

On February 19, 1970, I moved, seconded by the Leader of the Opposition (Hon. Mr. Flynn):

that the Standing Senate Committee on Legal and Constitutional Affairs be instructed to consider and from time to time report on procedures for the review by the Senate of instruments made in virtue of any statute of the Parliament of Canada, and to consider in connection therewith any public documents relevant thereto.

My purpose in introducing the motion was that the Senate could thereby study the recommendations of the third report of the Special Committee on Statutory Instruments of the other place. The Senate might accept these recommendations; the Senate might vary these recommendations; or the Senate could produce an entirely new report if it believed this was necessary. I was convinced that the Senate had a role to play in the statutory instruments field. Likewise, this was the view of the Leader of the Opposition and practically all who spoke in that debate. I recalled that both the British House of Lords and the Australian Senate had committees of their chambers which were concerned with delegated legislation.

I mentioned at that time the recommendation of the committee that there should be an expansion of the legislative section of the Department of Justice, since the draftsmen were overworked. This was a view shared by many members of this chamber, and a point emphasized by the Leader of the Opposition in the Senate.

The next stage in this process occurred on June 16, 1970, when the President of the Privy Council explained that implementation of the recommendations of the Special Committee on Statutory Instruments would require three different actions. First, this would require legislative action by Parliament to replace the existing Regulations Act by a new Statutory Instruments Act; second, a number of cabinet directives to implement several of the recommendations, which could not be dealt with by general legislation; third, amendment of the standing orders for the purpose of establishing a scrutiny committee to review regulations. He went on to say:

During the next session of Parliament the government will recommend that such a scrutiny committee be established and that by the proposed statutory instruments act all regulations, with the single exception of regulations the disclosure of which would be injurious to international relations, national defence security or federal-provincial relations will stand permanently referred to such committee.

The opposition leader in the other place, outside the house, affirmed that this represented almost complete compliance with the report of the committee.

On June 17, the then Minister of Justice, and his associate deputy minister, testified before the Standing Senate Committee on Legal and Constitutional Affairs. There has been a certain amount of turnover in the membership of the committee since that time, but those senators who attended that hearing will recall that it was a fruitful meeting. I think a number of the senators may have had in mind the disadvantages of each chamber having a separate committee on Statutory Instruments, and I believe that the minister also thought that a joint committee would be preferable.

[Hon. Mr. Martin.]

The Statutory Instruments Act, Bill C-182, was sponsored by the Minister of Justice, passed through both Houses of Parliament, and received royal assent during the past session. It was proclaimed to come into force on the first day of January, 1972. The act entailed amendments to the Interpretation Act, the Canadian Bill of Rights, the Defence Production Act, and the Export and Import Permits Act. The Regulations Act was repealed. The coming into force of the act, together with the statutory instruments regulations, implements to the extent possible those recommendations of the report of the committee of the other house that were capable of being dealt with by general legislation.

On October 14, 1971, the other chamber passed a motion to amend their standing orders to provide for a joint committee involving twelve representatives from that house. We amended our rules on October 12, 1971, to add a new subparagraph (d) of Rule 67(1) providing for the appointment of eight senators to the joint committee.

The new legislation is intended to provide the general public with a greater measure of protection against the violation of the rights of the citizen in a free society. The joint committee is one means of providing that protection, since the committee is to be empowered to review regulations and other statutory instruments.

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It is also provided that there shall be an internal review of proposed regulations by officers of the Privy Council and the Department of Justice before they become law. Another provision of the act gives the public a statutory right to examine and obtain copies of most regulations and other statutory instruments.

The act goes beyond the federal government, to the extent that federally incorporated companies have to examine their position to ensure that they are acting in compliance with the act. Failure to register a regulation in compliance with the act means that the regulation has no legal force or effect.

The coming into force of this Statutory Instruments Act, and the creation of the Standing Joint Committee on Regulations and other Statutory Instruments, is an important achievement for Parliament and an important safeguard for the general public. Much of the work of the committee will be undertaken far from the public limelight, but the effect of its work should prove far-reaching and long-lasting. I believe that many will look back upon this period as an important stage in the development of democratic control and the commencement of a new era in subordinate legislation.

I commend this resolution designating certain members of the Senate to the joint committee, and I propose that if we so agree a message accordingly be sent to the other place.

**Hon. Jacques Flynn:** Honourable senators, I am pleased that this Standing Joint Committee on Regulations and other Statutory Instruments will soon be operative, as the need for such a body is great. We, as parliamentarians, are entrusted with the task of making laws which affect the whole of Canada. No one else has that responsibility. We must bear this fact in mind when delegating authority to subordinate bodies.