A regulation conforming to its enabling power, however detailed, is not for that reason alone an expected and usual use of that power. Whether an enabling power has been used in an unusual and unexpected way goes to the purpose for which it has been used or to the consequences of its use, and not to whether the resulting regulations is intra vires or ultra vires. Similarly, the fact that a regulatory power has been used in the only way it may be, lawfully, and in accordance with its detailed scheme, is in no way conclusive of whether the use made of the power is unusual or unexpected.

What the committee was deciding was not whether or not the creation of the Alice Arm tailings deposit regulations in the middle of the 1979 federal election was legal or not; that question was not for the committee to decide. We had a number of other criteria that we were there to scrutinize.

Counsel goes on:

Since section 33(4) and (13) envisaged exceptions to the fundamental rule of Section 33, an exception is not of itself unusual. That the statute envisages exceptions being made does not mean that every exception is usual or expected. That an exception has been made, and deposits made in conformity with it, is irrelevant to the issue of unusual and unexpected use of power. The statement that there is no breach of the statutory rule of Section 33(2) goes to vires only. M. LeBlanc avers that the Alice Arm Tailings Deposit Regulations constitute exactly the procedure Parliament envisaged would be exercised when it enacted Section 33(2), (4) and (13). The parliamentary record would seem to negate this proposition and to point to quite other uses for Subsections (4) and (13) of Section 33. That a court, being required to ignore the parliamentary record, must govern itself by the words of subsections (4) and (13) in determining vires does not mean that the Committee cannot make reference to that record in determining what is the use to which subsections (4) and (13) might usually be expected to be put.

That is really the point and it is the point in relation to what the other speakers have touched upon. The committee heard various experts, officials, the minister and others say that the section was there and Parliament had various expectations of its use. The committee ruled after hearing lengthy evidence from the minister, his counsel and any witnesses the government side wanted to produce that it was an unusual and unexpected use of power and that they have in fact taken unusual steps to try and bully the committee and the public into believing that something other than what happened in the committee occurred. Counsel goes on:

That there has always been a prohibition on depositing deleterious substances, and a power of exemption, is only partially relevant. What is important is the nature and purpose of exemption. The particularized power which is now given to the Governor in Council is so substantially different from a blanket power in the Minister to "exempt ... stream or streams" as to be of only marginal use, at best, in assessing the uses to which the present powers can be put without becoming unusual or unexpected ones. Parliament has seen fit to resile to a very great extent from the old blanket power. It must have had some limiting purpose in mind. And, by reference to the parliamentary record one gains an understanding of that purpose: to beef up the prohibition and to allow exceptions to accommodate conflicting regulatory standards and to accommodate existing plants.

This is precisely the point. In 1977 when the metal mining liquid effluent regulations were brought in, they brought in very specific delimitations for the amount of various substances and the total quantity that could be dumped into any water system in Canada. For the minister to have used the sections he used, to put out SOR/79-345 was, as the committee ruled, an unusual and unexpected use of power for the simple reason that there was an existing regime under which the regulations could have been made. For the minister to have gone outside of that only comes clear when you realize that the amounts that the minister wanted to allow Amax Corporation to dump was 8,000 times what was allowed under the existing regulations.

It is a very serious matter. I would hope that the Minister of Fisheries and Oceans will respond to it in this House because the committee has ruled on it. Through various tricks and various forms of chicanery he has managed to hold the report from coming before the House. The reason I stepped back from forcing the issue was that I felt it would be an abuse of the committee. But instead I have discovered that the abuse of the committee has carried on despite the fact that I backed off from it.

Counsel continues:

The first five paragraphs of Mr. LeBlanc's letter are characterized as "legal arguments." Indeed they are, and, as such, they are not germane to the issue of the Committee's criterion 4.

Whether the use of the powers granted by Section 33 (13) to the Governor in Council (not to the Minister) is a proper and reasonable use is not a matter exclusively for the Standing Committee on Fisheries and Forestry.

That was the argument put forward by some government members on the committee, that is, that we should be looking at the issue in another committee. Counsel's comments continue:

It is a matter which bears upon the Committee's criterion 4. This Committee may not consider whether it is desirable to exempt new mining ventures, or old ones for that matter, from the regulations of general application. Nor may it consider whether it is desirable to exempt the particular Amax mine at Kitsault. But what it can, and must, consider is whether the use of Section 33(4) and (13) for this last mentioned purpose is a use and that can or should be characterized as unusual or unexpected. In this consideration the Committee may very well wish to consider whether the use made of Section 33(13) in these particular regulations is a proper and reasonable use.

There was a definitive recommendation of the senior counsel to the committee and that is precisely what the committee did. It took a vote on that point. The comments continue:

Mr. Bernier and I have never given an opinion as to whether the Alice Arm Tailings Deposit Regulations are a "proper and reasonable use"—

This is despite the fact that the minister and his counsel said they did. They said they never did, and they said that before the committee. These comments continue:

—of the powers conferred by Section 33(13). I have repeatedly advised that the Regulations are intra vires that subsection, that is to say, that they constitute a lawful use of those powers. I would presume, in my position as counsel to the Standing Joint Committee on Regulations and Other Statutory Instruments, neither to express a decided view as to whether a regulation is a proper and reasonable use of power nor to foreclose the Committee's own judgment as to whether a regulation is an unusual or unexpemted use of power.

I could put a great deal more information on the record but there are other members who want to speak and there is not a lot of time left. However, I want to speak forcefully for myself and for members of my party in support of concurrence in this report and to encourage the Minister of Fisheries and Oceans to take the necessary steps to bring the Alice Arm tailings deposit regulations before this House so that proper regulations can be debated and properly scrutinized in relation to the specific instances raised by the hon. member for Wellington-Dufferin-Simcoe. They should not be held outside the purview of this Parliament simply because the minister does not want to concur.