13. Questions have been raised as to whether your Committee should concern itself with the policies or merits of the thousand or so subordinate laws that come before it each year. While this might be a glamorous task and would perhaps rescue the Committee from that obscurity in which its predecessors languished, it would be beyond its capabilities. This is so even though a large part of the subordinate laws made each year consists of relatively straightforward amendments to existing subordinate legislation. Your Committee is well aware that its statutory terms of reference in section 26 of the Statutory Instruments Act do *not* preclude a review of any piece of subordinate legislation on its merits if the Houses so agree. Nevertheless, your Committee believes that it is more appropriate for subordinate legislation to be scrutinized by the appropriate Standing Committees of the Houses as to merits as discussed in paragraph 16 below. The Regulatory Review Committee should continue to review in terms of criteria such as those now used by your Committee and which are found in Appendix II.

14. Your Committee believes that the appropriate stage for the review of subordinate law as to its policy and merits is well before it is finally made. Your Committee also believes that more effective than any scheme of parliamentary scrutiny of the policy of a proposed subordinate law that can now be devised is an obligation to make that proposed law public, to state the reasons for its making and to consider representations from the public, whether individuals or groups. Consequently, a later section of this Report deals in detail with a mandatory notice and comment procedure for all subordinate law. After a subordinate law has been in force for a reasonable time, its effectiveness should be evaluated. Parliamentary Standing Committees could serve a useful role as the public fora in which the continued need for a particular policy and the effectiveness of the subordinate legislation could be scrutinized.

15. Your Committee also recommends in paragraphs 24-30 infra that disallowance of subordinate legislation that has been made and the affirmation of draft subordinate laws (commonly called negative and affirmative vote procedures) be established as regular and invariable parts of the Canadian system of subordinate law. The debate on a resolution to affirm a subordinate law and the actual disallowance procedure recommended by your Committee should provide scope for interested parliamentarians to raise the merits and policy of subordinate legislation. Your Committee has noted the failure of a special merits committee at Westminster where there has been no referral of subordinate legislation to appropriate Standing Committees. It has also noted that while disallowance has frequently been moved and carried in the Senate of the Commonwealth of Australia on grounds of illegality and impropriety, it has but rarely been invoked on ground of merits. Your Committee considers, therefore, that it cannot at this stage recommend the establishment of any new Committee to scrutinize merits. It can do no more now than to recommend referral to appropriate Standing Committees and a system which allows for pre-making scrutiny of proposed subordinate laws by the public and for affirmation and disallowance in the Houses. It will be up to the members of the Houses using these procedures to make good their oft repeated complaints that policy of which they disapprove is settled in regulations by bureaucrats.

16. One proposal that has been aired from time to time for the review of merits is that all subordinate legislation should be referred to the appropriate Standing Committees of the Houses for review on the merits and as to policy. With this your Committee agrees. It would also be desirable to have policies reviewed from time to time to assess their effectiveness and the need to continue them. Your Committee cannot pretend, however, that it is very sanguine about the effectiveness of references to Standing Committees while the membership of Committees of the House of Commons remains so large and subject to frequent replacements, and the Committees themselves lack adequate technical assistance. In any event, it would seem to be a Herculean task to review the merits of and to hold hearings on all regulations, even all new regulations. Perhaps all that can reasonably be aimed for is the review by Parliamentary Standing Committees of the merits and policy of selected subordinate laws. The Rules and Standing Orders of the Houses should be amended to allow such scrutiny and review by Standing Committees either on their own initiative or on reference from the Standing Joint Committee on Regulatory Review. Committees conducting such reviews would need to guard against the danger of their scrutiny of policy being too much influenced by their expert staff who might be simply endeavouring to have their own personal judgments substituted for those of servants of the Crown to whom Parliament had originally delegated subordinate law making authority.

17. Prevention is to be desired above cure and your Committee exhorts the Houses to a much more rigorous examination and scrutiny of the enabling powers in Bills and to insist on clear statements of policy in statutes. The Houses' study of Bills would be greatly facilitated if, when enabling powers are being sought, the proposed subordinate laws to be made under them were to be tabled and studied by the apppropriate Standing Committees at the same time they are studying the Bills. The mandatory notice and comment procedure which your Committee later recommends should act to reduce significantly the number of instances in which regulations are not drafted by the time Bills reach the Committee stage.

18. In addition to parliamentary review, subordinate laws should not, save in exceptional cases, be made at all unless and until there has been an opportunity for public representations on the draft laws. The public can have an influence on Bills through their elected representative and through representations at the Committee stage. Procedures should be in place to afford some approximate opportunity in respect of subordinate laws. Procedure is the handmaid of liberty and your Committee makes no excuse for paying so much attention to it in what follows.

B. CONTROL OF SUBORDINATE LEGISLATION AND LAW MAKING

19. A casual reader of the Statutory Instruments Act might be impressed by the apparent safeguards it contains and by the fact that most subordinate laws in Canada are made not by individual Ministers but by the Governor in Council. The true