

Delegated Legislation

[English]

REGULATIONS AND OTHER STATUTORY INSTRUMENTS

CONCURRENCE IN THIRD REPORT OF STANDING JOINT COMMITTEE

Hon. Robert Kaplan (York Centre) moved:

That the third report of the Standing Joint Committee on Regulations and other Statutory Instruments be concurred in.

He said: Mr. Speaker, I am aware that the rules provide for interventions of 10 minutes. Before I begin the statement I had intended to make in my ten minutes, I want to make an observation about the ruling you just made. Of course, I accept your ruling and appreciate that the report before you containing the motion is acceptable for the purpose of this debate. However, I hope and ask that on the occasion of the presentation of our next report that I be given the opportunity to make submissions about it before you reach a conclusion as to the propriety of the language. I would like to be able to defend the language in the next report when it is submitted. I will not take it for granted that the present formulation will be acceptable next time. I understand that is the point that you want to make. However, before you, in effect, rule against this language I would ask to have the opportunity when I submit our next report to make submissions in that respect.

● (1310)

Mr. Speaker: The Hon. Member for York Centre (Mr. Kaplan) raises a matter of importance. I want to make it quite clear to the Hon. Member and all Hon. Members that, of course, I will hear any discussion that might be helpful.

What the Chair has tried to do in making these observations today is to point out to Hon. Members that while I think it is clear what the intent of the matter is, the Chair hopes that Hon. Members and the committee will be able to phrase the words in such a way that the intent is carried out in this Chamber if it is to be debated.

Mr. Kaplan: Thank you, Mr. Speaker. I will submit my next report and when I do I look forward to debating with you the propriety of the formulation used in the report. I would like to turn to the third report which—

Mr. Speaker: Perhaps the Chair will be permitted to observe that the luxury of debate is kept from it. I must confess, and Hon. Members probably have noticed, that there are times when it takes all of the constraint and restraint that I can muster to keep from entering into debate. However, the Hon. Member is certainly entitled to make representations and make an intervention.

Mr. Kaplan: As you noted, this is an unprecedented occasion. I believe it is worth heralding by remarking that one of the significant reforms of the Government is achieved today, in that the committee is proposing to exercise the authority that it has to move the revocation of a regulation after finding,

in due course and in the normal workings of the committee, that the regulation is invalid.

I have had some discussions with all Parties, and the debate, although introduced today, will not come to the normal fruition that one would have anticipated, namely, a vote on whether the report should be concurred in. In any event, I want to take the opportunity to put the report before the Chamber and to indicate that it is a report which, if adopted, would revoke the Fruit, Vegetables and Honey Regulations, CRC Chapter 875.

These regulations propose non-tariff barriers on the importation of fresh fruit and vegetables into Canada. The regulations were originally adopted under the authority of the Fruit, Vegetables and Honey Act many decades ago. The validity of the regulations was not challenged for decades, until the introduction of the Statutory Instruments Act by the Leader of the Opposition (Mr. Turner) and which were reviewed pursuant to that statute in early 1983.

In 1983 the committee received the opinion of the legal advisers of the Department of Agriculture that the regulations were *ultra vires* of the Act passed by the Parliament of Canada. In other words, there never was any legal authority for the regulations. The present Minister of Agriculture (Mr. Wise), who is in the House, confirmed that these regulations are not authorized by law, and in a letter dated April 24, 1986, he informed the joint chairmen of the committee, Senator Nurgitz and myself, that he had "instructed his officials to proceed with the revocation of the regulations".

We then requested the assurance from the Minister that pending formal revocation, the regulations would not be enforced by customs officers. The then Minister, the Hon. Eugene Whelan, refused to revoke the illegal regulations on the ground that to do so would seriously jeopardize the Canadian produce industry.

The Minister's declared intention to continue applying these restrictions led the committee, then chaired by the Hon. Senator John Godfrey and the present Minister of National Defence (Mr. Beatty), to table the fourth report of the joint committee. In that report, the committee stated that:

—the continued application of these Regulations at the present time involves an inadmissible departure from the usages of Parliamentary government and a repudiation of the concept of the Rule of Law which is at the heart of our constitutional order. While the Committee recognizes that the revocation of these import restrictions may result in an economic disadvantage for domestic producers of fruit and vegetables, it does not accept that this justifies the Executive in illegally restricting the liberty of trade and commerce of Canadian importers. To do so would be to accept that ours is a government of men and not of laws.

Our committee has no business passing judgment on the policy justification of regulations. I could easily agree that the regulations are desirable in the interest of the horticultural industry and I would go so far as to say that regulations of that character may be needed. Our objection as a committee is to the failure of the regulations to conform to the rule of law, which is to say that the statute under which they have been purported to be introduced does not justify passing regulations