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Legislative Assembly of Manitoba

STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS

**Chairman, Mr. Warren Steen
Constituency of Crescentwood**



Monday, November 26, 1979 10:00 A.M.

**Hearing Of The Standing Committee
On
Statutory Regulations and Orders**

Monday, November 26, 1979

Time: 10:00 a.m.

CHAIRMAN, Mr. Warren Steen.

MR. CLERK, Mr. Jack Reeves: Gentlemen I should like to call this meeting to order. As a result of changes in the Committee, the former Chairman, who was Mr. Steen, is no longer a member of the Committee, and therefore can no longer continue as Chairman. However, before we start I think it is my duty to advise you that I have received resignations from the Honourable Donald Orchard and from Mr. Parasiuk as members of the Committees, effective the dates of the letters. Would you wish to deal with their replacements before you go on?

Then can I have a nomination for a replacement for Mr. Orchard?

HON. GERALD W. J. MERCIER: I nominate Mr. Steen.

MR. CLERK: Mr. Steen. May I have a nomination for a replacement for Mr. Parasiuk?

MR. BEN HANUSCHAK: I nominate Mr. Walding.

MR. CLERK: Agreed. Next item of business then, gentlemen, will be the election of your Chairman. Are there any nominations?

MR. MERCIER: I nominate Mr. Steen.

MR. CLERK: Mr. Steen. Are there any further nominations? I would ask Mr. Steen to take the Chair then please.

MR. CHAIRMAN: Gentlemen, the Committee on Statutory Regulations and Orders has been called and I would ask Mr. Mercier if he would be the first spokesman and update us as to the purpose of the meeeting, etc.

MR. MERCIER: Mr. Chairman, I understand the Committee has not met since 1969. Perhaps what we could do is ask Mr. Tallin to bring the Committee up to date on what has occurred, if anything, since that date?

MR. RAY TALLIN: Some of you may recall that there was a revision of the Regulations prepared for 1970, based on the 1970 year. During the course of the revision on Regulations the government decided that they would not progress too heavily with the agenda of this committee pending the revision. The revision, I think, was looked at by the Committee in 1971 and it was eventually published in 1972; and since then the Committee did not revive its review of regulations.

You may be aware that The Regulations Act provides that the regulations filed with the Registrar of Regulations are permanently referred to this Committee of the House, and the House Rules and Rule 71 sets out a number of guidelines which the Committee is supposed to use in studying the Regulations. The practice back in the sixties, prior to the Revision of Regulations, was that the law officer of the House would prepare a report each year on the regulations which had been referred during that year to the House, indicating which ones, in his opinion, did not meet with the guidelines set out in Rule 71.

During the review of the regulations, both the regulations that were referred annually and the revised regulations which were studied in 1970-71, the policy of the regulations it was agreed would not be discussed, it would be the question of whether or not the regulations met with the standards of the guidelines. These are generally guidelines which have been adopted in some form or other, in fair uniformity, among those jurisdictions in the common law world which do study

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There are some jurisdictions, I suppose, which go beyond these guidelines and want other things looked at, but Ontario recently established a committee which adopted guidelines very similar to the Manitoba guidelines. At least two jurisdictions in Australia have guidelines which are very similar to ours, and the guidelines used, at least back in the '50s and '60s in England were very similar to these guidelines.

I presume you all have Rules of the House available to you but if they are not available to you there's a copy here, and I suppose the Clerk has another copy to indicate the type of thing that is there. I could read them to you but I find, myself, that it's very difficult to pick up ideas of this kind from having them read. Would you like to read them yourselves, perhaps?

MR. CHAIRMAN: Any questions? Mr. Hanuschak.

MR. HANUSCHAK: Perhaps counsel could just briefly paraphrase them, or . . .

MR. TALLIN: Well, they're very short anyway. The rule says, "The Committee shall, in examining regulations and orders, be governed by the following principles: (1) The regulations should not contain substantive legislation that should be enacted by the Legislature, but should be confined to administrative matters. The regulations should be in strict accord with the statute conferring the power and unless so authorized by the statute, should not have any retroactive effect. The regulations should not exclude the jurisdiction of the courts. The regulations should not impose a fine, imprisonment or other penalty, or shift the onus of proof of innocence onto a person accused of an offence. A regulation in respect of personal liberties should be strictly confined to things authorized by statute. The regulations should not impose anything in the way of attacks as distinct from fixing the amount of a licence fee or the like. The regulations should not make any unusual or unexpected use of the delegated power, and the regulations should be precise and unambiguous in all parts."

Now with respect to the first one of those, that the regulations should not contain substantive legislation, that's a difficult one to comply with because frequently the regulatory authority is given in terms of the Lieutenant-Governor-in-Council may make regulations respecting the licensing of trades, something as broad as that. Automatically, you have to get into a substantive rule that a person shall not practise a particular trade unless he has a licence, so that you automatically get into a substantive situation, the creation of an offence, but at least the penalty for the offence should be left in the statute and it should be clear that the general power given in circumstances of that kind really does imply that there is to be a substantive type of provision made by regulation. And of course, the last one, "regulations should be precise and unambiguous in all parts" is a problem that is almost impossible to overcome.

MR. CHAIRMAN: Are there any comments or questions? Mr. Mercier.

MR. MERCIER: Mr. Chairman, I think the difficulty that Legislative Counsel has is the large amount of work that will be required to go back to 1969 to review and report on all of the regulations. So, I would propose a motion that would request Legislative Counsel to initially go back to October 24, 1977, and review the regulations from that date forward; and when those reports have been done and reported on to the Committee, then eventually Legislative Counsel could go back to 1969 and eventually report on regulations passed since that time. Probably, as time marches on, we will find that a number of those regulations have been reviewed and perhaps repealed and will have been dealt with in that way.

So, Mr. Chairman, I would move that the law officers initially prepare reports on the regulations which were enacted since October 24, 1977 which are still in effect, and which, in his opinion, do not meet the guidelines set out in rule 71 of the Rules of the House.

MR. CHAIRMAN: You have heard the motion. Any questions? Mr. Hanuschak.

MR. MANUSCHAK: Mr. Chairman, may I ask if the Attorney-General is setting some time parameter within which this is to be done?

MR. CHAIRMAN: Mr. Mercier.

MR. MERCIER: No, I'm not setting any time parameter. I think what will be necessary, probably, is that the government supply some additional assistance to Legislative Counsel to undertake this review and report and that perhaps some additional assistance will be made available during the summer months by hiring, perhaps, a law student or students to assist in this review.

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So, therefore, I wouldn't anticipate a report until next fall.

MR. HANUSCHAK: Yes, I believe that the Attorney-General has answered, or has anticipated the second question that I wanted to put to him and which I think he has answered, because I was going to ask him, is it his intention to provide this Committee with at least an interim report, and I think that he had indicated that he hopes to report back, or that Legislative Counsel will be in a position to report back to whatever committee is appointed for that purpose, next fall.

MR. CHAIRMAN: Mr. Wilson.

MR. ROBERT G. WILSON: To the Legislative Counsel. Will they be reviewing regulations that they may recommend be repealed and will we have any prior notice by this interim report as to what regulations we may be repealing after reviewing everything? Are we also going to be given information — you touched upon the powers of the Lieutenant-Governor . . .

MR. CHAIRMAN: In Council.

MR. WILSON: . . . in-Council, and I wondered if . . .

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Only in so far as the particular regulation exceeds the powers given by the Legislature to the Lieutenant-Governor-in-Council I would think.

MR. WILSON: Yes. All right.

MR. CHAIRMAN: Mr. Jorgenson.

HON. WARNER H. JORGENSON: . . . Mr. Chairman, if Mr. Tallin could tell us how long it would take to prepare the report from 1977 until to date?

MR. CHAIRMAN: Mr. Tallin.

MR. TALLIN: Well, the last time that we prepared a report, which was in 1970, it took one of our staff almost full-time six weeks to try and prepare it.

MR. JORGENSON: For how long a period was that?

MR. TALLIN: For one year. For one year's regulations and in 1970 I would think the number of regulations would probably be in the neighbourhood of 150 to 160.

MR. CHAIRMAN: Any other comment before we put the question? Mr. Einarson.

MR. HENRY J. EINARSON: Well, Mr. Chairman, in listening to the comments and the motion put by the Attorney-General, I think that one who has been for a number of years dealing with problems that constituents have, very often is the cause of a certain regulation as it relates to the legislation; and I think, Mr. Chairman, that this motion that the Attorney-General has put to us at this committee meeting is an appropriate one, a very important one, and I hope that the Legislative Counsel will be able to review those regulations that have been brought in by the government of the day, and that hopefully in the future, if when regulations are brought in, that they will probably be able to overcome some of the problems that we find where the citizens at large of this province are caused some difficulty because of certain regulations, and I look forward to receiving the report when the Legislative Counsel has completed it.

MR. CHAIRMAN: Mr. Cherniack.

MR. SAUL CHERNIACK: Mr. Chairman, I apologize for being late and I missed hearing the wording of the motion which I'd like to hear before I ask any questions.

MR. CHAIRMAN: Mr. Mercier, could you repeat the motion, please?

MR. MERCIER: The motion, Mr. Chairman, is that the law officers initially prepare reports on the

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regulations which were enacted since October 24th, 1977, and which are still in effect, and which in his opinion do not meet the guidelines set out in Rule 71 of the Rules of the House.

The purpose of attempting to establish a date on which the review is to begin is because of the vast number of regulations passed since 1969 when the last report to this committee was made, so that we have a time for starting. The law officers would start from October 24th, 1977, work forwards and then as time and manpower is available, go back to the date of the last report in 1969 and work forwards.

But as I indicated, it will probably appear as that review goes on from 1969, that a number of the regulations will have been repealed or dealt with since October 24th, 1979, so that the workload will be reduced.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, may I ask what is the agenda for this meeting? I mean, what follows this motion if it passes?

MR. MERCIER: What would follow this motion is that the law officers would begin the review and report in compliance with the Rules beginning with regulations passed since October 24th, 1977, and report to the committee as their reports become available. And I anticipate that they will not have a report available until next fall.

MR. CHERNIACK: Mr. Chairman, I'm sorry, I really meant what goes on at this meeting today, after this motion passes?

MR. CHAIRMAN: Nothing.

MR. CHERNIACK: Nothing. Which means that we were brought together here, some of us from out of town, in order to do what? Is it necessary for this committee to pass this kind of motion for the Legislative Counsel to be requested to do what the Rules require to be done by this committee?

MR. MERCIER: Well, Mr. Chairman, if the previous government had called this committee during their 8 ½ years in government, it would not be necessary to have to call a meeting today to give some instructions to Legislative Counsel to review all of the regulations that were passed since 1969.

MR. CHERNIACK: Mr. Chairman, does that then mean that Mr. Mercier, in two years time, in the role that he now has, has had to rely on the fact that a previous government had not done something which he feels should be done, and therefore now it is necessary for him to call a meeting to have it done? Does he suggest that he could not have requested Mr. Tallin to start doing whatever it is he wants him to do so that when we come to a meeting, we can deal with the subject matter as required by the rules? Does he want to rely on other governments and other history for his own two year delinquency?

MR. CHAIRMAN: Mr. Jorgenson.

MR. JORGENSON: What apparently Mr. Cherniack fails to recognize is that a decision had to be made as to whether or not we would start right from 1969 at this point, and then continue forward, or whether we would just go back a certain point to begin with, and then carry on from there. That decision has been made by the passage of this motion. The review will begin on October 24, 1977, up to this point.

Without that motion, Legislative Counsel would have probably had to go right back to 1969. That's a tremendous task, and what we're attempting to do is to bring current regulations up-to-date and then move back from there. And that's precisely what the motion says.

MR. CHAIRMAN: Any further comment or questions regarding the motion? Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, what has been the practice in the last ten years for the Legislative Counsel? Do regulations come before him at all for review?

MR. CHAIRMAN: Mr. Tallin, are you in a position to answer that?

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MR. TALLIN: I only prepared reports when I was requested to, and I think the last Attorney-General that requested me to prepare a report was Mr. Mackling, and the report was prepared, and Mr. Mackling brought it to a meeting of the committee, at which I think they were considering another matter that was on the agenda, and after the other matter had been dealt with, it was the time when the committee wanted to adjourn, so they didn't proceed to deal with the report.

MR. CHERNIACK: The other question is, am I correct in assuming that all regulations, or almost all regulations, require certification by some law officer before they are passed by the Lieutenant-Governor-in-Council?

MR. TALLIN: Are you asking me?

MR. CHERNIACK: Anybody who can answer it. I believe the answer is yes, but I want confirmation from somebody who knows.

MR. TALLIN: If you're speaking about the approval as to form on the Orders-in-Council, when they come to our office, we are usually an emergency office for putting initials on, and we just look at the form of the order. We don't examine the contract or regulation or anything else that's there. We presume it's been prepared by someone who knows what's going on.

MR. CHERNIACK: I said some law officer. I didn't mean your office.

MR. TALLIN: That may be. I don't know. We just presume that a law . . .

MR. CHERNIACK: Doesn't the Attorney-General's Department have to approve of that regulation as to form or content before it is passed by the Lieutenant-Governor-in-Council?

MR. TALLIN: I'm afraid I don't know of any such requirement.

MR. CHERNIACK: Well, I'm just thinking of any Order-in-Council that I recall seeing, it seems to me it has a rubber stamp on it "Approved by" and, I think, it's signed by the Attorney-General's Department, somebody in there.

MR. TALLIN: The order itself does but not the attachments to the order necessarily. . .

MR. CHERNIACK: Oh.

MR. TALLIN: . . . because the attachments to the order might be a hundred pages; and half an hour before Cabinet, when some person brings up the Order-in-Council, I presume we are only expected to look at the order part, not the regulation or the attachments to it.

MR. CHERNIACK: I'm sorry. I didn't mean the Legislative Counsel's office, I mean somebody in, I believe, the Attorney-General's Department. I think I've seen Moylan's initials, I don't know who else's but Moylan stands out in my mind as one that I think appears in almost all of them. Is that not correct?

MR. TALLIN: I have never noticed them, but they may be.

MR. CHERNIACK: I'll go and have a look.

MR. CHAIRMAN: Any further comment or questions? Are you ready for the motion? Mr. Cherniack.

MR. CHERNIACK: Just one other thing. I understand from Mr. Tallin that his practice has been not to prepare a report unless requested so to do by somebody with authority; and the last time he was requested to do that was by Mr. Mackling.

MR. TALLIN: Yes.

MR. CHERNIACK: Would there have been any problem? Oh, I see. So that the question before us today is whether it was necessary for Mr. Mercier to have this meeting in order to instruct the Legislative Counsel to start in October 1977, and that's the point Mr. Jorgenson makes implying

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that the Attorney-General could not have made that instruction without the concurrence of this committee. All right.

MR. CHAIRMAN: Mr. Wilson.

MR. WILSON: I have one thought. By the striking of this Committee, and having the Legislative Counsel examine regulations, is this an invitation to the general public to begin to look at some of the over-regulations that industry feels are in existence today; is this an invitation to them to begin to contact government and MLAs to bring forward some of their concerns; or is this sort of an in-House type of thing?

MR. CHAIRMAN: Who are you directing the question to Mr. Wilson?

MR. WILSON: Mr. Tallin.

MR. CHAIRMAN: Mr. Tallin, are you in a position to answer that?

MR. TALLIN: I don't think the guideline is necessary to go to the question of whether or not the regulation is necessary, unless it falls within one of the guidelines itself. For instance, a guideline that says that regulations should not contain substantive legislation may bring out some areas where there is substantive legislation which, maybe, the members of the Committee, in addition to feeling it is substantive, feel that it is not necessary. But I don't think the necessity of the regulation itself is something which the Committee would have to address itself to in each case.

MR. WILSON: Fine.

MR. TALLIN: If it's within the bounds of the regulation, making authority, I would think that they would confine themselves to the other guidelines.

MR. CHAIRMAN: Are we ready for the question? Mr. Mercier.

MR. MERCIER: Mr. Chairman, just one short comment. If Mr. Cherniack will read the rules that he has in front of him, and particularly 71(1), it states that "all regulations, etc. shall be examined by the Committee on Statutory Regulations and Orders" not by myself, as Attorney-General, I'm just a member of this Committee. This Committee has had this responsibility for the last ten years, or whatever, and I think as Mr. Jorgenson explained the rationale for having called the meeting for this committee to consider giving instructions to Legislative Counsel as to where to begin this review, and how to proceed with preparing reports for this committee, not for myself.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I just want to comment that I estimate quickly that there's +500 spent for this meeting. A number of us will get +50.00 for attending this meeting, the Cabinet Ministers won't, and I want to congratulate the new one and tell him to his dismay that he doesn't get +50.00 for this meeting, but I figure about +500 for the calling of this meeting, when it could have been just as easy for Mr. Mercier to phone someone on our side and say, can we instruct Mr. Tallin to do exactly what the motion does, and when we call our meeting, could we then approve of the fact that we're starting from a certain date. It not being done, fine, I accept Mr. Jorgenson's opinion that it should be done formally by this meeting. I think it's a pity. I think that whenever Mr. Tallin would be ready, a year from now, if that's as long as it will take, that at that time it could have been done in the way it's being done now, but if the government and Mr. Mercier want it done that way, that's the way it's being done. I still think it's +500 for calling this meeting. That's my point.

MR. CHAIRMAN: Are you ready for the question? You've heard it read by Mr. Mercier twice. All in favour? Opposed? Carried. Mr. Jorgenson.

MR. JORGENSEN: Mr. Chairman, I wonder if we shouldn't have a motion to have the proceedings of this committee taped and transcribed.

MR. CHAIRMAN: So moved. All in favour? Opposed? Carried.

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MR. WILSON: I move committee rise.

MR. CHAIRMAN: Mr. Wilson moves committee rise. All in favour? Opposed? Carried.
Committee rise.