



Special Committee on Regulations

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**SPECIAL COMMITTEE ON REGULATIONS
2000**

Don Toth, Chair
Moosomin

Kevin Yates, Vice-Chair
Regina Dewdney

Denis Allchurch
Shellbrook-Spiritwood

Brenda Bakken
Weyburn-Big Muddy

Ron Harper
Regina Northeast

Glen Hart
Last Mountain-Touchwood

Debbie Higgins
Moose Jaw Wakamow

Carolyn Jones
Saskatoon Meewasin

Andrew Thomson
Regina South

The committee met at 1:30 p.m.

Ms. Woods: — Okay. Well, maybe we'll start then. As you're probably aware, this is the first meeting of the Special Committee on Regulations and accordingly the first item of business will be the election of a Chair, and as Clerk it's my duty to preside over that.

So I'll begin by asking for any nominations for the position of Chair.

Mr. Hart: — I'll nominate Don Toth.

Ms. Wood: — Are there any other nominations? The motion is therefore:

That Mr. Don Toth be elected to preside as Chair of the Special Committee on Regulations.

All those in favour? All those opposed? The motion is carried. And I'll call upon Mr. Toth to take the chair.

The Chair: — Didn't want to be too presumptuous here. Okay. The floor is now open then for the election of a Vice-Chair.

Mr. Harper: — I would like to place for nomination the name of Kevin Yates.

The Chair: — Any further nominations? Further nominations? Third and last call, further nominations? Kevin Yates is then declared Vice-Chair. Thanks, Ron, and thank you, Kevin.

Well first of all, thank you, committee members, and welcome to this first meeting in quite a while for the Regulations committee. Those who are new, in our discussions earlier in planning this committee meeting and arranging for it, we felt it would be very important to have an orientation afternoon just so — because we have a lot of new members on the committee — just to kind of inform everyone as to what the real purpose of the Regulations committee is. We actually have a fairly new Law Clerk as well, and counsel.

And so without any further ado, I'm going to turn it over to Margaret to give us a bit of a history of the Special Committee on Regulations.

Ms. Woods: — Thank you. Last week, I believe it was, we sent out a package of material to you. Included in that was an article that has been prepared in the past regarding the history of this committee. And I'll put it out to the members: if you've had an opportunity to read it, do you want me to go through it again or do you want me to just summarize it? Or if not we can proceed on to the next item.

A Member: — It's not necessary to go through it again.

Mr. Allchurch: — If there's something you want to highlight, that would be okay.

Ms. Woods: — I think it's probably quite self-explanatory and I think just in the interest of keeping things moving, if there are any questions you can feel free to come and speak to me, and

we'll just proceed to the next item then.

The Chair: — Thank you very much then, Margaret. And as was indicated, if there's questions arise, even as we get into further debate, just feel free to raise the questions.

We'll then move on to item 4 on our agenda and invite Ken Ring, I guess, to just kind of bring us up to date on the regulations process. And, Ken, this is his first time in front of the committee. I've chatted with Ken and I think he's already done a fair bit of work. I'm not exactly sure if he realized the extensive amount of work that might be needed to accomplish prior to accepting the position, in view of the fact that we haven't met for a while and we've actually had an interim legal counsel as well.

So, Ken, the floor is yours.

Mr. Ring: — Thank you. I'll just do a brief overview of delegated legislation, and I have two handouts. One will show you the process that a regulation . . . how a delegated legislation is made: right from the very beginning when the idea is we need a law, we need something to help us; right through to what this committee does; through to the committee report to the Legislative Assembly. And then I'll talk about, first of all the executive branch, which is internal to executive government, and then the legislative branch process, which is when this committee comes into play.

There are generally four types of delegated legislation. There are Lieutenant-Governor-in-Council regulations, which are regulations or laws made by cabinet. There are ministers' orders, board and commission orders. And then one other part of that are the Provincial Court Commission regulations which are a special category, and I'll talk about those briefly at the end of the presentation.

Generally speaking this committee's general role and mandate is that of a scrutiny committee. The committee's . . . To put the committee's role and purpose into some context, I'd like to look at the regulations making process. We'll consider the processes for each of the four sets of regulations that I mentioned to you in going through a chart.

And I could have Allison Gartner, who's helped prepare the package, hand that chart out and you can follow through the processes step-by-step.

And, just as an outset, generally speaking, delegated legislation only can be passed if the Legislative Assembly has passed an Act, which authorizes delegated legislation to be passed by either cabinet, the minister, or the Provincial Court Commission.

And if we just refer to the handout, at the top box, there's a request for regulations. That can either come from cabinet, from a minister, it can come from the civil service, or it could come from a member of the public. Once they make that, of course there has to be an Act under which the government is allowed to pass that regulation. If there's no Act that's been passed by the Legislative Assembly authorizing delegated legislation to be made, then that delegated legislation can't be made.

So at some point . . . for some instances when the request for regulations comes in, then you have to go back and say maybe we should pass an Act first that will give us the proper authority to make these regulations or to regulate in that particular area.

The second step is that one of the government line departments establishes drafting instructions. And that is, generally speaking — here is the area we would like to regulate, these are the reasons why, and these are the rules that we'd like to put into place for regulating that particular area.

Those drafting instructions are then passed to the legislative drafting branch — the third box — which prepares a draft regulation. And that legislative drafting branch is located in the Department of Justice. And they draft the regulations based on the written drafting instructions that were received from the department.

Legislative drafting will consult as necessary with the legislative services branch of the Department of Justice, which helps advise executive government with respect to moving legislation through the House; with the constitutional law area where they look at the Charter implications of any regulation because you'd be dealing with regulating people's rights; and also the civil law branch, which is composed of a number of lawyers who are assigned to particular client departments and are essentially the lawyer for that particular department for government and help them with a whole range of legal services that they require.

In between the third box and the fourth box you'll see the two arrows going back and forth. And that's because legislative drafting receives the drafting instructions, they produce an initial draft; but when you start drafting the regulation, you realize that there are a host of other questions or issues that are sometimes not covered in the drafting instructions that have been received. So a draft will go back and say, here's what we've done so far, do you need an appeal process? Would you like to have some other type of process put in place? Have you thought of these implications?

That then goes back to the department. The department looks at those questions and provides instructions on, yes we need an appeal process, we want it to be one person, we want it to be three people, these are the type of . . . other types of things we need in the regulations, or answers to the questions that have been raised.

At some point in time, a draft of the regulations is prepared, the department looks at it, and they say, that's exactly what we need or that serves our purposes. And then they will ask the legislative drafting section for an approved draft of the regulation. Once the department has the approved draft of the regulation, the department will then send that document off to the minister responsible for the department who signs the recommendation, and then the regulation is put on the agenda for the legislative instruments committee which is a subcommittee of cabinet.

When it gets onto the legislative instruments committee agenda, copies are sent to the Department of Finance, and the Department of Finance looks at the regulation to check for financial and administrative requirements to make sure that

those processes have been addressed or taken care of in the regulation. Any copies . . . or any comments that the Department of Finance has will be sent to the legislative instruments committee, and then when the legislative instruments committee meets to consider the regulation, they are deciding whether or not to recommend the regulation for cabinet's consideration.

They receive input from the Department of Finance. They look at the regulation. They receive something akin to the explanatory notes that accompany Bills when they come to the House. They review that. They meet with officials and decide whether or not to recommend the regulation for cabinet's approval or not.

At that point you'll see . . . there's to the left-hand side on the chart it says, not approve or clarification. Legislative instruments committee can send a regulation back to the department to say, have you thought about this? Maybe we should do it this way. Would you like to consider these? Or we need more information on this, that, or another point. And then when that happens you go back up to the second box and you work back through the flow chart.

Once a regulation has been considered by legislative instruments committee and recommended to cabinet, then cabinet considers the regulation and the legislative instruments committee's recommendation and either passes the regulation or doesn't pass the regulation. If the regulation is not passed, it either would go back to the department to start again or that's where the process ends.

If cabinet approves the regulation, the Lieutenant Governor will sign the order that accompanies the regulation. The regulation is then filed with the registrar of regulations, who has the official copy and the signed copy of all regulations that are passed by cabinet. And then the regulation is published in the Gazette, which is the next step that is required to be done by law for the regulation to become a law in Saskatchewan.

Once the regulation . . . And that's the end of the executive branch process for the making of the regulation.

Once the regulation is filed with the registrar of regulations, it is automatically referred to the Legislative Assembly Special Committee on Regulations, which is this committee. And there's a second handout that I'll send around, and it's just a page out of The Regulations Act, 1995 that section 16, you'll see that every regulation that's passed is permanently, stands permanently referred to, it says, "any committee that the Legislative Assembly may appoint," which in point of fact means the Special Committee on Regulations.

So in the bottom right-hand corner is the legislative branch process, and that's the point in time where this committee comes into play. So each week in the Gazette the regulations are published, and it's at that point that I review the regulations and start compiling a report which is the information that was sent out last week for your consideration.

With respect to this year's report, I'd like to thank Garnet Holtzmann who was the Acting Legislative Counsel and Law Clerk who reviewed the regulations and made the notes. And

that's the information that I used to prepare the report for this year's . . . for this committee's consideration.

Now at the outset I said this committee is a scrutiny committee or a watchdog for the Legislative Assembly. The committee's task is to ensure that the authority given by the . . . given to the executive branch or given to cabinet by the Legislative Assembly through an Act to make regulations is properly exercised and that that authority is not exceeded.

The other important aspect of the committee is that it is the public forum in which delegated legislation is considered through the executive government process that we went through — the box is on the left-hand side of the page — that is internal to government. There are consultations with stakeholders and with members of the public, but there's no requirement in law to have that type of consultation.

The boxes on the bottom right-hand side of the page are where the public process for delegated legislation occurs. Prior to it being referred to this committee, the regulation has only been considered and approved by the executive branch of government. And as I mentioned before, section 16 of The Regulations Act, 1995 indicates that each regulation that's filed with the registrar stands permanently referred to this committee.

Now you could turn to the fourth page that was in your package of materials that were sent out. It's the Special Committee on Regulations terms of reference. And I'll just draw members' attention to that as to what the terms of reference are for the committee. And these are the six items that would be looked at when we're reviewing a regulation and deciding whether or not to report it to this committee.

The Law Clerk's assistance to the committee is there as per the term of reference, which is in the second paragraph. And that's an indication that the Law Clerk will review all of the regulations, ministers' orders, board orders that are published and made. But that does not mean that the only issues coming before this committee are issues that are raised in the Law Clerk's report. The committee of its own motion and individual members can bring forward questions with respect to regulations if they wish.

I'd also note for the committee's attention that there is the power to call witnesses and to invite people, government department officials, to appear before the committee either to get a better understanding of how a regulation works, or ask for a reason as to why a regulation was drafted or presented in the way it was presented.

In the past this committee has dealt with each of the regulations raised in the Law Clerk's report; and generally what has happened is the committee, once it's made a decision would ask the Law Clerk to correspond with the department respecting the regulation that has been considered by the committee. By and large this works for . . . this works in a number of situations, and works well in a number of situations; but for some situations, it doesn't.

An exchange of correspondence that's usually a page or two long doesn't necessarily work as expeditiously as possible. And that's why I drew the committee's attention to the fact that you

can invite government officials to the committee to either explain a regulation or to get more information as to how a regulation works and what it was designed to do.

And I think because we're starting with a new committee with some new members, it may be an opportune time to look at how the committee functions and what type of . . . the way the committee functions and whether it wants to take on new ways of functioning, either to expedite the process or to get more information.

In looking back over the past files and the work of the committee in previous years, in some situations it may be helpful to have the officials here to explain the regulation to the committee, in the same way they explain the regulation to the legislative instruments committee. Once you have that better understanding of what the regulation is about and how it operates, then there may not be a concern for the committee to address, instead of just looking at it from one side and not having the background information.

There's one situation, if we get to the follow-up reports at this meeting, or tomorrow morning's meeting of the committee, where it would be a good example of when it may be helpful to have officials from the department come to explain the regulation, rather than everybody here trying to plough through it and read through all of the information and trying to make sense of it.

The last box at the bottom on the flow chart is the Special Committee on Regulations reports to the Legislative Assembly. And that you'll find on the handout with respect to The Regulations Act, 1995, section 17, procedure if disapproved by committee. When the committee is considering a regulation, if they feel there is a problem with the regulation or a difficulty and it's not being resolved, the committee can report that fact back to the Legislative Assembly and then the Legislative Assembly can disapprove of a regulation and require that it be repealed or amended. To my knowledge that power has never been used. It seems to me they've always been able to work matters out. But I point that out to the committee for your information.

The other reason I wanted to point out section 17 of The Regulations Act, 1995 to you is with respect to the Provincial Court Commission regulations that are passed. Those regulations are done by what's called the Provincial Court Commission, and that was established as a result of the judicial independence issue that went to the Supreme Court. And with respect to those commission regulations, The Provincial Court Act indicates that section 17 of The Regulations Act, 1995 does not apply to Provincial Court Commission regulations.

So those are a set of regulations that you cannot report back to the committee . . . to the Assembly. The regulations are referred to the committee but you don't have the option that you would with another regulation to report them back to the Legislative Assembly. And that is I believe a result of the litigation in the Supreme Court of Canada that led to the establishment of the Provincial Court Commission to make regulations for Provincial Court judges.

Now with respect . . .

The Chair: — A question from Brenda.

Ms. Bakken: — Who is the Provincial Court Commission and what is . . . what is that made of or . . .

Mr. Ring: — It's a group of people . . . in The Provincial Court Act it indicates who actually sits on the commission. And they decide on . . . it gives the independence. Rather than the government deciding how much Provincial Court judges are going to be paid and the increments in that, they've given it to a special commission that is independent of government to set that, to allow for judicial independence.

Ms. Bakken: — And that's their only purpose?

Mr. Ring: — It's that, and I believe they do some discipline matters for judges as well. But because with the judiciary . . . you're dealing with the legislative branch, the judicial branch, and the executive branch of government — those are the three pillars of how our system of government operates and each has to be independent of the other, although the judges and the court system are the ones that interpret the laws that you pass in the Legislative Assembly.

So it was to recognize that independence so that the Assembly or the government didn't have the power or the authority to change the judges' salary without it maybe influencing their decisions. And there was litigation on that the last few years.

The last few items I wanted to talk about take us back to the top of the page that I mentioned with the three other types of regulations. The ministers' orders that I mentioned do not go through the scrutiny of Legislative Instruments Committee and through cabinet.

A minister's order comes by way of drafting instructions from a government department. They exchange drafts with legislative drafting. Once the department is happy with the draft that they've received from legislative drafting on a minister's order, they request an approved draft. And then once the minister signs the minister's order, that regulation becomes law once it's published in the Gazette and filed with the registrar, and it comes into force on the coming into force section of the regulation. And that allows the government to move quickly in certain situations, but those regulations don't receive or don't go through the same process that Lieutenant Governor in Council regulations do.

The last part that I'll just touch on briefly for committee members is the fact that this committee also reviews all of the bylaws of professional associations that have an Act of the Legislative Assembly giving them self-regulation powers. An example would be the law society, The Medical Profession Act, 1981, the denturists, the registered psychiatric nurses. There's quite a number of groups that have been given self-governing . . . or the power to govern themselves. And those bylaws are also reviewed by this committee although on today's agenda we don't have any of those before you today.

And that would be the extent of the remarks that I would make with respect to the regulations process unless someone has a question.

Ms. Bakken: — I'm not quite clear. So the regulations that we receive to review are just the ones that you have reviewed and found to have some kind of problem with, or are they all the regulations?

Mr. Ring: — No, they're not all the regulations. They are the regulations I've been through, or Mr. Holtzmann for '99, has read through all the regulations and he made notes on the 15 regulations that are found in your report. So although he's reviewed all of the regulations that were passed and published, he only found 15 instances that he wanted to bring to the committee's attention.

Ms. Bakken: — So those are they only ones that we . . . (inaudible) . . . okay.

Mr. Ring: — That's right. And other ones that have been published throughout the year in the *Saskatchewan Gazette*, and they're probably in the hundreds, haven't been brought forward to the committee by the Law Clerk or in the Law Clerk's report.

Ms. Bakken: — So they have to be brought forward by the Law Clerk.

Mr. Ring: — No, they don't have to be brought forward unless there's a question.

Ms. Bakken: — No, but I mean they have to be brought forward by the Law Clerk to this committee, otherwise this committee does not receive them. Is that correct?

Mr. Ring: — No.

Ms. Bakken: — We can bring them forward?

Mr. Ring: — You can bring them forward by your own motion, because each one of those regulations is permanently referred to this committee. And the Law Clerk report only deals with those regulations that the Law Clerk reviews and feels the committee might be interested in discussing. So if there are other regulations that committee members would like to discuss at the committee, then those can be brought forward to the committee.

The Chair: — But in general though what we basically have reviewed is areas as you said, Ken, where the Law Clerk has picked up something where the regulation may not really conform to the legislation — a fair bit of that. If we were all to go through some 100 pieces of legislation and regulations that come through in a year, we're apt to skim a lot and miss a lot. So we're grateful for people like you.

Mr. Ring: — Yes, and to add to that I'd say that when I look at it, I'm looking at it strictly with respect from a legal point of view and I'm not looking at the regulations from a policy point of view or anything like that. Do they . . . were they passed with proper authority under the parent statute? So I don't . . . I take no position or no quarrel with any of the policy of regulations.

Mr. Yates: — It should also be noted, Ken, though, before they come here they also go through several other lawyers in the civil law branch and . . .

Mr. Ring: — Yes.

Mr. Yates: — . . . and they may of the belief that they are, so we may have a difference of opinion whether or not there is legal problems with the particular piece of regulation that's before us.

Mr. Ring: — That's right. No, and I think that's an important point that members, the lawyers at Department of Justice go through them and they have reviewed them. They give advice to the government departments as to what they should do, although government departments can follow the advice they get or they can choose not to follow the advice they get.

The Chair: — Any further questions in this area of discussion? If not then I guess we can move on to item no. 5, roles and responsibilities of the individuals involved in the committee. And again I'll turn it over to Ken.

Mr. Ring: — Now on that item I think I've covered the role that the Law Clerk plays with respect to that, certainly after having responded to the questions that . . . I review all of the regulations that are published in the Saskatchewan Gazette. We'll review the bylaws that are tabled with the Legislative Assembly and when I feel there's an issue that the committee may be interested in looking at, I bring that forward in my report.

And then I'll ask Meta to discuss the responsibility of the committee Clerk at this committee.

Ms. Woods: — I think what we wanted to do at this point was just to show the distinction between Ken's role and my role before the committee because it's not often that you see a legislative committee where you have two officers of the Assembly serving it.

But generally as Ken has described his role, he's almost here as a legal advisor or the technical advisor to the committee with regard to the terms of reference and the subject matter that you are here to review.

My role is more akin to what you would customarily see with a legislative committee, that being as a procedural expert or an administrative support to the committee. So with respect to any matters of procedure that might arise, I would be the one that would provide you with the assistance that you might need. Similarly with regard to the administrative aspect of running a committee, things like notices of meetings, looking after your expense claims, that sort of thing would be done by myself through the Office of the Clerk.

I should point out that there is quite a bit of co-operation back and forth between both the Law Clerk's office and the Office of the Clerk with regard to assisting the committee. So chances are if you can't find myself and you have a question you probably could consult Allison or Ken and we could resolve whatever issue that you might have.

I think I will note just very briefly at this point that there have been changes to the way that your expense claims will be dealt with. You noticed earlier that I had you sign an attendance roster. That is now the means by which you will be receiving your per diem for attending a committee meeting outside of a legislative session.

Your travel expenses will be submitted on your travel claim form, which you use to claim your expenses from your travel allowance. What will then happen, once these have been submitted, is that financial services will take that portion which were incurred as a result of attending a committee meeting and apply that against the budget of the committee, not against your travel allowance.

So when you see that form, you can submit all your travel claims or travel expenses such as meals, accommodation, mileage, that sort of stuff, and the financial services will look after ensuring that it's drawn against the appropriate budget. And that's just to make it a little more simple for you, rather than having to remember where you submitted the claim, whether it was for the committee or against your travel allowance.

I'll turn it back to you.

The Chair: — Thank you, Margaret. With the changes, I was just going to mention the fact that we'd want to be careful when we're doing your travel allowance, making sure that . . . I know a lot of our members were in for caucus and of course you're going to claim caucus. But if you have a committee meeting, you certainly don't want to be seen as a double-dip, and just being mindful of that.

It's not that the intent, but I think this should simplify that process — the fact that we're doing it on the same form and then legislative accounts is going to pick up, well there was a special committee, these members are on the committee, and then appropriately attribute those expenses. So I appreciate that because sometimes my mind doesn't always work the way it should work. So thank you very much.

Anything else? Do you have any questions of Margaret in regards to that process of the committee as far as remuneration or responsibilities? Her role? Seeing none, we'll move back to Ken then. We'll move back to Ken.

Oh, by the way, my apologies. Earlier I should have introduced Allison Gartner as well, who assists Ken.

Mr. Ring: — Yes, and she's done a lot of work for the office in getting this package together and getting it out to people, and typing and retyping and retyping again.

The two letters that I'm circulating now are just an indication of . . . we called it a sample case, how the special committee reviews a regulation. The top letter was a letter that was sent from the committee by the committee clerk, Margaret Woods, saying that the special committee had reviewed The Mental Health Services Amendment Regulations, 1995, there was some problem with the map that was attached to the regulations, and the mental health regions weren't contiguous with the regions of the health districts.

And that letter is self-explanatory. You can read through that and then the response that we get back from the minister is, this is the reason why they're like that and we're looking at changing . . . not changing the format but this is the reason why the boundaries for the mental health services regions don't correspond with the health districts. And there's actually a

reason for that, and we're looking at that and thanking the committee for its concern and saying that the regulations are going to be considered by the department again.

So it's just to give you a bit of an idea for, certainly for the members who are new to the committee, as to what the end process of . . . what the end process of the committee is with respect to one regulation.

The Chair: — Thank you, Ken. Any comments in regards to the sample copy we have here of the process? Hearing none, I guess we can . . . I think we're moving along a lot quicker than we thought we might be. That's fine. I don't think committee members mind that.

So down to item no. 7, review of the 1999 regulations. Let's move on then to item no. 7, Ken, please.

Short-term Hog Loan Regulations (Gazetted January 22, 1999)

Mr. Ring: — And you have the package before you with respect to the regulations. The first one is the Short-term Hog Loan Regulations. On the top right-hand corner the pages have been numbered. So if we need to refer back and forth to regulations we can use that page number that's in the top right-hand corner.

With respect to these regulations, the concern there was that when you read the . . . there's a requirement that terms and conditions be prescribed in the regulations, and the Act is set out . . . section 3 of the Act indicates that:

The Minister, for any purpose relating to the financial stability of Saskatchewan farms, may provide financial assistance by way of a grant, loan or other similar means in accordance with prescribed terms and conditions to any person, agency, organization, association, institution or other body within Saskatchewan.

And then clause 5(a) of the Act is the authority that's given by the Legislative Assembly to the Lieutenant Governor in Council to make regulations for that, and the regulation-making power says

. . . prescribing the terms and conditions of the provision of financial assistance pursuant to section 3.

When you look at the text of the regulations, clause 3(1)(b) of the regulations says:

. . . any loan and security agreements that the minister considers necessary."

So there really isn't . . . the terms and conditions are not really spelled out there.

Then it goes down to whatever the minister considers necessary and you have a short set of regulations with that type of language. And when you read the regulations you really can't tell — if you're applying for the loan — whether you qualify for it or not.

So in that case there's the possibility that the regulations could include some necessity or the basic criteria that the minister might look at and then have sort of a catchall. Any other . . . you know, any other loan or security agreement that the minister considers necessary for particular unusual circumstances.

Similarly subsection 4(2) of the regulations allows the minister to impose any other terms and conditions on the loan or the repayment of the loan. None of the terms and conditions that might be imposed there are prescribed in the regulations. And perhaps there there could be a minimum set of terms that would be available . . . set out in the regulations as the sort of the bare minimum and then if there's unusual circumstances you can account for those or make provision for those in another way.

Similarly clause . . .

Mr. Yates: — Ken, just a question. Are these regulations inconsistent with other regulations in the Acts concerning farms and loans under various programs to farmers or to farm organizations?

Mr. Ring: — No, I don't . . . I wouldn't say they're inconsistent. But certainly some of the other loan programs you have at least some indication as to what those minimum terms and conditions might be. I know it's always difficult working with the department for them to say, you know, exactly how to devise a program that's going to work for every particular farm situation. So this is a way of allowing for just about anything, which is good for flexibility, but then the problem with some of the flexibility is you really have no idea when you read the regulations as to what the terms and conditions are.

Mr. Yates: — Has our history not been since about the early 1980's to have probably a larger degree of flexibility in agricultural loan programs than others in very broad wording.

Mr. Ring: — I don't know that I could respond to that particular question . . .

Mr. Yates: — Well, having sat on the Legislative Instruments Committee and reviewed regulations over the last year and a half in legislation that has come forward, there seems to be a pattern of greater flexibility in agricultural programs in order to react to sharp turns in the industry. Your time frames of reaction are generally much . . . needed to be much quicker than in some of the areas that government operates. So generally I've seen a greater flexibility on the part of the regulations and legislation, particularly in the farm industry. And I'm just wondering if this isn't consistent with what's there for most areas of the farm industry.

Mr. Ring: — I don't think I could respond and say yes, it's consistent or no, it's not. I don't know that it's terribly unusual. I could respond that way.

Although perhaps the solution is that in the Act, instead of putting in accordance with any prescribed terms and conditions, it could . . . Because the Act was passed well before these regulations were thought of and maybe that kind of flexibility was needed. And so rather than having prescribed terms and conditions, suggest something along that you find in The Crown

Minerals Act. And The Crown Minerals Act regulations indicates that there are prescribed terms and conditions and the minister may set any other requirements that are necessary in given certain circumstances or certain situations.

I guess that's the reason I bring them forward, not that they're unusual but that when you read the wording of the Act and then what's in the regulations, the Act says they'll be prescribed and in the regulations say that anything the minister considers necessary, any other terms and conditions that the minister may impose. And there really isn't . . . none of the terms and conditions are prescribed, or at least minimum terms and conditions aren't prescribed.

Mr. Yates: — And did we . . . This piece of legislation was also amended in 2000, was it not?

Mr. Ring: — I believe there was an amendment to the Act.

Mr. Yates: — Thank you.

Mr. Ring: — They've had a number of additions to the farm security Act.

The Chair: — So I guess where are we going with this regulation, and then Ken I guess would just do . . .

Mr. Ring: — At the bottom of the page I have a recommendation that we could . . . or recommend to the committee that we could correspond with the minister to determine, now that the program has been up and running for a while, determine what . . . if there are any minimum criteria that have come up as the program has been running and when they do give a loan to someone and what circumstances they decide not to approve a loan for a particular person.

Now that the program's been running for a while they may have a better sense as to what the minimum criteria may be. And that when the regulations were passed and there was that need, they really didn't have that information. So that would be one possibility.

The second possibility I indicated there was to invite the departmental officials here to indicate how the program works. And in discussing it with them, you may find that the flexibility is needed, that the minister can decide on a case-by-case basis with respect to the loans. If that's the case, then perhaps the wording in the Act shouldn't say "prescribed terms and conditions"; it should be . . . the wording in the Act should allow for the flexibility that the regulations have.

The Chair: — I guess that's the concern I have and that's the responsibility of the committee, I believe, when we're reviewing regulations to indeed address some of the issues in regards to whether or not the specific regulation follows the directives of the legislation. Because legislation in many cases comes forward and then basically it leaves it up to the regulatory process, or regulations then, to set out the guidelines and implement that piece of legislation.

So it's up to us as a committee to respond to the suggestions made . . . brought to our attention by our Legislative Law Clerk and either accept the recommendations or determine whether or

not we feel that the regulation as it is meets that requirement. So I'm looking for some direction from the committee at this time.

Mr. Yates: — Well I would think that the first prudent step would be to find out . . . to invite the officials and find out how the program is being utilized, what the needs of the program have been, and determine what criteria have been used. And then from that perspective look at what is our best avenue for dealing with it, either write to the minister asking something be included or perhaps send forward a concern about the wording of the Act itself.

The Chair: — Just conferring with Margaret for a minute. That would basically be taking the recommendation of our Law Clerk and we're just determining whether or not we need a motion on that. I think maybe it'd be appropriate so the committee then would be officially recognized that way. So would you be willing to put that in the form of a motion, that we invite departmental officials, and the committee could discuss it, please Kevin.

Mr. Yates: — I would move, yes:

That we invite the department officials to appear before the committee and discuss the program and how it functions in order to determine what criteria are used in setting the various terms and conditions by the minister.

The Chair: — Is there any discussion on this motion brought forward by Kevin, committee members? Are we agreed with the motion as it's presented? Opposed? It's agreed.

An appropriate letter will be sent off and we'll arrange a meeting with the department officials at the next convenient opportunity to get together. Thank you very much.

The Employment Program Amendment Regulations, 1999 (Gazetted January 29, 1999)

The Chair: — We're to page no. 2, The Employment Program Amendment Regulations, 1999.

Mr. Ring: — Here the issue was delegation of ministerial authority to lesser officials. The regulations for the employment program regulations set out a number of ways that grants could be given to individuals to pursue ways of either starting a new career, learning a new career, starting a new vocation, doing something different to help direct them and get their careers either moving again or start them in a different direction.

But with respect to this regulation, The Interpretation Amendment Act, 2000 that was passed in the last session of the legislature dealt with this particular issue, and The Interpretation Act now does allow for the delegation of authority to lesser officials.

So the government has moved to make a change to the parent Act that will allow for the assertive . . . the delegation of authority to lesser officials that was partially in case law and partially part of statute, but not exactly articulated in any particular forum. And now that the interpretation has been . . . The Interpretation Act has been amended, you'll recall as well there was The Interpretation Act Consequential Amendment

that repealed a number of sections from regulations in that Act. And what they did . . . what they were doing there was removing some of the different types of delegation to lesser officials that they had in place before then.

So the situation that was noted there has been taken care of by the Assembly through The Interpretation Amendment Act, 2000. The recommendation there would be to correspond with the minister indicating that what had been a concern or might have been a concern to the committee, has been dealt with through legislative amendment and thank them for . . . thank the minister for that.

The Chair: — Any comments? It would appear to me that it's simple and straightforward. And so I suppose . . .

So is the committee then in agreement with this recommendation? I think that's all we basically need.

Thank you very much.

Agreed; it's carried.

Mr. Ring: — I would also indicate to the committee that there are a number of other instances like this, so when we get to the one that has delegation of ministerial authority to lesser officials . . . unless you want me to go into the detail of what the regulations concerned, those are basically the same issue.

The Chair: — No, I think we were agreed on other than areas where there might be a question, but if everything's been . . . the concerns that were raised previously have already been addressed. I think we can move through them fairly quickly.

The Skills Training Benefit Regulations (Gazetted January 29, 1999)

Mr. Ring: — And that would be the same case for the item on page 3, The Skills Training Benefit Regulations.

The Chair: — Maybe what we'll do, Ken, in view of that, rather than doing them all individually, you can just mention which ones, and if there's any questions, we'll just, prior to, we'll just do them as a block. Is that okay?

Mr. Ring: — Certainly.

The Urban Municipalities Revenue Sharing Amendment Regulations, 1999 (Gazetted May 21, 1999)

The Skills Training Benefit Amendment Regulations, 1999 (Gazetted June 18, 1999)

Mr. Ring: — Then it would be as well on page 13, Urban Municipalities Revenue Sharing Amendment Regulations. Page 13 of the package. And page 20, The Skills Training Benefit Amendment Regulations, 1999.

The Chair: — Says pages 2, 3, 13, and 20.

Okay, is the committee ready to then accept the recommendation of the Clerk for items 2, items 3, 13, and 20?

Agreed? Carried. Thank you.

Move on to item no. 4 then, please, Ken.

Provincial Court General Regulations (Gazetted January 29, 1999)

Mr. Ring: — Now these are the Provincial Court General Regulations. And so I'll just remind the committee that these are a set of regulations made by the Provincial Court Commission and that whatever occurs with them, they cannot be reported back to the Assembly for repeal or amendment. But at the same time they are referred to this committee as a result of The Regulations Act, 1995 regulations.

And there are two concerns in this regulation that Mr. Holtzmann had noted to bring forward. The first concern was that there's no objective criteria set out that the minister must consider when making a decision on whether or not to grant a leave of absence to a judge where the minister considers it to be in the best interests of the administration of justice.

That's the only criteria, and perhaps that's sufficient. But I raise that for the committee's attention and also indicate to the committee that, because we're dealing with regulations that regulate another . . . the judicial branch of our system of government, to see whether to . . . then the committee can decide how they'd like to deal with this regulation or this concern.

The Chair: — Any questions from committee members regarding . . . This is page no. 4, the first recommendation we're talking of here, the first concern that's been raised regarding the Provincial Court General Regulations.

Mr. Harper: — My thoughts on this matter is, if you set out some objective criteria then you would limit to some degree the minister's ability to grant that leave if for any reason a situation arose outside the criteria, which then I think would be, if nothing else, very unfair to the individual who may be requesting that leave. This I think leaves it then open to flexibility to address all concerns that may arise — those, who we . . . who, you know, quite quickly come to mind and those which may not come to mind right at the moment, quickly. So I believe that there's a need to have that flexibility, is there not, for the Minister . . .

Mr. Ring: — Yes. And . . .

Mr. Harper: — . . . to be able to address it?

Mr. Ring: — And it doesn't say "prescribed terms and conditions".

Mr. Harper: — Right.

Mr. Ring: — There is a standard or some . . . you at least know what it is that the minister is to consider. He "considers it to be in the best interest of the administration of justice."

Mr. Harper: — And that seems to be the bottom line, I would think.

Mr. Yates: — Yes. My concern is similar to my colleague's — that to be too prescriptive in when you'd want to give leave of absence raises some concerns.

Other employees in the civil service, it's a very wide open clause. There are no, in their collective agreements or otherwise, strict criteria as to when you would get a leave of absence. Because the varying circumstances that a person may encounter when wanting a leave of absence, you couldn't possibly outline them in any type of policy paper in a way that's totally inclusive.

And so rather than put two or three or four things and saying, and any others that the minister would approve, why would we not have it basically open to the application of the individual and the minister deciding whether it meets the criteria that is in the best interest of that administration of justice. I believe . . . as wide open as possible. There are special circumstances judges find themselves in. I think that it's probably in the best interests not to try to limit it in any way.

Mr. Hart: — I guess I can agree with most of what has been said here, except that I think it would be useful for the committee to at least be advised as to what the type of criteria the minister does use in granting leaves of justice. I'm not saying that we necessarily have to make . . . ask him to make changes in that regard, but at least if we had some sort of an indication as to what guidelines are being used at present.

And, therefore, I would have to recommend that we adopt the recommendation no. 1 and just so . . . more for information purposes perhaps and then make a decision after we've been . . . after we know what the criteria are.

Mr. Yates: — I'd just like to make the point that a leave of absence is at the request of the individual asking for it, so that it's not a forced issue and that any employer — in this case the minister who'd be responsible for administering, because it's at the judicial branch — would consider, based on a number of things, whether or not you can accomplish the work that's required or . . . but it would be no different than any other job. And I think it has to be evaluated on the criteria in which the person asks for the leave under. It could be for education.

Mr. Hart: — In this case we're seeing that our judicial system and our court system seems to be a growing backlog and all those sorts of things. And quite often we hear from constituents that, you know, isn't there something that can be done to speed up the judicial system, and that sort of thing. And I guess it would help me as an elected representative if I would . . . The more information I had that I could at least deal with some of these concerns that are raised and so on, and I think I would like to at least see what criteria are used in this area.

The Chair: — Are there any further comments? What's the wish of the committee then? We have some members who feel that probably the regulations do address that. Other members have indicated that it may not hurt just to get a bit of an understanding of what the criteria are. And I think it kind of addresses what has been raised by both Ron and Kevin so I look for some guidance from the committee.

Mr. Allchurch: — Yes, I agree with Ron and Kevin somewhat.

But I also agree with what Glen was saying. As a newcomer I would also take the response of Glen here that we need a little more information as referred to by the recommendation no. 1.

The Chair: — Okay. I'll ask the question then. Is the committee ready to accept the recommendation as presented to us, recommendation no. 1? Okay, that's carried. And we'll then make that inquiry. Thank you very much, Ken.

Mr. Ring: — So just to be clear, Mr. Chair that would be with respect to: correspond with the minister to determine what criteria are used?

The Chair: — Right.

Mr. Ring: — But not the second sentence?

The Chair: — Yes, I think that's right. Leave the second part of it just to get an idea of what exactly . . . Thank you.

Moving then to the second concern, page no. 5.

Mr. Ring: — This also deals with the provincial court general regulations. The second concern that was raised there is the deferred salary leave plan, and this may go the same way that the first recommendation was dealt with.

There, section 7 of the regulations says:

Subject to the approval of the Chief Judge and the minister, a judge may participate in the deferred salary leave plan designated by the Lieutenant Governor in Council pursuant to subsection 64(2) of The Financial Administration Act, 1993.

When one looks at the Act, the subclauses in the regulation-making authority mention leave of absence. They mention sick and special leave, but there's no mention of deferred salary leave plan.

And the concern there, I believe, was with respect to an important part of judicial independence is that a salary aspect of controlling the salary of the person who is making the decision.

And that perhaps with the deferred salary leave plan there should be, either in the Act I mentioned, that deferred salary leave plan could fit in there or to find a place that the deferred salary leave plan would fit within the authority in the Act. Although it isn't expressly spelled out, when you look at how it's been set down in the regulations-making section, it doesn't appear to fit into any of the categories because a deferred salary leave plan is something that's planned beforehand, and that you make decisions on . . . the individual makes decisions on beforehand. So it wouldn't fall in under sick leave or special leave. It may fit under the special leave category, but because sick leave is linked with special leave, sick leave is not something you have control over and not something that you plan.

So I think the pressing necessity sections that are there would fit for the special leave, but I don't know that the deferred salary leave plan fits in anywhere under the Act.

The Chair: — Any questions by committee members? Is the committee then prepared to accept the recommendation as presented to us?

It's agreed and it's carried. Thank you very much.

**The Justices of the Peace Amendment Regulations 1999
(Gazetted February 26, 1999)**

Mr. Ring: — The first concern with respect to Justice of the Peace Amendment Regulations 1999 is that the minimum criteria required to obtain the benefit isn't set in the regulation. So when you read 14.5 and 14.51, the language makes it impossible to know whether or not a benefit would be continued. Fourteen point five says, "in the best interests of the administration of justice," and then 14.51 talks about, "In accordance with any guidelines that the chief judge may establish."

And there you have the chief judge would be setting out what the criteria would be as opposed to the criteria being set out in the regulations.

The Chair: — Do we have any questions in regards to item no. 6 and the recommendations brought forward? Is the committee prepared then to accept the recommendation as presented to us?

Agreed. Carried. Thank you very much.

We're waiting for a coffee break. We haven't got there yet. They haven't worked long enough.

Item no. 7, please, Ken. Justice of the Peace Amendment Regulations, the second concern.

Mr. Ring: — Yes, this is the second concern that Mr. Holtzmann raised in that the regulations purport to grant employee-type rights and benefits to justices of the peace, and justices of the peace perform judicial and quasi-judicial duties with respect to detention of people. And the issue there I think is whether or not they should be closer to the employee-type regime or in another type of . . . outside of that employee-type regime.

And here the recommendation, given the situation, was to correspond with the minister to raise the issue and ask for a response. And this may be a situation where once you get the bigger picture, you understand what it works and how it works that way and maybe nothing needs to be fixed. Maybe some clarifications need to be done.

The Chair: — Any questions? Are we agreed with the recommendations? It's agreed. Carried. Thank you.

**The Short Line Railway Financial Assistance Regulations
(Gazetted March 5, 1999)**

Mr. Ring: — The Short Line Railway Financial Assistance Regulations are very much similar to the issue that we dealt with under The Short-term Hog Loan Regulations. And when you look at the two sets of regulations, I think you'll find that they are very similar but for the title and changes in the wording. But one difference with respect to the two regulations

is that the short line railway regulations are made pursuant to The Government Organization Act and not pursuant to a particular Act.

Now The Government Organization Act allows the government to organize the ministries and assign duties and responsibilities to each particular minister. And it also allows in sections — with the combination of sections 19 and section 24 of that Act — for ministers who have authority in certain areas, be it transportation in this situation, to use The Government Organization Act in conjunction with the departmental Act here, The Highways and Transportation Act, 1997 that sets out the minister's powers, then allows that minister to make grants and loans to help with respect to transportation systems, which is what The Short Line Railway Financial Assistance Regulations were made to do.

Section 24 of The Government Organization Act, the third paragraph down on the page, again talks about required or authorized by this Act to be prescribed in the regulations. And then when one looks at the regulation themselves, the regulations say the minister may approve a loan conditional on compliance with or the fulfilment of any of the matters mentioned in subsection 2 or on any other conditions that are not inconsistent with these regulations that the minister considers appropriate or necessary.

So again you have the wide flexibility in the regulations, although The Government Organization Act speaks to prescribed terms and conditions or any terms and conditions that are prescribed in the regulations.

The Chair: — Any questions in regards to the items just presented to us?

Mr. Yates: — No. I would move that we invite the department officials — recommendation no. 2 — to appear before the committee to discuss the program and how it functions in order to determine what criteria are used in deciding the various terms and conditions, so we understand it prior to . . .

Mr. Harper: — Yes, I agree with Kevin. I believe that there may be some legitimate reasons for the flexibility being given to the minister and I don't think I'm going to prepare to make a decision on this until I have greater idea of what might be the need for this. So if we could have the officials in to further explain in greater detail, I think it would give us a better base knowledge and perhaps a better position to make a decision on at that time.

The Chair: — Okay. Is the committee prepared to accept recommendation no. 2? I certainly concur with that. Thank you very much. That's carried.

**The Forest Resources Management Regulations
(Gazetted April 9, 1999)**

Mr. Ring: — These regulations that are on page 10 of the package are a little bit more involved than some of the issues we've been dealing with to date.

The concern here was that there's no authority in the Act to allow the minister to withdraw land from a public forest . . .

from a provincial forest, although the regulations speak to the minister withdrawing land from a provincial forest with the written approval of the Lieutenant Governor in Council.

And if you . . . I'll give committee members a few minutes to read the provisions in the Act and then section 3 of the regulations.

So the issue there is that the Act seems to be quite precise in that the Lieutenant Governor in Council by regulation may designate any Crown resource land as provincial forest, and that none of those lands once designated can be withdrawn except pursuant to the authority of the Act and the regulations. And then in the regulations it talks about, in 3(2):

The minister may withdraw land from a provincial forest with the written approval of the Lieutenant Governor in Council.

And in 3(3) it talks about what requirements of the process that need to go through to withdraw that land. You get the written approval of the Lieutenant Governor in Council or cabinet, the reasons for withdrawing it. Those are published in the Gazette. And then 3(3)(b) talks about "the areas described in Part III are deemed to be amended accordingly."

And when you look at the process that's set out in the regulations in subsection 3(3) to withdraw land, to get the written approval of the Lieutenant Governor in Council, one wonders why you wouldn't pass a regulation. I wasn't sure what the written approval of the Lieutenant Governor in Council meant, what that process necessarily involves, whether it's a cabinet decision item or who would do that.

And then you publish the fact that you're withdrawing that land in the Gazette from . . . withdrawing that land is published in the Gazette, that's one of the prime things that needs to be done in order for any regulation to be law, is it has to be published in the Gazette and filed with the registrar.

And then in (3)(b) when it talks about "the areas described in Part III are deemed to be amended accordingly," it's just . . . I thought when you look at that process that sounds to me like you're making an amending regulation and that perhaps it should be an amending regulation. So that someone who's going through who wants to know if a particular portion of a provincial forest has been withdrawn, it isn't just deemed to be amended accordingly. But you can look at the provincial forest amendment regulations and then you can look and say, oh that parcel of land was withdrawn on this particular date.

It was the amending . . . deeming something to be amended accordingly that sort of caught the eye of Mr. Holtzmann who was reviewing them I think.

Mr. Yates: — I think the other thing; a good recommendation . . . and I believe the methodology used is in fact an amendment regulation. So I think that it is probably necessary to write the minister and make sure that we're consistent in how we deal with this.

The Chair: — The committee agree with that recommendation?

Ms. Bakken: — Wasn't the whole intent of the . . . I mean the Act does not to give any authority for anyone to withdraw the land once it's been put in, yet the regulation is. The Act doesn't give the authority once it's been designated for anyone to withdraw it.

Mr. Ring: — In 12(2) there is a way that provincial land can be withdrawn from: "All lands designated as provincial forest are withdrawn from disposition . . ."

Ms. Bakken: — That means once they've been designated . . .

Mr. Ring: — Once they've been designated, yes.

Ms. Bakken: — But it doesn't give any authority for anyone to take part of the designated land back out. And that's what the regulation is doing.

Mr. Yates: — That . . . (inaudible) . . . for the regulations to lay out a process to take it out — clause no. 2.

Mr. Ring: — Withdrawing the land from the provincial forest I don't think is actually articulated in the regulations-making power of the Act. Now it may fit under a category, but it doesn't appear under section 99 of The Forest Resources Management Act.

The Chair: — So it wouldn't really hurt for the committee to accept the recommendation and get a clarification; and the potential is there that the minister will have picked up, or be picking up on this, and may be coming out with some suggestions to meet that requirement.

So I think by conversing . . .

Mr. Ring: — Yes, if it isn't already in the Act . . .

The Chair: — . . . corresponding with the minister, that would bring it to the minister's attention and the concerns may be addressed, as were raised by Ms. Bakken. So it may be appropriate to correspond and then get the information we need and we can go from there.

And so is the committee agreed then we correspond with the minister to have clarification in regards to this matter that's been raised? Agreed? Thank you, that's carried.

The Swimming Pool Regulations, 1999 (Gazetted April 16, 1999)

The Chair: — Move on to item no. 10, The Swimming Pool Regulations.

Mr. Ring: — The concern with The Swimming Pool Regulations that were passed in 1999 pursuant to The Public Health Act, 1994: the regulations in subsection 2(3) state, "The local authority is responsible for the enforcement of these regulations in its jurisdictional area" — which makes sense when you look at it.

However, in The Public Health Act, 1994 the Lieutenant Governor in Council is given authority to make regulations governing the location, construction, and operation of

swimming pools.

Further, they're allowed to prescribe any matter or thing required or authorized by this Act to be prescribed in the regulations. And we've just been through the list for swimming pools.

But there's nowhere in the Act that allows the government to make the local authority responsible for the enforcement of the regulations through delegating the enforcement of the regulations down to another level of government.

Section 47 of The Public Health Act, 1994 allows local authorities to make bylaws with respect to swimming pools but — and that would be their own rules and regulations that they should enforce with respect to them — but there's no way for the delegation of the enforcement of the regulations to be moved to the local authority.

The Chair: — Any questions regarding item no. 11? Is the committee then prepared to accept the recommendation of our Legislative Counsel?

Thank you. That's carried.

Moving on then to item . . . I see it's 3 o'clock, but if it's committee members wishes, do you want to just go through and . . . I think we have about eight more regulations just to go through and we're basically done and wind up. Wishes of the committee to proceed?

Okay. We'll move on then to item no. 11 . . . or item no. 12, pardon me — The Urban Municipalities Revenue Sharing Amendment Regulations, 1999.

**The Urban Municipalities Revenue Sharing Amendment
Regulations, 1999
(Gazetted May 21, 1999)**

Mr. Ring: — The concern with respect to these regulations is that there's a definition of population. And the definition of the population for the municipality is:

unless otherwise determined by the minister, means populations as determined by the most recent census taken pursuant to the Statistics Act (Canada) that is available to the minister.

When you look at the Act, the authority in the Act to make regulations speaks almost exclusively of prescribing what should be done. And so it causes you to wonder why the minister would otherwise determine what the population of a municipality is if you have statistical information.

Now that could change dramatically between the times when they do a census, and perhaps that would be the reason for it. But perhaps there should be some type of criteria with respect to why the minister would otherwise determine what the population is if there is statistical information there.

The Chair: — Do you have any questions? Suggestions? Do you accept the recommendation of our counsel? Agreed. Carried.

**The Domestic Game Farm Animal Regulations
(Gazetted June 4, 1999)**

Mr. Ring: — With respect to these regulations, they appear to cover something that is covered, that is already covered by the Act. Section 7 of the regulations deals with the suspension of licences for domestic game farms. However, section 18 of the Act doesn't appear to provide the legislative authority for making regulations to suspend licences.

And when you look at section 15.01 of The Animal Products Act, which is the parent legislation, the minister's allowed to, under subsection (1), amend, suspend or cancel any licence issued to the Act if a person is convicted of that. Amend, suspend or cancel, where, in the opinion the holder of the licence has failed to comply with this Act or the regulations. And those criteria are set out in the Act, and that's fine; it was passed by the Legislative Assembly.

However, when you get into section 7 of the regulations it appears to be inconsistent with the Act, because section 7 of the regulations allows the minister to suspend a game farm licence on broader terms than the terms that are set out in the Act.

Section 7 of the regulations speaks to suspending a domestic game farm licence if the domestic game farm operator fails to comply with the Act, these regulations or any other regulations made pursuant to the Act, with respect to The Diseases of Domestic Game Farm Animals Regulations, and certain sections of The Wildlife Act, 1997.

Ms. Bakken: — So what are you saying? That because they're including these other Acts in the regulations that's not permiss . . . I mean that's not . . .

Mr. Ring: — There should perhaps be more . . . yes. The parent Act says here's when you can suspend, cancel or amend a regulation and here . . . this is what the rules are and then, down in the regulations, there seems to be . . .

Ms. Bakken: — They're broadening the scope . . .

Mr. Ring: — . . . broader terms that you can suspend the . . .

Ms. Bakken: — . . . by using other Acts.

Mr. Ring: — And there may be a good reason for that; in that, when you're drafting the Acts, you can't cover all the possibilities there. But perhaps there should be something that indicates that you can suspend them under broader terms that will be . . . to be set out in the regulations.

Ms. Bakken: — So the Act is . . . if they want to do this, the Act needs to be changed then.

Mr. Ring: — That would be one way of approaching it.

Ms. Bakken: — Well, just so I'm clear, the regulations follow the Act, not the other way around. Right?

Mr. Ring: — That's correct.

Ms. Bakken: — So if the regulations do not correspond to the

Act, then the . . . yet, they want it to be this way, the Act is going to have to . . .

Mr. Ring: — Have to be changed.

Ms. Bakken: — . . . be changed through legislation, not . . .

Mr. Ring: — Yes. Or, they could change the regulations to make them . . .

Ms. Bakken: — Yeah. To narrow them, so that . . .

Mr. Ring: — . . . work to correspond with the Act.

Ms. Bakken: — . . . they correspond with the Act. But if they want to keep them this way they have to change the Act.

Mr. Ring: — Right. So with respect to this one, I've indicated that perhaps correspond with the Minister to get the department's view of how those two provisions correspond and work together. And there may be a reason as to how they see the two provisions working and then there wouldn't be an issue that the committee would need to be concerned.

Mr. Yates: — I would move that we invite departmental officials to meet with this committee to bring forward their views and experience and utilization of both the legislation and regulations to determine what direction we would like to take.

The Chair: — Thank you, Kevin. Is that motion accepted by . . .

Mr. Allchurch: — Do we need to invite them here or do we just do as Mr. Ring has said, just correspond with the Minister?

Mr. Yates: — I think there's some value in meeting with the departmental officials to see what experience that we've had. And through those discussions we may want to recommend something even slightly different than what's there today as far as where those regulations should be or the legislation should be to meet the regulated needs. The more we understand it, I think, the better. And a short meeting with them is a good opportunity to find that out.

Mr. Allchurch: — Can we recommend . . . this committee, can we recommend to the Minister different options?

Mr. Yates: — We can always write a letter . . .

Mr. Allchurch: — Yes, okay.

Mr. Yates: — . . . to the Minister bringing forward any types of options. I just think the more we understand the particular issue, the better before we do that.

Mr. Allchurch: — And I agree with you.

The Chair: — We have a motion to invite officials here to explain. And is the committee prepared to accept the motion as presented?

Agreed. Carried.

The Provincial Lands Amendment Regulations, 1999 (Gazetted June 4, 1999)

Mr. Ring: — On page 16, The Provincial Lands Amendment Regulations, 1999, there are two concerns there.

And the first concern was that:

There is no authority in the Act to allow the minister to issue a lease in consultation with another minister.

And that's in consultation with the Minister of Environment and Resource Management in subsection 3.01(3) of the regulations.

The Chair: — That's what we just had in the previous Act? Somewhat similar?

Mr. Ring: — Somewhat similar in that the regulations talk about the domestic game farm, a domestic game farm operating on provincial lands on terms and conditions necessary where though 75 per cent of a parcel of land is provincial lands, has been cultivated or seeded under those situations.

But under section 20 of The Provincial Lands Act there's no authority to make regulations with respect to domestic game farms or to allow the minister to lease provincial lands on any terms and conditions that the minister may consider necessary.

And in reading it I was just wondering about clause 3 about:

the minister, in consultation with the Minister of Environment and Resource Management, considers that a lease should issue.

And there you really don't have any idea as to what that would entail or why that would occur.

The Chair: — Do you have any questions?

Mr. Yates: — I would move:

That we . . . again we invite department officials to explain the Act and regulations and the corresponding sections so that we understand to the best of our ability prior to making any . . .

The Chair: — Any further comments from committee members?

Committee members, ready to approve the motion that we have officials come and make a presentation?

It's agreed to and it's carried.

I think that's appropriate because just to correspond with the minister may not give us all the information and I think that it would give us an opportunity to get a better understanding of the issues here.

Mr. Ring: — And sometimes the exchange of letters that are a page or two, you sort of . . . once the letters are exchanged, even if you don't sort of pass each other, the letter then raises other issues and say well what about this, what about that. And, if you

had more clarification on those areas, you may see the value of the regulations or why they're drafted, why they're drafted in that way.

The Chair: — Motions carried. Thank you very much.

Moving on to item no. 17, second concern of the same regulations.

Probably, as was already indicated, we have . . . Deal with that in the same manner; have the officials at the same time? Okay, is that agreed to?

Members: — Agreed.

The Chair: — Carried.

**The Trust and Loan Corporations Regulations, 1999
(Gazetted June 9, 1999)**

The Chair: — Let's move on to . . . then to no. 18, The Trust and Loan Corporations Regulations, 1999. Ken, please.

Mr. Ring: — These regulations are interesting in that section 16 of the regulations sets out a series of definitions to be used for Part IV of the regulations. And when you set definitions in regulations, it will either expand or narrow the application of the piece of legislation that you're dealing with.

And the regulate . . . the definition section, or the interpretation section in Part IV of these regulations is prefaced by the words "Subject to directions issued by the superintendent, in this Part." And then they give the definitions: (a) means this and (b) means that.

However the Act, although it provides for words to be defined in the regulations if they're not already defined in the Act, doesn't say that the superintendent can issue directions with respect to whether the definition should be broader or narrower in scope. So I think that was picked up because it's an interesting type of . . . an interesting type of provision saying, here are the definitions unless the superintendent has given directions otherwise, and especially because definitions are very important. They determine the applicability of the legislation.

And so the definitions should be set out, as these are the definitions. Or if they're going to have changes or clauses made to them, there should be clear legislative authority allowing for those changes or for differences to be made by a particular statutory official.

The Chair: — Any comments, committee members?

Mr. Ring: — Yes, perhaps I'll just add one other thing to this is that it may well be that there are no directions given with respect to the definitions as they currently sit, and that that was put in out of an abundance of caution. So it may be that there are no definitions, but the fact still remains: where's the authority for the superintendent to issue the directions with respect to the definitions?

The Chair: — Thank you, Ken. Any questions? The committee accept the recommendation as presented? That's agreed to and

that's carried. Thank you.

**The Municipal Water Treatment Filter Membranes
(Education and Health Tax) Exemption Regulations
(Gazetted June 11, 1999)**

Mr. Ring: — This regulation brings forward an issue that's not like some of the other issues that we've dealt with previously this afternoon in that when the regulation . . . the regulation-making authority that is cited in the Gazette lists subsection 71(1) of The Financial Administration Act, 1993, and that provision allows for the making of regulations with respect to various items under The Financial Administration Act, 1993.

And 71(1) of The Financial Administration Act, 1993 is a provision of very general application, and I'll just read it to you:

The Lieutenant Governor in Council may make regulations respecting any matter or thing that the Lieutenant Governor in Council considers necessary or appropriate for the purposes of this Act.

And that's not an unusual provision to find in legislation. However, with respect to these regulations, section 24 of The Financial Administration Act, 1993 deals specifically with exemptions and . . . or exemptions from paying the health and education tax or what is now the provincial sales tax. And so that I believe there is authority for making the regulations.

And the only note with respect to these regulations would be that when the regulations are made and passed and published in the Gazette, that they should indicate that the authority for making the regulations is section 24 of the Act and section 71(1) if they want to rely on that broader authority for making them.

The Chair: — Any questions? The committee accept the recommendation presented? Carried.

**The Electronic Meeting Procedures Regulations
(Gazetted August 13, 1999)**

The Chair: — Final regulation to deal with this afternoon is item 21, The Electronic Meeting Procedures Regulations.

Mr. Ring: — When you look at the regulations, it says — the regulations start out — subject to sections 4 to 6, which is in essence the regulations because I don't think there are . . . there's probably seven or eight sections to it so it's the entire . . . the regulations, " . . . a board of education or the conseil scolaire may make provision in its written policies respecting the procedures for electronic meetings."

However, when you read The Education Act, 1995 that's the authority for making the regulations, it talks about, or it indicates, that the procedures for those electronic meetings must be prescribed in the regulations instead of saying, well we'll prescribe in the regulations and then you let the board of education decide what the policies are going to be and change them. So that there should perhaps be some indication of the fact that a board can make policies but they can't make policies that are respecting these particular aspects of an electronic

meeting.

Electronic meetings can be held and these would be the minimum requirements. If you want to have policies that affect the electronic meetings making them broader that's fine, but these would be the minimum procedures to be set out.

The Chair: — Any questions?

Mr. Yates: — I would move:

That we invite officials of the Department of Education before the committee with respect to section 3 of the regulations and have discussion.

The Chair: — Is that the wishes of the committee to accept that motion to invite officials? Is that agreed? It's agreed. Carried. Thank you.

I'd like to thank the committee members for their work and specifically Ken, for the efforts he has made in going through the regulations since he's taken over the responsibility. And Allison, thank you so much for the correspondence we really appreciate that. And we have basically covered the agenda for today.

However we do have one other area of business that we did schedule for tomorrow but since we're earlier in the afternoon, I want to seek guidance from committee members. Mr. Ring has indicated that maybe members, committee members, might like to go through the information before we take the time to review it. A lot of that, I think, is correspondence to previous requests.

Mr. Ring: — Yes, two remaining issues are . . . come in the category of follow-up reports. They were regulations that were considered by the committee during the twenty-third legislature when Mr. Holtzmann was here. I've corresponded with the departments. They've sent me some information with respect to the agricultural leases. The information is about 15 pages long so you have a number of leases.

And so the question then would be, do you want to deal with those now and try to resolve them or have a chance to have a look at the information that's been presented? It is fairly substantial if this is the first time you're looking at an agricultural lease and deal with the issue.

Mr. Allchurch: — I would like to have an opportunity to read that first before I enter into any . . .

Mr. Toth: — Just seeking the wishes of the committee. That's certainly fair. I'm not exactly sure how many committee members just want to have something sat in front of them and just make a decision without having had the chance to at least review it. And I think that's certainly a worthwhile suggestion, Ken.

Ms. Bakken: — I just have a question. So when these regulations are made, they are used prior to us even seeing them then. They're already . . . they're being carried out today even though they haven't been approved by this committee?

Mr. Ring: — That's correct. There's nothing wrong with that.

That's how the system operates now. The committee is . . . I don't know how best to describe it. Because there hasn't been a meeting of the committee for a certain time, there was all of the 1999 regulations to go through at once.

In a correspondence that I sent to the Chair, I was hoping that the committee could get to the point where we would be considering the regulations within three or six months of them having them being passed as opposed to waiting until the end of the year and then reviewing something that was done a year or a little more than a year and a half ago. So if we could try to make . . . or if the committee would be interested in making that time frame shorter and make it more current, that's certainly a possibility.

There's also the issue, if I might raise it at this point for the committee's consideration, is that in reviewing all the regulations and reading through them, you often find something that just is either a typographical error or just isn't correct. And in the past those types of issues have been brought to the committee's attention.

And I don't know that we could continue to do that. And say, there appears to be a typographical error here, and it should say 2000 instead of 2010. Or when there's something that obvious, the Law Clerk could deal with it in corresponding with the minister and saying, we've noticed this; would you like to fix it or not. And then just report back to the committee if the committee wishes, with respect to there's been this other correspondence that has gone on that doesn't need to come before the committee to say, should we write the minister and change 2000 to 2002, when it's quite obvious reading the regulation that 2002 is . . . it should have been 2000.

So I leave that for the committee's consideration.

The Chair: — Yes, Ken, Margaret has a comment that she'd like to make here.

Ms. Woods: — Just in regards to your question, the Regulations Committee operates on the same approach as the Public Accounts Committee and the Crown Corporations Committee in that it's a post facto scrutiny committee. So as a Crown Corporations Committee would review the operations of a Crown corporation after the year has actually been completed, the same principle applies here with the regulations, that this committee would look at the regulations after they've gone through the process and are actually in place.

There is one or two jurisdictions around the world where this type of committee would actually be placed in the system prior to them being put into force. But that isn't the practice here in Saskatchewan.

The Chair: — And the other point in Saskatchewan as well is what was shared with us earlier by Mr. Ring was the fact that the government actually has a Regulations Committee that reviews prior to, makes recommendations.

As Margaret said, we had the privilege of attending a conference in Australia. They do have an all-party committee that actually reviews prior to bringing forward the regulations. The regulations come forward much as what Ms. Bakken was

indicating.

So there's just the different formats that are used in different legislative processes around the world. That's where we function right now.

In regards to Mr. Ring's comments, I think our committee should make an effort to try to keep a little more up to date. Now of course last year we did have a committee prepared to and we were actually in the process of trying to organize meetings and then the election came along and everything basically derailed. And once the election was on, the committee was disbanded and we had to wait till a new committee was put into place.

So sometimes those things happen and things get delayed a bit. So I appreciate the time and effort being taken here today.

Mr. Yates: — I'd like to move:

Where questions or concerns exist about regulations when reviewed by the Legislative Counsel, the Legislative Counsel write to the department or agency concerned regarding written clarification of those concerns prior to the next meeting of the Regulations Committee, and the Legislative Counsel report back to the committee in its responses.

The Chair: — So basically what you're saying is rather than coming to the committee asking the committee to give approval, that the Legislative Counsel do that follow-up first of all and then come to the committee with . . .

Mr. Yates: — It speeds the process up. It allows us to move through the difficult issues in a much more timely manner. And then we'd at least have some . . . (inaudible) . . . and there doesn't seem to be any relevancy to what we're getting back, well then we can have officials come forward and so on and so forth. But on an issue like where you have typographical errors and those of types of things, you can get clarification and many of our concerns may be addressed so that we're dealing here with some greater substance and not so much hypothetical.

The Chair: — An example might be item no. 2 that we dealt with today, employment program regulations where the recommendation was that the committee correspond with the minister responsible to indicate what the concern is. Now would that . . . if I'm correct, is that the type of thing where we have some correspondence from the Law Clerk to the minister immediately and then come back to the committee?

And, if the concern has been addressed and the committee notes it, we can agree that it's been carried out and finalized, versus we've now indicated we're going to proceed with correspondence and we're going to sit again to see whether or not our concerns have been addressed. And I think that's certainly an appropriate motion, but we're open for any comments to the motion.

Mr. Allchurch: — I would agree with that, Mr. Yates. But in light of numbers 15, 16, and 17, where the recommendation is to correspond with the minister, we've actually gone above that and invited the minister in for clarification. If we do what

you've recommended, then Mr. Ring would just be corresponding with the minister. Or would that make any difference?

Mr. Yates: — It would not prevent us from asking a department or the minister to come before this committee. It would just mean that we would have more facts in determining whether we want that prior to requesting it.

So it just could in fact speed the process up and give us a more timely response dealing with Brenda's concern about we're dealing with it after the fact. We could in fact be dealing with things much sooner in the process.

Mr. Ring: — I just wanted to add that in some situations corresponding prior to bringing the concern forward to the committee I think would work and speed the process up. However, in some situations, when you read the regulation and you read the Act, there would be a time when I think I would want to bring the issue forward to the committee first and say, this is something that I've noticed; is this a concern to the committee or not, rather than just every time I see something I'm writing ministers all the time. And that when it's something that's very clear, do that. Where it's something that I'm not sure that the committee would necessarily view as a concern to be moved to another level which would involve correspondence or whatnot, then I'd bring that forward to the committee first to see what . . . how the committee would like the matter to be dealt with.

Mr. Yates: — . . . says when appropriate.

Mr. Ring: — When appropriate.

Mr. Allchurch: — Yes, that what I was referring to with . . . (inaudible) . . . 15, 16, and 17.

The Chair: — Yes, I think that's kind of the impression or the feeling I had that that's what Mr. Ring was basically asking for those. And that's, if I hear Mr. Yates correctly, that's what's in the motion.

We'll have him . . . Mr. Yates read the motion so that we know what we're agreeing to.

While we're waiting for that motion, just another question, Mr. Ring, regarding our meeting tomorrow and the possibility of setting another date for another Regulations meeting, I wonder if you could come prepared to indicate tomorrow what other agenda items may be available to be addressed to Regulations to be reviewed, and how soon they'd be ready so that we can use that in determining the next meeting that we would set up, please.

Mr. Ring: — Yes. I think I'd also like to raise the issue of what will be done with the 1997 regulations, at that point, for discussion.

The Chair: — Fair enough.

Ms. Bakken: — Are you saying they haven't been reviewed, 1997? Is that what you're indicating, that 1997 regulations haven't been reviewed?

Mr. Ring: — I don't think they've come before the committee, in that forum.

The Chair: — Okay, Mr. Yates.

Mr. Yates: — The wording of the motion is:

Where questions or concerns exist about regulations when reviewed by the Legislative Counsel, the Legislative Counsel write to the department or agency regarding a written clarification, when appropriate; the Legislative Counsel then to bring those responses to the next meeting of the Regulations committee.

It's at your discretion but it gives you that ability to do it in it.

The Chair: — Is the committee ready for the question on the motion? Agreed with the motion?

It's agreed, carried.

So we will then pass out the follow-up reports and give the opportunity to take a look through them this evening and we will meet tomorrow in this very room, what at 9 a.m.? I believe it's 9 a.m. for tomorrow's meeting.

And with that then, if there are any . . . any other questions prior to adjournment? If not, we'll meet tomorrow at 9 a.m., at which time we'll look through the follow-up summary as well as discuss a further meeting to review the '97 regulations and . . .

Mr. Ring: — . . . discuss what might be done with the 1997 . . .

The Chair: — Oh, where we're going to go with them.

Mr. Ring: — Where we're going to go with them and set another meeting date for the follow-ups that we'll get with this . . . from these regulations and the officials that would be invited to attend.

The Chair: — Very good. Well, thank you so much. Yes, Mr. Harper.

Mr. Harper: — Just one brief question. Has '98 regulations been reviewed?

Mr. Ring: — Yes, they were done. Mr. Holtzmann did the '98 regulations.

Mr. Harper: — . . . I'd think to ask the question, why was '97 not reviewed?

A Member: — Mr. Toth, were you on that committee once . . .

The Chair: — I just follow orders. Meeting is adjourned.

The committee adjourned at 3:35 p.m.