Court File No.: T-2225-12

FEDERAL COURT

SIMPLIFIED ACTION

B E T W E E N:

EDGAR SCHMIDT

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF TAYLOR AKIN

I, TAYLOR AKIN of the City of Ottawa, in the Province of Ontario, AFFIRM THAT:

1. I am a student at law at Raven, Cameron, Ballantyne & Yazbeck LLP/s.r.l. counsel for Plaintiff in this matter. It is in this capacity that I have knowledge of the matters deposed in this affidavit. Where my knowledge is based on information and belief, I have stated the basis for such information and belief.

2. The core subject matter of this action has been the subject of comment or discussion in the House of Commons, Committees of the House of Commons, or other Parliamentary procedures. Attached hereto and marked as the exhibit indicated are copies of excerpts from these comments or discussions:

a. **Exhibit "A"** - Excerpt of House of Commons debates concerning referral of Bill C-79, an Act for the recognition and protection of human rights and fundamental freedoms, to Special Committee (July 7 and August 1, 1960);

b. **Exhibit "B"** - Excerpts from the Minutes of Proceedings of the Special Committee on Human Rights and Fundamental Freedoms debate concerning Bill C-79 ;

c. **Exhibit "C"** - Excerpt of House of Commons debates concerning Bill C-21, to provide for the examination, publication and scrutiny of regulations and other statutory instruments (January 25 and March 18, 1971);

d. **Exhibit "D"** - Excerpt of House of Commons debates concerning Bill C-27 on the examination of government bills and regulations to ensure consistency with the *Charter* (March 27, 1985); and

e. **Exhibit "E"** –Excerpts from Minutes of Proceedings and Evidence of Standing Committee on Justice and Legal Affairs of House of Commons regarding Bill C-27;

f. **Exhibit "F"** – Excerpt from the proceedings and evidence of the Standing Committee on Justice and Legal Affairs of the House of Commons when considering Bill C-182;

g. **Exhibit "G"** – Excerpts from the Journals of the House of Commons relating to the progress of Bill C-79;

h. **Exhibit "H"** – Excerpts from the Journals of the House of Commons relating to the progress of Bill C-27; and

i. **Exhibit "I"** – Excerpts from the Journals of the House of Commons related to the progress of Bill C-182.

3. In 2005, the Minister of Justice and Attorney General of Canada, the Honourable Irwin Cotler, made a speech to the Canadian Bar Association entitled "The Constitutional Revolution, the Courts, and the Pursuit of Justice". In that speech, the Minister of Justice commented upon his role of "certifying that every

proposed law and policy comports with the Charter of Rights and Freedoms". The basis for the preceding statement is the document attached hereto and marked as **Exhibit "J"** which purports to be the text of his speech. This copy can be accessed on the Government of Canada Website at: http://news.gc.ca/web/article-en.do?crtr.sj1D=&mthd=advSrch&crtr.mnthndVl=&nid=164649&crtr.dpt1D=&crtr.tp1D=&crtr.lc1D=&crtr.yrStrtVl=&crtr.kw=royal%2Bassent&crtr.dyStrtVl=&crtr.aud1D=&crtr.mnthStrtVl=&crtr.yrndVl=&crtr.dyndVl&_ga=1.61193516.1630099836.1430313609. The link to this document can be found by searching "Cotler address CBA" on the Department of Justice Website (i.e. from the search box at http://www.justice.gc.ca/eng/).

4. I make this affidavit in support of this Action.

AFFIRMED BEFORE ME at the City of Ottawa, Ontario this 30th day of April, 2015.

A Commissioner, etc.

Taylor Akin

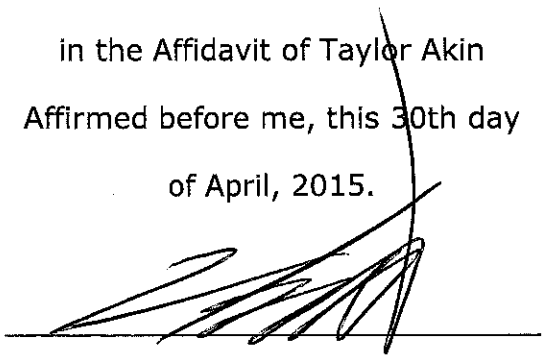
Tania Lee Smith, a Commissioner, etc., Province of Ontario, for Raven, Cameron, Ballantyne & Yazbeck LLP/s.r.l., Barristers and Solicitors. Expires April 30, 2016.

This is **Exhibit "A"** referred to

in the Affidavit of Taylor Akin

Affirmed before me, this 30th day

of April, 2015.



A Commissioner, etc.

Tania Lee Smith, a Commissioner, etc.,
Province of Ontario, for Raven, Cameron, Ballantyne
& Yazbeck LLP/s.r.l., Barristers and Solicitors.
Expires April 30, 2016.

Division

Mr. Pearson: It never did.

Mr. Diefenbaker: Mr. Speaker, I did not say that so apparently the hon. gentleman completely misunderstood and misapprehended what I said.

Mr. Pickersgill: The record will show it, if it is not changed.

Some hon. Members: Oh, oh.

An hon. Member: Take that back.

Mr. Hees: Shame.

Mr. Grafftey: Cheap.

Mr. Pickersgill: I was merely quoting the hon. member for Halifax (Mr. Morris) who made a similar statement earlier about the hon. member for Laurier.

Mr. Barrington: Go back to the crystal ball.

Mr. Pickersgill: Mr. Speaker, I spoke hastily. I do not think I should have said what I said and I withdraw it.

The house divided on the motion (Mr. Diefenbaker) which was agreed to on the following division:

YEAS

Messrs:

Aiken	Clancy
Aitken, Miss	Coates
Allard	Comtois
Allmark	Cooper
Anderson	Denis
Argue	Deschatelets
Badanai	Diefenbaker
Barrington	Dinsdale
Baskin	Dorion
Batten	Doucett
Bell (Carleton)	Drysdale
Bell (Saint John-Albert)	Dubois
Belzile	Dumas
Bigg	English
Bissonnette	Fairclough, Mrs.
Boivin	Fane
Bourbonnais	Fleming (Eglinton)
Bourdages	Fleming (Okanagan-Revelstoke)
Bourget	Forbes
Bourque	Frechette
Brooks	Fulton
Broome	Grafftey
Browne (Vancouver-Kingsway)	Granger
Brunsden	Green
Campbell (Lambton-Kent)	Grenier
Campeau	Grills
Cardiff	Gundlock
Cardin	Habel
Caron	Hales
Carter	Halpenny
Casselman, Mrs.	Hamilton (Qu'Appelle)
Cathers	Hamilton (York West)
Chambers	Hanbidge
Charlton	Harkness
Chevrier	Hees
Chown	Hellyer
Churchill	Henderson
Hicks	Herridge
Horner (The Battlefords)	Nesbitt
Howard	Noble
Howe	Nowlan
Johnson	O'Hurley
Jones	O'Leary
Jung	Ormiston
Keays	Pallett
Knowles	Parizeau
Korchinski	Pascoe
Lafreniere	Paul
Lahaye	Pearkes
Lambert	Pearson
LaRue	Peters
Legere	Pickersgill
Lennard	Pigeon
Letourneau	Pratt
Macdonald (Kings)	Pugh
Macdonnell	Rapp
MacInnis	Regier
MacLean (Queens)	Regnier
MacLean (Winnipeg North Centre)	Ricard
MacLellan	Richard (Kamouraska)
MacRae	Richard (St. Maurice-Lafleche)
McBain	Roberge
McCleave	Robichaud
McDonald (Hamilton South)	Rogers
McFarlane	Rompre
McGrath	Rouleau
McGregor	Sevigny
McIlraith	Small
McIntosh	Smith (Lincoln)
McLennan	Southam
McMillan	Speakman
McPhillips	Spencer
McQuillan	Stanton
McWilliam	Starr
Martel	Stearns
Martin (Essex East)	Stefanson
Martin (Timmins)	Stewart
Martineau	Stinson
Martini	Tardif
Matthews	Tassé
Michaud	Thomas
Milligan	Thompson
Mitchell	Thrasher
Monteith (Perth)	Valade
Montgomery	Villeneuve
More	Vivian
Morris	Walker
Morton	Webb
Muir (Cape Breton North and Victoria)	Weichel
Nasserden	White
	Winch
	Winkler
	Wratten—183.

NAYS

Messrs:

NIL

MOTION FOR SPECIAL COMMITTEE

Right Hon. J. G. Diefenbaker (Prime Minister): Mr. Speaker, with leave of the house I move:

That a special committee be appointed to consider Bill C-79, an act for the recognition and protection of human rights and fundamental freedoms, with power to send for persons, papers and records and to report from time to time;

That such committee have power to print such papers and evidence from day to day as may be deemed advisable or necessary;

That the committee shall consist of 15 members to be designated by the house;

That the committee be empowered to sit during the sittings of the house;

That standing order 66 be suspended in relation thereto.

Motion agreed to.

MOTION FOR REFERENCE OF BILL TO SPECIAL COMMITTEE

Right Hon. J. G. Diefenbaker (Prime Minister): Mr. Speaker, I move that Bill No. C-79 be referred to the committee just authorized.

Motion agreed to and bill referred to the special committee on the act for the recognition and protection of human rights and fundamental freedoms.

MOTION FOR APPOINTMENT OF PERSONNEL

Mr. John Pallett (Peel) moved:

That the special committee on the act for the recognition and protection of human rights and fundamental freedoms be composed of Messrs. Argue, Batten, Deschatelets, Dorion, Jorgenson, Jung, Korchinski, Martin (Essex East), Martini, Nasserden, Nielsen, Rapp, Roberge, Spencer and Stefanson.

Motion agreed to.

BUSINESS OF THE HOUSE

Mr. Chevrier: May we be told what the business is for tomorrow and for next week as well?

Mr. Churchill: Mr. Speaker, there will be a slight change in the order of business as announced earlier this week, I hope the Leader of the Opposition will not mind if I indicate that at his special request we are dropping external affairs this week and taking up that department next week. This has been done by consultation and arrangement. We will go on with the estimates of the C.B.C. and the board of broadcast governors tomorrow as the first item, followed by the estimates of the department of northern affairs. On Monday the program will consist of legislative items, the department of forestry act and the superannuation act if it is reported back to the house tomorrow; the discussion of the Canada-U.S.S.R. trade agreement, which is first on the order paper now. If these items are cleared on Monday, we will proceed with a discussion of the estimates of the Department of Labour, followed by public works, that is for Monday and Tuesday, if there is time available for these departments. For Wednesday, and this is by arrangement suitable to both sides of the house, we will take the estimates of the Department of Transport; for Thursday, this again is by arrangement, we will start off with the estimates of external affairs.

This order of business is subject to adjustment if hon. members on the other side of the house have suggestions to make to me tomorrow or on Monday.

At eleven o'clock the house adjourned, without question put, pursuant to special order.

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second reading. I see no reason why any statement need be made by me at this time.

Mr. Martin (Essex East): Mr. Chairman, I just want to point out that there were a considerable number of changes made in the bill. If the Prime Minister does not feel that he wishes to initiate the discussion, following the consideration of the bill by the special committee on human rights and fundamental freedoms, of course that is a decision which he alone can take. But as there were a limited number of members of this house on that committee one would have thought there would have been an explanation made of the changes for the benefit of the membership of the house as a whole.

Mr. Fulton: Mr. Chairman, if it will be of assistance to the committee, I would be glad to make a few remarks upon the bill as it has been reported from the special committee.

I think that hon. members reading the bill and comparing it with the bill that was given second reading recently in this chamber will note that the first change is that there has been added a preamble, which appears in the reprinted bill.

Then hon. members will note that clause 1 in the original bill, which was a short paragraph containing the title, has been moved down to the position which it now occupies of clause 4; and clauses 2, 3 and 4 have been renumbered as 1, 2 and 3.

This is in accord with a feeling, which I think was universally agreed to by the committee, that the Canadian bill of rights should be in a form which would render it capable and readily adaptable to be reprinted, reproduced and framed, mounted on walls of schools, church halls and assembly halls, and other similar places, so that it would become familiar in a readily understandable and easily recognizable form to the greatest possible number of people, and especially to younger Canadians.

In accordance with that feeling it was decided that in so far as possible those provisions, having what might be described as a purely legalistic connotation, should be shortened, if that could be done, and that the framework and construction of the bill should be so altered as to remove, or subordinate to a lesser position those portions of the bill having this characteristic.

It was in accord with that sentiment that it was decided to put the title, which is in a sense a legalistic part of a statute, in the position of clause 4.

With respect to the clause now appearing as clause 1, an amendment was made in the introductory words by way of the deletion of the word "always" in line 19. The original bill read:

> It is hereby recognized and declared that in Canada there have always existed and shall continue to exist—

And so on. It was the feeling of a number of witnesses, concurred in, I think, by the majority if not all the members of the committee, that perhaps this was an over-statement of the case. I expressed my own view that there was good justification for the word "always". But as we were trying to achieve a bill of rights that would be in so far as possible the unanimous opinion of members concerned I indicated my agreement with the deletion of the word "always". I do not think it changes the effect greatly, and therefore it was a change in which I was prepared to concur.

The next change in clause 1 is again in the introductory words. There was a considerable body of opinion expressed in the committee that the non-discriminatory features of the bill were not sufficiently emphasized, and an amendment was moved to clause 1 to insert a special provision with regard to non-discrimination. I pointed out in the committee that in our view the non-discrimination feature was really adequately protected by the provision in paragraph (b). This ensured the right of the individual to equality before the law as it was originally phrased, "without discrimination by reason of race, national origin, colour, religion or sex". In this way, having firstly defined in paragraph (a) the basic rights of the individual, then giving the individual the right of recourse to the courts and protection of the law without discrimination, in effect that would enable the individual to enjoy these rights without discrimination.

However, there was, as I say, this substantial body of opinion which felt it might be desirable to re-emphasize the intent of the parliament of Canada to ensure non-discrimination as a feature of the bill of rights. We accordingly worked out a proposal under which the non-discriminatory feature could be inserted in the introductory words, and I presented that to the committee and the committee adopted it.

So the introductory words now read:

> —that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex the following human rights and fundamental freedoms, namely,—

Then they are enumerated. The effect of that change is to provide that the rights enumerated in all the subparagraphs are now thus qualified by the words "that those rights

shall be enjoyed without discrimination by reason of race, national origin, colour, religion or sex".

There was then a consequential amendment to subparagraph (b), which I read earlier in its original form, and which now appears in amended form in the reprinted bill.

The next major change was with respect to clause 2. If hon. members will compare the introductory words of clause 2 with the introductory words of clause 3 as it appeared in the original bill, they will see there has been a considerable shortening of the introductory words. This again was in keeping with the feeling of the committee that in so far as it was possible this part of the bill of rights embraced under the heading of Part I should be readily capable of reproduction in a form which would make it suitable for framing and hanging up on the walls of schools and similar places, and that we should as far as we could eliminate all legalistic phrases and expressions.

I think hon. members will agree with me that there is no reflection or criticism of the draftsmanship because we were drafting a statute to have legal effect. I think they will agree that the words of clause 3 in the original bill as they appeared would be, shall I say, rather difficult for school children to memorize. So we agreed that this might be solved by taking some of those words out and puttting them in an interpretation clause which appears in a later part of the bill, now appearing in clause 5, the effect of which has been to shorten and simplify the introductory words of present clause 2.

Then there were a number of minor but still important changes in the particulars of subparagraphs (a) to (f) as they appear in clause 2, the details and import of which I think will be quite apparent as they are read and compared with the original wording of that clause.

The next important amendment I think I should mention is with respect to clause 3 as it appears in the reprinted bill, clause 4 of the original bill. This is the clause which imposes on the Minister of Justice the obligation of examining every proposed regulation submitted in draft form to the clerk of the privy council and every bill introduced in or presented to the House of Commons in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of that part of the bill.

It was suggested to us in committee that while this might impose an obligation on the Minister of Justice to satisfy himself with regard to the existence or the non-existence of any inconsistencies, there seemed to be no concurrent obligation imposed upon him to bring his views by way of report before the House of Commons. Mr. Chairman, to my mind that was implicit in the earlier part of that provision which said that:

> The Minister of Justice shall, in accordance with such regulations as may be prescribed by the governor in council—

I felt it was an inescapable and necessary implication that in the regulations that the governor in council might make as to the manner in which and the means by which the Minister of Justice would discharge this obligation, the way in which the minister would report the results of his examination to the House of Commons or to parliament would also be covered. However, hon. members felt that this specific obligation of reporting should be imposed upon the minister by specific provision in the bill, and since this seemed to me to impose no greater obligation than I thought was implicit in the clause in any event I felt there was no objection whatsoever to the insertion in the clause of a specific requirement that the minister should make the report to the House of Commons with respect to his examination at the first convenient opportunity.

Then the next change is the change in present clause 5 of the reprinted bill. As compared with clause 5 of the original print it will be observed that that clause is now divided into two subclauses. This is made necessary by the addition as subclause 2 of many of the words formerly contained in present clause 2 of the bill which, as I have explained to the committee, were taken out of the original draft and are now to be found included as subclause 2 of clause 5.

Mr. Martin (Essex East): Formerly in clause 3.

Mr. Fulton: Quite so, in clause 3. Those words were found in clause 3 of the original print.

Mr. Chairman, I think those are the major changes which I wish to bring to the attention of the committee. Many other changes indeed were suggested in the committee. Some of the changes which I have reported were agreed to as the result of suggestions made by hon. members of the opposition. Many of them, however, were the result of further consideration by the government itself.

The feature to which I should draw attention in particular with respect to the changes suggested in the special committee is that those changes in almost every case constituted what I have described as an attempt to reduce the bill of rights to a bill of particulars. With respect to most of those suggestions I think two observations should be

This is **Exhibit "B"** referred to
in the Affidavit of Taylor Akin
Affirmed before me, this 30th day
of April, 2015.

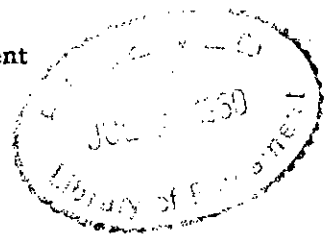
A Commissioner, etc.

Tanja Lee Smith, a Commissioner, etc.,
Province of Ontario, for Raven, Cameron, Ballantyne
& Yazbeck LLP/s.r.l., Barristers and Solicitors.
Expires April 30, 2016.

HOUSE OF COMMONS

Third Session—Twenty-fourth Parliament

1960



SPECIAL COMMITTEE

ON

HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Chairman: Norman L. Spencer, Esq.

Vice-Chairman: Noël Dorion, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

Bill C-79: An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1960

23534-1—1

This document contains excerpts from the Minutes of Proceedings and Evidence of the Special Committee on Human Rights and Fundamental Freedoms established to study and report on Bill C-79, An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms.

The following excerpts are included:

Pages 332 to 335 -- Wednesday, July 20, 1960

Pages, 372, 393 and 394 -- Thursday, July 21, 1960

Pages 405 and 406 -- Friday, July 22, 1960

Pages 509 to 513 -- Saturday, July 23, 1960

Pages 570 to 580 -- Wednesday, July 27, 1960

Pages 701 to 707 and 714 to 719 -- Friday, July 29, 1960

Pages 669 to 670 -- Report of the Committee

Mr. LOWER: Yes. I was under the impression, when I read this, that this is an attempt to make criticism of the War Measures Act. From what you say about it I can see you have something additional in mind. I would be very happy not only to have this retained but also to have the revision of the War Measures Act made subsequently. Of course, I do think it is too big a thing to be examined at this time of year.

Mr. FULTON: Yes. It is a big thing whenever you examine it. When you get into the War Measures Act and you are into a really difficult philosophical as well as legal problem.

Mr. LOWER: Yes.

Mr. FULTON: Then the question was raised as to the desirability of the words in clause 2 "there have always existed". I think you expressed the opinion that you would be satisfied with the substitution of the word "heretofore". Is your concern about the use of the words "there have always existed" related to the fact that we do not say at what point of time Canada came into existence?

Mr. LOWER: I think this, really, is not an overly important point. It is something that most people could debate in a very minor way and quibble backwards and forwards.

Mr. FULTON: If I put it to you that on the basis of the provision in the British North America Act of 1867, "the four provinces shall be and form one dominion under the name of Canada", a reasonable person would assume that when we use the word "Canada", we think of Canada as it came into existence in 1867, would you think that was stretching a point, or would you think that would be a logical conclusion?

Mr. LOWER: No, I do not quite agree with that, because the average person would think of Canada as going back further than that. There was the old province of Canada that was in existence before, and there was upper, and lower Canada, and so on. I think he would think in those terms.

As you put it, yes, in a purely legal way, I think you make your point that Canada has existed since July 1, 1867; but in the common, ordinary use of the word, I think the average people would carry the conception back further than that.

Mr. FULTON: And you have already said that you do not think we should be governed by the lawyers; we should only be advised by them. May I say that with regard to the word "always" it is a good point you make, and it is something that perhaps should be looked into.

Mr. LOWER: I hope not very much time and energy will be spent on that point, though.

Mr. FULTON: I agree.

Then with regard to clause 4 of the bill, the clause with regard to the powers and responsibility of the Minister of Justice, you say you would like to see the word "ascertain" strengthened. It is, however, my view—I am not trying, even if I had the right, to cross-examine you; but this is a clause which has given us difficulty from time to time.

When we drafted it first in 1958, the word was "ensure". Then we looked at that ourselves and felt that word was a rather questionable one, because we felt: does that mean that the Minister of Justice, who is to ensure, must, by necessary implication, have the power to ensure? Does this give him some power of dictation over his colleagues in the cabinet or, indeed, over the rights of private members to introduce bills into the house?

If the Minister of Justice is to ensure, how is he to do this, unless you give him the power to do it? We felt that parliament would not want to give a single minister of the government the right to say in what form bills should, or should not, be introduced.

With respect to government bills, the matter is easier, because it goes through cabinet and presumably the views of the Minister of Justice as to the form of a bill would be accepted. But even there it is not desirable to give the Minister of Justice dictatorial powers over cabinet.

But when you came to private members in parliament, we felt we were against a real difficulty. If you give the minister the responsibility to ensure, you must then give him the power to ensure and then he may be too powerful; and that is why we changed the word to "ascertain".

Mr. LOWER: There is just one point there. May I ask you your explanation of this? This states, "to examine every proposed regulation".

Mr. FULTON: Yes—"and every bill introduced in the House of Commons".

Mr. LOWER: Yes, I see.

Mr. FULTON: That is our problem. When you said you would like to see the word "ascertain" strengthened, I was going to ask you, and I ask you now, whether, in the light of that problem, you could offhand—perhaps you would not care to do it offhand; but perhaps you could indicate to us another approach to the problem, or else, perhaps, a word that could be substituted and would have the effect of strengthening, without going too far.

Mr. LOWER: If the cabinet has thought over this word carefully in the way in which you say, I hesitate myself to give some kind of snap judgment. The word "ensure" has been suggested. There must be a good many others. What would you conceive to be your functions in "ascertain"? When you ascertain, what do you do?

Mr. FULTON: In so far as government measures are concerned, I would think my function would be to advise the cabinet, or my colleagues in cabinet, as to whether, in the view of myself and my advisers, they are proposals which transgress the letter, or the principles of the bill of rights. I would imagine that if such advice were given in concrete form, cabinet would have the responsibility of making a judgment.

But with respect to bills introduced into the house by private members, I would think there that under the word "ascertain" my only function, and surely a sufficient responsibility, is to ascertain, and then advise the house that in the view of the Minister of Justice this bill does, or does not, conform to the bill of rights. And then would it not be for parliament to decide whether to proceed with it?

Mr. LOWER: I think that would be a very powerful opinion, if it were expressed by the Minister of Justice to the house; and the opinion of the minister would apply to regulations, every proposed regulation submitted in draft form. Public bills, no doubt, would be hammered out before they were submitted, from that point of view?

Mr. FULTON: Yes.

Mr. LOWER: You might refuse it to private bills—which are relatively few in number, I understand, and do not, as a rule, touch public subjects, the subjects of public policy.

Mr. FULTON: We have two distinct categories: we have private members' private bills—like divorce bills—and we have private members' public bills, which may deal with public matters.

Mr. LOWER: Which never get to the statute books anyway.

Mr. FULTON: I beg your pardon—not often; but there have been two that I recall. I had a hand in one myself.

Mr. LOWER: I really think you pare the thing down to fairly narrow limits, Mr. Minister.

Mr. FULTON: Frankly, I did feel that the main responsibility was to advise the government, because, as you say, the great majority of bills that reach the statute books and have an effect on the public are bills introduced by the government.

Mr. LOWER: Yes.

Mr. FULTON: Would it not be likely—and, indeed, not only likely; but almost certain—that with such a provision in the law, very early in the debate of a government bill somebody would ask the Minister of Justice whether he has examined this bill as required by section 4 of the bill of rights, and whether, in his opinion, it does conform to the bill of rights?

Mr. LOWER: Almost certainly, in the course of years, you would work out a whole set of criteria which people would observe in drafting bills.

Mr. FULTON: Yes, that is my view. We may have to change; we may well be faced with the necessity of amending bills already on the statute book—and we are certainly going to have to look at every bill in the future to see that it conforms to the bill of rights. And this would be my special responsibility under clause 4.

Mr. LOWER: That may be, in itself, a most valuable aspect of our legislation.

The CHAIRMAN: Would you like to ask a question, Mr. Batten?

Mr. BATTEN: Mr. Chairman, I am just looking for information, and I want to ask Mr. Fulton, if I may—

The CHAIRMAN: I think that would be all right.

Mr. BATTEN: I think it is a little bit irregular; but it is on the topic the minister is talking about. When you say you would advise the house, do you mean, Mr. Fulton—let me put it this way: supposing a bill were brought in that you felt was not in accordance with the bill of rights, and you took the view that the house should be advised.

Do you mean by that you would advise the house during the debate on the bill, or before the bill was introduced?

Mr. FULTON: I would have thought, during the debate on the bill. The appropriate stage, it seems, would be second reading, because that is when the principle comes up for debate. But it might be that in the course of years we would work out, either on our own, or by suggestion from others, a sort of formal report process under which the minister's opinion could be delivered at the same time first reading was moved. We might work out some such procedure as that.

Mr. BATTEN: I was thinking of this: I wonder if the administrative effect of a bill of rights would be weakened if these powers were not used to prevent bills being brought in to the house which in any way interfered with the operation of this bill?

Mr. FULTON: It might be. But, there again, while Mr. Lower has said there is no supremacy of parliament, certainly any government must be very careful not to dictate to private members as to what are their rights.

Mr. BATTEN: That is true.

Mr. FULTON: And I should be very reluctant, politically, if for no other reason, to go about telling a private member he could, or could not, introduce such a bill.

Mr. BATTEN: I do not mean that.

Mr. FULTON: Surely the only function of the Minister of Justice is to advise the house on that, not to dictate on it?

Mr. BATTEN: I am just saying, you would advise the house whether or not it was in accordance with the bill of rights?

Mr. FULTON: Yes.

Mr. BATTEN: If he goes ahead afterwards, that is his own business, and he would have to take the consequences of the debate.

Mr. FULTON: The advice of the minister should be not earlier than coincidental with first reading: I don't see how a Minister of Justice could properly make a report in advance that there has been submitted to him such-and-such a bill, and then report to the house that in his opinion it should not be introduced.

Mr. BATTEN: Thank you very much, Mr. Chairman.

The CHAIRMAN: Mr. Badanai, do you have a question?

Mr. BADANAI: Yes, Mr. Chairman.

The CHAIRMAN: Is it on the same topic?

Mr. BADANAI: Yes, Mr. Chairman. I would like to ask the Minister of Justice this question: if his opinion were overridden in the cabinet, what would be the attitude there—what would be the result?

Mr. FULTON: I think that would be one of those very difficult problems that no doubt do arise sometimes. There is the doctrine of collective cabinet responsibility, and whoever was Minister of Justice at the time would have to decide whether he went along with the opinion of cabinet, that either his advice was wrong, or that under the circumstances he should accept the majority view. He would have to decide whether he would take that position—either one of those two positions,—or whether he would submit his resignation.

Mr. BADANAI: The Minister of Justice would subordinate his opinion to that of the cabinet?

Mr. FULTON: No. Let us take the thing by specific stages. If the Minister of Justice advised his colleagues in the cabinet that a bill was not properly drawn, or, in his opinion, it was contrary to the bill of rights—and your question was: supposing the cabinet rejects that advice and says "We are going ahead anyway; we do not care." Is that your question?

Mr. BADANAI: I would like to ask Professor Lower.

Mr. FULTON: Yes, but we have left this thing right up in the air.

Mr. BADANAI: Yes. I asked the question and you answered it. In your opinion it would appear that the cabinet would have the final say.

Mr. FULTON: No. You asked what would happen, and this is what we have not got cleared up. The cabinet, of course, is the body which decides what bills will be introduced by the government, and what policy the government will follow, and its decisions are reached on a collective basis, under the doctrine of collective responsibility.

Therefore, a minister of justice who found himself in the position of having advised his colleagues that, in his opinion, a bill runs contrary or counter to the bill of rights but whose advice was rejected by his colleagues, would have to make one or two fundamental decisions. He would have to conclude that he is wrong and that his colleagues are right, or that the exigencies of the situation require him to accept the collective view of the cabinet and therefore to go along with it or should he not be able to come to one of these conclusions his next decision, as a simple alternative, would have to be to resign. That would be the position as I see it.

Seventh; I see here the objective to introduce a supervisory role of some kind, not clearly stated, for the Minister of Justice in dealing with the effects of this legislation.

The final objective I see in this measure, is to provide for a higher degree of parliamentary control over the consequences of proclaiming the War Measures Act. This, I take it, is in this bill as an objective because of the frank realization of the impact that the War Measures Act makes on the problems of liberty.

Are those eight objectives sound in principle, each of them? My general reaction is, yes, in principle. Do they go far enough? I divide this question into two parts. Do they go far enough with respect to the classical liberties; the liberties of political action in its various guises; the liberty of conscience or the freedom and the safeguards against arbitrary imprisonment, arrest and detention, and safeguards to property. These are the classical liberties. Do they go far enough? I think they cover and refer to most of these classical liberties. I do not know that much has been left out of these particular statements in so far as the classical position is concerned.

What about the second part; the possibility they have left out any reference to the new area of economic and social rights; the right to education, the right to social security, the right to medical services, the right to hospitalization, and so on; the whole welfare state configuration? Here it seems to me that I return to the position I took a moment ago; however desirable on one level it may be to try to legalize this new system of claims the individual has against the state in modern society, I see no place for it in this kind of document. It seems to me the system of law that we are talking about here is of quite a different order than the system of claims of a special character which are made as a matter of social and economic policy. I do not wish to say that they are of a lower order of value. I do not say a man's right to employment, if we had a full employment act, as the United States passed in 1946; I do not say a social security claim, is any less important than certain aspects of the rights to have property protected. I merely say that from the point of view of the administration of Canadian law in society, I think this is a more manageable approach to the problems of public law and the protection of the individual, and all the other claims are of a different order requiring different machinery, and are of a different tradition.

Now, admitting all these particular objectives, that I have referred to—the eight objectives; can they be put in a better form than we have them here, taking the statute as a whole? It is not only a question of phrasing, but a problem of where to put them to be solved more agreeably. Well, you know the three arguments that have been put before you. First, that there should be an amendment to the British North America Act as to both sections 91 and 92. Most of my colleagues in the field of public law would argue that this is the neatest and most complete solution. But it is the most unlikely solution. There is no evidence that the provinces and the government of Canada will get together any more successfully than they did in 1950—no evidence at all. Indeed, considering the changing political complexion arising from recent events, it may be more difficult for them to get together on some issue, as we shall know next week. Therefore, I would be very surprised if anyone with any realistic appraisal of the political life in Canada would argue that this is something which you can hope for in the foreseeable future.

Secondly; should there be an amendment under section 91(1) under which we now have the power to amend those matters where Parliament has jurisdiction itself. This is harder to answer. My own inclination would be to prefer to see this kind of document as part of the British North America Act itself; but if there are wider political, traditional, and other reasons for not doing so,

Mr. COHEN: He could get the benefit by giving this man his rights to be brought before the court.

Mr. FULTON: That would seem to us to be the case.

Mr. COHEN: You probably have a point there.

My next point, my seventh point, is well known. I have raised the question as to whether this creates new standards of administrative law for federally delegated legislation. But what would be the comparable effect on provincial administrative law?

And as a subsidiary question I ask myself: "Does clause (*d*) not raise in a very interesting way, indirectly, the possible need to examine the creation in Canada of a system of federal administrative tribunals, with a kind of federal administrative procedure act comparable to the United States Act?"

In short, I wish to ask should we not clarify the whole question of what happens before administrative tribunals, at least in the federal sphere. This may be the beginning of a movement toward codification or standardization, and it is to that extent extremely interesting and very useful, but it is only the beginning of a longer and more necessary process.

My eighth point is that of the problem of a fair public hearing, which may not be possible under many of our statutes. It may not be possible to have public hearings with respect to matters dealing with the Official Secrets Act, or it may not be possible to have public hearings where the courts, now under the Criminal Code, have a discretion not to hold public hearings in cases involving pornographic materials. What would be the onus on the court under those provisions?

My view is that the court would have to use common sense and discretion here, and that over the years a body of experience would develop, and that it is not likely to interfere with the present judicial pattern of approaches to the Criminal Code.

Mr. FULTON: You notice that the time element is involved with respect to the criminal charge?

Mr. COHEN: I now come to section 4. This section, as some people have pointed out, seems to be slightly weaker than the first draft of the bill, as the minister pointed out, and that the first draft had the phrase "to insure". While "to ascertain" is the phrase here. You might ascertain whether any information here was inconsistent with the purpose of this act.

It seems to me that there is really not much to choose between the two languages. I see no major difficulty if one uses the verb "to ascertain" because one cannot expect the Minister of Justice to administer these things. The courts are going to have to administer them.

There is a two-level process. First, there is the drafting process, where the minister will have his eye on it, and then there is the interpretation process, on which he will also have his eye for the purpose of seeing if further amendments are required.

But I would like to suggest two techniques for the consideration of the minister. I would like to suggest that if this bill is to do a serious job in the field of draftsmanship, and a serious job in the field of supervising what is happening, then I think the government should promise to establish, or attempt to establish a civil rights section, or some appropriately named section in the department, where the functions of drafting and supervision would go on, and would develop a body of expertise.

Professor Scott mentioned it, and I think it makes very good sense. But I do not want to push it too far.

The minister will, in any case, have to develop some draftsmanship or skills, and the department may be given a supervisory organization as well.

I would like to see also the possible establishment of a National Rights Commission to be comprised of a group of respected laymen, to which complaints could be made with respect to infringement of what is believed to be rights, so far as these rights are protected by this particular legislation. There is no *ultra vires* problem here, because they would be dealing only with these federal matters. This national rights commission, it seems to me, would be comparable to the device in Denmark, where there is an officer to whom grievances of all kinds are sent. Of course, that is a unitary state, and it does not present the problems we have here. It would not be entirely unlike what is now established in the United Kingdom with the Inquiries Act there. I think it would make extremely good sense to create a national rights commission, to which the average person might feel he had recourse by way of correspondence or by way of personal representation, if he felt aggrieved, if he felt the ordinary procedures of the court did not give him the kind of redress he felt he was entitled to.

Mr. RAPP: Under the Department of Justice?

Mr. COHEN: I would say it should be under the Department of Justice, reporting to the minister. I would make it a commission of laymen, serviced by the Department of Justice's permanent staff—but a commission of laymen, of senior citizens perhaps, working on a part-time basis. And, as Mr. Aiken probably cringes at the amount of time that is going to be needed—

Mr. AIKEN: I am concerned about setting up a commission of inquiry and not the time factor; or a commission of investigation.

Mr. COHEN: Not "investigation," but a commission to receive complaints.

Mr. AIKEN: I am afraid it would develop into a grand inquiry, a large grand jury.

Mr. COHEN: Bear in mind, Mr. Aiken, that something far more elaborate now exists in a far more suspicious environment in Europe. There the European Human Rights Commission does precisely that for the states members of that commission, for the seven or eight states who have now signed that treaty. If you can do it for a heterogeneous, suspicious-minded group of European states, surely we can do it for "homogeneous" Canada?

Mr. FULTON: May I ask one question?

Mr. COHEN: Yes?

Mr. FULTON: Would your view of the national rights committee—

Mr. COHEN: "Commission."

Mr. FULTON: —the national rights commission be that its hearings and those matters referred to it should be confined to the administrative actions of the federal government and the administrative boards and tribunals, or inquiries also relating to proceedings under the Criminal Code?

Mr. COHEN: I grant you there is a difficulty there, but really, Mr. Minister, I am inclined to think my answer is it is a kind of grievance committee, and if someone feels aggrieved under the administrative procedures which impinge upon his personal or private rights, it is easy to see it would do a job. In regard to the Criminal Code it would be harder to see. I would not like to be pressed on this at the moment, but for the time being, perhaps, it could be confined to the area of administrative redress and not to the Criminal Code as such.

Mr. DESCHATELETS: Do you have in mind such a commission could improve the bill of rights?

Mr. COHEN: Not "improve," but I would have certainly the feeling they would recommend, from time to time, to the minister certain procedures experience may teach them.

Mr. DESCHATELETS: And some improvements?

feels can be helpful to the committee, and deal with this bill specifically, but withhold any final decision in regard to the bill until we shall have heard from Mr. Mundell tomorrow.

If that is agreeable to the committee, as I assume it is, I shall now ask Mr. Fulton to comment upon the representations which have been made before the committee, and to give us the benefit of his study of the present bill.

Mr. BATTEN: I know that it is usual for the minister to appear last before the committee, but under the present circumstances I do not see any reason the minister should not proceed this morning, and we could hear from Mr. Mundell tomorrow.

The CHAIRMAN: Thank you.

Hon. E. D. FULTON (*Minister of Justice*): Thank you, Mr. Chairman, and gentlemen. I appreciate the opportunity to be here. I have with me Mr. Driedger, Q.C., deputy minister of the Department of Justice. Mr. Driedger, as you know, has become deputy minister just recently, but he, and Mr. Jackett, the former deputy minister, were the two officials of the department who had the primary task of drafting the bill of rights.

I would like to express my appreciation of the work that has been put into it.

You know that the problem of a bill of rights in Canada, in a federal state, is not an easy one to solve; and I know also that it is not customary to single out civil servants for commendation. I take the responsibility for any weaknesses which may be in the bill. That is my responsibility, but I would like to give them credit for most of the good things that are in the bill.

I am much impressed, and I would like to record before this committee my feelings of gratification of the way in which they have been able to produce a bill, as they were asked to do, which does, as I see it, solve this difficult problem of the division of legislative authority in Canada.

It is, Mr. Chairman, as I understand it, customary at this stage to go through the bill clause by clause and to direct questions to the minister and the departmental officials on those clauses before they are carried.

I would imagine that you would want to follow the same general approach this morning, but, as you have said, because Mr. Mundell will not appear as a witness until tomorrow morning, it would not be appropriate actually to carry the clauses, because it would seem to be discourteous to do so, since we still have a witness to hear from.

But I would like to suggest for your consideration, therefore, that I might be permitted to proceed as if the clauses were being called clause by clause, and, perhaps, if you would care to call them we could consider them, and I would be glad to deal with questions on the clauses until all the questions that you want to ask have been asked and answered.

At that stage, if there are no more questions, I would suggest, without formally carrying the clause, that you would let them stand to save going all through the same process again. So, in effect, you will have gone through the bill clause by clause, and after hearing from Mr. Mundell it should be possible to carry each clause seriatim, if that is agreeable to you.

The CHAIRMAN: I wonder if you have any preliminary observations to make before I call them? I think I should call them in their order, clause 1 first, and proceed from that point to the next one.

Mr. FULTON: Yes, I thing it would be more helpful to the committee if I confined all my comments to the clauses by way of reply to questions. But I would like to make some general observations, and I shall keep them as brief as I can.

Perhaps I should make some in the light of the variety of suggestions, comments, and indeed criticisms which have been made. I would like to

emphasize first that the scheme of this bill of rights is to have a piece of legislation which will be applicable only to the federal field of jurisdiction. Within that scheme we have designed a bill of rights which will provide complete coverage, and not only complete coverage with respect to all the rights and freedoms that it is designed specifically to protect, but also complete coverage with respect to all branches of government.

It is well known to you that under our constitution and our constitutional system there are three branches of government and I am not including the crown as such. There is the legislative branch; there is the judicial branch, and there is the executive branch. It was our design to see that our bill of rights affected the whole ambit of all parts of government, as I have outlined them. If you look at the bill, you will see this is done.

Clause 2 affects the legislature, and it is a declaration by the legislature of the rights and freedoms that exist in Canada.

Clause 3 is an enactment by the legislature by way of a direction to the judiciary as to how the judiciary will interpret all status of the legislature heretofore or hereinafter to be enacted, as well as the orders and regulations made under those statutes.

Clause 4 affects the executive. This is a directive to the Minister of Justice, as a member of the executive, having the primary responsibility in this field. It is a specific directive to him, imposing upon him certain obligations with respect to ensuring that all subsequent bills and regulations decided upon shall be, in so far as they lie within the power of the minister to do it, in conformity with the bill of rights. When I say "in so far as they lie within the power of the minister to do it," I mean in so far as it is within his power, preserving still the principle he is not a dictator over parliament, and that his powers are exercised subject to the overriding rights of parliament, and control by parliament over the executive. The scheme is as comprehensive as we can make it, not only with respect to the field or rights, but with respect to all branches and parts of the government within the federal field of jurisdiction. Then, with respect to the question whether or not it is better to have the bill, as it is now—a statute, not related specifically to the B.N.A. Act, or whether it should be by way of a constitutional amendment, meaning an amendment to the British North America Act, I do not think I should say much more than has been said about the problem of an amendment covering both provincial and federal fields of jurisdiction. The difficulties in that area have been discussed. Some witnesses have said that it would be desirable, but I agree with those who have also said that however desirable it might be, it does not seem to be possible at the present time; so, let us get on with the bill of rights we can have.

I would like to deal with some of the arguments put forward as to the proposal to amend the British North America Act, whether a comprehensive amendment, or confined to section 91—to those within federal jurisdiction. Those who put forward the view that it should be by way of a British North America Act amendment do so under the impression that the bill of rights would become entrenched and beyond the reach of any legislative authority in parliament.

May I comment first on that, by saying the law is not entrenched, because it happens to be contained within the British North America Act. There are a number of laws have been passed by provincial legislatures and by the parliament of Canada which, althought perhaps not always expressed as amendments to the British North America Act, have nevertheless changed the law as contained in the British North America Act. So that it is on that basis, first, that I say that merely putting something in the British North America Act does not mean that it is entrenched, in the sense that it is beyond the reach of parliament.

This facilitates it and guarantees it, and to that extent it is an improvement.

The CHAIRMAN: It gives public debate, and I am sure that the opposition believe that debate is useful in the parliament of Canada.

Mr. MARTIN (*Essex East*): We do, but we have not been able to convince others.

Mr. STEWART: We have run into six volumes of Hansard.

Mr. MARTIN (*Essex East*): Only six?

I want Mr. Mundell to know I agree with him on that point.

Mr. BADANAI: Mr. Chairman, I wonder if you would allow me to ask questions in regard to clause 4? I just happened to be out of the room while this particular clause was being discussed.

I would like to ask Professor Mundell if he has any idea about the establishment or appointment of a committee similar to the one which functions now in New Zealand? This is a petition committee to which a citizen may appeal in respect of any wrong that he feels has been done to him in respect to his freedom or his rights. This committee functions independently of the government, but also there is the power to direct either the courts or parliament to right whatever wrong might have been imposed? I posed the same question to one of the previous witnesses, namely, Professor Wright, and he replied:

> I submit that that is a very important piece of machinery for the enforcement of civil rights and political and human rights and freedoms.

I wonder if Mr. Mundell has any opinion to express on such a procedure?

Mr. MUNDELL: I could certainly see no objection to a petitions commission, or something of that sort. I believe that the ordinary citizen gets pretty adequate representation through his own member.

Mr. MARTIN (*Essex East*): Thank you.

Mr. STEWART: That does not apply to you.

Mr. MUNDELL: To that extent it might not be desirable; but I would be more dubious about giving a board powers to direct corrections of rights and wrongs. Would it be a legislative board that could make new law on it? I would like to see the nature of its power before expressing an opinion.

Mr. BADANAI: Would you then suggest it should be a parliamentary committee?

Mr. MUNDELL: It would depend partly on what the function was. If it had not been given any power beyond reporting on the thing, or to bring it before the house, I think a parliamentary committee might serve very well. Actually, it is now open to the citizen to petition any time.

Mr. BADANAI: Would you agree, then, that under the bill, in its present form, it gives the Minister of Justice that power? Would you agree perhaps a parliamentary committee would be more effective to guarantee the rights than the Minister of Justice?

Mr. MUNDELL: At the moment the provision is limited to the minister examining acts and regulations. I suppose there is nothing to prevent any citizen writing or petitioning the Minister of Justice now. I do not know whether it would make very much difference whether it is the Minister of Justice or a parliamentary committee.

Mr. BADANAI: Here I have a copy of a universal declaration of human rights approved by the world peace foundation, with which you are no doubt familiar. Article 10 reads as follows:

> Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.

It seems to me that article 10 would envisage such a procedure, that of a board being set up to which a citizen might appeal.

Mr. MUNDELL: I would have thought it would be much wider than that, and aiming at the establishment of proper judicial machinery, though I have not read the article in a long time. I do not know whether it goes to this particular problem.

Mr. MARTIN (*Essex East*): Have you examined the English act that has relevancy to this section, the Inquiries and Tribunals Act?

Mr. MUNDELL: I think that is really directed at a different objective.

Mr. MARTIN (*Essex East*): Administrative decisions?

Mr. MUNDELL: It is really aimed at administrative decisions, and the supervision of administrative boards and tribunals, to ensure they have a fair and proper procedure, one which is adapted to their functions and which is fair to the subject.

Mr. MARTIN (*Essex East*): The Toronto bar had a submission on this article 4. They would retain the word "assure" in place of the word "ascertain" in the section. But it seems to me that section 4, as presently drawn, is really meaningless. Would you not say that the Minister of Justice now by implication of his office has the responsibilities which are sought now to be imposed upon him by statute.

Mr. MUNDELL: I suppose that formalizes the principle.

Mr. MARTIN (*Essex East*): Yes, and clause 4 really has no teeth in it. All he is going to do is to ascertain whether or not these things exist, and that is the end of it. There is no sanction, and there is nothing.

Mr. MUNDELL: This is very much the question which arose out of Mr. Badanai's suggestion. What powers could you give the minister if you were going to try to make it an effective section? He could not block a bill in the house. It seems to me that the section has a limited purpose, namely, that there should be a review made, and that it would rest then on the conscience of the minister.

Mr. BROWNE (*Vancouver-Kingsway*): Would you not think from this clause that if the minister is instructed to ascertain something, and if he found something wrong, in that case it would be his responsibility to bring it to the attention of the house?

Mr. MUNDELL: It would rest on the conscience of the minister, whatever he should do. The bill is based on the principle that the Minister of Justice would have a conscience.

Mr. MARTIN (*Essex East*): If it were a committee, as Mr. Badanai suggested, and he had to bring something to the attention of the committee, there would be publicity about the matter, and public attention would be directed to it, and that would certainly promote action to be taken.

Mr. MUNDELL: I see no objection to that kind of committee at all.

The CHAIRMAN: But you would not want to incorporate the power that has been given here—you would not want to set up the Minister of Justice or a parliamentary committee with the power to prevent bills being brought before the house, just upon their opinions?

Mr. MUNDELL: No.

Mr. MARTIN (*Essex East*): If you look at the clause you will see that it says:

> The minister of Justice shall, in accordance with such regulations as may be prescribed by the governor in council, examine every proposed regulation submitted in draft form to the clerk of the privy council pursuant to the Regulations Act and every bill . . .

I can see a difficulty about the draft form of matters which go to the cabinet. It says,

> "Every bill introduced in the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part."

Surely if the Minister of Justice says that a bill, or a form, is contrary to this act, then he should have imposed upon him the obligation to take action, if this section is going to mean anything, and if it is not, then this section should not be there.

Mr. MUNDELL: It would mean an obligation to take action by just reporting or doing something.

Mr. MARTIN (*Essex East*): First of all, he would have to report to his colleagues in the government that this particular bill or measure was not consistent with the bill of rights, and that the government should bring in legislation correcting that situation; but if the government does not intend to do that, then he should bring it to the attention of the house or of this committee so that some private member might introduce a bill along those lines.

Mr. MUNDELL: Any bill produced would be public.

Mr. MARTIN (*Essex East*): No. He has to ascertain whether or not every bill is inconsistent, and it may not be apparent, because members of parliament are preoccupied with many things, and they might not see any inconsistencies.

Mr. MUNDELL: He could always be asked as to what he has found.

Mr. BROWNE (*Vancouver-Kingsway*): It seems to me that if he is instructed to ascertain about a bill upon its introduction, then he is obligated to bring it to the attention of the house if there is something inconsistent.

Mr. MARTIN (*Essex East*): There is no requirement about it, so the only way we could make him do so is by saying that he must.

The CHAIRMAN: This provides for regulations to be prescribed, and I think the minister explained to us some of the things that he had in mind as to procedure.

Mr. MARTIN (*Essex East*): We had this same sort of situation some years ago in regard to reports from departments. There was no statuatory obligation to file a report—a departmental report—within a prescribed period. And some departments did not table any reports. And the same argument came up. The result was the act was changed requiring, for example, the Department of External Affairs, to file a departmental report within ten days of the beginning of the parliamentary session.

The answer was that it would be done by the minister, but it was not done. Therefore the act was changed, because it was felt to be desirable, and the Department of External Affairs had to make a report. It was made obligatory upon them. I am simply saying the same principle ought to apply to this, if this is going to have any teeth in it.

Mr. MUNDELL: Well, I would agree you could add a requirement to report but, in the case of regulations, I do not know to whom—the cabinet, I suppose, or counsel; and, in the other case, to report to the house. But the minister, presumably, can always be asked, in the house, if he has reviewed the bill.

Mr. DESCHATELETS: Personally, I would think this clause does not add anything to what we have already. If this bill becomes law, is it not a fact that it is the duty of any minister to prevent any bill which would come before the house which is in contravention with any existing law, or any other existing regulation.

The CHAIRMAN: You mean to prevent it?

Mr. DESCHATELETS: Well, today, we have not any bill of rights. I was saying that I think it is the obligation of any minister not to bring any bill, which is in contravention of the provisions of this bill, before the house.

The CHAIRMAN: He is not bringing it. It may be a private member that brings the bill before the house.

Mr. MUNDELL: I think it would be his duty under this section to form an opinion, but I do not think that opinion should be binding upon parliament.

Mr. DESCHATELETS: I am refering to a moral obligation.

Mr. MARTIN (*Essex East*): You will remember originally, in the bill introduced in 1959, the words were "in order to ensure", and now they have the word "ascertain" which, I think, weakens it to the point where this section is meaningless. It does not change the situation now. As Mr. Mundell said the minister now would be implicit in his responsibilities doing these things and this section does not change the picture at all. It seems to me there is great merit in the proposal made by Mr. Badanai.

The CHAIRMAN: May I make this observation: I do not know how the Minister of Justice could ensure something—unless he has an opinion from the Supreme Court of Canada.

Mr. MARTIN (*Essex East*): I can see two ways. One way is by the publicity that would ensue from the procedure suggested by Mr. Badanai. If that were brought to the attention of a committee, as he states, it would become public knowledge; it would create a sanction, and that sanction would be reflected in the government itself, or on the part of some members of parliament. I am sure if Mr. Browne saw that, he would introduce a bill at once, to see that the inconsistency was corrected. And, if that proposal is accepted, why can we not do something like this:

> The Minister of Justice shall, in accordance with such regulations as may be prescribed by the governor in council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the Regulations Act and every bill introduced in the House of Commons, and shall take steps to see that such inconsistencies are removed.

Mr. MUNDELL: I would certainly agree with you that this section does not really do anything.

Mr. MARTIN (*Essex East*): The government is often called upon, by statute, to take steps.

Mr. MUNDELL: I do not know what else you could do actually.

Mr. BROWNE (*Vancouver-Kingsway*): May I suggest that if he is not required under this clause, the bringing of it to the House of Commons would be sufficient.

Mr. MARTIN (*Essex East*): He does not have to bring it to the attention of the house.

Mr. BROWNE (*Vancouver-Kingsway*): I am suggesting perhaps that may be the case. You can notice the difficulty there. In many instances, under the regulations that are submitted in draft form, he would have to bring it to the attention of someone before they became operative; in the case of a bill which is introduced in the house, that is a different matter. He should be required to bring that to the attention of the house; but I would presume that in the case of regulations, and so on, they would be amended before they were passed, after the minister had examined them.

Mr. MARTIN (*Essex East*): I agree with that—on a draft form. I have already said that is a matter for cabinet. But once the regulation becomes a public document, as an act, then there should be periphrastic direction put

on it, and I would suggest that when we come to the amendments we should give consideration to that.

The CHAIRMAN: Have we concluded, gentlemen?

Mr. MARTIN (*Essex East*): I have some more questions. The Minister of Justice said yesterday, in his comprehensive statement, that it was wrong to suggest that only amendments to the British North America Act were part of the constitution. He said that the Senate and House of Commons Act, the Supreme Court Act, the Representation Act, the Elections Act, the Governor General's Act, the Judges Act, the Royal Style and Titles Act, and the Succession to the Throne Act were part of the constitution of Canada. I suggest that was a specious observation.

Mr. MUNDELL: I think this is a very old argument. In fact, in England they have these documents in their constitution. In the United States they have the Declaration of Independence and other documents, and the constitutional law resolves around them. We are in the position, in Canada, of having both usages. When we talk of Canadian constitution, generally we think of the decisions under sections 91 and 92 of the British North America Act, the administration of power sections. The British North America Act, in our constitution, is used in some context to refer to all the basic documents and conventions, even to the constitution.

In section 91(1) it would seem to be the idea that constitution there refers to the other provisions of the British North America Act establishing the Senate and the House of Commons, and that sort of thing.

I think Mr. Justice Holmes said that the word was neither crystal nor a portmanteau. But it is a word that is used. This goes from one to the other; that is about the size of it.

The CHAIRMAN: You do not agree with Mr. Martin that it is a specious argument?

Mr. MUNDELL: Depending on the context. I do not know. I did not hear the context.

Mr. MARTIN (*Essex East*): Any act that has to do with the parliament of Canada, that has to do with the structure of government is, in one sense, part of the constitution. It is specious to say that, because that is the case, the obligations imposed on the legislatures and on parliament in sections 91 and 92, and the British North America Act itself as a whole, are a constitution. I say that in that sense the Minister of Justice was specious.

That is not a personal attack on the minister; I am referring to his argument. But I think it is—I tried to find out during the dinner hour, and could not; but I think perhaps Mr. Mundell could tell me: is there not some discussion on this particular point in Kennedy's book on the constitution of Canada? He makes the distinction between the Supreme Court Act, and so on, and the British North America Act.

Mr. MUNDELL: I do not recall it; I am sorry.

Mr. MARTIN (*Essex East*): I am sure there is.

Mr. MUNDELL: But I think you will find widely varying usage.

Mr. MARTIN (*Essex East*): You said you are not in favour of embedding the bill of rights in the constitution, and your point of view is something like that of Professor Lang the other day. But would there be no way of giving to the bill of rights, in your judgment, a form that would distinguish it somewhat from an ordinary act by some "notwithstanding" clause, or something of that sort?

Mr. MUNDELL: You mean, to distinguish it in appearance, or to distinguish it in legal operation?

For instance, we heard over the radio this morning that in a current case the counsel in that case was anxious that this bill should be passed so that he might provide a defence for that case based upon the bill of rights presently before the committee. Are we not going to have a situation result where there will be all sorts of confusion, all sorts of litigation, and all sorts of uncertainty? These are the dangers that will flow from this, and I can only hope the minister has considered all that; and if he has, and says so, then it seems to me our task will be to do what he suggests, and that is to go ahead. But, I do not think we should proceed without knowing, and bearing in mind, all of these considerations.

The CHAIRMAN: Gentlemen, I am going to ask the minister if he would care to make any further comment, and at the conclusion of his statement, I am going to ask the committee if it will support me in calling for questioning on clause 4 of the bill.

Mr. FULTON: Mr. Chairman, in response to Mr. Martin's invitation, I can only repeat what I said before; we did consider very carefully this whole question and when we came, for the reasons I gave, to the conclusion that we should proceed with the bill of rights in the federal field alone, we directed our own attention and instructed the draftsmen to direct their attention to producing a statute which would not constitute an invasion of provincial rights. I, as well as my officials, have studied carefully the opinions expressed by the witnesses who have appeared here. I have indicated that, in my view, the fears are exaggerated, and I also have indicated that we will consider carefully all suggestions of a concrete form that may be made in order to make it clear, or clearer, if that can be done, that this bill is confined to the federal field of jurisdiction alone.

If you will remember, we had a discussion in connection with making that clear in the preamble, or by a possible amendment to clause 2. Those matters are still before the committee, and they are before the committee, I hope, in the light of my indication that we will be glad to cooperate with the committee in any concrete suggestion that can be devised which we believe would have the result of making that clearer, although we think it is clear in the bill as it now stands.

The CHAIRMAN: Now gentlemen, when we adjourned on Monday, the minister was being questioned on clause 4 of the bill, and I am not sure whether or not we concluded our question on that clause.

Mr. MARTIN (*Essex East*): No, we did not. We were dealing with clause 3, and then we were going to go on to clause 4.

The CHAIRMAN: No, we were on clause 4.

Mr. FULTON: I have been asked a number of questions about this matter of the national human rights commission.

Mr. MARTIN (*Essex East*): Yes, Mr. Badanai's proposal.

Mr. FULTON: And matters such as that. I have dealt with quite a number of questions on clause 4.

Mr. BROWNE (*Vancouver-Kingsway*): In connection with clause 4, where it is set out that the minister shall peruse the legislation in order to ascertain whether any of the provisions are inconsistent with the purposes of this bill, would the minister feel it is an obligation on his part to report to the House of Commons if there is an inconsistency in the bill, or what action would he feel obligated to take, having ascertained an inconsistency? Would he file it away and forget about it?

Mr. FULTON: I think I indicated on a previous occasion that I regarded it as an obligation on the minister to report to the House of Commons. I said

we had not any firm or fixed views as to whether that report should be made orally—at the time, perhaps, that second reading was moved, or whether it should be done by a written report filed as soon as possible after the bill had been given first reading. Of course, we do not see private members' bills until they are given first reading. However, as I said, I regard it as an obligation to report to the house, whether it be a written or oral report, and the exact manner and time it should be done are matters on which we have not any firm views.

Mr. BROWNE (*Vancouver-Kingsway*): Do you feel, perhaps, that a future minister, who may not be of the same view, would be obligated by this wording to report, or whether it should not say "to ascertain, and to report to the House of Commons"?

Mr. FULTON: My thought there is that the method would be worked out in the regulations. As you know, clause 4 says:

> The Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the Regulations Act and every bill introduced in the House of Commons, in order to ascertain whether any of the provisions thereof are inconsistent—

and so on. I think the procedure would be worked out in the regulations. It must be worked out in the regulations, which would cover not only the procedures for examination, but also the procedures for reporting to the house. That regulation would be tabled and brought to the knowledge of the house, and no subsequent minister could change the regulation without that becoming known, and an opportunity for discussion given.

Mr. BADANAI: Are we discussing clause 4?

The CHAIRMAN: Yes.

Mr. BADANAI: I would like to move an amendment to this clause, by adding thereto:

> (*a*) The Minister of Justice shall report any inconsistency to a standing committee on Human Rights and Fundamental Freedoms.
>
> (*b*) All petitions to the House of Commons under Standing Order 70 which purport to be based on the Canadian Bill of Rights shall be classified and condensed by the standing committee on Human Rights and Fundamental Freedoms in such a form and manner as shall appear to it best suited to convey to the house all requisite information respecting their contents. The committee shall have power to report the same from time to time to the house, to report its opinions and observations thereon to the house.
>
> The committee may make no recommendation, or recommend that the petition
>
> (*a*) be rejected;
>
> (*b*) be referred to the government for
> (i) consideration
> (ii) favourable consideration
> (iii) most favourable consideration
>
> (*c*) be granted in whole or in part
>
> Or the committee may recommend that the petitioner(*s*) take action in the courts.

Will you second that motion, Mr. Deschatelets?

Mr. DESCHATELETS: I will second the motion.

The CHAIRMAN: It has been seconded by Mr. Deschatelets.

Would you mind sending that up to the table?

Mr. MARTIN (*Essex East*): Mr. Chairman, on a question of procedure; although this is a very important amendment, I did not know we were going to deal with amendments right at this time, or put them now. I thought we were having a general discussion at this time. We have quite a number of amendments we wish to have considered.

The CHAIRMAN: I think you are quite right, Mr. Martin.

At the inception, Mr. Badanai, I think we decided we would go over the bill clause by clause and question the minister without making any attempt to pass any of the clauses, which would mean, of course, not dealing with any amendments. If it is agreeable to you, Mr. Badanai, would you let that motion stand over until later on, when we come to the consideration of clause 4, after having passed the previous clauses, or having dealt with them.

Mr. MARTIN (*Essex East*): I think, possibly, I have been somewhat responsible for this. What I meant, Mr. Badanai, is that perhaps you had some questions to put to the minister in connection with the proposals you made.

Mr. BADANAI: Well, I questioned him in that connection at a previous meeting.

The CHAIRMAN: You are quite free to ask any questions to found the object of your anticipated amendment.

Mr. BADANAI: I have no further questions on clause 4.

Mr. FULTON: I do not want to depart from the committee's decision but, since the matter has been placed on the record, and certainly will be one for me to consider, I would like to make the preliminary comment that it does seem to me that the amendment contains a difficulty. This is dealing with rules and procedure of the House of Commons, and I am not certain that a statute apart from the House of Commons Act, is the proper way to do that. I would think there would be supplementary action that the house itself would consider taking by way of an amendment to the rules. However, I make that only as a preliminary comment at this stage.

I would like to come back to a point I made earlier, that it seems to me it is desirable, in the end, to let us have some experience on this. I have indicated in the clearest manner possible my view, which is the government's view, of what would be the responsibilities of the Minister of Justice under this section and how he should discharge those responsibilities. We will have to work out procedures. There will be heavy responsibilities, especially in the field of regulations. I feel the best way of dealing with that is to let us accumulate some experience. We cannot be working in secret on what we are doing. I think the sounder way of proceeding is to let us proceed by way of accumulating experience, and if it is found there is a necessity or the desirability of statutory amendment or enactment we could deal with the problem at that time.

The CHAIRMAN: Shall we go on, gentlemen, now to clause 5?

Mr. MARTIN (*Essex East*): I have some questions on clause 4.

Mr. BATTEN: Just one question, please.

After the minister has ascertained whether or not a given bill is a contravention of the bill of rights, what happens from there on?

Mr. FULTON: As I have indicated previously, if it is a government bill he reports that matter to his colleagues in cabinet, and it is for cabinet then to make its decision. If it is a private member's bill the minister would not

see the bill until it was given first reading in the house, and it would be his responsibility to give that to his officers to examine that bill at once. The minister's report would be made, in the first instance, to the House of Commons.

Mr. BATTEN: I want to go back to the discussion we had the other day. It seems to me there is a weakness in this section of the bill of rights if the government, particularly, were permitted to bring in a bill which is clearly a contravention of the bill of rights. I agree, if a private member wants to bring in a bill and that contravenes it, that is his responsibility.

Mr. FULTON: Yes.

Mr. BATTEN: I think that he should be told it does contravene the bill of rights. But the minister having ascertained there is a contravention, I would think that the bill of rights would be made stronger and would have greater effect if the proposed bill to be brought in to the House of Commons were not brought in until it was revised in such a way that it would be in agreement with the bill of rights.

Mr. FULTON: That would be the responsibility of the minister and of the government, to say, after having received the report of the Minister of Justice, as to whether or not the bill is in accord with the bill of rights. If at that time, the time the cabinet receives the minister's report, it feels that notwithstanding the indication that this bill is contrary to the bill of rights, nevertheless it should be proceeded with, because the interest to be served is so important that it warrants proceeding with it, then cabinet could only do that, as I see it, by inserting a clause which is contemplated in clause 3 of this bill, or the words: "notwithstanding the bill of rights the Senate and House of Commons enacts as follows:". That would then make it clear this bill is being submitted to parliament for its approval, notwithstanding the bill of rights. The whole issue would be out in the open for parliament to assess.

Mr. BATTEN: Agreed; but that does not add any strength or "teeth" to the bill of rights if, concerning every act you are going to bring in which contravenes the bill of rights, you are going to get over the hurdle by using the word "notwithstanding".

Mr. FULTON: You cannot get over the hurdle unless parliament agrees it is appropriate to legislate in this way, notwithstanding the bill of rights. But the strength of the two provisions, 3 and 4, taken together, is that parliament cannot be left in the dark and no one can try to deceive or mislead parliament. It will be out in the open and clear for all the country to understand that what parliament is being asked to do it is being asked to do notwithstanding the bill of rights.

My understanding of the constitutional principle involved here, however, is that no parliament can bind a subsequent parliament. Therefore, we did not want to pretend that our bill of rights would prevent a subsequent parliament from overriding it if it decided to do so. But what our bill of rights does do is to ensure that no subsequent parliament can override the bill of rights without that fact being clearly in its mind and out in the open, as it were, so that it cannot be done inadvertently or by concealment, either from parliament or the country.

Mr. BATTEN: I think, Mr. Chairman, that this section of the bill, clause 4, could be strengthened somewhat because I do not think that giving the minister the authority to ascertain whether or not there is any contravention between the bill of rights and any proposed bill in the House of Commons is sufficient. I am not a lawyer and, maybe, I do not see the thing in the same way as the minister does. In the meantime, I do not know how this

could be strengthened in proper words; but it does seem to me to be a little bit weak. The minister ascertains there is some contravention and then stops there, according to this clause.

Mr. FULTON: I do not know what power you could give the minister beyond this power which implies, as I say, the obligation of reporting his information. I do not see what power you could give him beyond that, unless you make him a dictator and sole arbiter of what there should and should not be in all bills introduced.

Mr. BATTEN: I think the section could be strengthened if he were instructed—

Mr. FULTON: The principle upon which we have founded this section is to impose an obligation on the Minister of Justice to examine specifically the question of whether or not statutes or regulations are contrary to the bill of rights, which implies the obligation to report his opinion to parliament or the other appropriate authority, and then leave to parliament to decide what action it should take in light of that information. Otherwise you make the minister a dictator and put him in a position, for instance, of saying that a private member could not introduce a bill. I do not think parliament would or should accept that.

Mr. BATTEN: But do you think that, having ascertained whether or not there is any contravention, this section should also instruct the minister to report to parliament? I know that is implied, but it is not written down. To me all this section does is to ask the minister to ascertain whether or not there is any contravention; and there, according to this section, his duty is finished.

Mr. FULTON: Well, you see, your suggestion—that there be an insertion in the clause, a provision requiring the minister to report to the House of Commons—does not, as I see it, cover the question of regulations, which is a very important field. It would cover the question of statutes because there the House of Commons can immediately question the minister. But in the case of regulations, all regulations which the minister is obliged by this bill to examine, are also tabled in the House of Commons, under the provisions of the Regulations Act, which also contains provisions for members—

Mr. MARTIN: In draft form?

Mr. FULTON: Not in draft form, but after they are finally passed. The Regulations Act contains provisions for members to raise a debate on these regulations, if they object to them. After that time, if any members felt the regulations, notwithstanding the scrutiny previously given by the Minister of Justice, did contravene the bill of rights, then they could raise it in debate, and the Minister of Justice could then be questioned in the House of Commons as to what his opinion is on these regulations with respect to this question of whether or not they contravene the bill of rights. So there are procedures now for covering the whole field, but it is difficult to reduce them into the compass of one clause in the bill of rights. This clause, however, is drawn bearing in mind the machinery which now exists in respect of the regulations.

Mr. DESCHATELETS: Mr. Minister, along the lines raised by my friend Mr. Batten, there is, at page 112 of the proceedings, a suggestion by the Canadian bar association on this particular point. I quote:

> This section might be more useful if it were to require the Minister of Justice to report to parliament those bills and regulations which might be considered to abridge the enumerated rights and freedoms.

Are the explanations the minister already has given applicable to this, or would he care to comment on this suggestion.

Mr. FULTON: I think my comments already cover the points made in that passage. I have indicated that in my view there is implicit in the clause the

obligation to report to parliament. I have indicated that the manner, both of examination and report, would be worked out and covered in the regulations which themselves would be tabled and thus known to parliament, so that the procedures would be known to parliament.

Mr. DESCHATELETS: On this point also at page 29, of the evidence, Professor Scott had a suggestion to make. I quote:

> I would like to see, in the Department of Justice, a special division on human rights, or a special section in the department itself; that is to say, personnel employed by the department for the specific purpose of keeping an observant eye on not only the legislation coming through parliament and the regulations issued under that legislation, but indeed on the future goings-on in the country to see whether they could not initiate procedures that might improve the general observance of human rights in Canada.

Would the minister say a few words on this.

Mr. FULTON: The Department of Justice has certain responsibilities now, as you know, in respect of the drafting of government bills and in respect of the drafting of any regulations and the further supervision of all regulations. This imposes upon us in any event the obligation of ensuring that they are in conformity with the existing statutes and existing constitutional provisions. In addition, now, we will have the function of ensuring they all are in conformity with the bill of rights. To that extent it is not a change in our function; it is an extension of the basic application of our function. It may be that as this function develops, and as we have experience with it, that we will find we need to enlarge the personnel of the department. I think that is a distinct possibility, but we do not know at the moment how much of an enlargement of our physical responsibilities there will be, although as I say it indicates the particular application of what we must do. If we find we do need more personnel, the necessary measures can be put in hand. It might be that the extra personnel could be formed into the beginning of the sort of body Professor Scott has in mind, but we are not in a position at the moment to tell this committee or the house how many extra people we would need or whether we would need any extra people. I do not think it would be wise at the moment to commit ourselves to the establishment of a special bureau. As you know, once you provide for something like this you have to staff it and it grows. We have had strong views, and others have expressed strong views, about the tendency towards increase in the civil service. So I do not think we want to commit ourselves at this time to a special bureau, but it may become necessary.

Mr. AIKEN: I would like to repeat what I previously said. I would not like to see a large committee of any kind set up on this section such as was suggested by several witnesses. The only thing I would like to say about this section is—and it concerns the word "ascertain"—I think we should put forward as strong a bill as possible, and I wonder if there is not some additional word that might make the responsibility of the Minister of Justice just a little more definite. True enough, one minister may accept his responsibilities and another may not. I think we are establishing a bill of rights, I hope, for a long time, certainly until there is an amendment to the constitution. I would like to think that in the provinces, if this were adopted, perhaps the attorneys general would have the same responsibility. There again, if their responsibility was only to ascertain, if these words were used, they might not take their duties too seriously, and the regulations might not provide the same type of responsibility that there is now. I have a feeling somewhat of unease about this particular clause and the particular wording. I feel we would be lax in

our duties if we did not try to make something a little more definite in respect of the responsibilities of the Minister of Justice in connection with any bills or regulations which he feels are contrary to the provisions of the bill of rights or on which he is requested to report by the house, or on which he is requested to give an opinion. It may be that this is sufficiently strong, but I wonder if the minister would consider again, before we pass this clause whether there might be some improvement in the wording.

Mr. FULTON: Mr. Aiken, I appreciate your concern because it is my view and the view of the government that where you can be specific you should be specific. I can assure you, however, that it is very difficult to be specific about this matter in a statute. Take, for instance, the field of regulations. We supervise them now and scrutinize them in draft form in our department, and if we find any inconsistency with other statutes—and from now on with the bill of rights —we take it up with the authorities sponsoring the regulations. It would be my very firm expectation that if we showed any inconsistency with the bill of rights in any regulation that that inconsistency would have to be removed before the regulation had the approval of the governor in council. So when the regulation comes out any potential infraction has been removed, at least in our view.

If you put in a provision to the effect that the Minister of Justice shall report all infractions of the bill of rights in regulations, that is a self-defeating requirement, because there would be no such infraction in the regulation itself. Well then, would we have to be reporting discrepancies or inconsistencies that were in draft form? That would seem to be requesting us to give ourselves a pat on the back by saying that we have had the inconsistencies, have taken them out, and the regulation is now consistent. It is very difficult and I think somewhat dangerous to put specific requirements on this matter in statutory form; but we appreciate what you have said and will have a look at it to see if we can strengthen it, perhaps not by changing the word "ascertain", but by some elaboration of the obligation to report. We will have a look at it and see if we can put it in in such a way that it makes statutory sense, but we would not care to guarantee that.

Mr. AIKEN: There is the possibility of giving an opinion upon request in the house.

Mr. FULTON: Yes.

Mr. AIKEN: If a situation arose it would obligate the Minister of Justice to say: "I looked into this and we are satisfied that it does not contravene the bill of rights, or that it does"; but this is just a suggestion.

Mr. BATTEN: I think the word "ascertain" here is a good one. I do not know whether I would or would not suggest that the word "ascertain" be changed; but I think something else should be added to it; and whether or not the word "insure" is a good word, is a question. It is a pretty strong word. But if we are going to continue with the word "ascertain", I think some additions to this clause might remove some of the fears which we have for it.

Mr. FULTON: We will have a look at the suggestions and comments made and see if we can devise anything that could improve the Statutory wording that we already have.

Mr. MARTIN (*Essex East*): I share the concern of Mr. Batten and Mr. Aiken on this subject, that one of the weaknesses of the bill throughout is that it has no sanctions whatsoever. Here is an opportunity to have sanctions. Admittedly, it is not easy, but I would suggest that it is possible.

I believe the suggestion put forward by Mr. Badanai, that it is possible for some complexities to arise in so far as the orders of the house are concerned, is one which should be carefully looked at by the law officers of the crown, and possibly it could be modified in some detail.

But I think it is a very desirable suggestion. I hope that, when the minister says he will examine this clause, he will examine that proposal, because it has been possible to embark on this proposal in Great Britain, in Denmark, and in New Zealand. It should not be any less possible for us.

I recognize that there are difficulties in this, particularly in so far as draft regulations are concerned. I do not think there is any difficulty in regard to regulations; but in so far as draft regulations go, there would be, in so far as they are intended ultimately to empower the governor in council; and I do recognize the difficulty. But what I have to say will not apply to those regulations in draft form.

In any event I would presume that the regulations in final form, before reaching the Governor in Council, are at least theoretically examined by the minister. I do not mean by the minister personally, but by his officers in one form or another.

But if those regulations are tabled in the House of Commons pursuant to the requirements under our procedures, surely the Minister of Justice—again I do not mean the minister personally—but the Minister of Justice should examine them to see whether or not before those orders are tabled there are any inconsistencies in them vis a vis those in the bill of rights.

Mr. FULTON: May I just indicate that I agree with you so far as you have gone.

Mr. MARTIN (*Essex East*): Yes. But I think that clause 4 is really a meaningless clause. It does not change what is now the fact. The minister has indicated in what he has said with regard to regulations that this is now the practice. It must be implicit in the authority given to the Minister of Justice that he would examine every proposed regulation submitted in draft form to the clerk of the privy council, pursuant to the Regulations Act. It must be assumed that that is an obligation which he now has.

With regard to bills, I can see a dilemma. The minister does not want, nor do we, to be placed in a position, vis a vis, his colleagues where he would seem to have a sort of veto power over them in respect of legislation which is suggested by the legislative committee, if that body still exists in council. That body did exist when we were there. We used to have a committee of four or five members, under the Minister of Justice, who examined all legislation prior to discussion in the cabinet as a whole. While I recognize the difficulty, I do feel that there should be an obligation on the part of the Minister of Justice, not to veto, but to point out in cabinet, or in whatever instrument there is, that a particular bill proposed by a particular minister, is contrary to the bill of rights. I would think that anything short of that would be incomprehensible, and I would think that that now is the practice, and has always been the practice.

Mr. FULTON: You are quite right.

Mr. MARTIN (*Essex East*): I think the Minister of Justice would suggest to his colleagues that a specific bill could not be put forward in its present form. It would be a matter for the cabinet to decide. The Minister of Justice would not decide over his colleagues. It would be a matter for the cabinet to decide whether or not a specific bill should be put forward, because it violates, up to now, the judicial principles of justice, and if this bill is passed, the bill of rights. I would think it is clear that once a government bill has gone to the House of Commons, or to parliament, one would not expect the Minister of Justice then to get up and say that the bill presented, let us say by the Minister of National Revenue, is contrary to the principles of the bill of human rights; no one would suggest that. I would presume that any

comment that the Minister of Justice would make would be made prior to the introduction of the bill.

However, in regard to private bills, surely that is a different matter. There should be no reluctance on the part of the minister in this regard and, as a matter of fact, that is what is done now with regard to a lot of matters. If a private bill is introduced, let us say, in respect of a matter of health and welfare, surely there is an obligation on the part of the Minister of National Health and Welfare to comment in regard to the acceptance of the bill to the cabinet, or to his department. I would think that in this bill there ought to be an obligation imposed on the minister, if the bill is introduced by a private member, to point out that in the minister's opinion it is contrary to the bill of rights. That should be pointed out.

If these suggestions are not acceptable, I do think the least that could be done would be to modify the word "ascertain". I do not fully agree with Mr. Batten on this—if I understood him correctly. I do think that the word "ensure" is stronger: it indicates that there is some element of sanction contemplated.

Last night in the house I was looking at the Energy Act, the national energy board—and I remember this being discussed last session—where the question of burden of proof has been reversed. In the case of a company that makes any discrimination in tolls against any person, this bill provides that the burden of proof that the discrimination is not unjust lies, not with the person making the accusation, but with the company. We took the position, when this was discussed last year, that this was a switch in the general presumption of innocence. I just mention that act.

Under this new bill, I would presume that if there is anything in the point I have made in regard to that clause dealing with presumption of innocence, the Minister of Justice would have taken action before the bill came into the house. And if the bill came into the house inadvertently, as it might well—because the Minister of Justice has a great many things to do—then I would presume that he would take steps, in conjunction with his colleagues, to have it changed.

I would think the suggestion that Mr. Aiken has made, of opinion on request, is really very anemic; it does not really add anything. You have that now, surely: any member of parliament can get up and ask the Minister of Justice for an opinion as to whether or not a particular bill will violate this bill of rights. That is something that exists now.

Mr. AIKEN: I question that. If a bill is going through the house, and the Minister of Justice does not happen to be there, let us say—

Mr. MARTIN (*Essex East*): He might not be there; but you could say, "In the absence of the minister, I ask his parliamentary secretary, or the acting minister if he will deal with this." But I am really agreeing with your basic argument, and I am trying to strengthen it by having you reject one of your weaker, subordinate arguments.

I hope the minister will take a look at this section, in the light of this discussion.

Mr. FULTON: Yes, Mr. Chairman, I certainly will. It seems to me that the problem mostly inherent in these doubts and concerns that have been expressed is the problem of reporting, ensuring there will be a report available from the Minister of Justice. I think that if you examine our legislative system, you will agree it is virtually impossible to give the minister an initial control over all legislation. Mr. Martin has outlined the system of most government legislation, and, as I have indicated, I agree with him in so far

as he goes. On an earlier occasion, I think when Professor Lower was here, I endeavoured to deal with that question, and my summary was along the same lines.

But look for a moment at the ways in which legislation can be introduced. First let me mention private members' bills, which may be both public and private; private members' bills dealing with an issue affecting some public interests; private members' bills dealing with matters affecting only private interests.

The minister does not see them until they are in the house, and I do not think it is desirable he should have any power to veto, or dictate, the form in which they will be introduced. His responsibility is to report to the house his opinion after they have come in. Then, there are government bills, which come through cabinet, and are put down on the order paper in the name of the minister. Then, there are committee bills, and those are bills which originate in committee. They may be submitted to the house in draft form and referred to a committee in draft form for the consideration of the principles, such as was the case in the Elections Act provisions this year. They are reported back to the house by the committee. Then, there is the question of regulations—regulations made and approved by the governor in council, and regulations and orders made by boards under their statutory authority, and ministerial orders. There are some statutes which contain an authority for ministers to make regulations. You have all these various types of legislation and regulations which originate in different manners and reach the house, or come to the knowledge of the house in different ways. It is not possible, as far as I can see, to give the Minister of Justice any authority over those measures that have not originated with the government before they reach the House of Commons.

So, it seems to me, that your concern is to ensure that there will be available a report from the minister as to his opinion whether or not these bills, orders or regulations, are in contravention of the principles of the bill of rights. I think that is the proper way to get at it rather than what I believe would be the erroneous way of trying to give the minister some authority or power to deal with all legislation before it comes to the House of Commons.

Mr. DESCHATELETS: Mr. Minister, what I have to say perhaps has nothing to do directly with section 4, but it has some bearing on it in so far as the observance of the provisions of this bill is concerned. The minister and his department will have, as far as I can see, a responsibility under section 4 and, without committing himself, does the minister not think that a standing committee of the house would be very useful and might, in a certain way, relieve him and his department from heavy responsibilities if they could sit during the session and examine cases or complaints that they might receive, and then make a recommendation to yourself and your department.

Mr. FULTON: Well, Mr. Deschatelets, I do not think it would be desirable to accept or to insert the principle that a parliamentary committee will relieve the Minister of Justice or the Department of Justice of any of his or its responsibilities. I think that it is perfectly in accord with our system, to provide that a parliamentary committee may have an additional supervisory or checking power. But I do not think I can go along with you when you say it should be something that relieves us of responsibilities; and probably that is not what you really intended to say.

Mr. DESCHATELETS: No, which would relieve indirectly, or might help.

Mr. FULTON: A supplement, an additional area of scrutiny to make sure, perhaps, we have discharged our responsibilities. That is something, I think, which the House of Commons always has within its power. It can set up what committees it likes, and give them all the powers to scrutinize, particularly statutes or, indeed, to scrutinize regulations that are laid on the table of

parliament. But when it comes to a question of scrutinizing these things before they reach parliament, then you are in difficulties, especially with regard to regulations.

Mr. DESCHATELETS: I had in mind that a committee of this kind might study and examine complaints arising out of this bill. Your department will surely receive many complaints from all parts of the country. Some of them will not be justified; maybe some will be justified; and a committee of this kind might be very useful, I think, in making recommendations to you.

Mr. FULTON: I would not, for a moment, dispute your point there. I am not sure, and there have been suggestions made, that this is a field which might be reviewed by the committee to assist Mr. Speaker on the rules—but perhaps there should be a method by which parliament could effect an over-all scrutiny of what is laid before it or tabled in parliament. If this is a matter which the House of Commons feels they should act upon, then the government would not have the right or desire, as I see it, to make any objections; and that is for parliament to decide.

The CHAIRMAN: Gentlemen, is it agreeable to adjourn now until 2.30 this afternoon, subject to the house at that time being engaged on the estimates? Otherwise—

Mr. MARTIN (*Essex East*): What estimates?

Mr. FULTON: That is the Northern Affairs and National Resources estimates, I think.

Mr. MARTIN (*Essex East*): I think we want to cooperate with the chairman as we have. I want clearly to establish this, though, that there are two departments in which I have an interest, and in which I will have to take the active part; and I would hope that when those matters are up that that will be taken into account. I am not interested in Northern Affairs.

Tonight it will be impossible for the members of our party to meet. It would be impossible for our group to meet because we are honouring those new hopes in other places who are visiting in Ottawa.

The CHAIRMAN: That being agreed, we will meet at 2.30. The clerk does not know exactly the room, and we will try to get notices to you; but I think it will be one of the Senate rooms.

May I have a meeting of the steering committee immediately after the questions on orders of the day are completed?

Mr. FULTON: So that I shall not be in any uncertainty or appear disrespectful to the committee, I take it that the committee will meet at 2.30 subject to the combines legislation being concluded in the house at that time?

Mr. MARTIN (*Essex East*): Your filibuster is over now?

Mr. FULTON: Is yours?

AFTERNOON SESSION

WEDNESDAY, July 27, 1960.

2.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. The minister is on his way down. But before we continue with our questioning of the minister I would like to present a report of the subcommittee on agenda and procedure which met this morning. The report reads as follows:

> The subcommittee on agenda and procedure met at 11:40 a.m. this day. The following members were present: Messrs. Badanai, Browne (*Vancouver-Kingsway*), Spencer and Stewart.

Mr. MARTIN (*Essex East*): If we do vote for that, that is always reserving the right elsewhere to seek to put forward the other amendment or any other amendment we think is necessary.

The CHAIRMAN: Moved by Mr. Stewart, seconded by Mr. Stefanson that all the words preceding paragraph (*a*) be deleted and the following substituted —shall I dispense?

Agreed.

The CHAIRMAN: All in favour?

Contrary?

Motion agreed to.

Mr. BATTEN: This morning when we were speaking about subclause (*c*) there was some question as to whether sections (i), (ii) and (iii) applied collectively or individually. Did we agree to put the word "or" after the word "detention" in the seventeenth line?

Mr. FULTON: It is a universal rule of drafting and is recognized by the courts that where you have subparagraphs numbered consecutively, and the word "or" appears between the penultimate and ultimate subparagraphs, then all subparagraphs are in the alternative.

The CHAIRMAN: The question now is on clause 3 as amended.

Clause 3 as amended agreed to.

On clause 4.

Duties of Minister of Justice.

Mr. FULTON: On clause 4 I have an amendment to offer to the committee dealing with the point raised that the obligation of the Minister of Justice is rather nebulous here in the sense that he has an obligation to ascertain, but no express obligation arising thereafter, and that it would be desirable to compel the minister, or make it clear by the act that the minister has an obligation at least to report to parliament in any case where in his opinion there is an infraction in any of the documents or statutes he has examined.

Mr. MARTIN (*Essex East*): Only the bill.

Mr. FULTON: Any documents which have been presented to parliament.

Mr. MARTIN (*Essex East*): But not a draft before the clerk.

Mr. FULTON: No; in respect of regulations, it is only after the regulations are passed that they would be tabled. I assume any objectionable feature would be removed before tabling, and therefore this is not applicable to draft documents.

My suggestion is that clause 4 be amended by substituting a comma for the period in line 40 and add the following words thereafter: "and he shall report any such inconsistency to the House of Commons at the first convenient opportunity".

Mr. AIKEN: I would so move.

Mr. STEFANSON: I second the motion.

The CHAIRMAN: Is there any discussion?

Mr. MARTIN (*Essex East*): I thank the minister for this further clarification. I think it is a considerable improvement and meets the argument that some of us put forward; but I wonder if we could not even strengthen it further. Instead of saying "at the first convenient opportunity" could you not say within so many days, or something like that.

Mr. FULTON: I thought that would be covered by the regulations. I am not quite sure how this will work in practice. There are a large number

of private bills, all of which we will have to look at under the section. I would rather not start by excepting certain classes of statutes or regulations. I think it should be all-embracing. I am not sure at the moment how long it might take for this examination to be completed. Would you not be content to have it left for the regulations under this act; they will be tabled in the house.

Mr. MARTIN (*Essex East*): Would you be content to say "and shall report any such inconsistency to the House of Commons during the first session of parliament after prorogation", or something of that sort.

Mr. FULTON: That would make it possible for a statute to be enacted before the minister reports on it. I would think parliament would desire the minister's report to be received before the enactment of the statute.

Mr. MARTIN (*Essex East*): I was really thinking of the regulations.

Mr. FULTON: I feel we would like time to develop a little experience. We will have to make regulations covering the procedure. Those regulations will be tabled, and if the period in the regulations is felt to be too long or if the experience proved that we are not reporting to parliament when parliament would like us to report, or by the time parliament would like us to report, then in that event the regulation itself could be brought up for debate.

Mr. DESCHATELETS: Do you not think it should be covered by regulation?

Mr. FULTON: Yes, I think it should be covered by regulation, Mr. Deschatelets. I think we might work out a standard form for reporting to parliament, probably in writing.

On the other hand it might be found more desirable to do it by oral report at the time of the motion for second reading, or something like that. But I think probably a standard form of reporting to parliament would be preferable.

Mr. MARTIN (*Essex East*): I find that I spoke too hurriedly. May I have leave to withdraw what I said? I find that Mr. Badanai has an amendment to this clause, which is not exactly in those terms, and which incorporates another idea. I think his amendment is an improvement.

Mr. AIKEN: Perhaps we might consider them both.

Mr. MARTIN (*Essex East*): Yes, it could hardly be made a sub-amendment, because it incorporates other ideas.

Mr. FULTON: Well, in order not to foreclose on Mr. Badanai, perhaps he might read his suggestion to us, although he cannot move it at the moment. In any event, it would be before the committee for consideration.

Mr. BADANAI: I move, seconded by Mr. Baten—this is the form of the amendment—

The CHAIRMAN: No, Mr. Badanai. It has been suggested that it would be out of order for you to move it at this stage; however, you can give us the substance of it.

Mr. BADANAI: The substance of my suggestion is as follows: that clause 4 be amended by adding thereto:

(*a*) The Minister of Justice shall report any inconsistency to an appropriate standing committee of the House of Commons on human rights and fundamental freedoms.

(*b*) All petitions to the House of Commons which purport to be based on the Canadian bill of rights shall be referred to an appropriate standing committee of the House of Commons on human rights and fundamental freedoms. The committee shall have power to report these petitions from time to time to the house, together with its opinions and observations thereon.

That is the substance of my amendment.

Mr. FULTON: May I comment on this to the effect that your proposed amendment seems to me to deal with those things which are only within the competence of the House of Commons itself to deal with, by its rules, or by amending its rules. And if you mean to provide that the Minister of Justice is to be under an obligation to report to an appropriate standing committee of the House of Commons on the bill of rights, you are imposing on him on obligation to do something which at the moment he is incapable of doing because there is not such a standing committee on the bill of rights.

Therefore it seems to me that we would have to wait until such time as the House of Commons itself decided whether or not to set up such a committee.

Mr. BADANAI: That is the very point which I raise. The amendment suggested the appoinment of a committee, and if I may just add this: that in the submission made by the Seventh Day Adventists at page 74—

Mr. MARTIN (*Essex East*): Mr. Michael.

Mr. BADANAI: There is a statement by the delegation as follows:

> With respect to bill C-79, "An act for the recognition and protection of human rights and fundamental freedoms" which it is felt would greatly strengthen the effectiveness of this bill —

And then he goes on to enumerate several of the ideas, among which is No. 6:

> 6. A standing parliamentary committee be established to give continuing examination with reference to the operation of this proposed act in the light of changing circumstances, and—

Now, even the Prime Minister, if I may quote him when speaking in 1945, in *Hansard* at page 2460 among other things said—and by the way, he was speaking on the national emergency bill—

> In the United Kingdom it has been found necessary to set up a committee in this regard, and I should like to see a similar committee appointed by this house.
>
> Such a committee would report to the house from time to time on all orders in council passed where there is a matter of principle in issue and where the question of delegated power arises. Where legislative power is conferred, the committee would make the necessary criticisms of orders passed by civil servants under the powers granted by legislation enacted by parliament.
>
> Members of the house would be given an opportunity to serve. There should be no difficulty about the government having a majority in the committee. Its members would be charged with nothing any breaches of parliamentary privileges and democratic rights; in fact, in orders in council it would be a watchdog in the preservation of our democratic rights.

I think the Prime Minister there envisaged the setting up of a committee which would strengthen a bill of rights if we had one. And, as you are aware, I have already indicated that in New Zealand they have a petitions committee dealing with grievances of individual citizens. And there are many examples of a petition with only one signature, being made in respect of the Succession Duties Act; and there are many seeking adjustments in social welfare benefits, licensing requirements, and other things. In fact, a member of parliament might recommend to a constituent who is aggrieved by the effect of a statutory law or regulation that recourse should be had by way of petition.

Briefly, Mr. Chairman, that is the point which I think should be considered by the minister.

Mr. FULTON: Well, it is a point, Mr. Badanai, of importance; but again I say to you that your amendment could only be accepted if the House of Commons had set up a standing committee on human rights and fundamental freedoms, but it has not set up such a committee. Therefore your amendment would impose—it would have the effect of imposing on the minister an obligation which he could not discharge.

Now I think that it might well be that such a recommendation, such a proposal as contained in your amendment, might be referred to the rules committee—that is the committee of which the speaker is chairman, and which considers the rules of the house. And if the House of Commons were to set up a committee and were to make a recommendation that the government should immediately refer to it—to that committee, along the lines of your amendment, and that the committee be burdened with the responsibility of sub paragraph (*b*) of your amendment, then the whole thing would be possible. But at the present time this cannot be done, because the government does not have the right or the power by statute to affect the rules and procedures of the House of Commons.

Mr. MARTIN (*Essex East*): I wonder if the minister would not consider this in support of Mr. Badanai's amendment: it is true there is no such appropriate committee—there is not now an appropriate standing committee of the House of Commons on human rights and fundamental freedoms; but the procedural point which the minister has just made, I would submit, is that if the committee accepted this amendment, and it went—I would submit that if they did set up such a committee and accepted this amendment, and it went to the House of Commons, then the House of Commons would not be precluded from seeking to answer the objection raised by the Minister of Justice.

The House of Commons is master of its own situation, subject always to the rules, and subject to the right of the House of Commons to provide exceptional applications; and the House of Commons could very well accept this recommendation from the committee, and, having done so, then the House of Commons will, I think, be obligated at the earliest opportunity, or at the next session to set up such a committee. I think there is no difficulty about that. The House of Commons would, by the acceptance of this amendment, perhaps have so decided. On the merits of the proposal, Mr. Badanai has quoted the Prime Minister's view of 1945, and he bases his argument in part on that as well as on the desirability of the proposal by itself. I do not think there is really any such difficulty. The Minister of Justice shall report any inconsistencies to an appropriate standing committee of the House of Commons on human rights and fundamental freedoms. Granted, there is no such standing committee now, but the House of Commons could, by this very act, be deemed to have taken a step to setting one up.

Mr. FULTON: But it simply has not.

Mr. MARTIN (*Essex East*): Yes, but by so deciding, it could be considered to.

Mr. FULTON: Well, there would have to be a resolution. A mere passage of a statute would not have the effect of creating such a committee in the House of Commons.

Mr. MARTIN (*Essex East*): Surely if the House of Commons wishes to resort to this procedure it could. I know there is a procedure now of setting up a standing committee, but if the House of Commons unanimously decided

to throw aside that particular procedure for this particular purpose, there would be no objection to it.

Mr. FULTON: I think there still is, Mr. Martin. Either you are purporting to set up a standing committee by a statute, which, as I see it, is undesirable and certainly an inappropriate method of proceeding. Secondly, if you look at subclause (b), you will see that you are writing rules of the House of Commons here. It says:

> All petitions to the House of Commons which purport to be based on the Canadian bill of rights shall be referred to an appropriate standing committee of the House of Commons on human rights and fundamental freedoms. The committee shall have power to report these petitions from time to time to the house, together with its opinions and observations thereon.

You are writing rules of the House of Commons.

Mr. MARTIN (*Essex East*): That is all right.

Mr. FULTON: It is not all right in my view. I could just imagine what we would be accused of if we had introduced a statute of this type. I can hear the clamour that would be set up.

Mr. MARTIN (*Essex East*): I do not think there would be any clamour. The House of Commons is always master of its own rules.

Mr. FULTON: Precisely, and it would object very much to the government introducing by statute, something which was enacting rules of the House of Commons. There is a procedure in the House of Commons for enacting or varying its rules.

Mr. MARTIN (*Essex East*): That is admitted, but the House of Commons will decide; and I am arguing in this particular case that it is prepared to resort to this particular vehicle for the purpose; namely, by way of special resolution.

Mr. FULTON: My view is that the most that this committee could do is not to insert into a statute what amounts to writing rules of the House of Commons, but to make a recommendation to the House of Commons as to the views of this committee; and the House of Commons could consider what is appropriate to do with regard to its rules.

Mr. AIKEN: May I speak in connection with the motion I moved and also comment on Mr. Badanai's suggestion?

I feel that the amendment that I have moved—

> —that the minister shall report any such inconsistencies to the House of Commons at the first opportunity—

—covers all the points that have been raised. In the first place, the minister is authorized to recommend to the governor general in council regulations, so that the method of dealing with any complaints could be set up by regulation as a means of reporting. Secondly, the House of Commons is the body to which the report is to be made, and if the number of reports, or the nature of the reporting seems to demand it, there is no reason why the House of Commons could not set up a committee, or deal with it by whatever means the House of Commons decided upon. Right now we do not know the nature or volume of the reports that the minister might be making, and I think by putting this in a statute leaves it open to the House of Commons to appoint any group to receive these complaints without amending this statute.

Mr. MARTIN (*Essex East*): I do not think that is an answer to the point. This is an important point I make. We do not know whether there will be any

reports or not, but they shall report any inconsistency to a standing committee. I would suggest we let Mr. Badanai move his motion and deal with it then.

Mr. STEWART: There is a motion now.

Mr. FULTON: Mr. Chairman, one other point. This bill will have to go to the Senate and, quite apart from the propriety of the government seeking to write rules of the House of Commons by a statute that it submits, I think there are many members of the House of Commons who would raise a very real question as to whether a statute, which also goes to the Senate, should write rules of the House of Commons. I think your suggestion bristles with difficulties.

Mr. MARTIN (*Essex East*): I do not think that is a very serious one.

Mr. FULTON: It occurred to me that possibly the amendment I suggested should be altered to read; "the parliament at the first convenient opportunity", because this bill is going to the Senate, and the Senate might have views about our report being confined to the House of Commons.

Mr. MARTIN (*Essex East*): Yes, I think that is very important. I agree with that, but I do not agree with you when you say that Mr. Badanai's motion would be regarded as an infringement of the rules of the House of Commons because the Senate has to pass it.

The CHAIRMAN: Are you ready for the question, gentlemen?

Mr. MARTIN (*Essex East*): Question.

The CHAIRMAN: The question is; moved by Mr. Aiken, seconded by Mr. Stefanson, that clause 4 be amended by substituting a comma for the period in line 40 and adding the following words thereafter:

> and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

Mr. MARTIN (*Essex East*): Question.

The CHAIRMAN: All those in favour please signify. Contrary?

Carried unanimously.

Mr. BADANAI: Now, Mr. Chairman, I move seconded by Mr. Batten, that clause 4 be amended by adding thereto:

> (*a*) The minister shall report any inconsistency to an appropriate standing committee of the House of Commons on human rights and fundamental freedoms.
>
> (*b*) All petitions to the House of Commons which purport to be based on a Canadian bill of rights shall be referred to an appropriate standing committee of the House of Commons on human rights and fundamental freedoms, the committee shall have the power to report these petitions from time to time to the House of Commons together with its opinions and observations thereof.

Mr. STEWART: Where does that come in clause 4?

Mr. FULTON: It would be added thereto.

Mr. BADANAI: Question.

The CHAIRMAN: I have some doubt about its being in order, but I will put the question. Moved by Mr. Badanai: that—

An hon. MEMBER: Mr. Badanai has just read it.

Some hon. MEMBERS: Dispense.

The CHAIRMAN: Shall I dispense with the reading of it?

Agreed.

The CHAIRMAN: All those in favour, please signify.

The CLERK OF THE COMMITTEE: Four, sir.

The CHAIRMAN: Those opposed?

The CLERK OF THE COMMITTEE: Six, sir.

The CHAIRMAN: I declare the motion lost.

Mr. MARTIN (*Essex East*): Now we are on clause—

The CHAIRMAN: Five.

Mr. AIKEN: Mr. Chairman, have we carried clause 4 yet? We have carried the amendment.

Mr. STEWART: We had better carry clause 4.

The CHAIRMAN: Shall clause 4, as amended, carry?

Mr. MARTIN (*Essex East*): With the usual reservation.

Clause 4, as amended, agreed to.

The CHAIRMAN: Clause 5, gentlemen.

Mr. BATTEN: Mr. Chairman, before we pass on to part II of this bill, we have a little unfinished business. Yesterday, during the discussion on clause 2, I moved:

> That the following paragraph, to be designated paragraph (*c*), be added after the present paragraph (*b*):
>
> "The right of the individual to freedom of movement and residence within the borders of Canada"
>
> and that the remaining paragraphs be relettered accordingly.

Following the discussion on that, we agreed to stand that motion.

Mr. FULTON: That is right.

Mr. BATTEN: Before we leave part I of this bill, I would like to have that motion dealt with.

The CHAIRMAN: That was yesterday?

Mr. BATTEN: Yes, Mr. Chairman, that was yesterday.

Mr. STEWART: Clause 2, Mr. Chairman.

Mr. BATTEN: If I can help you, Mr. Chairman, that was the fifth amendment proposed yesterday.

Mr. BROWNE (*Vancouver-Kingsway*): That was kind of a troublesome one too, was it not?

The CHAIRMAN: I have just checked the minutes, Mr. Batten, and the minutes indicate that following the presentation of that motion, you withdrew it, with leave to present it again if you wished to.

Mr. BATTEN: Yes.

The CHAIRMAN: Do you want to present it again?

Mr. BATTEN: I would like to present it, Mr. Chairman, and if I could present it at this time, we would have part I finished.

Mr. FULTON: Except that clause 1 of part I is stood.

The CHAIRMAN: Yes, clause 1 is also stood.

Mr. FULTON: We might as well deal with this now, if you wish to reintroduce it. Why not dispose of it now?

Mr. MARTIN (*Essex East*): Question.

Mr. BADANAI: Question.

Mr. BATTEN: "The right of the individual to freedom of movement and residence within the borders of Canada".

Mr. MARTIN (*Essex East*): If we have no other amendments at this stage—

Mr. FULTON: There is the question of the preamble.

The CHAIRMAN: Shall clause 6 carry?

Carried.

Mr. MARTIN (*Essex East*): With the usual reservations.

Mr. FULTON: There is the question of clause 1. Perhaps we should dispose of it. I thought this could be taken care of, if the committee desired, by the following amendment:

> That clause 1 be deleted and that the following be added as clause 4:
>
> 4. The provisions of this part shall be known as the Canadian bill of rights.
>
> (2) Renumber clauses 2, 3 and 4 as clauses 1, 2 and 3 respectively.

Mr. MARTIN (*Essex East*): It is agreeable, as far as I am concerned.

The CHAIRMAN: It is moved by Mr. Aiken, seconded by Mr. Rapp. All in favour? Contrary? I declare the motion carried unanimously.

Now we come to the preamble.

Mr. FULTON: We have worked on all the drafts submitted, and we have come up with this one which, while I recognize it does not contain everything that has been submitted, I think I can say conscientiously appears to incorporate them either in principle, by reference, or by implication, avoiding on the one hand those things which might be offensive to some of our people, and, on the other hand, trying to conform to words or ideas which are precious to others of our people, and which should be incorporated in a manner which would not be offensive to others. So we have come up with this suggestion which I would like to read to you. It is as follows:

> The parliament of Canada recognizing that the Canadian nation is founded upon principles that acknowledged the dignity and worth of the human person and the position of the family within a society of free men and free institutions,
>
> Recognizing also that men and institutions remain truly free only when freedom itself is anchored upon the dual foundations of respect for moral and spiritual values and the rule of law,
>
> And being desirous therefore of enshrining these principles and the basic rights and freedoms derived from them—

It might be better to say "derived therefrom".

> in a bill of rights which shall reflect the respect of the parliament itself for the provisions of its own constitutional authority and shall ensure the protection of the basic rights and freedoms of all individuals in Canada,
>
> NOW THEREFORE....

Perhaps I might make these few additional comments: we make reference here to the dignity and worth of the human person, and the position of the family within a society of free men and free institutions, recognizing, I think, it not explicitly then certainly implicitly the position of the family as the basic unit of society.

We also recognize these principles of freedom embraced in the second paragraph, and that they are anchored upon the dual foundations of respect for moral and spiritual values and the rule of law, thus recognizing the concept of our Christian beliefs without being offensive to any other group or

groups of individuals; and finally we recognize that the basic physical foundation is the rule law. That, certainly, I do not think anyone would deny, because it is absolutely essential if any right or freedom is to have any meaning at all, because it is freedom under the rule of law.

And then, carrying that idea forward, the third paragraph says that parliament itself acts within the framework of moral and spiritual values, and parliament itself acts in conformity with the rule of law. And those ideas are carried forward because parliament is desirous of enshrining these principles and the basic rights and freedoms derived from them in a bill of rights which shall reflect the respect of parliament for religious values and for the provisions of its constitutional authority.

The CHAIRMAN: Before I ask for discussion, I think it should be moved, before it goes to the committee.

Mr. MARTIN (*Essex East*): May we have a discussion first, because there will be a considerable discussion on this, and perhaps afterwards we could move it.

The CHAIRMAN: I have no objection, if that is agreeable to the committee.

Mr. MARTIN (*Essex East*): I know that Mr. Dorion and I will have to go at 8:00 o'clock, and if the committee wishes to sit—I hope it will not sit—but I understood from the Minister of Justice that it would not be sitting.

Mr. FULTON: I spoke to Mr. Deschatelets, and Mr. Deschatelets reported to me that you did not have any objection to our sitting after 8:00 o'clock; but I might have misunderstood him.

Mr. MARTIN (*Essex East*): There was a definite misunderstanding because I have to be in the house at 8:00 o'clock, and in fact, Mr. Deschatelets is speaking at 8:00 o'clock himself.

The CHAIRMAN: That matter has been disposed of by the committee. There was a resolution.

Mr. MARTIN (*Essex East*): We could meet tomorrow at 9:30, but I hoped the committee would recognize that, and I simply want to say that Mr. Badanai put forward a resolution, and Mr. Dorion put forward a proposed preamble, and I put forward one. An examination of these three revealed that they have the same basic constituents, but I feel there are a number of things that should be in a preamble that are not explicit enough in this one. One thing I do not believe is explicit at all.

I agree with the minister fully, as every member of this committee does, that we would not want to put anything in a Canadian bill of rights that would be offensive to any religious denomination in our country; to Christians, to Jews, to Moslems, or to any other religious body that recognizes the existence of God. We are a country made up for the most part of religious-minded people. The majority of our people are Christians, but we have a very important and respectful group of Jewish citizens, who subscribe to their faith, and we would not want I am sure, any of us, to incorporate here anything that would be offensive to them. But, it would seem to me, and I am open to correction, that in a bill of rights entertained and introduced by a country composed as we are of people who acknowledge the existence of God, we should not hesitate to confirm that fact in some way in this preamble. In the preamble which I put forward, reference to the diety is made twice; at the beginning and in the final paragraph.

An examination of other charters of human freedom, and particularly the peoples charter, discloses that reference is made to God.

One of the basic differences between our free society and communism—the Soviet Union—and totalitarian countries based upon dialectical materialism, is that religion itself, and the existence of God, are denied. To them, God does

not exist, and religion is regarded by this group as an opiate to hold down the progress of human beings. We make much of this fact in our ideological ideas. I believe we seriously ought to give recognition to this fact in this preamble. Recognition is given to the fact that the family is a basic, solid unit, of our society. There is a reference in the second paragraph to moral and spiritual values, which does not meet my objection as first stated when I mentioned the desirability of reference to God, because if one looks at the language used by some of the spokesmen for communism, one will find that they do not deny the existence of what they call moral principles. I cannot say that I recall any reference to spiritual values, or certainly to the rule of law, but they certainly do talk of moral principles; moral principles that have a genesis in man himself, and a genesis in things terrestrial, but this does not satisfy me.

Now, I make these observations because I know that a number of members of this committee feel as I do. This is not a party matter. I am sure none of us are going to discuss this aspect of the problem in that light. As a matter of fact, I do not think party considerations have prevailed here in a very singular way in our discussions, but I feel this is very important.

Our statesmen have no hesitation in public declarations to call upon God and God's guidance. We listened last night to one of the candidates for the presidency of the United States who referred to God in, I thought, appropriate terms. We do not hesitate to do it in this country. The Prime Minister does it, and properly so. Other Prime Ministers have done likewise. The word "God" appears somewhere in the Royal title. I feel that for these reasons and because we are a nation which recognizes the existence of the Supreme Being, we should not hesitate to say so.

I have talked to some of my Jewish friends, and subject to what Mr. Rapp might say, I find there could be no objection there. I have talked to some others before, of other religious groups, to get their views, and I find no objection there. Because this is in accordance with my own convictions, I would hope that we could acknowledge this as an essential ingredient before we can give final consideration as to which preamble we wish to accept.

Mr. DORION: Mr. Chairman first of all, I have to congratulate the minister for the wording of this preamble. I believe that everyone would be satisfied with an announcement of the principles which are in it.

Now, I agree to a certain extent with the views expressed by Mr. Martin. I believe that there would be no prejudice at all, and I feel it would not be offensive to any religious body if we referred to God in order to determine that He is the source of these freedoms and human rights enumerated in this bill. I would suggest that after the word "upon", we could have:

Fatherhood of God, brotherhood of man, and principles—

et cetera. In order to sustain my proposition, I would like to make a few observations. I hope that every member will excuse me if I refer to these quotations. It is only to show every member that, in doing so, it is not something new in British institutions or in Canadian institutions. You have, for example, the bill of rights of 1689, where we read, in article 12, paragraph 3:

> And whereas the said King James the Second having abdicated the government and the throne being thereby vacant, His Highness the Prince of Orange (whom it hath pleased Almighty God to make the glorious instrument of delivering this kingdom from Popery and arbitrary power)

You have James II, who is called the Instrument of God. You have Magna Carta, 1215. The beginning of the preamble of this so important constitution, which is the basis of our constitutional law, contains these words:

John, by the grace of God, King of England—

You have the coronation of Edward II—

Mr. FULTON: Mr. Dorion, may I just shorten this by suggesting that there is no dispute on the fact that those historical documents do contain such references, and I am sure everyone of the committee would accept your point and bring it up to date by reminding ourselves. We recognize that the present royal style and title starts with the words "Elizabeth II, by the grace of God". So there is no disagreement with that point at all, I am sure, in the minds of any of the members of this committee.

I just make that suggestion, because I know you are under some limitation with respect to time, so that you might go ahead from there.

Mr. DORION: In other words, it is very easy to establish that God was mentioned in many statutes, and very important statutes. Very often the opinion was given that Christianity is a part of our common law. On this point I have many quotations, but I will dispense with quoting them.

I have just a few observations. You will excuse me, because I have prepared some notes. I would add just this: I believe that recalling the religious character of royal institutions would help to preserve our actual form of government—and this, I believe, is very important. Canadian citizens will be reminded to what extent we are indebted to the crown for the maintenance and preservation of our spiritual values which are a guarantee of our social order.

A bill of rights recognizing the authority of God would have a very high educational value and would be in the line of our religious traditions. I believe that this is a very important point.

I hope that every member of the committee will appreciate and agree with my point, and the point expressed by Mr. Martin. I am sure that in so doing we will have gained a very serious and very precious document, which would be in the hands of our children, and it will be a sort of act of the recognition that all these freedoms, all these rights, depend on a Supreme Being.

Mr. FULTON: Mr. Chairman, may I say something here? This, I am sure, is one of the most important questions to which this committee could direct its attention.

I will speak personally for a moment, and then I will go back to recognizing my position as a minister of the government. Speaking personally, I would want to see a reference to God in this preamble. I do not need to enlarge on that, and I am not going to do so. But as minister I have had to be aware of the fact that we are drafting a statute for all the people of Canada. I think that statement itself is a sufficient statement of the difficulties inherent in this situation.

I have my own personal inclination, as I have indicated; but I have felt that my first responsibility as minister was to submit to the committee a document in a form which, in so far as possible, within the realm of the fact that we do have freedom for controversy in Canada, would be inoffensive to any person, particularly on this deeply-held point of religious dogma.

I felt that was my first responsibility, and so, as I said, I have endeavoured to find a preamble which, while recognizing the principles, spiritual and moral, as well as practical, that are so dear—and the others that are so dear—to many of our people, could nevertheless contain them without giving specific offence. By bringing it forward in this form, I wanted to make it possible for the Committee to decide.

Now, Mr. Chairman, at this point I would ask permission to go off the record, and I would ask that the press here respect the fact that this is off the record, rather than going into camera.

Mr. MARTIN (*Essex East*): You mean, this portion?

Mr. FULTON: Yes, this portion.

(*discussion off the record*)

—following discussion off the record.—

The CHAIRMAN: Gentlemen, we are now on the record.

We are on the preamble. May I have a motion.

Moved by Mr. Dorion, seconded by Mr. Badanai, that the following be adopted as the preamble to the bill:

> The parliament of Canada, affirming that the Canadian nation is founded upon principles that aknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions.
>
> Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law,
>
> And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a bill of rights which shall reflect the respect of parliament for the provisions of its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada,
>
> Now therefore

Mr. BROWNE (*Vancouver Kingsway*): Might I ask, in the second line of the second paragraph, after the word "founded", is it founded upon or founded on?

Mr. FULTON: "on" was the committee's decision in camera. I do not think much hangs on it because I will take it to an expert in English.

The CHAIRMAN: I had in mind the word "upon".

An Hon. MEMBER: Question.

The CHAIRMAN: All in favour?

Contrary?

Agreed to.

Mr. FULTON: Mr. Chairman, may I ask that the committee be kind enough to revert to clause 4 which now is renumbered clause 3 of the bill, and add after the words in line 37 "every bill introduced in", the words "or presented to".

We are distinguishing here between what comes from the Senate and what comes from the house. There are far more bills introduced in the house.

After the words "every bill introduced in", there should be added the words "or presented to".

This is intended to take care of the fact that bills coming from the senate are perhaps not properly described as being introduced in the house. If we were to be asked where was such a bill introduced, the strict answer would be that it was introduced in the senate. So I think the words "or presented to" would more appropriately cover bills coming from the Senate, in case there was any technical objection to the authority given to me in relation to bills introduced in the House of Commons.

I would appreciate it if you would move that we have leave to revert.

The CHAIRMAN: Gentlemen, may we have leave to revert to paragraph 3 of the bill as amended?

Agreed.

Mr. FULTON: The motion would be that there be inserted in line 37 thereof, after the words "introduced in", the words "or presented to".

The CHAIRMAN: It is moved by Mr. Stewart, seconded by Mr. Stefanson.

Mr. AIKEN: Do I understand the Minister of Justice is to have no responsibility for a bill introduced in the Senate until after it comes to the house?

Mr. FULTON: That is correct.

The CHAIRMAN: You have heard the question. All in favour will please signify? Contrary, if any? I declare the motion carried unanimously.

Mr. FULTON: I would have no responsibility in the House of Commons with respect to the bills introduced in the Senate until they reached us from the Senate side.

The Senate might decide to impose such a responsibility on the minister by amending the act.

But as a member of the House of Commons, and as a minister who reports to the House of Commons I do not think it quite proper to assume now, in introducing this bill, that I am given the right to scrutinize bills when they are introduced in the Senate.

The CHAIRMAN: All right, gentlemen.

Shall the preamble carry?

Carried.

Shall the title carry?

Carried.

Shall the bill as amended carry?

Carried.

Shall I report the bill as amended?

Agreed.

Now, gentlemen, I believe the bill should be reprinted, and I would like to have a motion accordingly.

Mr. BADANAI: I so move.

Mr. RAPP: I second it.

The CHAIRMAN: It has been moved by Mr. Badanai, seconded by Mr. Rapp that the bill be reprinted. All those in favour signify? Contrary? It is carried unanimously.

Mr. BADANAI: On behalf of our group here I wish to extend to you, sir, our appreciation for the manner in which you conducted the committee meetings. We have had several meetings that have been strenuous. We perhaps have disagreed at times, and at some times we have found that each member has cooperated. In so far as we are concerned, we are satisfied. We want to thank you for a job well done.

The CHAIRMAN: Thank you very much, Mr. Badanai, and I certainly would not like to see this committee adjourn without taking the opportunity of expressing to all of the members, and I might say especially to the members who are not supporters of the government, the fact that I am most grateful for the cooperation that I have received throughout the deliberations of this committee. I recognize in respect of our first two meetings that the waters were a little troubled, but I believe that our differences were resolved.

Mr. DESCHATELETS: We had a good boat.

REPORT TO THE HOUSE

The Special Committee on Human Rights and Fundamental Freedoms has the honour to present the following as its

First Report

Your Committee has considered Bill C-79, An Act for the Recognition and Protection of Human Rights and Fundamental Freedoms and has agreed to report it with the following amendments:

Clause 1

The present Clause 1 is deleted.

Clause 2

Clause 2 is re-numbered as Clause 1; and lines 5, 6 and 7 on page 1 of the Bill are deleted and the following substituted therefor: "1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,".

Paragraph (*b*), lines 12, 13 and 14 on page 1 of the Bill, is deleted and the following substituted therefor: "(*b*) the right of the individual to equality before the law and the protection of the law;".

Clause 3

Clause 3 is re-numbered as Clause 2; and lines 19, 20 and 21 on page 1 of the Bill and lines 1 to 10 inclusive on page 2 are deleted and the following substituted therefor: "Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to".

In paragraph (*b*), lines 13 and 14 on page 2 of the Bill, the words "torture, or cruel, inhuman or degrading" are deleted and the following words are substituted therefor: "cruel and unusual".

Paragraph (*f*), lines 30 to 32 inclusive on page 2, is deleted and the following is substituted therefor: "(*f*) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause.".

Clause 4

Clause 4 is re-numbered as Clause 3 and the following words are inserted immediately after the word "in" in line 37 on page 2: "or presented to"; and the following words are added immediately after the word "Part" in line 40: "and he shall report any such inconsistency to the House of Commons at the first convenient opportunity".

The following is inserted as new Clause 4: "4. The provisions of this Part shall be known as the *Canadian Bill of Rights*.".

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Clause 5

The numeral "(1)" is inserted immediately after "5".

The following subsection is added to Clause 5: "(2) The expression "law of Canada" in Part I means an Act of the Parliament of Canada enacted before or after the coming into force of this Act, any order, rule or regulation thereunder, and any law in force in Canada or in any part of Canada at the commencement of this Act that is subject to be repealed, abolished or altered by the Parliament of Canada.".

Preamble

The following is inserted as the Preamble to the Bill:

"The Parliament of Canada, affirming that the Canadian Nation is founded upon principles that acknowledge the supremacy of God, the dignity and worth of the human person and the position of the family in a society of free men and free institutions;

Affirming also that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and rule of law;

And being desirous of enshrining these principles and the human rights and fundamental freedoms derived from them, in a Bill of Rights which shall reflect the respect of Parliament for the provisions of its constitutional authority and which shall ensure the protection of these rights and freedoms in Canada;

THEREFORE . . . . ".

* * * *

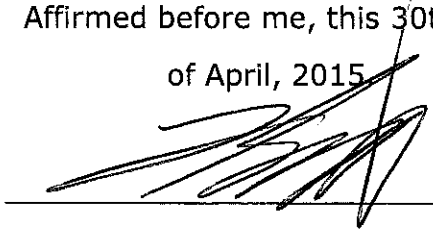
A reprint of the Bill, as amended, has been ordered.

A copy of the Committee's Minutes of Proceedings and Evidence is appended.

Respectfully submitted,

N. L. SPENCER,
Chairman.

This is **Exhibit "C"** referred to
in the Affidavit of Taylor Akin
Affirmed before me, this 30th day
of April, 2015.



A Commissioner, etc.

Tania Lee Smith, a Commissioner, etc.,
Province of Ontario, for Raven, Cameron, Ballantyne
& Yazbeck LLP/s.r.l., Barristers and Solicitors.
Expires April 30, 2016.

red tape by superimposing a structure which would build another labyrinth in order to accomplish a solution. I therefore submit that the notice of motion should be rejected and that the present situation, which has been rather excellently handled by the department, should be continued.

The Acting Speaker (Mr. Richard): Order, please. I am sorry that we cannot hear more of the eloquent pleas of the hon. member. It being six o'clock, I do now leave the chair until 8 p.m.

At six o'clock the House took recess.

AFTER RECESS

The House resumed at 8 p.m.

GOVERNMENT ORDERS

STATUTORY INSTRUMENTS ACT

PROVISION FOR EXAMINATION, PUBLICATION AND SCRUTINY

Hon. John N. Turner (Minister of Justice) moved that Bill C-182, to provide for the examination, publication and scrutiny of regulations and other statutory instruments, be read the second time and referred to the Standing Committee on Justice and Legal Affairs.

He said: Mr. Speaker, the dry title "statutory instruments" rather belies what I believe to be the importance of this bill. I feel it is a significant step toward a more open society in Canada and constitutes a major legal reform in the area that lawyers and parliamentarians have called subordinate or delegated legislation. It represents the first step to be taken by the government in fulfilment of an undertaking given on behalf of the government by my colleague, the Minister of National Defence (Mr. Macdonald), who was at that time President of the Privy Council, to the House of Commons on June 16, 1970. At that time the minister, in outlining the government's proposed course of action in relation to the recommendations contained in the third report of the Standing Committee on Statutory Instruments which was tabled in the House on October 23, 1969, stated to the House as follows:

> Due to the nature of the committee's recommendations it is not practical, nor is it reasonably possible, to proceed with their implementation by any one means. Rather, implementation of the committee's recommendations will require action of three different kinds: first, 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 cannot be dealt with by general legislation and, third, amendment of the Standing Orders for the purpose of establishing a scrutiny committee to review regulations.

Before the coming into force of this bill it is the intention of the government to implement the second part of the undertaking by issuing the appropriate cabinet directives to deal with departmental directives and guidelines and the conferring by legislation of regulation-making powers. The cabinet directive relating to departmental directives and guidelines will be in accordance with what was stated by the then President of the Privy Council to the House in these words:

> Departmental directives and guidelines that might reasonably be interpreted as affecting the rights of members of the public in a legal sense will be required to be submitted to the Deputy Minister of Justice before they are issued. The Deputy Minister of Justice will make a report to the person desiring to issue the document indicating whether the proposed directive or guideline is essentially legislative in its nature and, if so, whether it would be appropriate to incorporate it into regulations or, where there appears to be no authority to do so, whether the relevant statute should be revised with a view to conferring such authority.

The directive relating to the conferring by legislation of regulation-making powers will set out certain criteria which should be as closely adhered to as possible. It is my intention to recommend that regulation-making powers such as the following should not be granted except after careful deliberation:

(1) Power in a statute or in a regulation made thereunder to exclude the ordinary jurisdiction of the courts;

(2) power to amend or add to the enabling act or other acts by way of regulation;

(3) power to make regulations having retrospective effect;

(4) power to subdelegate regulation-making authority;

(5) power by regulation to impose a charge on the public revenue or on the public other than fees for services;

(6) power to make regulations which might trespass unduly on personal rights and liberties; and

(7) power to make regulations involving important matters of policy or principle.

In other words, the criteria which I tend to recommend to my colleagues in the government will exclude the granting of powers such as I have just enumerated. The third part of the undertaking will be implemented by recommending to the House the amendment of the Standing Orders to provide for the establishment of a parliamentary committee to review statutory instruments.

Some hon. Members: Hear, hear!

• (8:10 p.m.)

Mr. Turner (Ottawa-Carleton): On this day of the Gaelic, the learned House leader will introduce it in due course.

This bill is the first major revision of the law relating to delegated legislation. The Regulations Act was enacted in 1950 and, subject to the consequential amendments made to it when the Official Languages Act was passed in July of last year, it has existed without amendment since it was originally enacted. Since the enactment of the Regulations Act there has been a gradual and continued

growth of government, bringing in its train a proliferation of regulation-making bodies.

As a direct result of the exercise of regulation-making powers by these bodies, the number of regulations that are being made has greatly increased and the lives of all Canadians are now directly affected by regulations. It is obvious and self-evident that the direct result of this increase of delegated legislation has been a gradual erosion of the power of Parliament in its role as guardian of the people of Canada.

In recent years concern has been expressed by members of the public as well as by Members of Parliament relating to the increase of legislative powers being given to the executive without any realistic form of parliamentary control. I deeply share the concern of those individuals. This legislation, together with the other steps that I have outlined, is an attempt to restore a measure of parliamentary control over the executive and to redress the imbalance in the relationship between the individual and the state. The growth of modern government has meant an alienation of much of our citizenry. The size and anonymity of government has deprived the individual citizen from participation in the decision-making process. The anonymity and remoteness of government has left an imbalance between the citizen and the state. We are looking for new ways of increasing methods of redress, recourse and appeal for the average citizen against the government over which he must have the ultimate control.

The statutory instruments bill is the latest step in the continuum of law reform directed to the protection of individual rights from the power and remoteness of modern government. This continuum includes such measures as the new law regarding expropriation, the Federal Court Act passed before Christmas, the Tax Review Board Act, also passed before Christmas, and the National Law Reform Commission. In the future it will include laws relating to the right of privacy and other human rights.

In the preparation of this bill, the third report of the Special Committee on Statutory Instruments, prepared under the chairmanship of the hon. member for Windsor-Walkerville (Mr. MacGuigan), was extremely valuable. To the chairman and members of that committee I express my appreciation for the excellent report which they made. That report formed the basis upon which the legislation now before the House was drafted.

At the committee stage I intend to render an accounting to the Standing Committee on Justice and Legal Affairs. I will compare the report with its implementation in the form of this bill. We were not able to accept all the recommendations. I will attempt to explain to the committee and the House where we departed from the recommendations and why we did so. Generally speaking, the non-partisan report of the special committee of the House of Commons has been in large measure implemented in this legislation.

It is the government's intention to implement the recommendations of the special committee to the fullest extent possible in the manner that I have outlined. The government in no way denies the desirability of fully implementing all the recommendations of the committee, but it was decided that full implementation of certain recommendations was not possible due to a number of practical problems which we found when preparing this legislation. To explain where we have departed from the recommendations of the committee would require a full explanation of the details of the bill. If hon. members will permit, I will not at this time attempt to outline or justify those departures. I intend to do so at the courtesy of the committee.

One of the main features of this bill is that it is designed to protect the public from the improper or unusual exercise of power that has been delegated by Parliament. This will be done in three different ways. First, most proposed regulations will be required to be submitted to the Clerk of the Privy Council who, together with the Deputy Minister of Justice, will be responsible for examining the proposed regulations to ensure four things: first, that they are authorized by the statute pursuant to which they are to be made; second, that they do not constitute an unusual or unexpected use of the authority pursuant to which they are to be made; third, that they do not trespass unduly on existing rights and freedoms and are not, in any case, inconsistent with the purposes and provisions of the Canadian Bill of Rights; and fourth, that the form and draftsmanship of the proposed regulations are in accordance with established standards.

The examination procedure will be carried out by legal officers of the Department of Justice before a regulation is made. It is hoped that at this stage in the regulation-making process any proposed regulation that fails to meet the criteria which I have just enumerated will be revised in such a manner that, having regard to those criteria, it becomes acceptable to the Department of Justice and to the person or body that proposes it.

Although it is not my intention to deal with individual provisions of the bill at this time, I do not wish any hon. member to be left with the impression that it will be possible to carry out the examination I have mentioned for all proposed regulations. If asked to give an example of the type of regulation for which an exemption from examination may be proposed, the regulations made under the National Defence Act would immediately come to mind. I am advised that the daily orders for the Canadian Forces alone number in excess of 2,500 each week.

Mr. McIntosh: Mr. Speaker,—

Mr. Speaker: I suspect the hon. member for Swift Current-Maple Creek (Mr. McIntosh) is seeking the floor for the purpose of asking a question. This can be done if the minister grants permission. Is this agreed?

Mr. Turner (Ottawa-Carleton): Agreed.

Mr. McIntosh: I wish to ask a question before the minister leaves that part of his speech. The minister said

the regulations will be left to the scrutiny of the judicial officers of his department. Will he tell the House what they intend to do about the interpretation of any word or phrase in these regulations? Will they give a definition if it is required?

Mr. Turner (Ottawa-Carleton): At that stage the primary purpose will be to see whether the regulations meet the criteria. The ultimate interpretation, in one sense, lies with the scrutiny committee of Parliament. In a wider sense, the courts of this country will be called upon, if the regulation is challenged, to interpret whether the regulation is intra vires or ultra vires of the enabling statute. The interpretation of words will not be the primary purpose at this stage.

Mr. McIntosh: There will be no change in the present system?

Mr. Turner (Ottawa-Carleton): There will be a change in the present system. There will be a judicial scrutiny by the Department of Justice to ensure that the four criteria are followed. The second safeguard to be provided by this bill is to give to the members of the public a statutory right of access to statutory instruments, which includes regulations. This right of public access, coupled with the fact that most regulations will be required to be published in the Canada Gazette, will enable the public to be informed of the provisions of laws that are of particular interest to them; that is to say, laws that become laws because they are statutory instruments or regulations passed pursuant to an enabling power in a statute of Parliament.

Although it is contemplated that there will be exceptions to the general rule that every regulation must be published in the Canada Gazette, the right of members of the public to inspect and obtain copies of those regulations will not thereby be denied. In only very limited and necessary circumstances will the right of public access to statutory instruments be precluded. I imagine the committee will want me to enter into more detail in this respect. It is expected that public access will be precluded in respect of instruments such as orders that reveal the location of any unit of the Canadian Forces or the location of any ammunition, weapons or equipment for use by the Canadian Forces, and parole certificates and mandatory supervision certificates issued under section 10 of the Parole Act. Exceptions such as the examples given are necessary to protect, in the first case, the security of the country and, in the second case, the interests of the individual.

• (8:20 p.m.)

The third way in which the rights of the individual will be protected from the regulation-making power of the state is by the requirement of clause 26 of the bill which provides that most statutory instruments will stand permanently referred to any parliamentary scrutiny committee which is established. It is my hope that the members of the scrutiny committee will be able to find the time to examine all regulations, but especially those that have wide application to the public. In this way, members of the public will be assured that Parliament is at least aware of those regulations which have an impact on their daily lives.

The statutory instruments bill is wider in its application than is the present Regulations Act. As already noted, the bill deals with statutory instruments generally, whereas the Regulations Act deals only with regulations. In addition, the law relating to regulations has been significantly extended to deal with matters such as rules, orders or regulations governing the practice or procedure in proceedings before federal judicial or quasi-judicial bodies, regulations made by federal Crown corporations and regulations made by any federally-incorporated company where a penalty, fine or imprisonment is provided for their contravention. These regulations will now come within the meaning of the word "regulation" as defined in the bill and will be treated in the same manner as any other regulations, with the exception of the Federal Court and Supreme Court of Canada rules where there will be no examination as to form and draftsmanship.

I thank the House for its courtesy. Many of the provisions of this bill are technical in nature and, as a result, I anticipate that a number of questions will be asked at the committee stage. Again I point out that the bill was fathered by a special committee of the House and the government has done its best to implement as fully as possible the recommendations of that committee. I look forward to appearing before the standing committee just as I had the honour of appearing before the special committee when it was considering its report.

Mr. Robert McCleave (Halifax-East Hants): Mr. Speaker, perhaps this is an appropriate time of the year to be considering a subject with such mysteries as statutory instruments, subordinate legislative capacities and statutory authority. All of these have a fine mystic ring to them. Another great mystic gift which appears at this time of year is the dish of haggis, which is almost impossible to describe as to contents and almost impossible to feed to a large number of people. But for the connoisseur, what a dish is haggis! And for the connoisseur parliamentarian, I suggest we have an equal feast before us, something with which perhaps only a few directly concern themselves but when you get immersed in it you find yourself really fascinated because it is one of the basic questions before Parliament.

I think the guts of the bill, if I may use that expression, are to be found in clause 26. I appreciate the minister's saying in his opening statement that there would be a quick establishment of the committee. I think this is important. Clause 26 provides:

> Every statutory instrument issued, made or established after the coming into force of this act, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph (d) of section 27, shall stand permanently referred to any committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments.

Since the principle of the bill is really embodied in this clause, perhaps I may comment on it for a few moments

Hon. Mr. Martin: Not until April 30? I do not see why this bill should stand until April 30.

Hon. Mr. Flynn: If the honourable Leader of the Government wishes to engage in debate as to whether it should stand until April 30 or—

Hon. Senators: You mean March 31.

Hon. Mr. Flynn: Yes, I am sorry. I am always so much ahead of the Leader of the Government.

The Hon. the Speaker: Is it agreed that item No. 5 stand until March 31?

Order stands.

STATUTORY INSTRUMENTS BILL

SECOND READING—DEBATE ADJOURNED

Hon. Paul Martin moved the second reading of Bill C-182, to provide for the examination, publication and scrutiny of regulations and other statutory instruments.

He said: Honourable senators, I need not remind the house, which already debated the subject matter of delegated legislation during the last session, of the importance of this bill which I know will command the interest and the study of all honourable senators.

During the last session of Parliament we debated the general subject matter of the bill under the terms of the resolution which I introduced in this chamber on February 19, 1970. It might be useful to recall the wording of that resolution, which was as follows:

> That the Standing Senate Committee on Legal and Constitutional Affairs be instructed to consider and, from time to time, to 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 document relevant thereto.

Under the terms of that resolution we had a very comprehensive debate in which some 30 senators took part. I am sure that you will be interested, in scrutinizing this bill, to see how the Government proposes that the statutory instruments will be dealt with in the future, especially what form of parliamentary control over statutory instruments will be established under the terms of the bill. It will be recalled, I am sure, that this bill is based on the recommendations contained in the third report of the Special Committee on Statutory Instruments which was tabled in the other place in October of last year.

The bill before us now represents only the first step to be recommended by the Government in implementing the recommendations of that committee. If this bill receives the approval of both Houses of Parliament, the Government's intention will then be to initiate appropriate action to implement those recommendations which are not specifically dealt with in the bill. It is proposed that several of the committee's recommendations will be dealt with by means of cabinet directives to be issued upon the proclamation of the Statutory Instruments Bill, and that those recommendations of the committee relating to the establishment of a scrutiny committee of Parliament will be adopted by means of amendments to be made to the Standing Orders of this chamber, of the other place, or of both Houses of Parliament.

It will be recalled that during the debate last year one of the matters we were anxious to have the Standing Senate Committee on Legal and Constitutional Affairs consider was, when such a bill came forward authorizing the establishment of some instrument for the examination of delegated legislation or statutory instruments or regulations, what should be the instrument?

There has been much discussion in the other place with respect to this. Some have advocated a joint committee of both houses; some have advocated a committee of the House of Commons alone; others have advocated a committee of the Senate. With regard to our statutory orders following the passage of this bill by Parliament, it will be for us to decide what course to adopt, on the recommendation of the Standing Senate Committee on Legal and Constitutional Affairs.

Before commenting on the future action to be taken by the Government, it might be useful if I outline the general principles of the bill now before us for consideration. The basic premise upon which the Statutory Instruments Bill is based is that the public is entitled to be informed of the action being taken by the cabinet and to be protected from any arbitrary or unusual use of power delegated by Parliament.

The Statutory Instruments Bill provides that the public will be informed in two different ways: first, most regulations will be published in the *Canada Gazette* by virtue of subclause 11 (1); secondly, by virtue of clauses 24 and 25 of the bill, members of the public will have a statutory right to inspect and obtain copies of virtually all statutory instruments.

I am sure that all honourable senators will appreciate that it is not necessarily in the public interest to publish all regulations that are made, and that in certain cases the number of regulations of a particular class is so great that publication in the *Canada Gazette* is not practical. As an illustration of regulations where the public interest does not require publication in the *Canada Gazette*, I refer you to the restricted airspace orders made by the Minister of Transport under section 4(1)(f) of the Aeronautics Act. These orders are usually in force during specified hours on only one day, and all persons concerned are notified of their existence. Regulations made by the Lieutenant Governor of a province pursuant to section 13 of the Prisons and Reformatories Act might also be exempted from publication in the *Canada Gazette*, since they apply only in respect of provincial penal institutions and are published in the appropriate provincial official gazette. As an example of a class of regulations that might be exempted from publication on the basis of volume alone, I note that over 2,500 "daily orders" are issued each week under the authority of section 13 of the National Defence Act.

Although certain regulations will be exempted from the requirement of publication, it is intended that all

regulations which are of general interest and application to the public will be published as required by clause 11 of this bill.

At this time I would note that any regulations made under the bill whereby exemptions are provided will be subject to review by any scrutiny committee referred to in clause 26. We can discuss that further, although I mentioned it a few moments ago in terms of the consideration that was before us when we were considering the kind of reference that we would make to the Standing Senate Committee on Legal and Constitutional Affairs.

The manner in which it is expected that the public will be protected from arbitrary or unusual use of power delegated by Parliament is threefold.

First, virtually all proposed regulations will, by clause 3(1) of the bill, be required to be submitted to the Clerk of the Privy Council who, in consultation with the Deputy Minister of Justice, will, by clause 3(2), be required to examine those regulations for four specific purposes, namely, (1) to ensure that they are authorized by the statute pursuant to which they are to be made; (2) to ensure that they do not constitute an unusual or unexpected use of the authority pursuant to which they are to be made; (3) to ensure that they do not trespass unduly on existing rights and freedoms and are not, in any case, inconsistent with the purposes and provisions of the Canadian Bill of Rights; (4) to ensure that the form and draftsmanship of the proposed regulations are in accordance with established standards.

When proposed regulations are forwarded to the Clerk of the Privy Council as required by clause 3(1), they will be referred to the law officers of the Crown, who will carry out a detailed review of the proposed regulations for the purpose of ensuring that before the regulations are passed they comply with the four criteria which I have just mentioned.

It is to be noted that this bill provides a *means* to ensure that regulations required to be submitted for examination will in fact be submitted. It does so in two different ways. The Clerk of the Privy Council may refuse to register any regulation that has been made without having been submitted for examination. Of course, a refusal to register would in effect prevent the regulation from coming into force. This is provided for in clause 9 of the bill. The second procedure that may be used is to be found in clause 8, under which the Governor in Council is to be given power to revoke any regulation that was not examined before it was made as required by clause 3(2).

Secondly, the public will be protected from the abuses of delegated powers by virtue of clauses 24 and 25 of the bill. These provisions provide a statutory right for any member of the public to inspect or obtain a copy of most regulations. In providing this statutory right, the Minister of Justice seeks to make available on behalf of the administration to the public those regulations not published in the *Canada Gazette* that would for some reason be not otherwise available. It will ensure also that where copies of the *Canada Gazette* are not readily available, copies of regulations published therein will be provided to whoever wishes them. The Government fully realizes that this statutory right of public access could in certain cases cause serious injustice or hardship to individuals, so it has proposed that the Governor in Council be given authority under this bill to make regulations precluding the right of public access in certain narrowly defined situations. Those areas in which the right of public access may be denied are set out in the bill.

The third way in which it is proposed that the public will be protected from unauthorized regulations or the unusual use of powers delegated by Parliament is one that I suggest is of special significance to this chamber. Clause 26 of the bill provides that, with certain limited exemptions, all regulations and other statutory instruments shall:

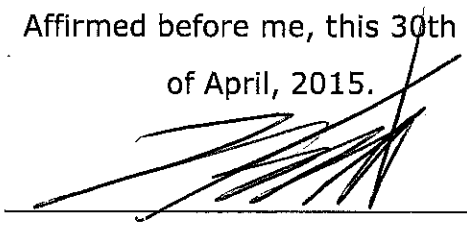
> ... stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments,

In other words, there is to be provided by this bill a means whereby Parliament will acquire a form of control over the exercise of powers that have been delegated by it. The rules of procedure and powers of such a committee are not provided for in the bill. It is intended that these will be provided by Parliament itself by making appropriate amendments to the rules of whichever house may choose to establish a scrutiny committee.

The establishment of a scrutiny committee of the Senate is a matter which, speaking as an individual, I hope will receive serious consideration. I do not take issue with the establishment of such a committee in the other place, or even a joint committee, but I would remind honourable senators that the upper house in the United Kingdom has taken on itself the responsibility of providing a scrutiny committee to deal with delegated legislation in the United Kingdom. Notwithstanding something that was said in the other place, I believe the Senate is best suited to performing the type of review envisaged in the recommendations of the Third Report of the Special Committee on Statutory Instruments, which was tabled in this house late in October, 1969, and in the other place on October 23, 1969. Of course, we will want to study this matter of formulation of a scrutiny committee in detail, but I hope we will arrive at a general consensus of opinion on what we should do and how we should do it at an early date once the bill becomes law. Once we establish such a scrutiny committee we can always amend the rules governing its operation as we proceed in the light of the experiences which we encounter.

It has been recommended that any committee established for the purpose of reviewing and scrutinizing statutory instruments should be non-partisan—I am sure so far as this house is concerned it would be—and I hope that that recommendation will be accepted. If it is, and if it is adhered to, the scrutiny committee will be a credible body, the recommendations of which will be designed to prevent useless and arbitrary restrictions being placed on the subject in Canada. It will be in a position to advise Parliament of the manner in which delegated powers are

This is **Exhibit "D"** referred to
in the Affidavit of Taylor Akin
Affirmed before me, this 30th day
of April, 2015.



A Commissioner, etc.

Tania Lee Smith, a Commissioner, etc.,
Province of Ontario, for Raven, Cameron, Ballantyne
& Yazbeck LLP/s.r.l., Barristers and Solicitors.
Expires April 30, 2016.

amendments provide that any accused may have the benefit of any defence available under the Criminal Code or any other federal law if the person is being tried on a charge under the code of service discipline. That is a major change. The legislation will end double jeopardy. It will permit an accused to plead that he has previously been acquitted or convicted or punished by a service tribunal, a civil court in Canada or by a court of competent criminal jurisdiction in another country. That was not the case before. I will not mention some of the other changes because of the quick passage of time, and I do not want to be too long in introducing the Bill.

There are amendments to the Canadian Human Rights Act which reflect the Canadian tradition of procedural fairness. These changes have to do with a situation where the Commission finds a complaint to be substantiated and then appoints a tribunal to look into that particular complaint. Since the Commission presently makes a decision whether the complaint is substantiated and also appoints the tribunal, there is a possible perception that the Commission is making a finding of guilt before requesting the appointment of a tribunal. Now, under the new procedures and these amendments, the Human Rights Commission will screen complaints and determine whether a tribunal should be appointed. But we provide for an independent office, the president of the tribunal, who is independent of the rest of the Commission and he will now appoint a tribunal from persons listed and it will be done independently and appear to be done independently. It will give a better perception than the present provisions provide. By the way, the Human Rights Commission has been supportive of that amendment.

I am glad to see the official critic of the NDP is here even though his Official Opposition counterpart is not.

The Bill also deals with a number of areas where, quite clearly, equality provisions of the Charter were being violated; changing references to members of one sex, where there is no justification, to exclude members of the opposite sex; changing words such as "wife" to "spouse", "widow" to "surviving spouse", in various acts such as the Canada Shipping Act and so on. There is another group of amendments which deal with age. In the Canada Corporations Act the age 21 is replaced by age 18 as their criterion for pilotage and so on.

The Minister of Justice already has an obligation under the law to examine Bills and regulations to ensure they are consistent with the Bill of Rights. I am referring to the Bill of Rights enacted under the late great John Diefenbaker when his Government was in power. These amendments provide a similar obligation on the Minister of Justice to examine regulations and Government Bills to ensure they are consistent with the Charter. That is new. They also provide for the co-ordination of the examination of regulations under the Statutory Instruments Act, the Department of Justice Act and the Bill of Rights.

Then there are a whole set of other miscellaneous amendments. For example, the Minister of Fisheries and Oceans has the power to suspend or cancel leases or licences. There is a change being made there. The right of the Minister to order forfeiture is abolished. There are amendments to the Immigration Act to provide that when there is an inquiry of an adjudicator, and we heard of such as inquiry today, it will be held in public unless it is established that the person concerned or some Government interest would be adversely affected. The bar against action for false imprisonment in the Canada Shipping Act is removed and there are other amendments of that type.

Let me again emphasize that this Bill is not put forward as our sole initiative in ensuring consistency of federal laws with the Charter. There will be many other pieces of Government legislation in this session dealing with Charter issues. Of course, as decisions are made on the issues that come before the courts, we will have to act. One example which comes to mind is with respect to the Customs Tariff item which, about 10 or 12 days ago, was found by the federal Court of Appeal to be contrary to the Charter provisions with respect to the concept of immoral and indecent when people bring goods into the country. The House will have to amend the customs legislation in that respect.

• (1540)

As a result of court decisions, in the future the House will have to make changes in legislation from time to time. We also recognize that there may be aspects of federal legislation that we missed in this review. It is a continuing process to ensure conformity with the Charter. New problems will be identified from time to time. I have an open mind on the need for further changes and in connection with the nature of changes that we or other Members of the House may propose.

I am pleased to have the opportunity to move second reading of this Bill. I am a bit disappointed at the reaction of the Official Opposition to the steps we have taken, particularly since they were exactly the steps that they were going to take. They have not offered any suggestions for any different steps in the last six months. However, their ranks are rife with hypocrisy and hypocrisy is often their standard on issues such as this.

I was shocked by the actions taken by the Member for York Centre. As I mentioned earlier, he had the audacity to write to groups across the country suggesting that they not take an interest in this matter and not appear before a House of Commons subcommittee. I have never heard of any Members of the House writing to groups across the country trying to persuade them not to appear before a committee that the House had decided to set up. I am happy to realize that no one has paid any attention to his advice in that respect. I am delighted that other members of his Party, such as the Hon. Member for Mount Royal (Mrs. Finestone), are demonstrating more interest in the matter than is the official critic. I know the Hon. Member for Mount Royal will be following the issues closely.

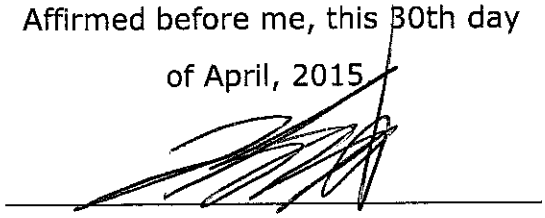
If the official critic for the Opposition can give answers to the issues raised in the discussion paper or can persuade the subcommittee to accept some good, sound, sensible policy advice, then the committee can make interim reports from

This is **Exhibit "E"** referred to

in the Affidavit of Taylor Akin

Affirmed before me, this 30th day

of April, 2015



A Commissioner, etc.

Tania Lee Smith, a Commissioner, etc.,
Province of Ontario, for Raven, Cameron, Ballantyne
& Yazbeck LLP/s.r.l., Barristers and Solicitors.
Expires April 30, 2016.

HOUSE OF COMMONS

Issue No. 25

Tuesday, April 23, 1985

Chairman: Blaine A. Thacker

CHAMBRE DES COMMUNES

Fascicule nº 25

Le mardi 23 avril 1985

Président: Blaine A. Thacker

Minutes of Proceedings and Evidence of the Standing Committee on

Justice and Legal Affairs

Procès-verbaux et témoignages du Comité permanent de la

Justice et des questions juridiques

RESPECTING:

Bill C-27, An Act to amend certain Acts having regard to the Canadian Charter of Rights and Freedoms

INCLUDING:

The Third Report to the House relating to Bill C-18, An Act to amend the Criminal Code, to amend an Act to amend the Criminal Code and to amend the Combines Investigation Act, the Customs Act, the Excise Act, the Food and Drugs Act, the Narcotic Control Act, the Parole Act and the Weights and Measures Act, to repeal certain other Acts and to make other consequential amendments

CONCERNANT:

Projet de loi C-27, Loi modifiant certaines lois eu égard à la Charte canadienne des droits et libertés

Y COMPRIS:

Le troisième rapport à la Chambre relatif au projet de loi C-18, Loi modifiant le Code criminel, la Loi modifiant le Code criminel, la Loi relative aux enquêtes sur les coalitions, la Loi sur les douanes, la Loi sur l'accise, la Loi des aliments et drogues, la Loi sur les stupéfiants, la Loi sur la libération conditionnelle de détenus, la Loi sur les poids et mesures, abrogeant certaines autres lois et apportant d'autres modifications connexes

APPEARING:

The Honourable John C. Crosbie, Minister of Justice and Attorney General of Canada

COMPARAÎT:

L'honorable John C. Crosbie, Ministre de la justice et Procureur général du Canada

WITNESS:

(See back cover)

TÉMOIN:

(Voir à l'endos)

First Session of the
Thirty-third Parliament, 1984-85

Première session de la
trente-troisième législature, 1984-1985

25285—1

APPENDIX "JUST-23"

STATEMENT BY MINISTER OF JUSTICE TO JUSTICE AND LEGAL AFFAIRS COMMITTEE, HOUSE OF COMMONS

THE STATUTE LAW (CANADIAN CHARTER OF RIGHTS AND FREEDOMS) AMENDMENT ACT, BILL C-27

THE PROCESS

SINCE THE PROCLAMATION OF THE CHARTER IN 1982, THE FEDERAL GOVERNMENT HAS BEEN REVIEWING ITS LEGISLATION, REGULATIONS AND ADMINISTRATIVE PRACTICES TO ENSURE CONSISTENCY WITH THE CHARTER. THIS REVIEW WAS NECESSARY BECAUSE LAWS WHICH ARE INCONSISTENT WITH THE CONSTITUTION MAY BE FOUND TO BE OF NO FORCE AND EFFECT. THE REVIEW HAS BEEN BASED ON THE ASSUMPTION THAT IT IS PREFERABLE TO CHANGE LEGISLATION, RATHER THAN FORCING CANADIANS TO CHALLENGE LAWS IN THE COURTS TO ASSERT THEIR CONSTITUTIONAL RIGHTS.

IN ORDER TO CARRY OUT THIS REVIEW AND TO PROVIDE ADVICE GENERALLY ON CHARTER ISSUES, THE DEPARTMENT OF JUSTICE ESTABLISHED THE HUMAN RIGHTS LAW SECTION IN 1982. THE LAWYERS IN THIS SECTION HAVE WORKED CLOSELY WITH THE LAWYERS IN THE LEGAL SERVICE UNITS, WHO IN TURN HAVE CONSULTED WITH OFFICIALS IN VARIOUS DEPARTMENTS AND AGENCIES TO IDENTIFY PROBLEMS. IN THIS WAY, THE DEPARTMENT OF JUSTICE HAS BEEN ABLE TO DRAW ON THOSE WITH EXPERTISE AND SPECIALIZED KNOWLEDGE IN MANY DIFFERENT AREAS.

THE REVIEW OF STATUTES HAS BEEN AN ENORMOUS TASK. THERE ARE HUNDREDS OF LAWS COVERING AN INCREDIBLE VARIETY OF SUBJECTS. THE

CHARTER IS RELATIVELY NEW AND THE JURISPRUDENCE IS AT AN EARLY STAGE OF DEVELOPMENT. IN MOST AREAS, THERE ARE NO DEFINITIVE COURT DECISIONS. THE TASK IS FURTHER COMPLICATED BECAUSE CHARTER ASSESSMENT REQUIRES EVALUATION OF FUNDAMENTAL ISSUES OF SOCIAL POLICY, AS AN INTEGRAL ELEMENT OF ANY LEGAL JUDGMENT THAT CAN BE MADE. THE BILL THAT IS BEFORE THE COMMITTEE TODAY SETS OUT SOME, THOUGH NOT ALL, OF THE AREAS WHERE WE HAVE BEEN ABLE TO REACH CLEAR LEGAL AND POLICY CONCLUSIONS THAT WILL CONTRIBUTE TOWARDS ENHANCED CONFORMITY WITH THE CHARTER.

POWER OF ENTRY - INSPECTION AND SEARCH

SECTION 8 OF THE CHARTER PROVIDES FOR THE FIRST TIME IN CANADA, CONSTITUTIONAL PROTECTION AGAINST UNREASONABLE SEARCH AND SEIZURE. IT IS APPARENT FROM THE DEBATES ON THE CHARTER AND THE EARLY COURT CASES THAT THE PREDOMINANT ISSUE HERE IS THE PROTECTION OF THE LEGITIMATE PRIVACY INTERESTS THAT ARE AT RISK IN ANY CONTEXT OF SEARCH OR SEIZURE. WHERE SEARCHES OR SEIZURES ARE A NECESSARY ELEMENT OF A REGULATORY SCHEME, WE SEEK TO ENSURE THAT THE ADMINISTRATION OF THE SCHEME WILL ENTAIL THE LEAST INTRUSION IN THE LEGITIMATE PRIVACY INTERESTS OF THOSE REGULATED. WE ALSO SEEK TO INJECT THE GREATEST DEGREE OF CONTROL ON THE PERSONAL DISCRETION OF GOVERNMENT OFFICIALS, CONSISTENT WITH EFFECTIVE REGULATION. THIS IS ESPECIALLY IMPORTANT IN CURRENT GOVERNMENT ADMINISTRATIVE PRACTICES WHERE A NUMBER OF STATUTES AUTHORIZE ENTRY WITHOUT A WARRANT FOR THE PURPOSES OF CARRYING OUT INSPECTIONS AND SEARCHES. THE MAJOR THRUST OF

BILL C-27 IS TO ENSURE THAT POWERS OF SEARCH ARE CONSISTENT WITH THE CHARTER. FOR THIS PURPOSE, IN BILL C-27, WE HAVE TREATED POWERS OF ENTRY AUTHORIZING AN INSPECTION DIFFERENTLY FROM THE POWERS OF ENTRY AUTHORIZING A SEARCH.

INSPECTION

AN INSPECTION OCCURS WHEN ENTRY IS FOR THE PURPOSE OF ENSURING COMPLIANCE WITH A STATUTORY SCHEME OF REGULATION. FOR EXAMPLE, UNDER THE CANADA AGRICULTURAL PRODUCTS STANDARDS ACT, AMENDED IN CLAUSE 2, AN INSPECTOR MAY ENTER ANY PLACE WHERE HE REASONABLY BELIEVES THERE ARE AGRICULTURAL PRODUCTS OR OTHER THINGS TO WHICH THE ACT APPLIES. ONCE ON THE PREMISES, THE INSPECTOR CAN OPEN CONTAINERS, EXAMINE PRODUCTS, INSPECT AND MAKE COPIES OF BOOKS, RECORDS AND OTHER DOCUMENTS FOR THE PURPOSE OF ENSURING THAT THE REGULATIONS ON GRADING AND PREPARING PRODUCTS ARE COMPLIED WITH.

THE PURPOSE OF AMENDMENTS TO THIS STATUTE AND OTHERS IN PART I IS TO ENSURE THAT THE AUTHORITY OF INSPECTORS IS CONTROLLED IN CIRCUMSTANCES WHERE THERE IS A RISK OF INTRUSION INTO PERSONAL PRIVACY. WE HAVE THEREFORE, DRAWN A DISTINCTION BETWEEN INSPECTIONS IN COMMERCIAL PREMISES AND INSPECTIONS IN DWELLING HOUSES. APPLYING THE CURRENT LEGISLATIVE SCHEME IN STATUTES LIKE THE CANADA AGRICULTURAL PRODUCTS STANDARDS ACT, IT CLEARLY EXTENDS TO WARRANTLESS ENTRIES INTO DWELLING PLACES BY GOVERNMENT OFFICIALS WITHOUT CONSENT OF THE RESIDENT. WE THINK THAT SUCH AN AUTHORITY GOES TOO FAR.

IN OUR VIEW, WARRANTLESS ENTRIES FOR INSPECTIONS IN FACTORIES, MINES, OFFICES AND PREMISES WHERE REGULATED ACTIVITIES ARE CARRIED ON - OTHER THAN DWELLING HOUSES - WILL IN PRINCIPLE CONTINUE TO BE CONSISTENT WITH SECTION 8 OF THE CHARTER. INSPECTIONS ARE NOT GEARED TO ANY SPECIFIC CONTRAVENTION OF THE LAW THAT MIGHT BE SUSPECTED. THOSE ENGAGED IN CLOSELY REGULATED BUSINESSES EXPECT REGULAR INSPECTIONS AT THEIR COMMERCIAL AND BUSINESS PREMISES. BUT THE SAME IS NOT TRUE WITH RESPECT TO A DWELLING HOUSE. HISTORICALLY, THE COURTS HAVE ALWAYS DEMONSTRATED A PUNCTILIOUS CONCERN TO SAFEGUARD THE SECURITY AND PRIVACY OF THE HOME.

THE AMENDMENTS IN PART I OF BILL C-27 PROVIDE FOR A WARRANT FOR A NON-CONSENSUAL ENTRY TO A DWELLING HOUSE FOR AN INSPECTION. THE WARRANT WILL BE OBTAINABLE ON EX PARTE APPLICATION TO A JUSTICE ON INFORMATION ON OATH SHOWING THAT THE STATUTORY CONDITIONS FOR ENTRY EXIST AND THAT ENTRY TO THE DWELLING HOUSE IS NECESSARY FOR PURPOSES RELATED TO THE ADMINISTRATION OR ENFORCEMENT OF THE ACT.

SEARCH

A SEARCH OCCURS WHEN ENTRY IS FOR THE PURPOSE OF SEEKING EVIDENCE OF A SUSPECTED CONTRAVENTION OF THE ACT. THE SCHEME IN PART II OF BILL C-27 BUILDS DIRECTLY UPON THE INTERPRETATION OF SECTION 8 BY THE SUPREME COURT OF CANADA IN HUNTER ET AL. V. SOUTHAM.

THOSE FEDERAL STATUTES WHICH ALREADY CONTAIN SPECIFIC POWERS OF SEARCH HAVE BEEN AMENDED TO REQUIRE A WARRANT FOR ENTRY. AS SET

DOWN IN HUNTER V. SOUTHAM, THE WARRANT MUST BE ISSUED BY A JUSTICE OR JUDGE ON INFORMATION ON OATH.

THE AMENDMENTS ALSO PROVIDE THAT A WARRANT MAY NOT BE REQUIRED, IF EXIGENT CIRCUMSTANCES CAN BE SHOWN TO EXIST. EXIGENT CIRCUMSTANCES ARE DEFINED AS CIRCUMSTANCES WHERE THE DELAY NECESSARY TO OBTAIN A WARRANT WOULD RESULT IN DANGER TO HUMAN LIFE OR SAFETY OR THE LOSS OR DESTRUCTION OF EVIDENCE. THE DETERMINATION OF WHETHER OR NOT EXIGENT CIRCUMSTANCES EXIST WILL STILL BE REVIEWABLE BY THE COURTS. IF THE PERSON EXECUTING THE WARRANT IS NOT A PEACE OFFICER, FORCE MAY ONLY BE USED IF IT IS SPECIFICALLY AUTHORIZED IN THE WARRANT AND IF THE PERSON IS ACCOMPANIED BY A PEACE OFFICER.

I SHOULD POINT OUT TO THE COMMITTEE THAT AMENDMENTS TO SECTION 10 OF THE COMBINES INVESTIGATION ACT, WHICH WAS STRUCK DOWN BY THE SUPREME COURT OF CANADA IN HUNTER ET AL. V. SOUTHAM, ARE NOT INCLUDED IN THIS BILL. THE REASON IS THAT THE MINISTER OF CONSUMER AND CORPORATE AFFAIRS HAS ALREADY INDICATED THAT HE WILL BE BRINGING FORWARD AMENDMENTS TO THIS ACT.

THE OTHER IMPORTANT POWERS OF SEARCH NOT INCLUDED IN THIS BILL ARE THOSE IN THE CRIMINAL LAW. THE SEARCH POWERS IN THE CRIMINAL CODE ARE BEING EXAMINED SEPARATELY AND I EXPECT TO COME FORWARD WITH LEGISLATION IN THE NEAR FUTURE.

NATIONAL DEFENCE ACT

THE MAJOR CHANGES IN THE NATIONAL DEFENCE ACT AIM TO PROVIDE MORE COMPARABILITY BETWEEN THE SYSTEM OF MILITARY JUSTICE AND THE ORDINARY CRIMINAL LAW. THE CHARTER IS NOT THE SOLE MOTIVATION FOR THESE CHANGES. FOR SOME TIME NOW, THE CANADIAN FORCES HAVE WANTED TO BRING ABOUT A GREATER DEGREE OF EQUIVALENCE BETWEEN THE CRIMINAL LAW AND MILITARY LAW. BASIC PROTECTIONS IN CRIMINAL PROCEDURE SUCH AS DEFENCES AVAILABLE AND PRESUMPTIONS OF SANITY WILL NOW BE AVAILABLE TO MEMBERS OF THE ARMED FORCES. IN ADDITION, RIGHTS SPECIFICALLY GUARANTEED BY THE CHARTER SUCH AS BAIL AND REASONABLE SEARCH AND SEIZURE WILL BE SPECIFICALLY PROVIDED FOR IN THE ACT. WE HAVE ACCEPTED THE VIEW, EXPRESSED BY SOME JUDGES OF THE SUPREME COURT OF CANADA IN THE 1980 CASE OF MCKAY V. THE QUEEN, THAT DISPARITIES BETWEEN THE PROTECTIONS AVAILABLE TO AN ACCUSED UNDER THE MILITARY AND CIVILIAN SYSTEMS OF PENAL LAW MUST BE RELATED TO SPECIFIC NEEDS OF MILITARY LIFE AND ORGANIZATION. AND MEMBERS OF THE COMMITTEE WILL APPRECIATE THAT A NUMBER OF THE PROPOSED CHANGES INVOLVE MODEST CONTRIBUTIONS TO ENHANCED CONFORMITY WITH THE NEW EQUALITY RIGHTS GUARANTEED BY THE CHARTER.

CANADIAN HUMAN RIGHTS ACT

RECENTLY, THERE HAVE BEEN CHALLENGES TO DECISIONS BY THE CANADIAN HUMAN RIGHTS COMMISSION'S TO APPOINT A TRIBUNAL TO INVESTIGATE COMPLAINTS. THE ALLEGATION HAS BEEN PUT ON THE GROUNDS THAT THE STATUTORY SCHEME UNDER WHICH THE COMMISSION OPERATES LEADS TO

POTENTIAL OR ACTUAL BIAS OR PARTIALITY IN ITS DECISION. EVEN THOUGH I DO NOT ACCEPT THIS PERCEPTION, BOTH THE CHIEF COMMISSIONER AND I WANT THE MATTER PUT BEYOND ANY DOUBT. SOME CLAIMS HAVE BEEN MADE THAT THE PRESENT PROCEDURES CONTRAVENE SECTION 7 OF THE CHARTER AND I THINK IT BEST THAT WE AVOID LITIGATION IN THIS AREA.

THE AMENDMENTS TO THE CANADIAN HUMAN RIGHTS ACT WILL TAKE THE APPOINTMENT OF TRIBUNALS OUT OF THE HANDS OF THE COMMISSION. AN INDEPENDENT OFFICE - THE PRESIDENT OF THE TRIBUNAL - WILL BE ESTABLISHED TO APPOINT TRIBUNALS FROM PERSONS ON A LIST. THE COMMISSION WILL STILL SCREEN COMPLAINTS TO DETERMINE WHETHER OR NOT A REFERENCE TO A TRIBUNAL IS WARRANTED.

EQUALITY

AS I POINTED OUT IN MY SPEECH ON SECOND READING, THIS BILL DEALS ONLY WITH THOSE EQUALITY ISSUES IN WHICH CHARTER IMPLICATIONS ARE CLEAR. THE MORE CONTROVERSIAL EQUALITY ISSUES ARE RAISED IN THE DISCUSSION PAPER ARE CURRENTLY BEING CONSIDERED BY A SUB-COMMITTEE OF THIS COMMITTEE, CHAIRED BY THE MEMBER FOR ETOBICOKE-LAKESHORE. I WANT TO REAFFIRM MY HOPE TO HAVE THE RESULTS OF THE SUB-COMMITTEE'S WORK AS SOON AS PRACTICALLY POSSIBLE, AND AS I SAID IN MY APPEARANCE BEFORE THE SUB-COMMITTEE, IF IT CAN REACH CONCLUSIONS ON ANY OF THE ISSUES OF EQUALITY THAT ARE RAISED BEFORE IT FINALLY REPORTS, WE WILL BE READY TO CONSIDER THOSE CONCLUSIONS FOR IMMEDIATE ACTION IN PARLIAMENT.

THE EQUALITY AMENDMENTS IN BILL C-27 DEAL WITH AGE AND REFERENCES TO MEMBERS OF ONE SEX WHEN THERE IS NO JUSTIFICATION FOR EXCLUDING MEMBERS OF THE OPPOSITE SEX.

EXAMINATION OF BILLS AND REGULATIONS

THE AMENDMENTS TO THE DEPARTMENT OF JUSTICE ACT AND THE STATUTORY INSTRUMENTS ACT WILL PROVIDE FOR THE SCRUTINY OF BILLS AND REGULATIONS TO ENSURE CONSISTENCY WITH THE CHARTER. A SIMILAR OBLIGATION ALREADY EXISTS WITH RESPECT TO THE CANADIAN BILL OF RIGHTS, WHICH MEMBERS OF THE COMMITTEE WILL KNOW WAS ONE OF THE MAJOR ACHIEVEMENTS IN THE FIELD OF HUMAN RIGHTS OF THE GOVERNMENT OF THE RIGHT HONOURABLE JOHN DIEFENBAKER.

THE AMENDMENTS WILL ALSO MAKE THIS PROCESS MORE EFFICIENT BY ENSURING THAT AN EXAMINATION OF REGULATIONS MADE UNDER THE STATUTORY INSTRUMENTS ACT WILL BE SUFFICIENT FOR THE PURPOSES OF THE CHARTER AND THE BILL OF RIGHTS.

MISCELLANEOUS AMENDMENTS

THE PART COVERS A WIDE VARIETY OF CHARTER PROBLEMS:

- THE RIGHT OF PUBLIC ACCESS TO IMMIGRATION HEARINGS,
- THE POSSIBILITIES OF DOUBLE PUNISHMENT UNDER THE FISHERIES ACT,

- UNREASONABLE SEIZURE IN THE WEIGHTS AND MEASURES ACT,

- THE RIGHT AGAINST ARBITRARY DETENTION AND THE CANADA SHIPPING ACT, AND

- ENSURING THAT LIMITS ON MOBILITY RIGHTS IN THE TRANSFER OF OFFENDERS ACT ARE PRESCRIBED BY LAW.

CONCLUSION

THE PROGRESS TO ENSURE THAT FEDERAL LAW CONFORMS TO THE CHARTER IS EVOLUTIONARY. WE DO NOT CLAIM TO HAVE ALL THE ANSWERS OR TO HAVE IDENTIFIED ALL THE PROBLEMS. THERE ARE A NUMBER OF CHARTER ISSUES CURRENTLY BEFORE THE SUPREME COURT OF CANADA. AS OUR UNDERSTANDING OF THE CHARTER INCREASES SO WILL THE PROCESS OF MAKING LAWS CONSISTENT WITH THE CHARTER.

THERE ARE ALREADY A NUMBER OF OTHER GOVERNMENT INITIATIVES UNDERWAY THAT I EXPECT WILL RESULT IN LEGISLATION TO BRING FEDERAL LAWS INTO CONFORMITY WITH THE CHARTER. AMONG THESE ARE THE REVIEW OF THE INCOME TAX ACT AND RELATED STATUTES, THE REVIEW OF THE CANADA ELECTIONS ACT BY THE PRIVILEGES AND ELECTIONS COMMITTEE AND THE EXAMINATION OF EQUALITY ISSUES BY THE SUB-COMMITTEE ON EQUALITY.

THE PEOPLE OF CANADA ARE ANXIOUS TO HAVE THE CHARTER IMPLEMENTED. IT IS A PRIMARY OBJECTIVE OF THIS GOVERNMENT TO RESPOND TO THAT ASPIRATION, WITHOUT NEEDLESS CONFRONTATION AND

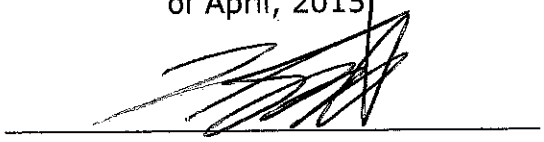
HARDSHIP. WE ARE MOVING TO MEET A CONSTITUTIONAL IMPERATIVE, AND THE EXPERTISE OF THIS COMMITTEE WILL, I KNOW HELP US TO DO SO EXPEDITIOUSLY AND IN A MANNER THAT IS SENSITIVE TO THE HIGHER VALUES EMBODIED IN OUR CHARTER.

This is **Exhibit "F"** referred to

in the Affidavit of Taylor Akin

Affirmed before me, this 30th day

of April, 2015



A Commissioner, etc.

Tania Lee Smith, a Commissioner, etc.,
Province of Ontario, for Raven, Cameron, Ballantyne
& Yazbeck LLP/s.r.l., Barristers and Solicitors.
Expires April 30, 2016.

HOUSE OF COMMONS
Issue No. 7
Tuesday, February 16, 1971
Chairman: Mr. Donald Tolmie

CHAMBRE DES COMMUNES
Fascicule no 7
Le mardi 16 février 1971
Président: M. Donald Tolmie

Minutes of Proceedings and Evidence of the Standing Committee on

Justice and Legal Affairs

Procès-verbaux et témoignages du Comité permanent de la

Justice et des questions juridiques

RESPECTING:
Bill C-182, Statutory Instruments Act

INCLUDING:
The Third Report to the House

APPEARING:
The Honourable John Napier Turner, Minister of Justice

CONCERNANT:
Le Bill C-182, Loi sur les textes réglementaires

Y COMPRIS:
Le troisième rapport à la Chambre

COMPARAÎT:
L'honorable John Napier Turner, ministre de la Justice

WITNESS:
(See Minutes of Proceedings)

TÉMOIN:
(Voir les procès-verbaux)

Third Session
Twenty-eighth Parliament, 1970-71

Troisième session de la
vingt-huitième législature, 1970-1971

23262—1

[*Text*]

The Chairman: Shall the amendment as proposed by Mr. Béchard carry?

Amendment agreed to.

Clause 27 as amended agreed to.

Clause 28 agreed to.

On Clause 29– *Duties of Minister of Justice*

Mr. Turner (Ottawa-Carleton): Let me explain Clause 29 because it deals with the Canadian Bill of Rights. The Statutory Instruments Committee makes two comments on page 51 about the obligation of the Deputy Minister of Justice to certify that a proposed regulation does not run contrary to the Canadian Bill of Rights.

> Two comments may be made. First, it is fair to observe that not all lawyers and parliamentarians would share the same feeling about the ease of application of the Canadian Bill of Rights.

I am not interested in that particularly.

• 1640

Secondly, and this is the comment that I think is relative:

> ...it appears that the practice is not to report an inconsistency with the purposes and provisions of the Canadian Bill of Rights to Parliament, as provided for in the statutes, and the regulations made thereunder, but to continue to work with successive drafts of the regulations until the inconsistency has been removed. We have no fault to find with this technique, but the burden it imposes on the Department of Justice is considerable.

The Committee says that the way the Regulations Act is drafted now it requires the Minister of Justice to certify that a proposed regulation is in accordance with the Canadian Bill of Rights. What happens in practice? The Deputy Minister of Justice finds that a proposed regulation is contrary to the Canadian Bill of Rights, he sends it back to the department concerned saying we will not accept this, fix it up and it is fixed up and then it is certified.

The amendment, instead of imposing the duty on the Deputy Minister of Justice or the Minister of Justice at the stage of a proposed regulation, says when the regulation is transmitted, that is to say after it has been approved, argued about, drafted and then sent over. In other words, the proper stage at which the Minister of Justice ought to certify it, is when it is transmitted for registration, not when it comes up by way of a proposal. That is the only change. It is responsive to the Committee report and makes a lot more sense because in practice we send proposals back anyway until they come back in the proper form. Our duty should be to make sure that before registration it is in accordance with the Canadian Bill of Rights.

Mr. Alexander: Will the regulations come before you, sir? I do not even see the difference except where if there is any doubt about the validity of a regulation it is then transferred to your Department. Is that right?

Mr. Turner (Ottawa-Carleton): Yes. There are two different things, Mr. Alexander. The Deputy Minister of Justice under the

[*Interpretation*]

Le président: Est-ce que cet amendement proposé par M. Béchard est adopté?

> L'amendement est adopté. L'article 27, tel qu'il a été modifié, est adopté. L'article 28 est adopté.
>
> Article 29. *Devoirs du ministre de la Justice.*

M. Turner (Ottawa-Carleton): Laissez-moi expliquer l'article 29 car il a trait à la Déclaration canadienne des droits. Le comité de la Chambre sur les textes réglementaires fait, à la page 51, deux commentaires au sujet de l'obligation qu'a le sous-ministre de la Justice de certifier qu'un projet de règlement ne s'oppose pas à la Déclaration canadienne des droits. On peut faire deux commentaires à ce sujet. Tout d'abord, il est juste d'observer que tous les hommes de loi et tous les parlementaires ne partageraient pas les mêmes sentiments au sujet de la facilité d'application de la Déclaration canadienne des droits. Cela ne m'intéresse pas particulièrement.

Deuxièmement, et je pense que ce commentaire est tout à fait pertinent:

> ... il semble que la pratique ne tende pas à faire rapport au Parlement des erreurs décelées dans les objectifs et les dispositions de la Déclaration canadienne des droits, comme cela est prévu par les lois et les règlements qui en découlent, mais qu'elle tende plutôt à faire continuer les travaux, à savoir la rédaction de projets successifs pour les règlements en question, jusqu'à ce que les erreurs soient éliminées. Nous n'avons rien à reprocher à cette technique, mais elle impose une tâche considérable au ministère de la Justice.

Ce que le Comité dit, c'est que de la façon dont la Loi sur les règlements est rédigée à l'heure actuelle, cela exige que le ministre de la Justice certifie qu'un projet de règlement est bien conforme à la Déclaration canadienne des droits. Qu'en est-il dans la pratique? Le sous-ministre de la Justice s'aperçoit qu'un projet de règlement s'oppose à la Déclaration canadienne des droits; il le renvoie au ministère concerné disant que le texte ne peut être accepté. Je leur demande de la modifier, et ensuite le texte est certifié.

L'amendement, au lieu d'imposer ce devoir au sous-ministre de la Justice ou au ministre lui-même, au niveau d'un projet de règlement, précise quand ce règlement doit être transmis, à savoir, après avoir été approuvé, discuté, rédigé, et enfin envoyé. En d'autres termes, le ministre de la Justice devra certifier ce règlement une fois qu'il aura déjà été transmis pour être enregistré, et non pas quand il est transmis à titre de simple proposition. C'est la seule modification. Cela fait suite au rapport du Comité et est bien plus sensé, puisque dans la pratique, nous renvoyons les projets, de toute façon, jusqu'à ce qu'ils nous reviennent sous une forme correcte. Notre devoir serait de nous assurer, avant l'enregistrement, que le texte respecte bien la Déclaration canadienne des droits.

M. Alexander: Est-ce que les règlements vous seront soumis, monsieur? Je ne vois pas de différence; sauf peut-être si l'on a des doutes au sujet de la validité d'un règlement; on le transmettra alors à votre ministère. Est-ce exact?

M. Turner (Ottawa-Carleton): Oui. Il y a deux choses différentes, monsieur Alexander. Le sous-ministre de la Justice dans le cadre des

[*Texte*]

earlier sections had the duty to ensure that the regulations met certain criteria. But the Minister of Justice under this clause has the duty to ensure that it does not contravene the Canadian Bill of Rights. In practice the Deputy Minister of Justice exercises that particular power on my authority but I am responsible before Parliament if he makes a mistake. As a matter of fact if there is a real dispute then the Deputy Minister of Justice draws it to my attention.

Mr. Lambert (Edmonton West): Can the Minister tell me that every regulation is going to be transmitted to the Clerk of the Privy Council. It seems to me that there were exemptions to Clause 5(1) in particular cases. I think this is the one where one would have to be exceedingly careful that those which are not to be transmitted for registration should not also be subject to the scrutiny. I regret to interpret this as though all those which, for instance under Clause 27 (c) (iii), are of an international nature or federal-provincial and any of those deemed not to have to be registered would be exempt from any scrutiny under the Bill of Rights or any certificate under the Bill of Rights.

Mr. McCleave: What is the effect of Clause 4 on all this?

Mr. Turner (Ottawa-Carleton): The difficulty is that every regulation that is submitted to the Deputy Minister of Justice and then transmitted will go through this process. There are some regulations which because of their sheer bulk will not be submitted to the Minister of Justice at all. We have to limit our responsibility to those we see.

Mr. Lambert (Edmonton West): Are they not the ones where there is grave danger? After all, the Bill of Rights is the Bill of Rights and this is the first time that anybody has come near it, to even touch this, unless it said that every proposed regulation had to be certified by the Minister or the Deputy Minister of Justice.

• 1645

Mr. Turner (Ottawa-Carleton): You see in the explanatory note here Mr. Chairman it just says every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the Regulations Act. Not every Bill is submitted to the Clerk of the Privy council under the Regulations Act; in fact, a lot more bills are submitted now than were under the present Act.

Mr. Lambert (Edmonton West): Yes, but at the present time, Mr. Chairman, the Minister must examine every proposed regulation to see that it does not contravene the Canadian Bill of Rights. That is at the examination stage.

Mr. Turner (Ottawa-Carleton): That is not true and I will ask Mr. Beseau to explain that.

Mr. Beseau: At the present time, the only regulations that are certified under the Canadian Bill of Rights are the ones submitted in draft form to the Clerk of the Privy Council. The only problem we are endeavouring to overcome is the comment raised in the report of the Special Committee that in examining these proposed regulations the Committee interpreted the first draft that comes in as being the

[*Interprétation*]

anciens articles de loi, devait s'assurer que les règlements respectaient bien certains critères mais le ministre de la Justice, en vertu de cet article, doit s'assurer que cela ne contrevient pas à la Déclaration canadienne des droits. En pratique, c'est le sous-ministre qui exerce ce pouvoir particulier, sous mon autorité, mais c'est moi qui serais responsable devant le Parlement si des erreurs étaient commises. En fait, s'il y a une réelle dispute, le sous-ministre de la Justice attire mon attention sur la question.

M. Lambert (Edmonton-Ouest): Le ministre peut-il me dire que tous les règlements doivent être transmis au greffier du Conseil privé? Il me semble qu'il y avait des exemptions à l'article 5(1) dans certains cas particuliers.

Il me semble qu'il faut être extrèmement prudent dans ce cas-là, car les règlements qui ne doivent pas être transmis pour l'enregistrement ne devraient pas être non plus soumis à la vérification. J'ai le regret d'interpréter ceci de la façon suivante:

> Tous ceux qui, par exemple, en vertu de l'article 27(c) (iii), sont déclarés de nature internationale ou encore fédérale-provinciale, et tous ceux qui ne doivent pas être enregistrés, seraient exemptés de toute vérification en vertu de la Déclaration des droits ou de n'importe quel certificat établi en vertu de la Déclaration des droits.

M. McCleave: Quelle portée aura l'article 4 sur tout ceci?

M. Turner (Ottawa-Carleton): Tous les règlements soumis au sous-ministre de la Justice et transmis par la suite devront passer par cette série de processus. Certains règlements, en raison, tout simplement, de leur volume, ne seront pas soumis du tout au ministre de la Justice. Nous devons limiter notre responsabilité à ceux que nous étudions.

M. Lambert (Edmonton-Ouest): Ne s'agit-il pas de ceux qui présentent un grave danger? Après tout, la Déclaration des droits est la Déclaration des droits, et c'est la première fois que l'on s'en occupe; on précisait seulement auparavant que tout projet de règlement devait être certifié par le ministre ou le sous-ministre de la Justice.

M. Turner (Ottawa-Carleton): Dans cette note explicative, monsieur le président, il est dit que . . . . chaque projet de règlement soumis au greffier du Conseil privé sous forme de brouillon, conformément à la Loi sur les règlements. Tous les bills ne sont pas soumis au greffier du Conseil privé en vertu de la Loi sur les règlements, en fait plus de bills sont soumis actuellement qu'ils ne l'étaient en vertu de la présente loi.

M. Lambert (Edmonton-Ouest): Oui, mais à l'heure actuelle, monsieur le président, le ministre doit examiner tous les projets de règlements afin de voir s'ils ne s'opposent pas à la Déclaration canadienne des droits. C'est le stade de l'examen.

M. Turner (Ottawa-Carleton): Ce n'est pas exact, monsieur, je vais demander à M. Beseau d'expliquer cela.

M. Beseau: A l'heure actuelle les seuls règlements qui sont certifiés en vertu de la Déclaration canadienne des droits sont ceux qui sont soumis sous cette forme de brouillon au greffier du Conseil privé. Donc, le seul problème que nous nous efforçons de résoudre, est la remarque exprimée dans le rapport du Comité spécial, selon lequel qu'en examinant ces projets de règlements, le Comité

[*Text*]

proposed regulation and we would send that back. Only when we got through with it would we say now that is the proposed regulation being submitted to the Clerk of the Privy Council. We are just letting it go a little longer and picking it up at a later stage. We are not saying that any less regulations will be subject to the Bill of Rights or will be certified under the Bill of Rights.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Mr. Chairman, again at the expense of showing my ignorance, if a regulation is exempted is it then transmitted to the Clerk of the Privy Council or not?

Mr. Turner (Ottawa-Carleton): It depends what it is exempted from. If it is exempted from examination, it is exempted from submission to the Privy Council Office. If it is exempted from registration or from publication it still has to go to the Privy Council Office.

Under the present Regulations Act, the Governor in Council under Section 9 may make regulations for exempting any regulation or class of regulations from the operation of Section 3. Section 3 is the section sending something to the Clerk of the Privy Council. Anything that is not sent to the Clerk of the Privy Council now, and that includes a lot of arbitrary situations that we are trying to overcome here, is not caught by the Canadian Bill of Rights under the present section of the Regulations Act.

This is not a derogation of the Canadian Bill of Rights. There is nothing in the Canadian Bill of Rights which relates to these regulations. It is the Regulations Act which says that any regulation submitted to the Clerk of the Privy Council also has to be certified as being in accord with the Canadian Bill of Rights. The same thing will happen here. There is no way we can certify those regulations that do not reach the Clerk of the Privy Council.

Clause 29 agreed to.

On Clause 30 – *Regulations subject to negative resolution of Parliament.*

Mr. McCleave: This caused quite considerable debate back in 1955 when it was brought in and just offhand perhaps Mr. Beseau could answer my question because it seems to me we may have watered down the right here. Under the procedure established in that year you could get notice signed by ten members, I wonder whether we could have a comment on that?

Mr. Beseau: With respect to Clause 30 it was expected that quite possibly the rules made to deal with negative resolutions of parliament would be similar to what is already provided in Section 41 of the Defence Production Act. For that reason we thought instead of repeating three subsections, and having that become obsolete likely at an early date once this act is proclaimed in force, Parliament might well want to use the negative resolution of Parliament that will be provided.

Mr. McCleave: The only difficulty I really had, I notice the ten members it said here, but I do not notice that in the provision dealing with the negative resolution. You are suggesting this is something we cure by rules of the House just as we take that other section which has been stood?

[*Interpretation*]

interpréterait le premier brouillon qu'il reçevait comme étant le projet de règlement et nous retransmettrons cela. Seul, lorsque nous en aurions terminé l'étude, dirions-nous qu'il s'agissait du projet de règlement soumis au greffier du Conseil privé. Nous le laissons circuler un peu plus longtemps et nous en occupons ultérieurement. Nous ne disons pas que moins de règlements seront soumis à la Déclaration des droit ou certifiés en vertu de ladite Déclaration.

Le président: M. Gilbert.

M. Gilbert: Monsieur le président, je dois encore une fois montrer mon ignorance, mais si un règlement bénéficie d'une exemption doit-il être transmis ou non au greffier du Conseil privé?

M. Turner (Ottawa-Carleton): Cela dépend pourquoi il est exempté. S'il est exempté de l'examen, ou d'être soumis aux services du Conseil privé. S'il est exempté d'enregistrement ou de publication, il doit pourtant être soumis aux services du Conseil privé.

En vertu de la présente Loi sur les règlements, le gouverneur en conseil peut établir des règlements qui peuvent soustraire certains des règlements à l'application de l'article 3. Or l'article 3 est l'article qui renvoie certains documents au greffier du Conseil privé. Tout n'est pas envoyé à l'heure actuelle au greffier du Conseil privé tout n'entre pas dans le cadre de la Déclaration canadienne des droits en vertu du présent article de la Loi sur les règlements.

Il n'y a rien dans la Déclaration canadienne des droits qui ait trait à ces règlements. C'est la Loi sur les règlements qui dit que tous les règlements qui sont soumis au greffier du Conseil privé doivent être également certifiés comme étant conformes à la Déclaration canadienne des droits. La même chose se produira en vertu de ces propositions. C'est que les règlements qui n'iront pas devant le greffier du Conseil privé ne nous concerneront pas.

L'article 29 est adopté:

Au sujet de l'article 30: *Les règlements sont établis sous réserve de résolution négative du Parlement.*

M. McCleave: Cela a soulevé des débats considérables en 1955, lorsqu'il a été introduit, peut être que M. Beseau pourrait repondre à ma question parce qu'il me semble que nous avons pu affaiblir le droit existant ici. En vertu des procédures établies cette année-là, nous pouvions avoir des motions signées par 10 députés, pourrions-nous entendre un commentaire à ce sujet.

M. Beseau: En ce qui concerne l'article 30 on s'attendait à ce que les règlements traitant des résolutions négatives du Parlement, seraient semblables à ce que prévoit l'article 41 sur la Loi de la production de défense. Pour cette raison, nous avons pensé qu'au lieu de répéter trois paragraphes et que la disposition devienne vite désuète une fois que cette loi est mise en vigueur, il est très possible que le Parlement veuille utiliser le droit de résolution négative du Parlement qui sera prévu.

M. McCleave: La seule difficulté qui s'est posée pour moi, c'est qu'il me semble qu'il est question ici de 10 députés, mais il n'en est pas question dans la disposition concernant les résolutions négatives. Vous pensez que c'est un problème qui est réglé par les règlements de la Chambre, de même que nous nous occupons de cet autre article qui a été mis en réserve?