



Special Committee on Regulations

Hansard Verbatim Report

No. 3 – February 6, 2001



Legislative Assembly of Saskatchewan

Twenty-fourth Legislature

**SPECIAL COMMITTEE ON REGULATIONS
2001**

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 p.m.

The Chair: — I'd like to call this committee to order. We'd like to welcome you all back to the Legislative Assembly committee work.

I trust you've had a little bit of a break. I know our members on the government side, they've been busy for the last month or three months . . . leadership debate. It looks like they're geared up and ready to go, ready to roll — I think we on the opposition side are as well — to fulfil our roles as MLAs (Member of the Legislative Assembly) in this province. Which is one of the requirements of this committee is to see to it that issues of government that may be brought to our attention are addressed through all-party committees.

And we will endeavour to do that and we would like to begin this afternoon by addressing an issue that as a committee we really didn't feel we had enough information on to really debate and deliberate on, and make an assessment or a judgment on it and felt it would have . . . may have been important to have officials come.

And so we're pleased to have officials from the Department of Education, Mr. Michael Littlewood, the executive director, and Ms. Diane Gingras here to just fill us in on The Electronic Meeting Procedures Regulations. And then if we have any questions once they've kind of made things, we would assume, much more clearer or better understanding for us, then we'll address some questions and make a final decision.

So I'll turn it over at this time then to Mr. Littlewood, please.

The Electronic Meeting Procedures Regulations
(R.R.S. c. E-0.2 Reg 6)
The Education Act, 1995
Section 370
Saskatchewan Gazette August 13, 1999

Mr. Littlewood: — Thank you. Good afternoon. We're pleased to have this opportunity to speak to your committee about these regulations and to try and specifically address the concern, as we understand it, that has been raised about one or two provisions of the regulations. Perhaps what I'll do then is begin by giving a brief background as to how these regulations came about, the impetus for them, and what they're intended to achieve, and then speak more specifically to the committee's concern and perhaps suggest some ways in which we might address those concerns.

These regulations came about a couple of years ago as a result of the restructuring of the francophone component of our K to 12 education system. When the francophone component was first set up around 1993-94, there were nine communities around the province where the francophone community was large enough to operate its own school and to set up its own governing structure. So what was established was effectively nine very small, geographically small, francophone school divisions; each of which elected its own board of education and operated legally in the same way as any other school division. Be it a rural one or a large urban one, their legal structure was the same.

After a few years the francophones themselves determined that this structure was administratively top-heavy and cumbersome. They were just spending far too much time and money on administration, and they felt they could restructure it to be more efficient. And the way in which that happened was to create one francophone school division to govern all the francophone schools in the province. And each of the nine areas which to that point had operated as its own school division with its own board, effectively became a subdivision or a ward of this new school division. And each of those areas then elected one member to the francophone school board so that we had one nine-member board governing all of the francophone schools in the province.

That obviously cut down on the number of trustees from 45 to 9. There were far fewer board meetings. The director of education spent less time sitting in attending board meetings and spent more time on program and instructional issues. Those were the benefits to be derived.

However one of the downsides under the existing legal requirements for board meetings would have been that every time this nine-member board wanted to meet, they would have to find a location such as Regina or Saskatoon, and the trustees from everywhere from North Battleford to P.A. (Prince Albert), Bellegarde in the east, Gravelbourg in the west would have had to travel to that location for purposes of having a meeting. That would have been counterproductive — more time, more costs, and everything, in administration.

So we looked at that and said, well you know, the whole world is moving into an era where far more business is conducted electronically rather than face to face, and surely we should be able to find some way of allowing this board to meet by electronic means.

And it was that that led to these regulations. It was felt at the time that while the conseil scolaire, the francophone board, would be the main beneficiary, there was no reason not to make the same opportunity available to boards of education generally.

For example, perhaps the Northern Lights School Board which governs the entire northern half of the province might see some benefit to that. Possibly the larger rural school divisions, particularly looking towards the future, towards possible restructuring if they become geographically larger, they might see some advantages to that as well. So that was sort of the context as I say and the impetus for creating the opportunity for electronic meetings.

Once that was determined though, it was felt that there needed to be at least some fundamental criteria or procedures around how such meetings would be conducted. And it was with that in mind that the legislation was written to require that where a board of the conseil scolaire held such meetings, they had to do so in accordance with the regulations. And there were two things to be prescribed in the regulations — one was the technology and the other being the procedures.

When we developed the regulations in consultation with our stakeholder organizations, the trustees, and the school business officials, and so on, I think we realized that trying to prescribe

technology in the sense of trying to come up with a list of the types you could use wasn't going to be workable. Given the rapid evolution of technology, I'm sure whatever we listed, a month later a company would come out with the latest digital interactive whatever that wouldn't be on the list.

And similarly we said that sort of the nitpicky administrative details of how a ward would go about this might vary from one to another and we couldn't try and prescribe all that. But what we did need to do was say what are some of the fundamental principles around a school board meeting that must be preserved if you're going to do this electronically.

And that's the approach we took in developing these regulations. To say we're not going to tell you name the technology, but whatever you use, the technology must be of a type that will allow these things to happen and make sure that this occurred. Respecting the notion of school board meetings being open to the public, the public being able to attend, media can attend, everybody can hear everybody, and so on. Respecting the fact that boards of education have policies in place around how the public can make presentations at board meetings, how delegations can appear. Similarly, the capacity for a board to meet in camera where it needs to and for members to absent themselves if they have a conflict of interest.

Those were the key things. And we said okay to each board; you can work out the details, but this is the framework that we are prescribing. Whatever technology you use, specifics must fit within these requirements. Whatever specific procedures you set out must fit within this framework.

And so that was the idea that the board could work out the details, but whatever they worked out had to be in accordance with these requirements that we were setting out in the regulations.

In terms of who's actually using this, as I said, the conseil scolaire is the main beneficiary. They use this all the time now. I'm told each of their schools has provision for interactive video. And they are able to do this such that the trustee from each community, as I understand it, would participate from the school in that community where they have this available and it works well for them.

We're not aware of any other board of education that has adopted this mode of meeting on a regular basis. However, you would note from the regulations that the definition of an electronic meeting isn't simply one where all the trustees are in a different place. It's a meeting where at least one of the trustees is in a different place from all the others.

So just to illustrate how that might work. I'm aware of one case where a board of education needed to meet on an urgent matter on relatively short notice, but the board chairperson already had business commitments in Vancouver that he couldn't break. Well under the old rules, that board would have had to meet in the board office and the Chair just wouldn't have been able to participate. They'd have had to go ahead without him. This way they were able to make arrangements to have him on a speakerphone at one end, a speakerphone in the boardroom at the other; he could hear everyone else, they could all hear him, the public could hear everything.

So on an emergency basis, a board could use it that way as well in addition to the regular way of doing business.

So perhaps I'll stop there. That's the overview on how that came about. We can move from there to the specifics whenever you wish.

The Chair: — Thank you very much, Mr. Littlewood. I noticed a lady at the back. Is she part of the department as well?

A Member: — I'm the new member services librarian.

The Chair: — Oh very good. Thank you. We'll now open the floor for questions that the members may have. I just wanted to bring to your attention through a note that the bottom of the information you received regarding officials from government departments cannot and should not be requested to provide answers with respect to the basic policy thrust of the regulations.

Questions with respect to whether or not the regulations are good policy or bad policy should be directed to the ministers in charge.

Committee member should also note that questions with respect to the policy choices that have been made and delegated legislation do not form part of the terms of reference of the committee.

So just raising that for your information and so we all know exactly where we are and the questions we're dealing with at this time.

The floor is now open for any questions that committee members may have in regards to this regulation, and we have officials here that are more than prepared to respond. So anyone with any questions? Or is it all clear now?

Well maybe, Michael, if you've some more to add. I think you had some suggestions about some changes.

Mr. Littlewood: — Ken, you can correct me if I describe this wrong. From reading the information and the verbatim of the committee, it seemed that the point that was being raised about the wording of the regulations, the issue seemed to be what is sometimes called subdelegation. It had the appearance that the Legislative Assembly had said in statute that the Lieutenant Governor in Council could prescribe certain things and then it appeared that through the regulations the Lieutenant Governor in Council was saying, oh, well that's okay, the board of education prescribed certain things. That seemed to be somewhat the gist of it, that area.

Okay, with that in mind, I think we could certainly understand that. I think from the description I've given, you'll appreciate why we can't try to prescribe absolutely everything in regulation to make this work. What we're trying to say is, I think consistently with the statute, that however a board does it, it must do it according to these requirements that are prescribed and as long as they fit within that framework that would be okay.

However, in the interests of trying to certainly address the

concern that the committee has raised, what I might do to help is just distribute for your consideration quickly something very brief, that would perhaps speak to that issue. And, Mr. Chairman, I can just indicate that . . . Mr. Chairman, in anticipation of this meeting and recognizing that Ken does provide advice, I took the liberty of providing an advanced copy to him this morning so he would have an opportunity to at least look at it and think about it and perhaps would help to move this along faster.

What we're suggesting perhaps would help to address the concern, is if we simply took section 3 as it is currently worded and to remove reference to the notion of a board of education making provisions in its written policies, and simply to define it that as it says here:

Where a board does hold a meeting pursuant to the section of the Act that authorizes this, that it shall conduct it using the means that meet the requirements set out in the regulations and in accordance with the procedures prescribed in these regulations.

That would eliminate the awkwardness of sort of the perception, well, who's actually prescribing something here. Is it the board? Is it these regulations? Or is it board policy? And we felt that that wording might help to address that so I just put that forward. That is not something we've discussed with the Department of Justice at all. It's just, as I say, in the interests of addressing what we understood to be the committee's concern. If that would be helpful, then we can try and take this forward.

The Chair: — Thank you very much, Mr. Littlewood. Maybe I'll get a response from our counsel, Mr. Ring.

Mr. Ring: — Thank you. I think it addresses the issue that was raised by the committee and my recommendation would be then that the Department of Education take this proposal forward through the regular legislative process on the government side to effect the change.

The Chair: — Any questions from committee members? Seeing none I would assume that the explanation that's been presented to us this morning by Mr. Littlewood certainly has I think clarified the whole question. At least in my mind it has. It just made it a lot clearer, a better understanding. And I appreciated the suggestions for an amendment that clarifies that in the regulations for the sake of anyone who may be perusing those regulations. I therefore then would ask for a motion to accept the proposed changes.

Mr. Harper: — I'll make the motion, Mr. Chairman.

The Chair: — It has just been brought to my attention by Mr. Ring — and while Mr. Littlewood has certainly given the indication that they would move forward with it — maybe our motion could also include that this committee recommend the department move forward with the suggested amendments to the regulations, and I guess just clarifies the issue and certainly addresses the concerns that have been raised and acknowledges the work that the department has done.

So that's part of the motion, Mr. Harper?

Mr. Harper: — Part of my motion, Mr. Chairman.

The Chair: — Thank you. Is the committee in favour with that motion? I appreciate the time, Mr. Littlewood. Ms. Gingras, I'm pleased to have you this afternoon.

Committee members, I think as has been pointed out by Mr. Yates, we're well ahead of schedule. It's hard to anticipate what type of questions or format of questions you may run into. Sometimes you set a time period of . . . a very short time period and then you are squeezed for time. So we allowed enough time in case there were a number of questions to be raised regarding these issues. And fortunately the Department of Education, I think, did a very commendable job and so we're well ahead of schedule.

But I would ask if it's the wish of the committee while we're waiting for departmental officials from the Department of Highways, if we would move to item no. 3, new business, regulations from 1999, freehold oil and gas production and Crown oil gas royalty and remaining concern. Does the committee wish to proceed to item no. 3? It's agreed. Thank you.

Mr. Ring: — And these will be found in the package that starts out new concerns, so it's the third package in your . . . the third part of the package that was sent out.

The Chair: — Well you can't say that we don't have enough paperwork in front of us.

Moving on to item no. 3 then, and we'll move into the new business, The Freehold Oil and Gas Production Tax Amendment Regulations, 1999 (No. 2). And I'll call on Mr. Ring.

**The Freehold Oil and Gas Production Tax Amendment
Regulations, 1999 (No. 2)
(S.R. 85/1999 - Order in Council 669/1999,
dated November 17, 1999)**

**The Freehold Oil and Gas Production Tax Act
Section 32
Saskatchewan Gazette November 26, 1999**

Mr. Ring: — And I'll deal with these individually, but you'll see when we get into the second one that one of the concerns is the same type of concern that was raised in the previous regulations, so we could sort of deal with them as a group of two. But maybe we should look at them individually too as we're going through them.

The first concern was with respect to the coming into force. Subsection 7(3) makes the regulations retroactive to December 1, 1998. I note there is clear authority in the Act to make the regulations retroactive. So that's not a problem or a concern.

However the provision that's being made retroactive sets the SOP (standard operating procedure) factor for the period from February '98 until December '98 inclusive. So in effect it's only retroactive for the month of December. And I didn't understand what the February '98 . . . why they go back to February of '98 when it's really only retroactive to December of '98.

Now the reason for that may be the difficult and complicated calculations that are done with respect to revenues for oil and gas. It may not be. So this was one that, although it quickly . . . on first looking at it, it may appear to be an oversight, an error, I'm not necessarily sure that it is an error, and it may just have something to do with the complicated way that royalties are calculated pursuant to the regulations in the Act.

So in that circumstance I'd ask the committee . . . or the recommendation to the committee would be to write to the minister seeking an explanation for the particular wording and find out why it's worded that way. And if there is a particular reason, it can come through and it's a calculation, I think we would be able to clear that up through correspondence.

The Chair: — Any committee members have any questions? Appears straightforward?

We got a motion from the floor that we ask counsel to write the minister, seek clarification.

Ms. Jones: — I move, Mr. Chairman.

The Chair: — Motion by Ms. Jones. Is everyone agreed to that motion? It's agreed. It's carried.

Mr. Ring: — And with respect to the second concern for these regulations is when you read the coming-into-force provision, it's tied to the filing date of what will be an expired and repealed regulation made pursuant to a different Act. So at some point in the future, it may be difficult to ascertain the coming-into-force provision, particularly after 2008.

So the recommendation here would be to simply write the department and encourage the department to pick or decide on a coming-into-force date when that is possible. And if that isn't possible and there are certain other realities that enter into the considerations that go along with the regulations, then they need a complicated coming-into-force provision such as these, and there's certainly nothing wrong with it.

The Chair: — Committee members, any questions?

Mr. Yates: — I move:

That we write the department and urge them to consider the recommendation.

The Chair: — Of selecting coming-into-force dates. That's moved by Mr. Yates.

Mr. Thomson: — I'd be interested to know what the department's reasoning is for the way that they currently do this. I'm not sure how exactly we are . . . how they go about deciding what the coming-into-force date is, and I think rather than us making a decision to urge them to pick this, I'd be interested to know what their rationale is for currently using the process.

I don't know if anybody here has already had that discussion and can perhaps explain this to the committee, but if not, I would be interested to know at least what the officials have to say on it.

I'm not . . . I guess as clarification I should just say I won't speak against the motion. I would just . . . I'm sure in the process we'll get back some kind of a response, but I don't think we have enough information in front of us to be urging a change to something that we don't understand why it's currently in place.

Mr. Hart: — I agree with Mr. Thomson's concerns and I think maybe perhaps we need a little bit more information as to how these coming-into-force dates are set and the reasoning behind it and so on. And perhaps that information could be provided in written form. And if we receive the information in written form and still require further clarification then perhaps at that point we may need to have some officials from the department present. But I would suggest perhaps that maybe we should look at getting further clarification on this.

Mr. Yates: — . . . a friendly request information as to why they've done it and . . .

The Chair: — I guess Mr. Yates has just asked if you would be willing to make your motion that we would make this request in the motion.

Thank you very much. Is everyone agreed to that motion then that we make that request? It's agreed and it's carried. Thank you.

**The Crown Oil and Gas Royalty Amendment Regulations,
1999 (No. 2)
(S.R. 85/1999 - Order in Council 668/1999,
dated November 17, 1999)
The Crown Minerals Act
Section 22
Saskatchewan Gazette November 26, 1999**

Mr. Ring: — And with respect to these regulations, they are the same two issues that the committee just dealt with, with the previous regulations. And when you go through them you'll notice that the second set of regulations, the Crown oil and gas royalty regulations, are the regulations that are tied to the coming into force of the petroleum research and incentive regulations. And that was the concern that I'd raised on the first one. My recommendation then would be to deal with both of these at the same time as they both come from the Department of Energy and Mines.

The Chair: — Committee members, any questions? I think it certainly appears to be, as Mr. Ring has indicated, very similar to the previous question just raised. Do we have a motion accepting the recommendation of Mr. Ring? Mr. Allchurch. Everyone in agreement? It's carried, thank you.

And concern #2.

Mr. Ring: — That would be the same.

**The Employment Supplement Regulations
(R.R.S. c. S-8 Reg 3)
The Saskatchewan Assistance Act
Saskatchewan Gazette July 3, 1998**

The Chair: — Very good. Then we'll move on to Employment

Supplement Regulations, 1998. Again, we'll ask Mr. Ring to . . .

Mr. Ring: — This is just a one-page handout. And this is a concern that my predecessor, Mr. Holtzmann, raised. It may be the type of concern that I could have written the department with and come back with a response to the committee. But given its nature, I felt the committee should perhaps consider the matter to see what they felt would be their direction to me with respect to these regulations.

The Employment Supplement Regulations provide funding to people who are working to bring their employment income to a certain level. And in those regulations in sections 11, 15, and 26, they require that certain information and returns must be made by the clients by telephone.

And Mr. Holtzmann noted that perhaps in certain circumstances, dealing with the clientele using these regulations, they may not always have access to a telephone. And so he thought it was an interesting question and perhaps one that should be looked into, and if the system is working the way it is and there's not a problem, that's fine. If there isn't, then perhaps the department could look at it again.

The Chair: — Thank you, Mr. Ring. Any questions from committee members?

Mr. Thomson: — Yes, Mr. Chairman, if I could just ask, has this previously been pursued by the committee or by other members?

Mr. Ring: — No.

Mr. Thomson: — It does appear to be an odd regulation. It would be interesting to know what the rationale is for such.

Mr. Yates: — I would move:

That we write the department seeking clarification on our concerns regarding this regulation.

If counsel could write the department.

The Chair: — Thank you, Mr. Yates. Mr. Yates has moved that the department be contacted to seek clarification. Is there any questions regarding the motion? Committee in agreement with the motion? Thank you very much.

I didn't think things could run this smoothly as they have been so far. I was looking for some real debate.

Mr. Thomson: — Mr. Chairman, I just have to say I think we're all impressed by your skill in the chair, and advised as of this morning the job is vacant at the higher level, perhaps a promotion is in order.

The Chair: — Thank you very much. However we will move on. There are a couple of short snappers here Mr. Ring indicates that we could discuss, and maybe we will take about a 15-minute break while we wait for officials to arrive.

You'll note . . . I shouldn't say you will note — I will note. It's

on the information in front of me. There's some material regarding the veterinary medical association bylaws, '97, and regulations regarding appointment program regulations, 1998. And Mr. Ring has asked for a moment just to get those bylaws and regulations out for the committee's review.

Mr. Ring: — If we might move to the employment regulations, 1998. This is in the vein of a follow-up report to the committee. I had written them between the last meeting and this meeting with respect to the name, the legal name of a park in a set of regulations, and I have had some contact with the department to indicate that they are moving to make that change to correct the name in the regulations.

And I just thought I would bring that to the committee's attention, for your information, because that was one that didn't come to the committee but went through a more expedited process in writing the department saying I saw this; would you like to change it. And they're in the process of doing that, rather than bringing it forward to the committee.

And I thought, seeing as that was using authority that's been newly granted to the Law Clerk from the committee, that I would in the interim basis keep you apprised of how that is working so that you know that something is happening even though regulations aren't coming before the committee, that we're making . . . some of the changes are being done routinely, rather than bringing it forward to this forum.

The Chair: — Thank you very much, Mr. Ring.

I think that indicates that it cuts down on the workload of the committee, as if we're overworked right now as it is. But it also just shows the efficient work that our Law Clerk is doing, and I think we as committee members certainly appreciate that.

Mr. Ring: — Thank you.

The next item will be the veterinary medical association bylaws and I'll just hand this out. It's a one-page handout. It's one aspect of the committee's work that we discussed briefly at the orientation session last time, but no items were brought forward to the committee at that time.

The Legislative Assembly passes Acts for professional associations allowing them to operate as self-governing organizations under the authority of the Act given to them. The association also has the authority to make bylaws, which are similar to regulations that the government makes, and the association makes the bylaws pursuant to the Act that was passed by the Legislative Assembly.

One of my jobs is to review the bylaws that these associations pass to make sure they're using the authority that's been given to them by the Legislative Assembly properly.

And this is just one example of a bylaw that came through. I noted something and thought I would bring it forward to the committee's attention. And at some point in time, we'll have perhaps a meeting dedicated to association bylaws, as there are a number outstanding to review.

The Chair: — Do committee members have any questions?

As Chair, I just take a quick note here and I'm thinking of the issue that's been raised in Ottawa of late. It just comes to my mind. All of a sudden it just pops out. I'm wondering if that's what's really raised the issue here — not necessarily raised it, but the fact that outside of jurisdictions, I believe what you're saying here is the association may be able to require a member to report to the association if the member is convicted of an offence in another jurisdiction that is equivalent to an indictable offence in Canada. That would be the limit. I think that's what we're looking to actually do right now.

I think certainly a good point has been raised here. I wonder if any committee members have any suggestions or if we ask Mr. Ring to correspond with the registrar in the suggestion that he has brought forward and get some clarification.

Mr. Yates: — I move:

That counsel write the registrar, Saskatchewan Veterinary Medical Association, to indicate that the bylaw is ultra vires to the authority granted in the Act.

The Chair: — Any further comments? Ready for the question? Is the committee in agreement with the motion as presented? Agreed. It's been carried. Thank you very much.

Committee members, we're just going over some of the agenda for tomorrow and looking at a couple of items that maybe we could just address immediately. You'll note . . . and I'm not sure, have you got the agenda all in front of you — maybe not the identical agenda to what I have, so I guess I can't just say go . . . (inaudible) . . . My apologies in that regard.

But I believe on the short agenda that was sent out, where there's a point where we're talking about administrative matters, and we have item no. 1 regarding an international conference and regulation reform management to be held in Australia, and we're going to leave that until tomorrow. Ms. Woods will come back with a motion. I believe we need a motion to the House in that regard . . . or Assembly in that regard.

But there's a second item to be brought forward and it's called presentation of materials. And I'll ask Mr. Ring to speak to that.

Mr. Ring: — I didn't think we'd get to the filler before the second delegation, but that's fine. And this is really . . . since the last meeting and this meeting, the manner in which material is presented to committee members has changed and evolved. And I would just wonder . . . And I wanted to get feedback from members perhaps now, or over the course of the next day or so as to whether you feel it's organized to your liking.

If some committee members feel as though they would like to have the material three-hole punched because they like to put their things in binders to keep it all together, instead of paper clips, and clips and things, we could certainly do that for individual members. Or whether you feel you'd like to have access to some of the material electronically as opposed to on paper.

I put that out for committee members' discussions or preferences as to whether or not they prefer that — some may

prefer binders; some may not — and just open it for discussion seeing as we've got a new format in presenting the material.

The Chair: — Thank you, Mr. Ring. Any questions from committee members to the suggestion that has been brought forward?

Ms. Jones: — I'm wondering, in the course of a session, how much material we're likely to accumulate. This is my first Regulation meeting, although I missed the last one. So I mean, what volume are we looking at in terms of what's . . . I don't know if you can do it just in one session but over the term of, you know, a normal four-year period, if the committee didn't change. Or how easy it is to pass it on to a replacing member of the committee.

So I mean are we looking at a whole bunch of binders in a normal four-year term, or twice this much?

Mr. Ring: — I would think the . . . and just as a response to that. I would think this might be a bit more than what would be typical for a meeting. We've included copies of the regulations, the entire regulation, when they aren't too long — like the electronic meeting regulations — so that you can put that provision into some context.

Or certainly if it's a large set of regulations . . . some regulations are as thick as the material that were distributed to you today, and certainly we wouldn't be photocopying the entire regulation for those purposes. We'd perhaps give you the part or just the section or the relevant sections.

Part of my response would be — and I hate responding to a question with a question — but whether the office could send out what we feel is sufficient and then leave it to the members. If they feel they want to see the entire regulation or more of the regulation, certainly we could provide that information to individual members when they're preparing for meetings.

And that might be a way to do it electronically — if we could send it out to the constituency offices say, and then you could see the entire regulation on the screen and decide if you feel you needed to see it all or not, or get a copy of the Gazette and quickly skim it and see whether you needed a full copy of the material or not.

With respect to the binder issue, I would say we could. If one or two or three of the members decided they would rather have binders, then the material that would go out would simply go out on paper that has three-hole punches in it and then committee members could put that material in their binders as they see fit. When there's a change in the membership of the committee or if someone sits in substitution for you on the committee, then you could give them your binder and they would have the past and what was happening that day — or you could just give them that information.

But I certainly don't want to go to the expense and foist binders on people who would prefer to have the material page by page and don't want to be carrying the books around, so I'm just looking for what people's preferences are.

And perhaps we could come back to this tomorrow before we

wrap up if people want to have a chance to think about how they'd . . . if they have a preference one way or the other. And certainly if you made a decision now we wouldn't be tying you to it and saying you didn't ask for a binder, you're not going to get one until the 25th legislature. That's a possibility.

Ms. Jones: — I think in terms of a presentation that it's well done, well presented in that you have everything you need for that particular item paper-clipped together. I tend to like binders rather than folders myself, but I don't expect that you should have to provide me with a binder; but the three holes might be nice for ease of putting into one.

The Chair: — Well, just a comment as well as Chair of the committee. Some of the information that was presented us today, I had Ms. Woods and Mr. Ring actually go through it and send it out to you just so we'd have an idea of what . . . the questions that were raised when we met previous and the feeling was that members may not have it immediately at their disposal. We could have come to the meeting today and been scrambling trying to go back over our files to find out whether or not we had the information and so that's why you've received this information.

Whereas the suggestion that's been brought forward in a binder, a binder just might be easier to hang on to and then when we have a question that we need further answers to then we can quickly pull it out of the binder. So I think that suggestion Mr. Ring is bringing forward, that probably is worthwhile looking at and would save some of the paperwork because you already have this. And if you disposed of it before you got back to get the final answer on a question, then it's difficult to find it. So I think that would answer some of those concerns.

And certainly having been involved in the Regulations Committee through a period of years, we've never really have had excessive amounts of paper. Our legal counsel has usually basically just addressed the specific area of a regulation and sent that information rather than the whole regulation. And if there was further, then we delved into it further if need be. But I found that usually our counsel has been very good at pointing out the specific areas of concern and raising those concerns so that committee members had an ability to respond to them without excessive paper.

Any further questions in regard . . .

Mr. Ring: — I'd just like to make one final comment. I'd certainly like to thank Allison Gartner from my office for being very patient and helping with the presentation and the material — setting it up, making the changes, and making changes to make changes until we felt we got it into a format that would be helpful for members. I'd like to thank Allison for all the time and work she's put into the presentation of materials.

The Chair: — Agreed. Thank you, Allison.

So are there any suggestions in regards to some of the suggestions brought forward — use of binders versus just loose?

Mr. Allchurch: — I like this way here rather than the binders. When I get binders it kind of reminds of school. But no, I like it

this way here, just the way it'd done. It's perfect.

The Chair: — Well what I would suggest we do then is sleep on it and tomorrow we'll make a final decision as to how we approach this so that we're . . . at least there's unanimity around the table and we don't have three different sets of means of producing the information.

Mr. Harper: — Yes, Mr. Chair, on this particular issue my own personal preference is the preference of using the binder. And when you suggested earlier that we should sleep on it, does that mean I have to sleep on the binder before I can make up my mind?

Ms. Jones: — Perhaps we could unanimously agree to the three holes and put it in a binder if you wish.

Mr. Ring: — No, I don't think . . . I certainly wouldn't force the committee either to make one decision on that so we could three-hole punch the material and then if you like the binders, fine; if not, you don't have to use them.

The Chair: — Is that the wish of the committee? The easiest answer? It's agreed. Save you some extra work.

A Member: — My constituents will be glad that we resolved this issue.

The Chair: — Committee members, we should have . . . is the Department of Agriculture here . . . or Highways? I would expect they'll be here shortly so rather than . . . I think we could maybe just take a quick five-minute break. Can we do that? Five minutes and we're back and address The Short Line Railway Financial Assistance Regulations.

The committee recessed for a period of time.

**The Short Line Railway Financial Assistance Regulations
(R.R.S. c. G-5.1 Reg 86)
The Government Organization Act
Sections 19 and 24
and
The Highways and Transportation Act, 1997
Section 3
Saskatchewan Gazette March 5, 1999**

The Chair: — I call the committee back to order. We would like to welcome officials from the Department of Highways and Justice this afternoon coming just to fill us in on regulations regarding The Short Line Railway Financial Assistance Regulations and some of the concerns that were raised. And so we're just going to proceed directly to officials to respond to some of the questions that were brought to their attention, and then we'll proceed from there.

As I was indicating to Mr. Brown, if the explanation was as clear as glass, there probably won't be a lot of questions. We'll understand it very clearly. If it's otherwise, then we may run into a fair number of questions. But I'll probably invite Mr. Ian Brown then to start.

But maybe what we should do is just, for the sake of committee members, just have the officials introduce themselves. And

we'll actually go around the table for committee members, and we should have done this earlier too but I think we kind of all knew each other — a lot of new faces. How about if we start with Mr. Martin, please.

Mr. Martin: — Barry Martin, assistant deputy minister, operations, Highways and Transportation.

Mr. Brown: — Ian Brown, the chief legislative Crown counsel for Saskatchewan Justice.

Mr. Styles: — Ron Styles, deputy minister with Highways and Transportation.

Mr. Hobbs: — John Hobbs, legal counsel, Department of Justice.

Ms. Schnell: — Sandra Schnell with legislative drafting in Justice.

Mr. Tholl: — Jerome Tholl. I'm an articling student with Saskatchewan Justice.

Mr. Hart: — Glen Hart, MLA, Last Mountain-Touchwood.

Mr. Allchurch: — Denis Allchurch, MLA, Shellbrook-Spiritwood.

Ms. Gartner: — Allison Gartner, assistant to Ken Ring.

Ms. Woods: — Margaret Woods, the committee Clerk.

Mr. Toth: — Don Toth, MLA, Moosomin, and Chair.

Mr. Ring: — Ken Ring, Legislative Counsel and Law Clerk to the committee.

Mr. Yates: — I'm Kevin Yates, the MLA for Regina Dewdney, and the Vice-Chair.

Ms. Jones: — I'm Carolyn Jones, MLA Saskatoon Meewasin.

Mr. Harper: — Ron Harper, MLA, Regina Northeast.

Mr. Thomson: — I'm Andrew Thomson from Regina South.

Ms. Higgins: — I'm Debbie Higgins from Moose Jaw Wakamow.

The Chair: — Thank you very much. Mr. Brown, I guess the floor is yours.

Mr. Brown: — I'd like to thank the committee for the opportunity to come and address some of the issues that were raised by the committee about not only the regulations for any of the Short Line Railway Financial Assistance Regulations, but also I'm going to talk very briefly about the regulations which are the first item on your business tomorrow, and it's the Short-term Hog Loan Regulations.

And again, I'm going to talk briefly about some of the legal issues. I'm going to defer any detailed policy comments to my colleagues from Highways. And of course, the officials from

Agriculture will be here tomorrow. They'll be able to fill you in on some of the practical details of the Short-term Hog Loan Regulations.

The reason I want to provide a brief overview with respect to both of these regulations is that in some ways they're quite similar. And I think we've identified what could probably be taken as four similarities between the two regulations.

First, they were enacted pursuant to similar kinds of legislation; a general authority in an Act to authorize the minister to make grants subject to terms and conditions prescribed in regulations so there is a similar authority.

Secondly, they were enacted for a similar purpose and that was to provide a loan.

Thirdly, both were enacted within a short time period and they were enacted really to meet an urgent need.

And then the fourth similarity obviously is they both raised the same concern for the committee.

I'd just like to make a couple of brief comments about both regulations before going on to look at the issue involved. With respect to the Short-term Hog Loan Regulations, if you remember they were enacted about two years ago at a time when hog prices were at a 30-year low. They were enacted to deal with a situation which was generally acknowledged to be temporary. Hog prices were at a low and it was expected, and indeed, hog prices did recover.

There was a need to get some assistance out urgently, and so the regulations were put together quite quickly. I think it's important to remember too, and I'm not sure if the committee grasped this, but the program really has had a short life. The last applications were submitted some time . . . and they had to be submitted by July 5, 1999, so it's been about 19 or 20 months since any applications have been submitted to the department.

And really in a sense the program is now just winding down. So I think it's important for the committee to keep in mind that we're dealing with a program that's really almost run its course and is now in the process of being wound down.

With respect to the short line railway financial assistance Act, I'll let my colleagues talk a little bit more expertly about it. But really it was designed to provide . . . produce your local groups who are interested in establishing short-line railways with some assistance. Amongst other things the program provides a loan that's sort of a matching loan to that offered by the Government of Canada.

Again the regulations were enacted with a little bit of urgency. There was an application, I believe, pending at the time and there was a need to get some assistance out. And I believe that to date only one loan has been applied for.

Well what's the issue before the committee with respect to both of these. And it's actually an important issue and a good issue to raise. And I'm going to define it in this fashion.

Given that the enabling legislation requires the Lieutenant

Governor in Council to set terms and conditions, is there any scope for the Lieutenant Governor in Council to give a minister some discretionary flexibility in administering the regulations.

And as the counsel to the committee, Mr. Ring will note, for lawyers, that really raises the issue of subdelegation. Cabinets require set terms and conditions. Does cabinet have to set all the terms or conditions, or is there some flexibility? And if there is any flexibility, how much flexibility can be given to somebody else to set terms and conditions? That's really the issue that was set before this committee with respect to both regulations.

And I think without going into too much detail, I think what we would say as the Department of Justice is we agree that regulations ought to set forth all the essential terms and conditions. The types of regulations we're talking about here, where there is a little bit of discretionary flexibility, are really not common but they do happen from time to time.

I think the position of the Department of Justice is that this whole principle of subdelegation is not an inflexible rule, but it's really a matter of statutory construction. Now what that means, I guess, is one has to look at the context of the Act, the purpose for which the regulations were being enacted, and looking at all of that ask yourself: is there some scope for flexibility; is it possible to have flexibility?

In some cases, for example, where regulation is dealing with licensing, or imposing a burden of tax, for example, the position of the Department of Justice is that you have to construe the statute very strictly and there really isn't any scope, or not very much scope, for discretionary flexibility.

But I think with respect to these two regulations we note a couple of things. First, the regulations are providing a benefit, there's a loan. And secondly, they were passed urgently; there was some urgent need for this assistance to be given. And in those circumstances, we think it's justifiable and practical for a regulation to give the minister a little bit of flexibility in administering the regulations. It's practical because, in our opinion, you can't foresee every possible circumstance. To try and put in every possible term and condition would make the regulations both lengthy and take a lot of time to draft.

And we think it's justifiable. The purpose of the regulation is clear. The Crown is seeking to provide some assistance not to interfere with somebody's rights. And at the same time there is a need to protect the public purse and the integrity of the program just in case some detail or some term or condition has been overlooked.

We think there are a couple of points though that have to be kept in mind in terms of whether it's possible to subdelegate. The first is the regulation should set out as many of the essential terms and conditions as possible, and I think that that really was done in both of these regulations. I'm advised by both Highways and Agriculture, just as a practical matter, there really weren't any significant terms or conditions beyond those set in the regulation. So that people who applied for a loan under the short-term hog loan or the person who applied for the loan under the short-line railway, if they saw the conditions in the regulations, basically they knew whether they were in or out.

The second point we'd make is that even if the minister does exercise some discretion, has some flexibility, that that flexibility is limited — and really quite limited. First, whatever the minister does would have to be limited to some supplemental matters. It couldn't be anything major or significant.

Secondly, whatever the minister does would have to be consistent with the object and purpose of the Act and the regulations.

Thirdly, the minister couldn't set terms or conditions that would be inconsistent with those set out in the regulations. And then, fourthly, the minister is bound by the general legal duty to be fair and reasonable and to be consistent with the Charter and with the Human Rights Code and act in a sensible fashion.

So taking a look, I guess, just in summary at both these regulations, we feel that they were both validly enacted. We feel they fit within the category of regulations that were enacted to provide a benefit, and they were enacted quickly, and there was an urgent need for that kind of assistance. We note that all the essential terms and conditions were indeed set out. And indeed the practical administration of the program suggests that the minister has never really had to use the discretionary power to set any significant or other terms or conditions.

So that's my presentation. I'll turn it over to Mr. Martin to talk a little bit more.

Mr. Martin: — How much detail would you like or background would you like me to go into, Mr. Chair?

The Chair: — I think basically what the committee is looking for is just to identify discretionary problems and how they're specifically stated in the regulations. And the concern that there was just a fair bit of flexibility and the minister had maybe more power, more authority without, if you will, having it specifically identified. Just a feeling of too large a flexibility that they could work with. And that I think is a concern that was raised originally.

Mr. Martin: — Okay. I have a written response that I can table with the members.

The Chair: — Okay, thank you.

Mr. Martin: — I will go through first the criteria that Justice has sort of indicated that it is sort of delegated discretion. And I'll go through the discretionary criteria we've used on behalf of the minister to determine whether a loan should be given and the current status of the loan. And then if you have any questions I can go into further background.

In general, the loan will be for no more than 16 per cent of the net salvage value of the potential short-line railway. The rail line will be economically viable. And that's a bit pejorative but I'll go into what that means. The operation of the rail line has strong local support in the area. The operation of the rail line will support economic growth and well-being. The rail company will operate the rail line as a common carrier and that is enforceable under the legislation.

The participant is eligible to receive financial assistance pursuant to CAIP (Canada/Saskatchewan Agri-Infrastructure Program) and that means Canada Agri-Infrastructure Program. A minimum of 8 per cent of the purchase price will be received as financial assistance from local governments for local area residents. And that's just to prove that there is a local support for the short line.

The participant will receive a loan from the bank or other lender on terms that are acceptable to the minister. And I'll come back to that one for some discussion.

The participant has received all commercial and regulatory licences or permits and approvals and there are sufficient funds in the short-line railway program to make the loan. That means we have to have the money before we do it.

But I'll go back to the third last one, is that to some extent we're really relying on the banking system or the financial institutes to provide due diligence. We feel comfortable making that loan if a bank says they have sufficient business case to get this as a loan, still have the business and borrow money and can operate.

So we are to some extent really relying on the process that they have to go through with the local lending institutions to have a viable business. And if they can get through that hoop, then we feel comfortable giving them a loan for this portion of the funding. And again, a lot of the regulatory licences or permits are something that we approve under the Act in terms of operating of a short line or operating authority from the Highway Traffic Board.

This was instituted on somewhat of a short time frame for the Red Coat Road and Rail short line. The line was up for abandonment, and they had to make a decision. The local producers who wanted to have a short line as an option had a very short time frame to get their business case together to convince the banks to get the local support to do it. So it really was enacted to deal with that particular rail line at the time. The loan to the Red Coat Rail is \$176,000 . . . excuse me, 176,800, and that to date is the only loan that has gone out under the program. Any other short lines that have occurred in the interim are all commercial deals between a private short-line company and a major railway where they have not accessed the short-line assistance.

The Chair: — Do committee members have any questions at this time?

Mr. Thomson: — Thank you. I'm not sure if the officials are finished with their presentation. I can certainly wait until they are.

Mr. Martin: — I think I'll stop there, unless there's any questions.

Mr. Thomson: — In that case, Mr. Chairman, I appreciate . . . I want to say I appreciate the information we've received in terms of the specifics of how this has been used up to now. I believe when we dealt with the legislation which enables these regulations, that certainly we foresaw that there was a need for flexibility in them.

The one question I do have though is one of transparency and the financial reporting that would be used. At what point would it become public who has accessed these loans? Or in specific, where the minister has decided that there would be a default or that . . . not to pursue defaulted money, do we have any understanding at this point as to how that would be communicated? Is it simply communicated through to . . . would we find this out through the normal course of audit? Would the Provincial Auditor bring this to our attention? Or would it be reported in some other way?

Mr. Martin: — Yes. In terms of the financial statements of the department, this would show up on our . . . in the public accounts as a loan that's against our budget, and so it would be recorded. And if there's anything undue in the management of it, then the auditor could also identify whether it was being administered inconsistently with the Act or the regulations.

Mr. Thomson: — So then there would be full transparency of this? It's not a case that the minister can simply decide to issue the loan without, say, cabinet knowing about it or without it somehow being reported through.

Mr. Martin: — Yes, it's certainly all public information. And beyond the legislature, this . . . It's received, although not legally binding, quite a bit of investigation by SARM (Saskatchewan Association of Rural Municipalities) because they're quite interested in where this money is going and what we are doing to help short line. So they keep a close eye on us.

When we made the change in this agreement to provide this funding, we actually negotiated with the federal government a change in the CAIP program to recognize short lines. The federal government was the signatory to that program.

And the movement of money from our budget to our partnership fund and all that involves negotiation with the Department of Finance, and SUMA (Saskatchewan Urban Municipalities Association) and SARM had to agree to our managing these transfer of funds — not the actual loan but the overall program actually.

The Chair: — Thank you, Mr. Thomson.

Mr. Allchurch: — Thank you, Mr. Chairman. On the second quotation from current status, it says 176,800 to TPF (transportation partnership fund). What is TPF?

Mr. Martin: — The transportation partnership fund. That's a fund within our department or within our legislation, within our budget. It's a separate fund.

Generally, that's used where we have the trucking partnerships. And there's revenue paid into the fund. It's a separate entity within the . . . a separate financial entity. And the money goes into there from the trucking partnerships and is used to go back into road construction or road projects.

It's really being used as a short term to manage the money for the program. The reason we're doing that is the federal government wants to wind down the CAIP funding but we still want to keep it available for short lines.

And so, we're really taking the CAIP money and putting it into the partnership fund and keeping it open until we, with SUMA and SARM, agree that there is no more short lines going to access it. And then we'll take the money, put it back into road projects that would have originally been built from the CAIP as it was intended.

If you followed that convoluted discussion.

Mr. Allchurch: — Okay. A second part of the question is you said the loan is for 176,800. But in the second part, it says 176,800 to TPF and 176,800 to General Revenue Fund. Does that mean that there's two loans or . . .

Mr. Martin: — Yes, this is the question. It's difficult to explain. And there is a perception problem with this, is that really the loan is being repaid from the railway to the government. That goes back to the general revenue. The money that the federal government paid out of its share — 16 per cent from the CAIP — from their point of view really goes out as a grant. And that grant is actually being paid back to the partnership fund and it will be used to build road projects.

Now the reason it's being drawn back from the short-line railway, rather than it being treated truly as a grant, is it affects the cost structure of the short-line railways. And if it is given this grant — a pure grant — that changes the economics of the short-line railway and the major companies, CP (Canadian Pacific) and CN (Canadian National), will just claw that back when they set their rates for the short line. And so it's to no advantage to the short line to have it as a loan. It looks like a mirror as a grant. It really means they don't have to have the cash, but it doesn't help them in a long term in terms of their financing. If they do get a grant, it reduces their costs. Then they can't . . . we would lose it effectively back to CP or CN.

And so the original CAIP program was set up for road improvements. We're really using the federal portion as a short-term loan — although they call it a grant — to get the short line operating. After it's paid back, it goes into the partnership fund. The partnership fund is managed by a public body which just coincidentally happened to meet today to allocate some other funds. They will then put it back in the road projects once the short line has paid it into that fund.

So it appears that the province is clawing back money that the federal government gave as a grant, but it really gets down to the economic structure of the short line and what they can charge and how they are charged by a main-line railway.

The Chair: — Any questions?

Mr. Thomson: — Mr. Chairman, I am interested in knowing some more about section 9 of the regulations — the waiver of default section. This section stipulates:

. . . the minister may waive the default on any terms and conditions that the minister considers appropriate.

I was hopeful that the officials could tell me at this point what the minister would likely consider appropriate; and secondly, why we would not want that articulated in the regulations itself?

Mr. Styles: — The detail behind it hasn't I guess been worked out or resolved. The amount of discretion that's being provided in essence reflects the uncertainty I guess of the business the short lines are in. A lot of them right now are facing pressures obviously as a result of elevator closures and things like that and are removed to producer car loading.

The discretion then provides an ability for the province to assess where that break-even point might be for them to survive financially, and potentially to alter the terms and conditions of the loan, okay, to bring the break-even point down to something that will allow them to sustain themselves on a long-term basis.

If the amount of cars they're moving dropped in half for instance, even waiving our entire loan would not make them viable. If the number of cars dropped by 10 per cent or 15 per cent and they were having problems and we could do something to help that, okay, that might be in our best interests when you associate the amount of road damage that might occur as a result of moving the wheat from rail to roads. Again each circumstance will be a little different and it provides flexibility to deal with it.

Mr. Hobbs: — One of the situations we had in mind was this. The Department of Highways . . . pardon me, the Government of Saskatchewan is not the only lender. In fact we're the second or the third lender. And we could have had this situation develop. The Bank of Commerce or one of the commercial lenders, who's the primary lender, is prepared to waive a default. Let's say the farm group is behind, misses a payment by a day, or could only make half the payment, but the long-term outlook is good.

So we could have had a situation where the primary lender, the banks or whoever, are prepared to waive the default. Now they're not changing the terms, they're just letting a payment slide or whatever. And we didn't want or didn't think the government would want to be in the situation where it said: but we can't waive the default. And it would bring the whole operation down.

So we thought it was advisable to ensure that the government as a lender had the same sort of flexibility that the primary lenders have to avoid that situation where we find that we don't have the flexibility to waive a default when I think most people might think it should have been waived.

Mr. Thomson: — Mr. Chairman, as my colleagues would know I have no interest in being argumentative, but one of the questions I would be interested in knowing is why we would not stipulate conditions in this. As I read section 9 and understand basically where this goes, this allows us to become a forgivable loan, essentially, by us simply not pursuing it.

I think one of the things we as legislators would be interested in making sure does not happen is that we do not delegate too much outside of the Assembly or out of the public realm.

Now clearly cabinet has the ability to amend the regulations as it pleases through normal process. Would there be a situation that would occur that would require such immediacy of action that we would need to leave it solely at the minister's discretion rather than a change in regulation through order in council.

Mr. Styles: — Maybe I can approach it from two perspectives. One, if you're looking at it from strictly an underwriting perspective as a financial institution, you'll make whatever decisions are necessary in the short term to protect your overall investment. That may mean, okay, that you decide not to move to default but rather to work with the lender. And that's the kind of situation that John is talking about.

Secondly, there's a public policy interest here as well, and that's why the program is in place. And again, the minister has a discretion or requires the discretion to make sure that essentially the objectives of the program, the public policy interest is being maintained if in some way forgiving a portion of the loan or allowing for payments again to be added to the principal. And I think that would be an option that would be available as well. Then the minister can take that option, okay, to sustain the public policy objectives.

So again there's sort of two different fronts under which he could take actions or reasons why he would want to take actions.

The question now, should the authority be delegated to the minister, in essence to the department officials versus the legislature; each situation becomes relatively unique and relatively dynamic. Usually defaults occur rather quickly, would be my experience.

The Southern Rails Co-operative, for instance, that operates in the Avonlea area right now is under some financial pressure. While they're not a participant in this particular program, my guess would be that their default, if it was to occur at some point in the future, would be rather precipitous and would occur very quickly. And lenders have to move very quickly in order to respond to those kind of actions. Trying to move that kind of question and that kind of issue back through cabinet would be exceedingly cumbersome, would be the kind of response I would give you on that.

Mr. Thomson: — Are we dealing with . . . I take it we're not dealing with particularly large sums of money. It appears at this point we're dealing with less than a quarter million dollars in each case. Is this correct?

Mr. Styles: — Yes, that's right. In point of fact, the direction when this was initially established would seem to have indicated that you're going to see a lot of small short-line operations develop around the province. In point of fact, since '98, most of them have been larger short-line operations.

You've now got on the tracks Westcan coming in; there's a large proposal. Talks about a regional network based upon prairie lines of the future, okay, and one of the railway unions working together.

So from sort of very small, isolated short lines, this whole notion of what's going to develop seems to be moving towards large, more corporate entities in the future.

Mr. Thomson: — Mr. Chairman, if I might then, do I understand that these larger organizations would not have access to these funds?

Mr. Styles: — That's right.

The Chair: — Any questions, other committee members, any questions of the officials while they're here with us?

It appears then that you've probably answered most of the concerns we've had or at least made things a lot clearer, although I think in some regard there's still some iffiness about just exactly how the regulations are presented. And whether or not we need to have the Act pursuant to which regulations are made be reviewed and amended in order to allow for the broad use of ministerial discretion . . . amended or changed. I'm not sure if you'd like to respond and suggest that maybe that might be the way of clarifying the concerns with the committee.

Mr. Styles: — I mean from a department perspective, you know at this point in time we've only had one experience with regulations and nothing at the default end. And hopefully we don't have any experience with the default end of it.

You know the indications we would have at this point in time, based upon our experience, is that it is appropriate to the kind of public policy interest the government is trying to pursue. And that's helped small organizations where circumstances change quite rapidly with them and you need the ability to manage and to work with that. So at this point, I mean we haven't changed our position essentially that it's the right approach.

The Chair: — Thank you, Mr. Styles.

Mr. Yates: — Would it be fair to say that one of the considerations are that you're dealing with time frames that are established by outside agencies, banks, and they can establish a 24-hour time frame if they want and the government would have to react within that time frame seeing as we're not necessarily first on the repayment list . . .

Mr. Styles: — Quite definitely. The banks will make their own decisions, their own timelines. Usually they move quite quickly, okay, if they believe their own interests are in some way being threatened.

Mr. Yates: — So they in fact could foreclose and being first payer receive their funds and the government receive nothing if we didn't have some ability to . . . in potential situations, prop up the operation or make it more financially viable. So we could lose our full investment versus . . .

Mr. Styles: — I mean essentially if an organization tends to become insolvent, starts to run up losses, the longer you let it go — I mean the higher level losses and the large losses that somebody has to take, and usually it's whoever is secured in a second position — so you need to make relatively quick positions if you want to protect your investment. Or if you want to make a public policy decision again, you'd need to make it in a relatively quick timeline in order for it to actually be effective.

Mr. Hart: — Thank you, Mr. Chair. What type of surveillance or review of the loans that the department do . . . it seems to me that you indicated that these things happen quite quickly. But quite often in the business world they don't happen quite that quickly, that if you're on top of the account as such there would be some indications and that sort of thing. And I wonder if you

could explain for the committee as to what type of financial review that the department does to the regards to these types of loans?

Mr. Styles: — I mean at the front end — if you're talking about the underwriting part of it — we're a relatively passive participant, at least in the one instance that we've been through. Again in that particular instance, because the banks are actually issuing loans, we allow them to carry out sort of their full underwriting process, and place, I guess, great emphasis or great faith . . . (inaudible) . . . in that process. That by looking at the viability, the whole economic viability and the sources of funds that are coming forward, they're comfortable but the amount of risk is relatively minimal.

So again we're heavily dependent on the banks or the credit unions, depending on who would be involved.

On an ongoing basis, our staff work with . . . The short lines use very small outfits potentially in terms of local co-operative groups, so we tend to work on an ongoing basis. Have a lot of technical involvement with them as well.

And for some . . . Again, I'm speaking sort of broadly, not the specific one that we're involved in. For a lot of them, they bring a larger partner to the table. For instance, the latest two short lines that were formed — Cudworth and Arborfield, I think, if I have the two locations correctly — they brought in another partner on the tracks, which is a much larger corporate entity, has the background and the involvement to understand sort of where the break points are in operating it.

And we maintain our ongoing liaison with them to understand what's going on with those operations and the conditions. So if one was turning financially unviable, we should know about it ahead of time.

But again, they're very small organizations. They don't have a lot of, you know, equity tied into them. Don't have a lot of reserves tied up. And so where with a larger company it might take a fairly significant period of time, I think six months without getting producer cars running through one of the lines, they'd have financial problems.

The Chair: — Any further questions?

Mr. Martin: — Just one. In terms of using the Red Coat loan as an example, we're probably at least monthly contact with that company through our short-line unit. They share with us their tax bill, their fuel bill, and are certainly open with us in terms of their finances. For one reason, they want us to understand so that we can provide any technical assistance that we can to help them stay viable.

The Chair: — Thank you. Any further questions? I'd like to then thank the officials for coming down and responding to the concerns and giving up your time. And hopefully, we've got a better understanding of what we were raising, the questions we were raising, and so we'll allow the privilege of getting on with your line of duty, and then we'll continue our business of the day.

Mr. Styles: — Thank you very much.

The Chair: — Well, committee members, we now have to make a decision. And in regards to what has been suggested by Mr. Ring . . . and Mr. Ring was indicating to me that he had a feeling from what has been suggested that certainly the department is operating within the broad guidelines. But I'll maybe allow Mr. Ring just to clarify his comments, and then as a committee we'll decide which direction we should move or if Mr. Ring has a suggestion for us.

Mr. Ring: — I think as a starting point the comments that Ian Brown made with respect to how the regulations came about, the authority, the loan, urgency of them, that most of the terms and conditions are set out in the loan, certainly I agree with those and they're valid observations to make. However, as was pointed out by committee members, section 9 sort of jumps out at you when you look at all the regulations and then all of a sudden section 9 is there. And in certain instances, perhaps the government does need to move that quickly.

One comment that I would have with respect to the regulations is that they were made pursuant to The Government Organization Act, which is an Act of general application and not an Act of specific application to Highways and Transportation. The GO Act, or The Government Organization Act, works in conjunction with the departmental Act.

So in section 3 of The Highways and Transportation Act, 1997, you will look for some authority that the minister has and then that gets you to The GO Act in order to use 19 and 24 to make the regulations; and section 3 of highways and transportation talks about transportation systems. So clearly, there is the authority to be dealing with short-line railways under The Highways and Transportation Act.

The one area that I would make comment on to bring the committee's attention, perhaps for discussion at this point, would be that 19 and 24 of The Government Organization Act do speak to the minister prescribing . . . or the Lieutenant Governor in Council making regulations to prescribed terms and conditions, not necessarily the minister making them.

And certainly there is ministerial discretion when a set of regulations are there, and it's really a question of how far you'd like that ministerial discretion to move out when you've got terms and conditions set out.

With respect to section 9 specifically, had there been some type of an indication as to what type of considerations would go into that decision as there is in section 8 with respect to default, that may go some ways in addressing the situation that Mr. Brown was saying that the minister could do certain things but it's limited by what's in the section, what precedes it. In section 9, nothing precedes it. But perhaps that's a circumstance where the minister needs that discretion. So those would be my comments there.

I guess one final comment would be because the regulations are conferring a benefit, it's very unlikely that someone would want to challenge the regulations because they are receiving a benefit pursuant to them. Although I think in making the regulations and scrutinizing the regulations, you may want to ask yourself, should there be that broad authority, or should there at least be some type of considerations attached to it.

The Chair: — Thank you, Mr. Ring. Seek direction of the committee. Any comments or suggestions?

Ms. Jones: — Thank you. In this particular case — and if I'm stepping in this area where we're not supposed to comment, tell me so — but in this case, there's only one loan. Would you foresee a problem with the regulation as it exists, giving broad discretion if there were a number of loans and different criteria could be applied to different loans? Is that a cause for concern that there may be a perception of bias of one instance against the other, anything like that?

Mr. Ring: — To respond to that question, I think that's the . . . First of all, now that the committee has that information, that there is in fact the one loan and not 15 or 20 or 150 of them, that's an important piece of information for the committee to use when it reflects on what to do.

Because there's only one loan, it's very difficult for there to be ad hoc decisions made by the minister in allowing one default and not allowing five others. And that's when people say, well that other one was waived and why isn't mine being waived?

So with the one loan there, you don't get into that problem. Where there are more loans, then perhaps you would have something along those lines so that's certainly something that should be taken into consideration.

Ms. Jones: — But in this Act, there's only going to be one, and this program is winding down.

Mr. Ring: — Yes, and that's the other important piece of information that we received from the committee official . . . or from the departmental officials, that we wouldn't have received through correspondence. So I think when you look at all of those factors, that's one thing that would bring the committee to a resolution as to how serious they feel this might be.

Ms. Jones: — Right.

Mr. Ring: — And having had the officials come forward, address the issue, other departments will realize in the future that they may be called upon to make a case if they were, you know, to draft a similar set of regulations in another area.

Ms. Jones: — Well, Mr. Chairman, considering that that is the situation dealing with this particular set of regulations, that there is only one loan and that the program is winding down, or has wound down in effect, I would think that my concerns are addressed. It's perhaps useful information to be looking for in a future Act, but I don't believe that I have cause for concern in this particular set of regulations that would cause them to need to be amended.

Mr. Allchurch: — What Ms. Jones said about winding down, they haven't given any intention to us knowing when this is going to come in effect, have they? When is it going to be wound down?

The Chair: — I believe, if I'm not mistaken, it was Mr. Brown talking more of the hog program versus the short-line rail.

Mr. Thomson: — No, it's my understanding that CAIP is

wound down.

Ms. Jones: — Yes, they are.

The Chair: — Oh that program. But he also made a comment with regards to the hog program I believe as well. Yes, the CAIP program, yes, that's true as far as federal funding.

Mr. Allchurch: — So we don't know when this one will be winding down then, even though it is going to be winding down.

The Chair: — Yes, as far as loans for short-line rail.

Mr. Allchurch: — Yes. The reason I make that assumption is because I know Omni Trax is looking at possibilities of taking over some more short-line railways. And will Omni Trax, if it doesn't wind down very shortly, if Omni Trax wants to pursue the fact of getting a short-term loan, can they?

The Chair: — Mr. Ring was just indicating to me he understood that they would probably have to have a CAIP grant in order to get the loan.

But from what I understood from the officials, they didn't anticipate Omni Trax or these alleged organizations, private enterprise actually applying for this. It was more individuals and community groups. And I think that this was set up for us, what I understand.

Mr. Yates: — You look at the regulations, 50 per cent or more the shareholders must reside within 50 kilometres of the railway line. So it's designed for local area producers to have access to funding to get into this type of endeavour. Omni Trax, being a corporation, wouldn't meet those criteria.

Mr. Harper: — Mr. Chair, I believe that one of the officials mentioned that Omni Trax would not meet the criteria, therefore they would not qualify, or any other organization the size of Omni Trax would not qualify for this program. This program was simply designed for local residents or co-operatives to establish a short-line system.

Mr. Hart: — Well I guess it's somewhat unclear whether there is funds available for future loans.

If I understood the officials correctly, there's \$3.2 million from the CAIP program is being moved into the TPF fund and I'm not sure whether that's available for future loans to community groups or not. And I guess it really doesn't matter whether there is money available or not. As far as the concerns of the committee, I think the main concern is the broad range of discretionary power that the minister has when it comes to a default on the loan, whether it be one loan or several loans.

And I guess, seeing that there is only currently one loan at this time alleviates some of my concerns. And I guess the only concern I would have is does this set a precedent, not only within this department but other departments, if those type of regulations become commonplace.

Mr. Ring: — No. I was just looking back through the material presented by the officials and at the bottom of the second page

they indicate that CAIP is not now accepting new applications, and that the remaining money in the CAIP fund that was designated for short-line railways is being moved to another program.

So I think that would mean that we have one loan and we're not likely to receive any other applications for loans.

Mr. Hart: — But I guess my question was, even though we may only be dealing with one loan, you know, is this commonplace in other sets of regulations, or will it allow it to become commonplace where the minister has a wide, or a broad range of discretionary power? Are we setting some precedence here or has there precedence been set with this particular section in the regulations?

Mr. Ring: — I don't think you'd be setting a precedent for allowing for it, although I think by having come forward to the committee and having the officials attend, before doing it in a subsequent set of regulations, the department may want to make sure that they have a good reason, a good rationale, in order to do that. And perhaps a future set of regulations wouldn't just have nine the way it's presented, but might have nine with a little bit more, with some qualifiers in it, some type of minimum terms and conditions, or something along those lines.

Mr. Thomson: — Given what we've learned today, I'm prepared to accept the arguments laid out by the officials. But I do have some residual concerns about the use of The GO Act and these type of provisions becoming commonplace in regulation. I don't know that we need to act on that today. I don't think that it's necessary for us to write the president of the Executive Council and express our concern. But it is something that I believe we should be mindful of. In this case the program is virtually defunct.

We have one small loan outstanding, and I believe the minister will use appropriate discretion in dealing with it. With any luck it will be a very successful venture and we won't need to worry about the default provisions.

However I think that we should be mindful of this as we look to other regulations, to ensure that there is perhaps a greater transparency and accountability built into the regulations in these issues. So I don't know that we need any further action on this.

The Chair: — Any further comments?

Mr. Yates: — I would move:

That we accept the explanation of the department and pass these regulations on.

The Chair: — Committee members agreeable with that motion? Agreed. Carried. Thank you very much.

Well as the committee will see, we've basically covered everything that was on the agenda for this afternoon, a little more. And rather than trying to bring forward information that may not be all at our disposal right now regarding tomorrow's meeting, I would suggest, unless there's other questions, that we recess and meet at 10 a.m. tomorrow when we'll have some

more officials before the committee.

And what I suggest as well is that, depending on the length of time we spend on some of the regulations, if they move along as speedily as they did today, we just continue to move through the agenda rather than recessing for a period and then coming back. We'll cover as much as we can prior to lunch. And if we happen to finish the agenda at that time, then so be it. If not, we'll reconvene after lunch.

But I would to thank committee members and the officials for the time they've allotted to us this afternoon and would declare the committee now adjourned to meet at 10 a.m. tomorrow.

The committee adjourned at 2:55 p.m.