another body, and parliamentary government would then be suspended. This is an extremely dangerous area, especially in these days when executive branches of government are striving to increase their powers of legislation.

Those of us who cherish freedom, those of us who fear statist governments, those of us who do not want to see the authoritarian we stopped at the front door sneak in the back, welcome the institution of this joint committee. It will have to acquire experience before it really becomes effective. However, I feel sure that the members representing the Senate on this committee will make a significant and useful contribution. They will be free to do so because neither the Leader of the Government in the Senate nor the Leader of the Opposition in the Senate will be members of that joint committee.

**Hon. John J. Connolly:** Honourable senators, I should like to take part in this debate for a few moments. There is in the current issue of *The Parliamentarian* an article on the House of Lords by Lord Shepherd who was Chief Whip during the days of the Labour government in England. Lord Shepherd was in Canada as, I believe, the leader of the British delegation for a while at the 1966 Commonwealth Parliamentary Association meeting.

In this learned and sophisticated article he discusses in a general way the powers and functions of the Lords, and he makes a particular point of the importance which the Lords attach to their scrutiny of subordinate legislation. This has been a problem, of course, in Britain for a long time and they faced up to it much more quickly, I feel, than we have in Canada. We have not been oblivious of the importance of it. One only has to look at the regulations extant under the Income Tax Act to realize how important regulations are. Or one can look at the numerous boards, committees and administrative tribunals that are issuing orders constantly. The volume of subordinate

legislation and the volume of decisions which bear upon life in the modern state is something to appall the ordinary layman. No one person can be an expert in all areas of this field.

There is one aspect, however, of this matter that I should like to refer to. Before doing so I should say that I feel the interest of the citizen, the position of the common man in the face of the proliferation of subordinate legislation, is a responsibility for Parliament to protect. Through the establishment of this committee, under the aegis of the bill passed by Parliament some months ago, Parliament will go far towards discharging that onus.

There is another area of legislation, and I intend to ask the Leader of the Government a question about this because I am not sure of the ground upon which I am proceeding. When the War Measures Act is invoked at a time of national emergency, the amount of subordinate legislation enacted is enormous. Parliament generally knows nothing about it. I believe Parliament realizes in such circumstances, because of the security element that is involved in wartime operations, that many of those orders must be secret. The security of the state is involved. I wonder what the position of this committee is in respect of such orders made under a bill like the War Measures Act. I should think that while the act is in force it would be possible to say that the orders are secret orders and should not be examined, but would have to stand the test of examination when the War Measures Act has been revoked. While it is important to remember that this committee will be a further protection for the rights and liberties of the individual, we should also, I submit, bear in mind that there are occasions of emergency and of crisis when it is perhaps not desirable that every regulation made should be open to scrutiny, even by this committee or by Parliament.

• (2030)

**Hon. Allister Grosart:** Honourable senators, the Leader of the Government, in introducing this motion, left two very important questions unanswered. One was referred to a moment ago by Senator Connolly (Ottawa West), namely, the status of those statutory instruments that may be invoked or put into operation by the government but are not referable under the act to this committee. The other question, of course, refers to the very limited powers of this committee, which as I understand it are merely to review. Under the act, as I have read it, the committee does not even have the power to report.

As Senator Connolly (Ottawa West) pointed out, there may be matters which it would not, in his view and in the view of others, be advisable to refer to this joint committee. I hope the Leader of the Government will have a better explanation of this than I have received to date. I suggest that this committee will be in the position of having certain statutory instruments referred to it, but having no idea whatsoever what other statutory instruments may be in effect about which it knows nothing.

I would therefore ask the Leader of the Government if it is the intention of the government in the implementation of the act, following the resolution that has just been proposed, to indicate to the joint committee on a confidential basis the headings, at least, of those statutory instruments about which the committee knows nothing. If that