

SPECIAL COMMITTEE ON REGULATIONS

June 15, 1998

MINUTE NO. 3

9:30 a.m. - Room 10

1. **PRESENT:** Mr. Toth in the Chair and Members D'Autremont, Jess, Koenker, Ward and Whitmore.

Staff to the Committee

Ms. Margaret Woods, Clerk to the Committee

Mr. Bob Cosman, Legislative Counsel and Law Clerk

Ms. Allison Gartner, Secretary to the Legislative Counsel and Law Clerk

2. The Chair welcomed and introduced the visiting delegation from the Scrutiny of Acts and Regulations Committee of the state of Victoria, Australia:

Mr. Murray Thompson, MP, Chairman of the Subordinate Legislative Sub-Committee

Hon. Maree Luckins, Chair of the Redundant Legislation Sub-Committee

Mr. Bob Cameron, MP

Mr. Carlo Carli, MP

Ms. Tanya Coleman, Legal Advisor to the Committee

3. The Committee Clerk summarized the origins and operations of the Saskatchewan Special Committee on Regulations for the Australians visitors. The Legislative Counsel and Law Clerk gave a briefing on his role in the Committee and an overview of the review process he follows.
4. **The Personal Injury Benefits Regulations – *The Automobile Accident Insurance Act* – January 13, 1995**

Issue:

The Act authorized the regulations to prescribe “educational institutions”. The word “prescribe” does not authorize the Lieutenant Governor in Council to delegate to a third party, such as Saskatchewan Government Insurance, the power to determine what is an educational institution.

The Committee accepted the recommendation of the legislative counsel that he would monitor the Minister’s undertaking that a correcting change, to either the Act or the regulation, would be made to address the Committee’s concern. The Committee agreed that no additional action was necessary.

5. **The Dairy Producers Regulations, 1995 – *The Animal Products Act* – January 27, 1995**

Issue #1:

The regulations provide for the incorporation by reference of the International Association of Milk, Food and Environmental Sanitation Standards while the Act contemplates that the regulation would actually set the standards. The issue is whether this incorporation by reference amounts to an invalid subdelegation of powers, as the Lieutenant Governor in Council is adopting standards from out of the jurisdiction. The Committee’s concerns essentially were “when and under what circumstances is such an open referential incorporation in order”?

The Committee accepted the response of the Minister and agreed that this particular incorporation by reference was appropriate.

However, the Committee continued to have concerns regarding the drafting of the regulation-making powers in statutes and agreed to recommend that legislation should be drafted to clearly permit the adoption of standards legislated in other jurisdictions, where it is the intent to grant such a power. The Committee directed the legislative counsel to correspond with Mr. Ian Brown, Chief Legislative Crown Counsel, Department of Justice, to suggest that this be taken into account when drafting legislation and regulations and to also seek further clarification on this issue.

Issue #2:

The use of the word “may” in subsection 5(2) of the regulation grants a discretion to the Minister to determine whether or not to grant a dairy producer license once all the provisions included in the subsection are met (i.e. milk quality standards, requirements respecting dairy facilities, equipment, health, sanitation, etc.). Furthermore, section 15(4)(b) of the Act stipulates that all conditions for the granting of a license are to be prescribed by the regulation, not the Minister. Should the word “may” be replaced with the imperative “shall”?

The Committee accepted the Minister’s response that there are additional requirements, not contained within the purview of The Dairy Producers Regulations, 1995 (such as a milk quota and a Canadian Dairy Commission Number) that a producer must meet before a license can be issued.

However, the Committee directed the legislative counsel to correspond with the Minister to confirm that the National Dairy Code has been finalized and adopted and that the Committee’s concerns have been addressed. The Committee further agreed that if its concerns have been addressed, no additional action was necessary and the matter would be considered resolved.

Issue #3:

At subsection 10(6) of the regulation, there is a prohibition for a dairy producer from having more than one bulk milk tank “unless otherwise approved by the Minister”. There does not appear to be any authority in the Act for such a power to be accorded to the minister to exempt the law. The issue before the Committee is whether or not all substantive requirements that the department wishes to impose on licensees should be stated in the regulations as the Act demands, and not left to the arbitrary discretion of the Minister?

The Committee agreed to direct the legislative counsel to clarify, in his correspondence with the Minister, whether the policy to permit two storage tanks under defined conditions was included in the revised National Dairy Code

Issue #4:

The producer’s right to ship milk is dependent upon compliance with the regulations but the regulations in section 21 impose a positive duty on the producer to comply with whatever the Minister may order. Section 21 does not appear to be authorized by the Act.

The Committee accepted the recommendation of the legislative counsel to accept the Minister’s response as satisfactory. The legislative counsel undertook to monitor the anticipated repeal of this section. The Committee agreed to consider the matter resolved.

6. It was moved by Mr. Ward:

That this Committee do now adjourn.

The question being put, the motion was agreed to.

7. The Committee adjourned at 11:15 a.m. to the call of the Chair.

Margaret A. Woods
Committee Clerk

Don Toth
Committee Chair