

Statutory Instruments

should at least write in and say, "Have you chaps taken a look at this? It seems to affect some of my basic rights. I wonder how you can allow that sort of thing to happen in any part of the parliamentary system."

The purpose of the speech I have just delivered, and the speeches the House has heard from other hon. members, no doubt will give some emphasis to the fact that we are trying to cope with the problems of the delegated process and the fact that we are trying to enlist as many people to this cause as we possibly can.

Mr. Brewin: Mr. Speaker, this second report of the Standing Joint Committee on Regulations and Other Statutory Instruments, as those who have read it will be able to testify, is a lengthy, complicated, legal document. It is none the worse for that. In effect, it has to be that sort of report dealing with that sort of subject matter. It is important that the salient features may not possibly be recognized because of the torrent of legalistic words. I will bring out some of those features which deserve special consideration.

The committee's primary function is to maintain a watch on the laws made by the delegates of parliament and to subject all rules and regulations to parliamentary scrutiny. I suggest that that delegation is necessary. This delegation is regarded as necessary, as evidenced by the well-known practice of almost all developed countries and their legislatures. There is no way we can rail against delegated legislation and say it should not be: it is here to stay; it is a natural result of the type of society in which we live.

The report which we are now discussing indicates that the intentions of parliament in respect of parliamentary scrutiny have been whittled down by a series of interpretations of the meaning of the expression "rules and statutory instruments" by legalistic refinements of the meaning of these terms. This exercise has apparently been promoted by the Department of Justice. It is not too much to say that the report indicates in great detail how the will of parliament has been frustrated by this process of interpretation by the bureaucracy within the Department of Justice. I am glad the Minister of Justice is going to speak after me. He will be able to correct me if I am wrong, or say wherein the report is wrong.

The interpretation given by the legal advisers of the Privy Council office removes from the class of instruments covered by the act a substantial number of subordinate laws. This is done by the application of what the committee called a magic formula. Unless an enabling power reads that the governor in council or minister may "by order, by rule, by regulation, by warrant, by tariff", and so on, there can be no statutory instruments.

This interpretation would remove, from the class of statutory instruments and the committee's scrutiny, instruments made under enabling powers in common use. For example, the phrase "terms and conditions as the governor in council may prescribe", or "as the board may regulate", do not, in the opinion of the Privy Council, constitute statutory instruments and therefore they are free of regulation.

In this connection I would remind the House that Bill C-24 on immigration which recently received second reading in this House contains much of such phraseology which would remove some of the rules passed by it from the scrutiny of the committee. For example, under section 14 of the new Immigration Act it is provided that where an immigration officer is satisfied that it would not be contrary to this act or the regulations to grant admission to an immigrant who has been authorized to come into Canada, he may, after such further examination as he deems necessary, grant landing to such person and impose terms and conditions of a prescribed nature. That is language which, according to the legal authorities of the Privy Council, means that the rules made in respect of providing or imposing terms and conditions are not to be scrutinized by any instrument of parliament. As far as I can make out, they do not even require publication. That is a secret form of legislating with respect to the rights of people.

The instrument or document describing these terms and conditions for admission would not be a statutory instrument, according to this interpretation, and would not require publication or scrutiny by the committee. To my way of thinking, the legal contortions used to arrive at this extraordinary conclusion are beyond comprehension. It is obvious that they deprive the Regulations and Statutory Instruments Act of the application parliament intended them to have; namely, the committee should have wide jurisdiction over all statutory instruments and legislation. There is no rhyme, no sense or no reason in saying that one parcel of documents should be subject to parliamentary scrutiny and others should not.

To put it another way, an ingenious formula has been found for substantially curtailing the purposes of parliament in passing the act. I know what the purposes were, because I was a member of the MacGuigan committee and I took part in all the debates which dealt with this subject. I believe it was the intention of parliament that this committee should have wide jurisdiction and should not be restricted by these legalistic interpretations which deprive it of much of its jurisdiction. To go into the legal merits of this matter would tax the patience of the House, and indeed I would not even have time to go into them.

The committee said, on page 19 of the report, that despite widespread belief to the contrary, there is no system whereby all orders which have legislative effect and are tabled in parliament are automatically referred to the standing joint committee and are published so that the public can know what is being done. That is the purpose of this, so that the public can know, through the filing and scrutiny of this Committee on Regulations and Other Statutory Instruments, what is being done to remove an atmosphere of secrecy about laws applicable to Canadian citizens and others in Canada. The committee report continues to read as follows:

● (1600)

There is a system only for regulations and not for all statutory instruments, many of which are effectively hidden, are unpublished or are unknown even to the parliamentary committee.