

Hon. John M. Godfrey: Honourable senators, I should say at the outset that I know nothing about the fisheries.

Hon. Senators: Hear, hear.

Senator Godfrey: Nor am I a member of the committee.

Hon. Senators: Hear, hear.

Senator Godfrey: I am not qualified in any way to comment on the merits of this bill. However, there is one aspect of it that I drew to the attention of the committee, and I would like to discuss it this afternoon.

● (1700)

I must remind my fellow senators that on February 26 a motion, which I had moved some two years and nine months before, was approved by the Senate. That motion provided that the Joint Committee of the House of Commons and the Senate on Regulations and Other Statutory Instruments could examine the subject matter of bills to ascertain whether or not the regulation making power in those bills infringed upon a cabinet directive that was passed back in 1981, originally proposed by John Turner when he was Minister of Justice in 1971, and that had been followed all those years. I will read part of that cabinet directive. In fact, I am going to be doing a fair amount of reading this afternoon, because I want to get certain things on the record. Of course, the minute I say I am going to start talking about regulations everybody starts to yawn.

This cabinet directive states:

In the preparation of proposals for legislation, departments and agencies should observe the following principles respecting regulation-making powers:

(1) When bestowing the power to make regulations upon a person or a rule-making authority, care must be taken to ensure that the statute is not couched in unnecessarily wide terms.

(2) Specifically, certain powers are not to be granted unless the Memorandum to the Cabinet requesting the authority for preparation of the legislation by which such a power would be conferred specifically requests authority for the power and contains reasons justifying the power that is sought. These powers include the following:

I will refer to only three of those mentioned:

- (a) power to make regulations that might substantially affect personal rights and liberties;
- (b) power to make regulations involving important matters of policy or principle;—
- (f) power to subdelegate regulation-making authority.

Bill C-32, as we have heard, was enacted really because of a decision of Judge Collier, and it provided, which is rather unusual, a specific purpose clause. Section 34 of the Fisheries Act, which deals with regulation—making powers, says:

The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and

in particular, but without restricting the generality of the foregoing, may make regulations.

Then it lists various ones. The result of putting in a specific purposes clause in the bill was that it greatly widened the regulation making power of the government, and in fact was a contravention, in the opinion we got from our counsel, of the cabinet directive.

This was drawn to the attention of the committee by the counsel on regulations, and I therefore appeared at several meetings of the committee and drew the committee's attention to that fact. At the second meeting I went to there was a legal opinion given by Mr. Tousignant, the Assistant Deputy Minister, to the effect that I was wrong, that it did not widen the regulation—making powers, that they could still only make regulations with respect to the specific items listed in section 34. In answer to that testimony I said to him, "All right, if that is true, although I know you cannot speak on behalf of the minister, will you ask the minister if he will give an undertaking that he will not pass any regulations using the increased regulation—making power which I say he has and you say he has not? In other words, we will find out whether he is willing to give that undertaking or not."

At this point I am going to read into the record the correspondence that I had with the minister. First of all there is the minister's letter of May 7, 1985, addressed to me:

I understand from the officials of the Department of Fisheries and Oceans who participated in the Senate "pre-study" of Bill C-32 that you have expressed concern with the breadth of the Bill's "Purpose" clause and the scope of the regulation-making powers that would be provided to the government under the amended Fisheries Act. I understand as well that you have sought, in response to these concerns, a formal undertaking from me that I would confine myself to proposing regulations only for the specific purposes enumerated in Section 34(a) to (m) of the present Act.

Let me underline at the outset that I fully appreciate your concern that the introduction of a general statement of purposes into the Fisheries Act should not expand the Minister's regulatory powers through simple inadvertence. I do feel, however, that the broad terms of the "Purpose" clause accurately describe the extensive and complex responsibilities with which the Minister is charged. I also believe that the powers provided to the Minister in the Fisheries Act as amended are necessary to meeting those responsibilities.

From time to time, it has been suggested that some formal or informal limitation is required on the discretionary powers, including regulatory powers, conferred on the Minister. While I am sensitive to the concerns that give rise to such proposals, I maintain that the scope of Ministerial discretion is dictated by the need to provide effective, flexible, responsive management of a highly volatile resource. Without access to the full range of these powers, a Minister cannot be asked to bear responsibility