

Ms. Woods: — Good morning, everyone. I think we're going to begin with the meeting. I guess as Clerk of the committee, it's my responsibility to preside over the election of the Chair, so we'll move right into that.

If I could have any nominations for the position of Chair.

Mr. Whitmore: — I would like to nominate the member, Mr. Buckley Belanger, for the position of Chair.

Ms. Woods: — Are there any other nominations? Okay. Could I have a motion for the nominations to cease?

Mr. Ward: — I'll so move.

Ms. Woods: — If I could have the motion, then. So the motion is for Mr. Buckley Belanger to be elected to preside as the Chair of the Special Committee on Regulations. All those in favour? All right. That motion is carried and Mr. Belanger will take over from this point.

The Chair: — All right. Welcome and good morning. You'll have to forgive me; this is my first opportunity of being a chairman of a committee here in the Assembly, so I'll probably make 50 million mistakes.

We're now into the second item of the agenda — election of a Vice-Chair. I guess the floor is open for nominations.

Mr. Sonntag: — I'd like to nominate the good member from Estevan, Mr. Larry Ward.

The Chair: — Okay. A nomination by the member from Meadow Lake to nominate Larry Ward.

Mr. Whitmore: — I would second that motion.

The Chair: — Second the motion, by the member from Saskatoon Northwest. Do we have any further nominations? Can we then move that nominations cease?

Mr. Sonntag: — So moved.

The Chair: — So moved by the member from Meadow Lake. And we now have an official vice-chairman, upon his acceptance.

Ms. Woods: — You have to put the question first.

The Chair: — Okay. All in favour of the move in nominations? Okay. We now have a vice-chairman.

All right. We'll go on quite directly into business. We are scheduled to go from 9 to 12 and 1 to 5, and what we will do is we will have a break immediately following the orientation. And I do have to travel back tonight, so if by luck we are able to finish by four then that would be just fine with me, if nobody else has any major problems with that.

So with that we'll go to item no. 3 — orientation. And I would

like to invite Margaret Woods, committee Clerk, to explain . . . Is she here? Oh, sorry. You're Margaret, right?

Ms. Woods: — Don't tease me this morning. Okay. I think all of you received a number of papers this morning. If you didn't, they're just on the table at the back here. One of those is the revised agenda and we put a few items on there to clarify what we're going to do this morning.

The orientation will be made up of four parts, beginning with myself, followed by a briefing on by-laws by Mr. Flory, a briefing on regulations by Mr. Brown, and then the Law Clerk, Bob Cosman, will explain his role. Hopefully at the end of this you'll have an appreciation of what this committee is supposed to do here at the Assembly. And if there are any questions or clarifications that you have as we go along, I would suggest you ask them right away so that we can clear up any misunderstandings there may be.

The Legislative Assembly delegates certain legislative powers to other bodies, such as the Lieutenant Governor in Council; to ministers; to boards; to professional associations. The regulations made by these bodies have the force of law and they confer legally enforceable rights and obligations on Saskatchewan citizens. Regulations are important because they do affect, far more closely perhaps than the parent Act, the individual lives of your constituents.

The legislature will decide the general policy of an Act, but often it's issued in a skeleton framework with the appropriate minister or body being empowered to fill in the details by way of regulations. It's then left to officials in the Department of Justice to actually draft these delegated laws. The amount of delegated legislation now surpasses the amount of Acts in force, so that it is a fairly large body of work that we're dealing with.

The need for regulations is often debated, but for the most part it's accepted that they are necessary. The range and complexity of modern government requires that in addition to the general authority for and the outline of government projects provided by the legislation, that there remains a need for a vast body of administrative regulations also having the force of law to actually implement the project.

It can be argued that such regulations can be made only by the executive who are familiar with the administrative problems and procedures involved. It can also be argued that regulations should be capable of speedy alteration without having to resort to the cumbersome procedures of a legislative amendment. Finally it can be argued that the legislature itself does not want to become involved in legislating administrative procedures.

Essentially the House cannot deal with the parent Acts, with the framework of the programs and so on, and also deal with all the specifics within those programs. The House really doesn't have the time and perhaps not the expertise to go into the complete details of how to implement an Act. So that is why the legislature approves the general policy or the framework of an initiative and then delegates the power to fill in the details to the Executive Council or to a professional association.

Consequently the legislature tends to delegate more . . . or a considerable amount of legislative authority through such devices as the frequently occurring phrase, the Lieutenant Governor in Council may make such orders and regulations. And I think this was an issue last session when we were in Committee of the Whole; that a number of members had questions in regards to what this power was actually conferring upon the Lieutenant Governor in Council.

If the term, responsible government, is to be more than a hollow phrase, the Legislative Assembly must maintain sufficient control over this large area of legislation. The control mechanism that was set up to achieve this was this committee, being the Special Committee on Regulations.

One of the documents that I think you were handed out this morning . . . one of the papers that you were given this morning is a brief summary of the review of delegated legislation in Saskatchewan, and as an appendix at the back is a history of the committee. So if you are curious as to how this committee came about, in a brief point format, it explains that in the appendix.

Saskatchewan is still one of the few jurisdictions in Canada that has an active Regulations Committee. So through this committee the Assembly reviews all the regulations which have been passed to ensure, among things, that they have been properly drafted, that they do not go beyond the powers conferred by the parent Act, and that they have been properly published.

The committee is empowered to request explanations from departments of regulations which are possibly in violation of any of the guidelines that are laid down in the terms of reference. If a satisfactory reply is not received from the department or if remedial action is not taken, the committee may report the matter to the House where action can be taken. The Legislative Assembly itself does have the power under The Regulations Act to require that a regulation be amended, or even choose to revoke it.

The Regulations Committee is also charged with the task of reviewing by-laws, amendments, and regulations of professional associations. These are annually referred to the committee. The committee is empowered to review such by-laws, not only to ensure that they are properly drafted, but also to determine whether or not they are in the public interest. A decision of the committee or of the House to refuse to ratify these by-laws could result in the by-law being declared null and void.

I'm not going to go into any further detail about regulations or by-laws or how they are drafted because I believe that's going to be covered later on in the orientation.

I next want to go on to a few points about the structure of this committee. First of all, the terms of reference. You were handed out the terms of reference; it's on a single sheet of paper. These terms of reference haven't changed substantially since the committee was formed in 1963. The only major change to the terms of reference occurred when responsibility to scrutinize the regulations and by-laws of professional associations was

transferred to this committee in 1966.

Prior to that time, from 1946 to 1966, these professional by-laws were reviewed by the Law Amendments and Delegated Powers Committee of the Assembly, and that committee no longer exists here. So in 1966, this duty of reviewing the by-laws was transferred to the Regulations Committee, primarily because this committee has legal counsel which can assist it in carrying out its work.

The Legislative Counsel and Law Clerk will go into a bit more detail in regards to the terms of reference later on.

You may be interested in noting that this committee is referred to as a special committee as opposed to a standing committee, but in practice it does tend to operate exactly like a standing committee.

In 1963 when the committee was struck, it was struck as a special committee in order to allow it to sit between sessions. But since that time the rules of the Assembly have changed. Now both standing and special committees can sit between sessions. So the original rationale for creating this as a special committee no longer exists.

Another historical result of the special committee status is the need for distinct motions to establish the Regulations Committee at the start of a legislature and to name the members on it, to give it its terms of reference and so on. Another motion has to be passed to actually refer the by-laws of professional associations to the committee.

A referral motion is not needed for the regulations as they are automatically referred to the committee under The Regulations Act. This Act also provides for a copy of all the regulations to be given to the Clerk of the Assembly. So they do form part of our record.

Another important characteristic of this committee is that the chairperson is an opposition member, and the purpose of this is to strengthen its scrutiny function in much the same way that the Public Accounts Committee has an opposition Chair. To offset that, the Vice-Chair traditionally comes from the government side. And the government members do make up a majority on the committee, as they do in all except for one other committee of the Assembly.

In regards to the scheduling of meetings, these are scheduled at the call of the Chair. Normally there are between two and four meetings a year. The last couple of years have been a bit of an exception. In a normal year, the committee would start to review the regulations that have been passed during the first half of that year some time that fall. In the past, the members have found it preferable to meet for one or two full days in the fall when the House isn't sitting.

And then in the spring when the members are here for the session, they meet once or twice during the mornings. But it depends upon how much work there is for the committee to do, how quickly the responses are being received back from departments and associations. So it's not really possible to schedule meetings on a regular basis.

The committee does have the power to call for witnesses and to call for papers if required when they are investigating a particular area. Normally witnesses may be invited, especially when the committee is examining by-laws and there is a point of contention where they want clarification. And it's easier if they get someone to come to the committee to explain what is being involved within a by-law. That being said, the committee is not precluded from inviting representatives from departments as well if it so chooses, but that's up to the committee to decide for itself.

The final point that I want to go through is just a brief synopsis of how the review process takes place. The normal review process of this committee starts with a lot of work being done ahead of time by the legal counsel. The committee members and the committee itself does not want to usually spend the amount of time that it would take for the committee to go through each and every regulation, you know, as a group, during a committee meeting.

So the first step is a review by counsel. Bob Cosman does receive copies of all the regulations and by-laws and he will review them and then bring to the attention of the committee those regulations where he feels that there is an issue that warrants the committee's attention. He's going to go into a bit more detail as to what criteria he uses in determining whether there is an issue or not that the committee may be interested in hearing about. He will then prepare a report for each meeting of the committee.

I think this morning there are actually three reports that have been handed out to you. The first one deals with the 1995 regulations and these are regulations that the committee hasn't considered before. The other two reports are what are referred to as follow-up reports. One of them deals with follow-ups for regulations that the committee has already addressed at one point and they are waiting for a response back from somebody. The other report deals with follow-ups to by-laws and also are issues that are still outstanding that have not been resolved.

That being said, the committee is not restricted to considering just those issues that the law counsel brings up in his report. Any member can raise a concern or request the counsel to review it or to obtain further information for the committee. Once the committee's attention has been drawn to a regulation or by-law, the committee will then assess the advice or recommendations that they receive from counsel and make a decision on how they wish to proceed with the issue.

In that vein, the committee has a number of options available to it as to how it wishes to proceed. Either it can consider the response from a department or a professional association and decide that the issue is resolved and they don't wish to pursue it any more. If they still feel that there is an issue that hasn't been resolved to the committee's satisfaction, they can request counsel to go back and discuss it further with the department or the association. The committee is also permitted to request individuals to appear before it to provide that explanation in person if they so choose.

You'll notice when you actually look at the reports, that some

of the issues are quite old in the sense that they . . . I think the oldest one is back to 1986. So you will appreciate that it takes a fair amount of time to get some of the issues resolved, simply because of the necessity to send letters back and forth. And if the committee isn't meeting on a regular basis, it's quite easy for a few months to pass before an issue is actually dealt with.

Another factor in requiring a fair amount of time is that if the committee decides that what is needed is an amendment to a regulation, well that can be done fairly quickly. If it's an amendment to an Act, that takes a little bit more time because it's not simply a case of having to have it go through the three readings in the Assembly, but there's all the work preparing that amendment that goes on in Justice and in government prior to that point.

Finally I guess, when the committee has reviewed the reports and made a number of decisions, it does report back to the Assembly just like any other committee. After the meeting today we will not be considering a report simply because we haven't done enough work. If the committee does meet again during the session, then probably the consideration of a report to the Assembly will be put on the agenda and we'll report back to the House on what the committee has done.

I guess a final point that I would like to just mention in passing is there has been some confusion in the past between this committee and other committees. There is a committee that I believe is called the cabinet regulations committee, and that's not this committee and it's quite distinct from this. This is a legislative committee that's made up of members of all parties. The cabinet committee is responsible to the Executive Council; it doesn't report to the Assembly.

That committee looks at the regulations prior to their being enacted. This committee does a post-mortem review after they've been put in place. So it's important to appreciate where this committee comes into the scrutiny of the regulations.

I guess in conclusion I would just like to make a point of saying that while the committee's work is not often spectacular or newsworthy or often even not controversial, it is an effective way of improving the quality and the consistency of the draftsmanship of the regulations because of its scrutiny role. And it's something that . . . it is important that the committee does meet regularly and does its work because it does have a place in the whole role of the regulatory process.

But that's all I have to say, and I guess I'll turn it back to you, Buckley, and go on to the next person.

The Chair: — Okay, thank you very much. Maybe before we go on to the next person, most of us know each other here at the table, but maybe just a quick introduction before we go on to Phil Flory.

Just to the people that are here today, and in the back, are they all making presentations?

So just before you start, Phil, maybe you can introduce the people that are with you or behind you.

Mr. Flory: — I'm sorry.

The Chair: — Get an introduction from our guests in the back there. I'm not sure who they are.

Mr. Flory: — Phil Flory, corporation branch, Department of Justice.

Mr. Brown : — I am Ian Brown, chief legislative Crown counsel.

Mr. Epma : — Rey Epma from the legislative drafting office. I'm just here as a guest and a visitor. I spent some time doing some work for this committee this summer.

Mr. Cosman: — Bob Cosman. I'm your legal counsel to the committee.

The Chair: — Thank you. Okay, now we'll go on to Phil, I guess.

Mr. Flory: — Thank you. I appreciate the opportunity to be here and give you just a quick background, a little bit of background into the by-law filing process as it relates to professional associations and occupational groups in Saskatchewan. I have a little number of document background papers that you may wish to look at and retain for future reference.

Essentially in Saskatchewan there are 42 professional and occupational groups that have self-governing legislation. About health . . . About half of them, I'm sorry, are health disciplines administered by the Department of Health and responsible to the Minister of Health, and the other half are dispersed throughout various department and agencies of government. So by way of example, dentists, doctors, denturists, nurses, etc., are the health professions that are responsible to the Minister of Health. Lawyers, accountants, engineers, land surveyors, are the professional groups that are responsible to and have other ministers responsible for those various Acts.

Essentially what each Act does is create an association, an institute, or a society as a governing body and authorizes and delegates to it the power to regulate the activities and affairs of that professional or occupational group. The normal practice is that any by-laws made by the association: a) must be filed with the Department of Justice, and two essential elements to that, within 30 days after they are made; and b) be certified as a true copy of the regulations or by-laws that have been passed by the association. And secondly, the Act provide that by-laws not filed within the 30-day period are deemed to be revoked.

So my duty is essentially twofold: is to ensure that they have been filed within the 30-day period and that they are bona fide, certified true documents, as true copies of documents filed by the association.

It is important to note I guess, that the regulations passed by the association are in effect when they are passed. The exception to the normal rule is that under the health discipline, many of these by-laws must bear the approval of the Minister of Health before they are filed with our branch, and I have attached a list of those organizations.

The most recently passed health discipline Acts have two-part by-law filing processes. One is the regulations that require the approval of the minister, and then the others, of administrative nature, that require the approval of . . . must be filed directly with the Department of Justice.

By-laws, rules, and regulations are required to be tabled in the legislature within 15 days of the session, and it is our practice to receive the by-laws in between the sessions. And at the beginning of the session you will note the Minister of Justice will table a stack of by-laws that have been filed in the intervening period for you to review.

If by-laws, rules, or regulations that are laid before the Assembly are found to be beyond the power delegated by the legislature, to not be in the public interest by this committee, then those by-laws cease to be in effect and are deemed to be revoked. And notice of revocation will appear in the *Votes and Proceedings* and forwarded to the deputy minister of Justice, and we then forward copies of the revocation and notice of the revocation to the association affected.

The second aspect relates to the list of members, and the standard requirement is for each association to file a list of members with the department and which are thus available for inspection by the public.

There are some associations however, because of their number, because of their size, that are exempt from this requirement and those are listed in the attachment as schedule 2. An example of that list, of one of those associations, is the teachers. There's many thousands of teachers in the province and they are not required to be . . . The list of those members are not required to be filed. But in those cases the association must make the list available for public inspection during normal office hours.

And that's essentially my involvement. Thank you.

The Chair: — Thank you. Do we have any questions for Phil? If not . . . Sorry?

Mr. Sonntag: — I have one question. This is probably going to sound like a silly question coming from a legislator, but the 30 days seems like, seems like an awfully tight time frame. There must be obvious rationale for that.

Mr. Flory: — For the 30-day period?

Mr. Sonntag: — Yes.

Mr. Flory: — Yes, it's so that the, and particularly during the session . . . I think the main reason for it is just simply so that they get filed in the office and that they get tabled as quickly as possible in the legislature. So that you, your Regulations Committee, can look at them as quickly as possible. Because they are in effect when they're passed and if there's something in there that you see that's not in the public interest and you decide not to approve it, it is so that they can be dealt with expediently.

Mr. Sonntag: — The 30 days is applicable intersessionally

though, is it not, as well?

Mr. Flory: — Yes.

Mr. Sonntag: — Yes, okay.

The Chair: — Can you give us a couple of examples, just for clarification, as to what are some of the possible non-public interests? When you talk about not in the public interests, what are some of the examples that you are . . .

Mr. Flory: — Well some . . . I think there haven't been very many by-laws that have not been . . . or pardon me — that had been revoked in that last, let's say, five years that I can think of. But one example of one that was revoked, where by-laws were passed that were . . . Two examples I can think of: one, where the fees were thought to be exorbitant; another case, I believe, where the by-law that was enacted was thought to be outside the powers of the association. And I believe a third example that comes to mind is an association passed some by-laws that brought fees into place retroactively.

There may be others. Those are the ones that come to mind immediately.

The Chair: — Okay, thank you, Phil. Is there any other questions for Phil?

Mr. Sonntag: — Yes, where are those decisions made then, at what level? Is that the department or is that this committee you're saying revokes those?

Mr. Flory: — I'm sorry, I didn't understand.

Mr. Sonntag: — At what level is that decision made? You're talking about where these by-laws were revoked.

Mr. Flory: — Right here.

Mr. Sonntag: — Okay, that was one . . . so that's . . .

Mr. Flory: — That's your . . . Yes. I don't pass any judgement on the suitability of the by-laws; just simply, are they received within the 30 day period; are they . . . have they been passed, a verification that they have indeed been passed by the association. And if we have those two elements, I pass it along to the minister for tabling in the legislature and then this committee, you, make that decision.

Mr. Sonntag: — Okay, so that's one of the roles of this committee.

Mr. Flory: — Yes, that's one of the roles. Absolutely, yes.

The Chair: — Thank you. Any further questions? If not, thank you, Phil. I'm sure we'll have questions as we go along.

Next on the agenda is the item c, briefing on regulations, Ian Brown.

Mr. Brown: — Thank you very much. I'm the head of the

drafting office in the Department of Justice and it's our responsibility to draft the regulations on behalf of departments and Crown corporations who request them.

We have five professional staff including myself, and I've also invited our editor, Rey Epma, who is at the back. Rey performs a very important function in our office. He checks for the grammatical and linguistic structure, makes sure that we're writing properly and consistently. And he also puts together the tables of regulations that we use.

What I have distributed is a flow chart, and I hope you have a copy of that. If you don't, you might want to get a copy. What I propose to do is just briefly go through that flow chart and hopefully give you a bit of a background, a summary of the process by which regulations are made and how they actually are handled before they come to this committee. And what I'll do is just briefly go through that flow chart.

The first step in making regulations of course, is somebody has to come up with an idea. And the idea could be a minister, it could be cabinet as a whole, could be the government caucus, could be a member of the public, or quite often a member of the civil service suggests there is a need for a regulation — the Act has authorized a regulation to be made, now we have to fill in the details.

Once that has been cleared through the departmental structure, then the department has the responsibility of putting together drafting instructions. And those are instructions given to us. In those instructions we ask the departments to consider the financial and administrative implications as well as asking the departments to consider, as best they can, the legal implications and tell us in their words what the regulation should be like, what they should contain, how they should be structured and organized.

The third step is submitting of the drafting instructions to our office. And it's at this point that we get involved directly, and we look at a number of things when drafting regulations. Basically we check to make sure, is there proper authority for the regulations? It's one of the points that this committee will be looking at. Is there proper authority for the regulations? Is the proposed regulation consistent with the Act and with other Acts of Saskatchewan? Does it make a novel or unanticipated use of a regulation-making power? Are there any charter of human rights implications? We also check to make sure that the proposed regulation makes sense. Is it operational?

And then we also look at a number of drafting issues. We try to write it in a fashion that's clear, that's consistent, and that can be understood by people who are reading the regulation. You could say that during the process of drafting, it's not only our office alone, but we get involved with a number of other branches of Justice — our constitutional law branch, the civil law branch that actually provides the legal advice directly to the departments.

We also consult with our legislative services branch. And in addition, if we spot any financial or accounting implications, we'll take a look and try to get the Department of Finance involved. It's basically an executive government exercise to try

and make sure the regulations are properly organized.

You'll notice there is a bit of a loop or a circle between ourselves and the department. Quite often drafts will go through 5, 6, 10, 12, 20 different drafts before they are at the point where the department feels comfortable with them.

When a department is satisfied we then come to the next step, which is step 4, and that is our department prepares a final, approved draft. And if you go to the Executive Council office and take a look at the original regulation, you will find at the bottom of every regulation, an approved stamp. Every regulation has to be approved by our office. Cabinet will not accept a regulation unless our office has approved it. That means that we're satisfied with the legal content and it's consistent.

We then give that approved draft to the department. The department, step 6, gives it to a minister. The minister then signs the copy; has to be recommended by the minister to cabinet. And then copies are sent to the Department of Finance for their review and comment. And then copies are submitted to the Executive Council. And this is the committee that the Clerk was talking about, this is the regulations review committee of cabinet.

That committee, unlike this committee, takes a look at the regulations before it is passed. And they take a look at it to make sure that there are no political problems. They make sure that all the financial implications and legal implications are considered. And our office sits as counsel to that committee; we provide them with legal advice.

It sometimes happens that a regulation is not approved for a number of reasons and it has to go right back to the department. They have to rethink, and we start the process over again. If the regulations review committee is satisfied, the regulation is then recommended to cabinet; cabinet will approve it. It then goes to the Lieutenant Governor for signing. And when the Lieutenant Governor has signed it, it then becomes law under The Regulations Act.

It then must be filed with the registrar of regulations. The registrar is an official with Executive Council. And when the registrar gets the official copy — it's been signed — the registrar does two things. She sends one copy to the Clerk of the Assembly — and that copy is ultimately submitted on to this committee for its review — then another copy is sent to our office and our office takes responsibility for making sure that the regulation is printed in the *Gazette*. And that's the basic procedure that we follow.

Just as some example of the volume of regulation legislation, on the second page I have some statistics for you. And you can see, both in terms of the number of Acts and pages, how busy we are in Saskatchewan. You can see also as well for the last four years the number of pages of regulations. Just a . . .

Mr. Heppner: — May I ask a question?

Mr. Brown: — Certainly. Go ahead.

Mr. Heppner: — Okay. On that list of stats, you have a number of English drafters. That's people who's writing out the legislation and . . .

Mr. Brown: — Yes. This is the number of lawyers. We have only English language drafters in Saskatchewan.

Mr. Heppner: — Okay. That was my next question. Thank you.

Mr. Brown: — I've included the number because in Manitoba and Ontario of course, they do legislation . . . they draft legislation in English and French, so therefore they have larger staff. But I've . . . To make it comparable and understandable, I've used that statistic.

But just to perhaps address that point for a moment, we do have a number of bilingual Acts in Saskatchewan, and we also have therefore enacted a number of bilingual regulations. So the committee will be dealing with some regulations that are bilingual but it's a very small percentage at this stage.

Perhaps just two little points about regulations. First, one little initiative that we're a little proud of in the department, and that's the fact that we've developed an electronic database of regulations, and through our Queen's Printer we're now making that database available to subscribers. And we've offered that to the public; so that process has been under way.

The second thing I'd mention is the government's regulatory reform initiative. And I believe that Ms. Lynn Minja has provided a short explanatory document that outlines the regulatory reform initiative. She's not here at the moment, and I believe some arrangements will be made to have her come to the committee later and provide you with some more details.

We're involved with that obviously, because we do the drafting — we'll be very much a part of the review — but the initiative is actually being spearheaded through the Executive Council branch and not the Department of Justice.

Basically I would say that the government has given a 10-year commitment to review all of its regulations and as many of the Acts as possible. The intent is to ensure that at the end of that process all the regulations that remain are reasonable, that they have force, that they're needed. The intention is to weed out as many regulations as possible that are unnecessary. The departments, as Mrs. Minja has pointed out, are now in the process of developing a 10-year plan. Those plans are to be submitted to Executive Council and Executive Council will be monitoring progress to make sure that the initiative is completed.

I would state one little thing — I don't think she mentions this in her little background document — and that's the fact that really for the past 16 or 17 years in Saskatchewan the governments — really all the governments in the last 16 or 17 years — have taken the review of regulations quite seriously.

And unlike, let's say, jurisdictions such as Alberta or Manitoba or Newfoundland or other jurisdictions that have gone through this process, our regulations base has been thoroughly reviewed and we think it's in pretty good shape. It's not to say that there

are regulations that couldn't be repealed or that there is some unnecessary duplication. There's always that need to review. But we feel we're actually starting from a much better base than other jurisdictions.

I would say as well, and the Clerk alluded to this slightly, that our process for enacting regulations, for reviewing them and enacting them and monitoring them, is really, I think, about the best process in Canada. It's very efficient. We have probably the fewest number of people involved in the process as you could get. But I think the end result has been that we're not perfect but I think the process itself is very efficient.

So that's it.

The Chair: — Thank you, Phil . . . Ian, sorry. Is there any questions for Ian?

Mr. Sonntag: — Well don't take this the wrong way, but I always wondered what kind of people would draft legislation . . . or regulations. You must be a bit masochistic, I would think. That'd drive me crazy.

Mr. Brown: — I was thinking about that actually before I got up and I think you're right. Charles Dickens once said that he who would be a great lawyer must first be a great drudge, and when you look at regulations it's a lot of drudge work.

Mr. Sonntag: — You have my admiration.

The Chair: — So one of the questions that I have in terms of in the flow chart at the back when you talk about the Acts and the pages and then further down it says the regulations and the pages, is that to say that in 1993 this committee went through 431 pages of regulations?

Mr. Brown: — Yes, that's correct.

The Chair: — In 1996, we're now going to be going through 1,201 pages?

Mr. Brown: — That's correct.

The historic average has been about 750 pages to 800 pages. Last year we had a slightly larger volume. There were several big regulations that were enacted. But you can expect, I think, around 700 pages of regulations on average.

The Chair: — All right. Thank you, Ian. If there's no other, further questions for Ian, we'll go on to item .d which is the role of the Legislative Counsel and Law Clerk. Mr. Cosman, the floor is yours.

Mr. Cosman: — Thank you, Mr. Chairman. Being distributed to you at this moment is the terms of reference of the counsel to the committee as I view it. I've expanded to a degree on some of the items that the terms of reference of the committee include, but they're still consistent with the overall framework of the terms of reference of the committee.

I look at some fairly detailed things. I'm quality control on the drudge. So as you can see, in a review of regulations I follow a

kind of a check-list system and after a time it becomes kind of second nature. And I almost wonder sometimes if I don't need a review myself of the things I should be looking for.

I do like to look for the big ticket items — the retroactivity, the things that are against human rights, and things like that. But I do as well have a responsibility to check for the things enumerated here, including the name and citation of the regulation, the name and citation or reference to the empowering Act under which the regulation is made, review the regulation-making section of the Act under which the regulation is made. In fact as I'm doing that work, I have the Act and that regulation-making section open in front of me as I review the regulation so that I can make reference back on a continual basis.

I check for the date of the filing and publication of the regulation in the *Saskatchewan Gazette*. And if it's not published, if I only see a reference by name and then an exemption from publication, I'll check the Act to ensure that it is one of the regulations that can be exempted from publication.

I might point out that all regulations, even those which are not published, are available for public inspection in the registry of regulations office, which actually is room 32 of this building.

If the regulation was published within 30 days — this is the 30-day requirement that you had heard Mr. Flory speak to with regard to by-laws — in this case I'm checking to make sure that the regulation was published in the *Saskatchewan Gazette* and available to the public within 30 days of filing, and if it was not published within that time, was it validly extended beyond that time.

Is the regulation created by the proper party in accordance with the statute? Again there are some regulations which must have some prerequisite approvals of ministers. The minister has a role, and with the minister's approval it goes on to the Executive Council for approval as a regulation. And I have to see that the notation is there; that the minister did in fact approve the regulation in accordance with the statute.

If filed by the minister, is the regulation certified a true copy? Again you can see from the *Gazette* that it's a certified true copy or not, and so the two previous things pretty well go hand in hand, the criteria.

Is the subject matter of the regulation authorized by the parent statute? That's a very, very important thing in my review of the regulation. Because in a sense, this committee is standing on guard for the legislature to ensure that a regulation does not go beyond the terms of reference given . . . the regulation-making power given in the Act.

I have worked in a jurisdiction where in the passing of an Act, a certain provision was defeated and so it was obvious that the legislature intended that provision not to be the law. A few weeks later a regulation was promulgated under that Act and it had the provision in the regulation that had been expressly defeated in the legislature. So they got it in again, okay.

And this is the kind of thing I'm watching for, is that something

doesn't get in the regulation that is not authorized by the Act; or in the case that I was speaking of, was actually defeated and was taken out of the Act. So that's one I give considerable attention to.

Does the regulation impose a charge on the public purse not specifically provided for in the empowering statute. Again that's fairly easily checked when you're checking down your regulation-making powers and the intent of the Act and some of the things set out in the Act.

Does the regulation purport to be excluded from challenge in the courts? Sometimes. We have in legislation, in an Act of the legislature, that the decision of the commissioner shall be final and there's no recourse to the courts. Regulations sometimes try that sort of thing, maybe by inadvertence or what have you, but they don't set out any grounds for . . . any avenue for appeal or anything like that. And sometimes they expressly try to say to the courts, you can't review this regulation; you can't review the administration of this regulation. So that flies in the face of what we call natural justice and against our Canadian Charter of Rights and Freedoms and that sort of thing. So I watch for that.

Mr. Sonntag: — That would be the result of an unruly drudge . . .

Mr. Cosman: — No comment.

Does the regulation make unusual or unexpected use of powers conferred by the empowering statute. This one relates closely to the head of . . . investigation under the . . . is the subject matter of the regulation authorized by the parent statute? Sometimes it's authorized by the words that are there, but it might be an unexpected use of the regulation-making power just the same to do that, and you can go back and . . . because quite often we have words that can mean two different things. We have the ordinary meaning and we have an unusual meaning. In some cases people can find that unusual meaning. So I kind of watch for the unexpected use of the regulation-making power.

Does the regulation purport to be effective retroactively where there's no express authority in the Act for retroactivity. Retroactivity is a special situation all on its own. It's repugnant to most people on the face of it, just simply because you were legal doing something today, but someone tomorrow passes a law that says as of last Friday you don't do this and all of a sudden the act that you did that was legal becomes illegal. And it's just repugnant in our concepts of fairness and natural justice that we have retroactivity of laws.

If there is going to be retroactivity of a regulation there must be authorizing legislation. The Act must state that the regulation may be made retroactive to a certain date. So at least the retroactivity gets full debate on the floor of the Assembly rather than just simply in the closed back doors of the rooms where regulations are considered. Regulations in their making are not as open as the process of passing a law as far as the public's concerned . . . (inaudible interjection) . . . I see. I might have to allow room for rebuttal, but while I have the microphone, I'll carry on.

Has the regulation been sufficiently promulgated in accordance with the current Regulations Act? This again entails a number

of the things of 30 days of . . . publication within 30 days of filing and so on and so forth.

Is the regulation clear in meaning and free from obvious errors? I would say that in view of the drafting process that you've just seen described by Mr. Brown, there's very little problem with this part to my duty. The quality of the regulations coming now from the Department of Justice in the years that I've been here is improving to the point that hopefully some day we won't have too many regulations, if any, to consider. But it's getting hard to find the issues. The work in legislative drafting is very good.

Does the regulation purport to come into force prior to the coming into force of empowering statute? That's a matter of just checking the dates and so on and it's . . . would be quite understandable that sometimes an Act and a regulation are set up to come into force at the same time. And there might be a situation where an Act is delayed in its passage in the Assembly but the regulation is ready to roll and has a date; this regulation comes into force on such-and-such a date.

So you might get a situation where you have the regulation attempting to come into force a day or so before the Act. But generally speaking now if that's the situation, that the regulation is to come into force on the coming into force of the Act, the regulation will make reference to the coming into force, on the day the Act comes into force, and so the two come into force together without error.

Is the expression "shall" or "may" used in the regulation and if so, is the term "shall" intended as imperative and the expression "may" intended as permissive? This is a drafting situation by and large, and usually when I feel something is an issue for legislative drafting I will actually consult with the legislative drafting department. I don't bring too many of these to the committee but it doesn't mean that . . . on occasion they do come forward.

Do the regulations affect the rights of the Crown? If so, does the empowering Act evidence that Her Majesty is bound thereby? In some cases there are . . . I think under the old common law that Her Majesty was not bound unless there was a statement to the effect the Crown is bound by this Act or regulations, as the case may be. And so I look for that sort of thing in the regulation if it's to affect the Crown.

Is the regulation punitive, and if so, does a fair, large and liberal construction and interpretation of the regulation continue to ensure the attainment of the object of the Act or the regulation? Well that's a matter of a judgement call on my part and I'm tending to feel if regulations are punitive in a sense, that there should be regard for appeal processes and right to hearings and things of that nature. So I watch for that sort of thing.

If a form is prescribed does the regulation accord to the form used? Or vice versa. Does the form accord to the regulation? Just to make sure there's consistency, that there isn't something being asked for in the form that wasn't authorized by the regulation. If the enabling Act has been repealed or amended, is the regulation inconsistent with the substituted Act or amendment?

This requires some explanation, and that is sometimes there's a new Act that repeals an old Act but the regulations under the old Act continue in force under the new Act so long as they are not inconsistent with the provisions of the new Act. And, of course, so long as a new regulation doesn't come along under the new Act that's inconsistent with the old regulation or that repeals the old regulation. So watch for that sort of thing.

Considerations under the Charter of Rights and Freedoms. Even though this not a made-in-Saskatchewan situation, the Charter of Rights and Freedoms is a constitutional document and it does apply throughout the country and hence in Saskatchewan, so I do consider issues that might be Charter of Rights and Freedoms issues. And I think Mr. Brown alluded to this in that he watches for this sort of thing as they are drafting, as they receive instructions from the department. They're not going to do things that are contrary to our constitutional Acts and the Charter of Rights and Freedoms.

In the same vein, I also review to a degree the Saskatchewan Human Rights Code just to refresh my memory of what's there and to make sure that the regulation I'm reviewing doesn't run contrary to our own Saskatchewan Human Rights Code.

So that's what I do with respect to regulations.

With respect to by-laws, I won't get into too much detail because you had a good discussion on this by Mr. Flory. But I review the by-laws, again matching them to the Act under which they're made. As Mr. Flory pointed out, he's simply checking to make sure the 30-day filing of the by-laws is there and the approval of the minister is there if it's required and then it comes over here.

So I'm reviewing again the by-law closely under the terms of reference in the Act, the by-law-making powers in the Act, and also if they are in the public interest. And you had some examples given by Mr. Flory as to what we consider over the past few years to be or not be in the public interest and retroactivity was one of those issues. It was in the public interest that we have laws that apply back to January 1 of this year and this is February 20. In some cases we do, but they're authorized by the governing statute.

That completes my explanation of what I do. As counsel to your committee, I'm here in this . . . with this committee at all times; I'm not just a witness who came in today and this is your only chance to ask me questions. Certainly, throughout the next few months as we have further committee meetings and so on, I'm available both here in the committee room but also in my office in room 225 here in the building.

And so if you do have questions with respect to regulations, please feel free to come and see me and discuss them with me. I'm not the only person who reviews the regulations. I submit they affect a great number of people in the province, and probably you're being made aware of that. Perhaps you have an issue that's been brought to your attention by a constituent or something and there might be something that I can explain or look into on your behalf.

The Chair: — Thank you, Mr. Cosman. I believe we have a few questions.

Mr. Whitmore: — Robert, in regards as drafting as changing — I guess I should have asked the question more of Mr. Brown too — regarding the drafting of legislation now to what's termed plain English, or for the general public to have a greater understanding of legislation being drafted, but also understanding that drafting in a sense of Acts and regulations is based on interpretation, does it make it more difficult to interpret the regulations, their powers or enforcing of those powers, when the structure is changing in terms of what the drafting has been to that of Acts of plain English regarding regulations?

Does it create a difficulty of regulations? As Mr. Cosman has outlined, a standard by which he follows, does that change the standard then in terms of interpretation? Because law is one of interpretation.

Mr. Brown: — Boy, you've asked a very complex question. I'll try and . . . And a very good question. One would think and hope that drafting legislation in a clear and consistent fashion would result in a better understanding of the regulation-making powers; therefore make it easier to understand what the regulation-making powers are.

I guess the reason I find this interesting is that some people think that clearer language means that an Act or regulation is going to be understandable by everybody. And that, as you know, just isn't the case. It's not really possible, for example in dealing with something as complex as trade union legislation or securities regulation, for it to be understandable by everybody. So when we talk about clear language, trying to write things clear, we certainly try to simplify the language. We try to make sure that it's written using good language, consistent language, but that doesn't mean ultimately that somebody who is a lay person or not familiar with that field is going to understand all the complexities.

What we have been encouraging departments to do — and this doesn't answer your question directly but just raise that point — is we've been encouraging departments to prepare more explanatory materials. So that, for example, we'll take no-fault auto insurance; there are a lot of technical insurance issues that have to be addressed in the legislation. It's not going to be possible to simplify it. But SGI (Saskatchewan Government Insurance) has produced a number of very good booklets that explain what your rights are in simple language; what you can do in simple language; what your procedures are that you can follow. It has things that you couldn't put in legislation, like a telephone number, a fax number, a person to contact. So that's sort of a broad issue in terms of clear language.

But getting back to your comment, I think I would say that if we write things in a clear, consistent fashion, it should make Mr. Cosman's job easier and it should make your work easier, as well, to understand.

Mr. Cosman: — Yes, if I can just add to that. I don't find my terms of reference changing that much. I just find the work easier because there's less ambiguity for me in the regulation.

The other thing I'm finding is that in legislation now, if a regulation is required or something is required to be done by regulation, the regulation-making section is getting very, very specific about what it is that can be in the regulation. Years ago, Acts used to say: the Lieutenant Governor in Council may make regulations that are not inconsistent with the purposes of this Act — period.

Well now you had to read the entire Act and try to derive the purposes of the Act and decide whether the regulations that you were reviewing were within the purposes of the Act. But in . . . I don't know that it's a clear language initiative, but certainly it is clearly enunciated in most of the regulation-making sections now in an Act that the Lieutenant Governor in Council may make regulations respecting A, B, C, D. And it's not unusual to see them get down to AA, BB, CC in the powers, very specific powers, that empower the making of a regulation.

Mr. Whitmore: — It's a way, I guess, away from what one would call enabling legislation, all-encompassing in terms of powers to the minister in terms of regulations and such.

Mr. Cosman: — All-encompassing in the sense that it's very specific and therefore it goes from A to Z. But I would prefer to see a regulation-making section of that complexity than one that simply says: may make regulations not inconsistent with the purposes of this Act. You can go anywhere with that regulation — you can make anything under that section.

The Chair: — Thank you. Is there any other, further questions for Mr. Cosman? So I guess in the summary of your role, Mr. Cosman, you're more or less a watchdog. So if this committee decides to put the grunge on a pedestal through a calculated oversight on some of the regulations, you'd come and wrap us on the knuckles and straighten it out.

Mr. Cosman: — Yes, he's the grunger or I'm the grungee.

The Chair: — Okay. Thank you very much.

All right. We'll continue on with this committee work. I see it's 20 after 10 and I guess for our perspective we have maybe seven or eight considerations of the 1995 regulations. Did you guys wish to get into that right away and then we could break a bit earlier for lunch as opposed to taking a coffee break now? Okay, if nobody is in desperate need for a coffee break, we'll let the committee work continue.

I guess this is Mr. Cosman's time for the floor.

Robert, maybe . . . or Mr. Cosman, what you could do for us is just quickly explain for the purposes of the committee members what the process is here and what our participation is.

Mr. Cosman: — Thank you, Mr. Chairman. Yes, I think it goes without saying that we recognize that regulations are made under power given in an Act. In fact, physically you can see on the bookshelf there, the Acts or statutes of Saskatchewan, and the volumes, the green volumes of regulations that are made under the Acts. Those are both the laws; both the Acts and the regulations are the laws that govern us in the province of

Saskatchewan.

Each year, each session I should say, the regulations that are promulgated throughout the previous year are filed with the Clerk and in turn referred to this committee and referred to me. And I read those regulations in conjunction with the Act under which they are made, keeping in mind the terms of reference of the committee and the check-list that I had elaborated on earlier.

Through the years there have been issues that have been brought to the attention of the committee through counsel or other means, that have not been speedily resolved. They become regulations follow-up matters.

You can see from our revised agenda today that we are going to consider the 1995 regulations. This is going to be the consideration of the 1995 regulations by this committee for the very first time. I think that relates back in part to the fact that there was dissolution of the legislature and the committee was not struck again for this legislature for some time, some time in 1996, and so we have fallen a bit behind in our consideration of the regulations.

In any event, I'll be going through my problems or issues that I have identified with the 1995 regulations. And in fact I might point out, at this point in time last year in June of '96 I had the good fortune of having some assistance in the review of the regulations by a gentleman who was sworn in as the Acting Law Clerk for a time. And he has experience with a committee, a similar committee to this, in the House of Commons for a number of years — Mr. Ed Schmidt, who may have an opportunity to speak to you a little later on today on some of the things that he's had experience with in Ottawa.

So I am not going to claim authorship in the 1995 regulations as such because Ed did a lot of the groundwork on this. However as counsel to your committee, I'm giving the report.

The Chair: — It is necessary for us to go through this thing word by word, or could you just simply give us a summary of what the item no. 1 would be, like the personal injury benefits regulation.

Mr. Cosman: — I can skip through things. It has been my tradition to pretty well word for word this. But no, I can pick out the issue; but we'll give it a try. I don't know how that affects *Hansard*, that's the problem. No problem, eh?

The Chair: — I guess that's just my point. I don't know how the other committee members feel about it, but word for word and going through the grunge work, I guess, is something that's probably going to . . .

Mr. Cosman: — We may find, Mr. Chairman, that we'll have to do the grunge work, because I see initially there's a reference to clause 100(1)(j) of a regulation and I'm going to have to . . . There's going to have to be some detail.

The Chair: — No, I can appreciate the need for the detail. I'm just saying that where there's opportunity for us to avoid going word for word, that we should do that to speed up the process. Because after a few hours of this, you generally get bucket brain

and you're not really, you know, being really effective on committee so . . .

Mr. Cosman: — I know whereof you speak.

CONSIDERATION OF 1995 REGULATIONS

The Personal Injury Benefits Regulations The Automobile Accident Insurance Act January 13, 1995

Mr. Cosman: — Well I'll commence then with the 1995 regulations. The first regulation was the personal injury benefits regulations under The Automobile Accident Insurance Act. These regulations were first gazetted on January 13, 1995 and hence in the report I've made to you, you see this date. That's what the date is a reference to. You can go to a *Saskatchewan Gazette* in your public library or the Legislative Library and actually pick this regulation off the shelf. I believe too the committee sometimes is provided with a set of regulations and this would be a way of identifying where that regulation is — it's by date on the *Saskatchewan Gazette* publication.

Okay, with that explanation out of the way, it appears that the Act under which the regulation is made refers to educational institution as being a prescribed educational institution or a member of a prescribed class of educational institutions. I'm going to confuse you further and tell you that the word "prescribed" means "prescribed by regulation." So anywhere you see the word prescribed throughout any of this documentation, The Regulations Act and The Interpretation Act says prescribed means prescribed by regulation. So an educational institution therefore is one prescribed in the regulation.

The regulation states however, at clause (v), "an institution in another province or territory of Canada or the United States that is, in the opinion of the insurer, similar to one mentioned in . . ." previous sub-clauses. The problem here is the Act says the educational institution has to be defined, prescribed, in the regulation. The regulation says oh, it's whatever the opinion of the insurer is that counts. That's an invalid sub-delegation, in my opinion. The identification of what is an educational institution was to take place in the regulation. It doesn't. It's done by the insurer.

And this isn't just a rhetorical problem. I received, unsolicited, a letter from a young student here in Saskatchewan, who was having a problem with her educational institution being recognized for some reason or another. It had to do with an insurance claim, and I've actually attached a copy of her letter. What you'll find in these materials is my report, and then attached to them the supporting material: a copy of the Act, the relevant section of the Act, a copy of the regulation or the offending provision of the regulation, or what have you.

And what I'm showing you here in the materials is a letter from a young student. The letter is dated November 5, 1996. And she points out in her letter that she'd like to know who has the authority to interpret provincial laws. She's had a problem with terminology under the automobile accident insurance and it deals with current studies, which is one of the definitions of the

regulation. And her question is at the bottom of the page:

. . . I wish . . . to get an official explanation for the term **current studies** in detail . . . since I have a different understanding from SGI.

SGI is the insurer and they've made an opinion as to whether or not something is a valid course of current studies or a valid educational institution. The Act has said the educational institution has to be defined in the regulation. So we have invalid delegation of powers and we have a real example of somebody affected by invalid investigation powers.

Are there any questions on the first issue? And I smile because I suspect that we would have gotten there faster if I had read it word for word, rather than the ad lib. I don't know.

The Chair: — So the problem that we have with this particular interpretation is that the student is complaining that SGI should not have the right to determine what is current studies, and you're saying to us that the Act defines that?

Mr. Cosman: — The Act says current studies and educational institution has to be defined in the regulations, and it stops there. Has to be defined in the regulations. The regulations say it's whatever SGI says it is, and that's not defining an educational institution by regulation, it's using the regulation to say somebody else can define education institution . . . (inaudible interjection) . . . Surely, if, Mr. Chair . . .

The Chair: — Yes.

Mr. Heppner: — Okay. So on the possibility that we decide that SGI does not have the right to make that kind of a decision and it should be in regulations — apparently there's been some kind of situation between this young lady and SGI — what are the legal ramifications of what our decision is?

So SGI has said, this is the way it is and if we say, no that's not the way it should be, does that then reverse whatever has happened between this young lady and SGI? Or is that a done deal at this point?

Mr. Cosman: — I don't know because I don't know any further facts in her case. It may be an open case. It's not often that I bring a real case. The issue was identified, and only a few weeks after the issue was identified in my office, a letter arrives that says: help me; people are making a definition here that I don't agree with. And of course it must affect the outcome of an insurance claim or something of some nature or another.

So rather than . . . I'm not trying to address this person's problems. It may be they've settled already; the file is closed. I just put it in here for the point of view to show you that it's not just some ivory tower belief of your counsel that this is an invalid delegation that might affect somebody somewhere down the road; it really has affected somebody already.

The Chair: — So I guess in essence here what our direction is we would advise you take it back to the appropriate department to get clarification on who should be . . . or what should be classified as current studies.

Mr. Cosman: — Exactly. I'd be pleased, if the committee so directs, to correspond with the minister responsible for the personal injury benefits regulation and raise this issue with the minister, explain it, and ask for either some rectification of the problem with the regulation . . . I don't think it's a matter of the minister explaining it away. I think they've got to decide we've got to define in the regulation, as the Act says, we've got to define in the regulation what these issues mean.

Now it may well be, because these are fairly new regulations and a fairly new part of The Automobile Accident Insurance Act, that they didn't quite have a feeling for what some of these definitions would be and they felt, well let's leave them up to SGI somewhere down the road. But I suspect now that they've had a couple of years of hands on with these definitions and things, so it would be quite a simple thing to amend the regulations by actually defining the educational institutions.

The Chair: — So it's not even up to us to determine . . . I shouldn't say not up to us, but we can't even suggest what current studies would mean; we'd simply be referred back to the department?

Mr. Cosman: — I think that would be the proper route to go. And just to ensure that when they define current studies, whatever it means, that they define it in the regulation rather than passing it off to an agency, an insurer.

The Chair: — So is it within the committee's mandate to instruct you that SGI should not be determining what current studies is; that it should be at the determination of the appropriate department?

Mr. Cosman: — And placed in the regulation, yes.

The Chair: — Are there any further questions?

Mr. Sonntag: — I just want to be clear, because I've not sat on this committee before either, I want to be clear on what the role of the committee is here exactly in a situation like this. Is it up to this committee to try and interpret what is the way . . . the wording of this clause or is it the role of this committee to deal with process, rather?

Mr. Cosman: — It's the process. This is an invalid sub-delegation in my opinion. It's not so much to determine what an educational institute is or to rectify this person's problem or anything of that nature.

Mr. Sonntag: — Okay, so it's up to us then to ask you to try and get a proper definition of that.

Mr. Cosman: — It's not so much a proper definition as to get a definition back in the regulation rather than bringing it down to the third tier — Act, regulation, insurer. The Act says the definitions are to be prescribed in the regulation. But what the regulation does, it doesn't prescribe a definition at all. It just says it's whatever SGI believes it is. So it moved it down one more notch. But the Act doesn't contemplate SGI making the definitions. It contemplates the Lieutenant Governor in Council making the definition.

So we've got an invalid sub-delegation in my opinion. And if I've elucidated to the committee that that's what the issue is, it's really to have them address, to have the ministry responsible for SGI address, the invalid sub-delegation. And I suggest the way they do that is by putting a definition in the regulation rather than just simply saying it's whatever SGI thinks it is.

Mr. Sonntag: — One other question then. Is it — I'm trying to think of the right wording here — out of order for the committee to occasionally deem the . . . You're seeing something that's invalid or offside with the regulations. The committee, is it uncommon for the committee to disagree with your deductions as well?

Mr. Cosman: — No. The committee can certainly disagree with me and ignore the issue or deem it to be resolved just simply by discussion right here. Yes.

Mr. Sonntag: — I see. Okay.

The Chair: — So all the committee would do is, upon your recommendation we would say nay or yea to you taking these back to the appropriate department to get clarification on the interpretation of current studies and that we feel that it is not up to SGI to determine that. There should be a clear guideline. That's all we're doing here?

Mr. Cosman: — Exactly.

The Chair: — Okay.

Mr. Whitmore: — Just to carry on the question of process then, and I know this is getting into the question of interpretation and into the next step. Again I'm one who's not sat on the committee before. If SGI disagrees with your interpretation or the comment that comes back doesn't deal with your question, is the committee there empowered then to call SGI to bring forth their arguments in terms of . . . Like the next step after this is trying to deal with this interpretation problem. Would we then call SGI or their legal department to come back and discuss this issue with us?

Mr. Cosman: — The committee certainly could. However that's rarely been my experience in this committee. Usually there's correspondence with the minister responsible and responses back from within the legal departments of the areas involved.

And I bring those responses back to the committee and if the committee feels that it's a valid response, that it makes sense, that it's an explanation of what the problem or perceived problem was, the committee makes the determination.

I'm simply raising issues that I see to the committee's attention and the committee can act on it or reject it out of hand right now. I take no offence. Or we can pursue it maybe to another level of correspondence.

The Chair: — Mr. Jess had a question.

Mr. Jess: — Yes. Thank you, Mr. Chairman. You may well

have answered this, but as I see it, it's not just a case of agree or not agree. It's your role to bring up and identify certain items that may be a problem in the future. As to agree or not agree, is not confrontational here as I take it.

Mr. Cosman: — No.

Mr. Jess: — Thank you.

The Chair: — Do I have this feeling that we're all rookies on this committee?

Mr. Sonntag: — Except you, Mr. Chairman.

The Chair: — I think we have a question from Mr. Ward.

Mr. Ward: — Okay, let's go back and see if I've got this. Follow this through.

You want to go back to the personal injury regulations, right, and correct them, and you want to correct the part that says education institution. Is that . . .

Mr. Cosman: — Yes. And many of the other definitions in that Act refer to definitions as defined in the regulation under this Act. And so any of them that are actually defined by SGI, which is not in the regulations, any of those should come back into the regulations.

Mr. Ward: — Okay. Now under the Act, and it says, educational institution refers to The Education Act. Now does that mean that we have to go back to The Education Act to define or redefine this regulation? Or can you not define this regulation from The Education Act?

Mr. Cosman: — That would be fine. If the regulation wants to adopt the definition that's in The Education Act, that's fine. It's just it shouldn't be given off to a third party to define it unless the legislation says the third party should define it or may define it — third party being SGI.

Mr. Ward: — Yes, just looking at these, I can see some problems just the way these are written. Like you're right, there is probably . . . because if I'm taking a correspondence course from a recognized education facility, is that included in The Education Act, you know, which may be where she's coming from. I don't know where her letter is coming from. Like you say, you don't understand the whole situation.

Mr. Cosman: — Yes, and really that individual's letter is not the essence of this thing. It's just an example. Somebody who got . . .

Mr. Ward: — No, it's not. And that's right. You're trying to determine who has the right to make the decision and send it back to . . . now do you want to send it to SGI's minister, or do we send it to the Education minister to work with SGI?

Mr. Cosman: — No. That may actually be the case but we don't orchestrate that. We simply go back to the ministry responsible for this personal injury benefits regulation. That's

very likely the Minister of Justice, I suspect. Or no, there's a minister responsible for SGI directly, isn't there?

If they feel yes, the committee has a valid point and that we should have a tighter definition and it should be in the regulations, not left up to an insurer — like SGI, for example — they will coordinate the people they need to respond to it.

Mr. Ward: — Okay. Can we then when we make our recommendation on this, which I assume that's what we're doing, if we agree with you or disagree with you, can we indicate that we want both those ministries to look at it?

Mr. Cosman: — Sure. Oh yes.

Mr. Ward: — And work in conjunction?

Mr. Cosman: — Yes, I would think so.

Mr. Ward: — Not just the one that's dealing with the Act. We can bring in everybody here if we wanted.

The Chair: — Yes. Just for clarification. I don't think . . . from what I can gather we're all rookies to this thing and there's no way that we can ever . . . we're not drafting legislation; we're asking for clarification on the rules. And it's not really a partisan thing here. It's just clarification. So I think we have to make sure we deviate common sense and partisan politics in this regard, and I don't see no problem with us accepting your recommendation . . . (inaudible) . . . vote of course, to get the clarification on this matter.

What I think we're trying to do here is kill a fly with a sledgehammer, asking 50 million questions.

Mr. Heppner: — Where do you think this is going? So now if someone wants us to do this, one of us just says we move that what? — the recommendation be accepted, or do we just move that this goes back to whatever ministry that it ought to?

The Chair: — As long as we give, I think, Meta, the clear direction we're on to (a) leave it alone, or (b) get clarification. That's all.

Mr. Sonntag: — I think if we have consensus then we don't require a motion and it's a lot faster. So if everybody . . .

Mr. Heppner: — Okay, yes, I'm happy with that, because if I disagree, I'll let you know.

The Chair: — Is everybody agreeing with the recommendation?

Mr. Whitmore: — Well just a comment that the Chair made regarding, I sense, though, because members of the government were asking questions, that it was deemed to be partisan. We were simply asking questions to have an understanding of what the operation was with the Law Clerk . . . or with our legal counsel. It's not deemed to be of a partisan nature but simply that of information.

The Chair: — Okay, I apologize for the comment. So what's the direction we're going?

Mr. Heppner: — We had a show of hands, didn't we?

Mr. Jess: — Yes. Consensus that we agree with the recommendations on that.

The Chair: — Okay, is that clear enough?

A Member: — Sure.

The Chair: — Okay. We're going on to item no. 2 now, The Regulations Act, repeal, part III.

The Dairy Producers Regulations, 1995
The Animal Products Act
January 27, 1995

Mr. Cosman: — Yes, the next regulation for consideration, the dairy producers regulations, 1995 under The Animal Products Act, gazetted January 27, 1995.

The definition for provision at clause 2(b) of the Act sets out certain standards of fabrication and design for dairy equipment that must meet the requirements of the International Association of Milk, Food and Environmental Sanitarians, as amended from time to time. That is, an outside body is making a code and we here in Saskatchewan are adopting someone else's code as amended from time to time.

When the International Association of Milk, Food and Environmental Sanitarians amends its standards, the law of Saskatchewan changes automatically. This form of incorporation by reference functions somewhat like a sub-delegation. The LG in C (Lieutenant Governor in Council), in effect, permits some other person or body to make the law of Saskatchewan. This gives rise to the question, which the committee may wish to consider: when and in what circumstances is such open referential incorporation in order?

We see it in sub-section 5(2) of the regulation provisions respecting dairy producers' milk that meets the quality standard set out in section 16 of the regulation — and all of this is attached to your materials, by the way — respecting dairy facilities, equipment, health, sanitation, and so on.

The minister "may" issue a licence. One wonders why this provision is worded in a discretionary manner. If an applicant meets all the requirements, why should the applicant not have the right to be licensed? On what basis might a decision not to issue the licence be made? In this connection one ought to note that under clause 15(4)(b) of the Act, all conditions for granting a licence are to be prescribed by regulation.

It appears then that the word "may" should be replaced by "shall", because if you've got in your regulation all the conditions that must be met and you've met them, then a licence "shall" issue, not that a licence "may" issue.

Carrying right along, subsection 10(6) of the regulation prohibits a dairy producer from having more than one bulk milk

tank "unless otherwise approved by the Minister." There does not appear to be any authority in the Act for such a power to exempt from the law. The department ought to be asked to justify this aspect of the provision.

It's interesting to note that sections 11(a), 12(a) contain similar provisions. The reference in 12(a), for example, is to "meeting with the approval of the Minister." Once again, this is not prescribing or regulation-making. The reference to the approval of the minister ought to be deleted and all substantive requirements that the department wishes to impose on the licensee ought to be stated in the regulations.

A further issue, section 21 of the regulation authorizes the minister to order a person in default of any requirement of the regulation to remedy the default within a specified time. Therefore, the minister orders a producer to do something, the person refuses, the person becomes guilty of an offence. It's one thing to make a producer's right to ship milk dependent on compliance with the regulations — that is, suspend or cancel the licence if the person doesn't meet the conditions for the licence. But it's another to impose a positive duty to do what a minister orders. This provision does not appear to be authorized by the Act and the department should justify it or repeal the provision.

Are there any questions with respect to the issues raised in this regulation? And as I state, you can see these regulations attached to your materials — The Animal Products Act and the regulations.

Mr. Heppner: — I'll use my own words. I just wouldn't be impressed with someone having those kinds of powers. You know, they like the rules to be there and know that you're in the rules or out of the rules, and that's the way you work.

Mr. Cosman: — If I might make a comment, Mr. Chairman, not in answer or response to Mr. Heppner, but just a general comment on one of the issues.

It's not unusual for Saskatchewan legislation or regulations to incorporate by reference fire codes, national building codes, that sort of thing. So on that particular issue, it's just thrown out to you, you know, where are the limits, when do we stop adopting somebody else's laws and making our own laws?

Mr. Jess: — I may not understand this completely — I likely don't — but what I'm wondering, this one you say, may — it enables you to do that, and maybe that is all that is required, because if we say shall, then you're obligated to do it and there might be some other, higher standards, for example, that we as a province could request.

Mr. Cosman: — The main . . .

Mr. Jess: — Does that make sense?

Mr. Cosman: — It does because to a degree, I think you've confused two issues — the may-and-shall issue with the out-of-province adoption issue.

The out of province, you know adopting a milk production

standard that's set by Manitoba, isn't a really unusual thing. I just raise it here as, you know, do we want to recommend to the minister, let's make our own milk standards instead of adopting the international association of milk, food and environmental standards.

But the may-and-shall issue, the point is in the regulation. It says to a producer: if you meet this requirement, and this requirement, and this requirement, and this requirement, the minister might issue a licence, may issue a licence, may not issue a licence.

And the point being made is if all the requirements are set out in the regulation, as they are, if they're all set out in the regulation, and you meet every one of those requirements, that the Lieutenant Governor in Council has chosen to set out there and if there's any missing, they can add more, tighten it up.

But once you've met all those requirements, maybe the producer who has gone to the expense of getting all that equipment, and getting set up, and meeting the regulations in every way; maybe they should be guaranteed that the minister shall issue the licence, rather than may issue the licence. Why would the minister now be bringing in additional criteria that he's got in the back, or she has in the back of their head that would disqualify a person from getting a licence, a producer's licence, even though they've met all the requirements set out in the regulation.

That's the issue here, is just maybe the regulation should say at the bottom of it, the minister shall issue the licence.

The Chair: — Mr. Ward? I assume Mr. Jess is done. Sorry.

Mr. Ward: — Yes. Are you done?

Mr. Jess: — Well I'm not convinced but I guess I'm done.

Mr. Ward: — I guess on the first issue of adopting somebody else's standards, is that not probably an acceptable way to write the Acts? Because if their standards go higher than ours, then we're in violation, right?

Mr. Cosman: — And can't export.

Mr. Ward: — And can't export. So would it not be in the best interest to adopt those standards as they improve? Like they may find tomorrow that milk causes who knows what and we're still producing it under these regulations and they say, oh well, your milk is no good any more. Whereas we automatically become an exporter if we adopt those regulations as they come along.

Mr. Cosman: — If I may answer, Mr. Chair. That's true. And I don't think it's so much a matter that this is repugnant to us and so on. It's just that I'm raising an awareness that little by little we are delegating to other authorities: we're meeting the Free Trade Agreement's regulations and we're meeting Manitoba's regulations and we're . . . order to export and be in the world market.

But I'm not trying to make a policy decision here. I'm just trying to raise to the attention of the committee that here's one

more little nail in the coffin to self-government by the legislature of Saskatchewan. We've delegated the lawmaking off to some other body.

Mr. Ward: — Okay, and under the minister . . . Like I'm not sure what all is involved with dairy farming — I'm not a dairy farmer. But does the Milk Board, marketing board, fall into play with this and does that have anything to do with whether he may or shall issue the licence? Like you can go out . . . Just because I have all the material and have the cows and everything is up to standards . . .

A Member: — You don't have a quota.

Mr. Ward: — And not have a quota doesn't mean I can have a licence. Would that contradict that side of the . . . I don't know, I just raise it to make sure that we've checked every . . . you know, I guess there's always other pieces of legislation that interact with things.

Mr. Cosman: — That may very well be a reasonable explanation. I just would like to see some clarification from the department. At first blush, it did appear that a person could undertake to meet a lot of standards and still, at the last end of it, be denied by the minister for some reason.

The Chair: — Thank you.

Mr. Whitmore: — Regarding clause 2(b), I think the question of the Free Trade Agreement and meeting those standards — also provincial boundaries coming down, particularly in the dairy industry with, I think of Dairy World and Beatrice Foods where dairy products are being marketed across western Canada now, not just within the provincial boundaries; we're going to see that more in agricultural goods — is that I know it does make an impact in terms of what's going on there and you're saying you're raising a flag that's going to take place here.

But I think it's inevitable though those regulations and those things that determine that in terms of trade will be automatic to allow for that from time to time in other pieces of legislation so that the standards can be immediate. Because within the North American Free Trade Agreement and also within World Trade Organization, particularly the Free Trade Agreement, is a harmonization of rules and also a harmonization of rules between provinces.

So I don't know if there's enough time within the legislative session scheme of things to change those regulations quick enough for producers. It's a fact of life. As much as I know you're flagging, I think it is a reality now, that in a sense we do have less power as a legislature due to this fact.

Mr. Cosman: — Perhaps you would like to vote that one off.

Mr. Whitmore: — I'm just raising the concerns.

Mr. Heppner: — First of all I think when we're talking about the "may" part, that other section about the Milk Board, there's a quota that has to be bought. So I think that's covered.

I'd like to support the flag because we had the issue of our milk

going out. On the other hand what can then happen if we go with something like this, is that standards can be lowered and other jurisdictions can dump milk into Saskatchewan that may be of a quality we don't want. And so as far as the export part, yes, we will want to stay with the outside regulations to get our milk out, but it also then means that we may get products in that we don't want because of that, quality levels there. So I think it's got the other side to it.

The Chair: — Thank you, Ben, for the observation.

Mr. Sonntag: — My question is just very simply, then your recommendation is that we simply go back to the minister for clarification on this because you're flagging it. Okay. Well I mean I don't have any problem with that; I think that's fine. I'd suggest then that we go with that recommendation.

The Chair: — Okay. Does anybody have any major disagreements with that, with the recommendations of a dairy producers regulations? So the minister can turn around and say, yes that's going through?

Mr. Sonntag: — Well, then he will come . . . he, in this case, will come back to us with an explanation, right? Or say that that was an excellent idea and it should be changed.

Mr. Cosman: — Exactly.

Mr. Sonntag: — Okay, good.

The Chair: — Okay, and general direction is approved. Go take it back to the minister.

All right. Do we have item number . . . the third item, The Regulations Act repeal, part III . . . Oops, sorry.

Mr. Sonntag: — Is that the only issue in this?

Mr. Cosman: — There . . . going back to the previous . . . the dairy producers regulation '95, I had outlined the two other issues, but they're for clarification as well. So I took your recommendation to include . . . But it's up to the Chair if you want discussion on the third and fourth paragraphs of the bulk milk tank issue and the section 21 issue.

The Chair: — All right. I guess in essence it is up to the committee if they wish to have him . . . Let it go? Okay. The entire presentation.

All right, no opposition, we will go on to the third item, Regulations Act repeal.

The Regulations Act Repeal (Part III) Regulations, 1995
The Regulations Act, 1989
April 7, 1995

Mr. Cosman: — I'll just draw the committee's attention to this, it's a major repealing regulation. It repeals upwards of 100 regulations if you were to see the regulation itself, and it takes out orders in councils, regulations and statutory instruments dating as far back as 1964. And it's part of the ongoing

regulations revision that's been initiated by the legislative drafting branch, Department of Justice, and it appears to be a very good thing in my opinion. I'm just simply pointing out to the committee that there are ongoing processes within government to weed out these out-of-date and archaic regulations.

We had a presentation this morning from Mr. Brown on what the process is and on this regulations revision initiative by . . . out of Executive Council. So I think in effect that this commendation in order for . . . On this issue, I think a good job is being done. That's what I observe as your counsel. And I ask no recommendation. There's nothing to vote on, I'm just pointing it out to you. Issue resolved — no issue.

The Chair: — All right. Is there any questions on this one? Okay, there's no issue to be resolved here. Okay, next item.

The Rural Municipal Road Relief Assistance
Program Regulations
The Department of Highways and Transportation Act
June 2, 1995

Mr. Cosman: — Thank you, Mr. Chairman. Because this regulation requires any claims to be filed by December 31, 1995, in many cases it's a little out of date for us now; we're in 1997. But the primary purpose that could be served by pursuing the issues raised below is to avoid similar problems in the future with respect to regulations made under the same authority.

Subclause 4(1)(b) of the regulation provides that no relief assistance is payable under the program unless the minister approves the claim. Section 7 provides that where all conditions for relief assistance have been met by a rural municipality, the minister may approve payment of relief assistance to it. The authority for the regulations is found in those sections, 11 and 16 of the Act, reproduced for you here.

Both of these sections use a form of the verb prescribe to indicate what it is the Lieutenant Governor in Council may do. To prescribe in this context means to set out in a regulation, to define or mark out. But clause 4(1)(b) does not prescribe a term or condition for the provisional financial assistance. It can be described as a transformation of the power given by the Assembly to the minister to spell out in regulations the conditions for financial assistance, transforming it into an administrative power to approve or not approve financial assistance.

Now there may be legitimate factors that the department is intending to protect with these discretionary provisions, such as limits of financial resources available to the minister for this program. These could however, be indicated in regulations. It's not necessary to draft the regulation in a way that leaves the minister with an unguided discretion to approve or disapprove financial assistance, and the Act does not appear to intend that such unguided discretion be a part of programs instituted under its authority. So the department should be asked to identify in the regulations the terms and conditions that will determine when relief assistance will be paid.

There was an issue with respect to the date of the filing of claims as well, but do you want to deal with that first matter that I've just outlined, first? It's very similar to the previous issue with the milk tanks where there's a whole bunch of criteria outlined and then the minister can ignore the criteria and issue or not issue licences in any event. In this case there's criteria, but the minister is given the power to may or may not.

The Chair: — We have a question from the member from Meadow Lake.

Mr. Sonntag: — Well not really a question, just a suggestion actually here. I don't know — and again being new here this may be entirely out of order, but as long as somebody passes this on to the Provincial Auditor. It might be a little easier for us to follow if simply you just had in your preamble, just right here, recommend, just right beside the recommendation, just clearly outline your recommendation so we as committee members can just see very clearly what it is that you're recommending to the committee. That's my only suggestion. It would be easier for us to follow it then.

Mr. Cosman: — And I believe it's a given that the Chair wants it in point form too, so we can speed her up a little bit.

The Chair: — We don't want to be sitting here all day talking about . . .

Mr. Sonntag: — Yes, this is too much, meeting once every two years.

The Chair: — You know, most of the things, like I can see the role and purpose and value of the committee, but actually there's . . . you know, all we're just doing is simply getting clarification on regulations.

Mr. Heppner: — Well I see this as being pretty critical because . . . And the concern that you raised about why the "may" is there I think is valid. You could have a lot of assistance needed and suddenly there are millions of dollars worth of assistance that fit under the criteria that are set out because of some sort of natural disaster. And the minister finds that there just isn't the money available. And the "may" is in there.

On the other hand, it gives the minister I think, too much partisan power to kind of . . . if there is money there and say, okay, I'll put it here; I'll put it there. I don't think municipalities should have to worry about that.

Now the option probably is to have something in regulations that says, in case the funds that are available are insufficient, this is a process that's followed to decide where it goes. That way the municipalities know that there may not be enough funds and in that case they get it prorated or whatever else. So I support the recommendation.

Mr. Cosman: — If I could add to that, Mr. Chair. I generally, when I correspond with a ministry, will send not only my detailed outline of what the issue was, hence the detail in your report, clause by clause and what have you, but often I will send a copy of the page from the *Hansard*, the committee verbatim.

And that assists the ministry in seeing what the committee members were thinking and the kind of thoughts back and forth, the debate and so on. And I think they consider that very useful. And in fact in the case of a recommendation such as you've made, it may actually be an idea that they want to look at and so on.

So I just wanted you to know that I try to get all the information through to the ministry in that regard.

The Chair: — Okay, thank you. So the recommendation is accepted? Any . . . Agreed. Yes. Okay.

No other, further questions. We'll continue on with the item on page 5, the mental health service amendment regulations.

Mr. Sonntag: — I think there's some other recommendations under this Act yet, are there not? Yes.

Mr. Cosman: — Yes, Mr. Chair, if I may. Going back to the previous regulation, I just stopped at the end of an issue to see what the feeling was on that issue rather than going through the entire document and then having to refresh everybody's memories as to what the first issue was, my own included.

The second issue deals with the process of substantiating claims under the regulation and that proof must be "satisfactory to the minister." Some provisions require that a claim is to be in a form "acceptable to the minister" and containing any information the minister may require without indicating that this requirement may be reasonable or not in contrast to one of the other provisions. And it's been made in accordance with any procedures the minister may determine.

Again, section 6 refers to "proof satisfactory to the minister." So we've got unguided discretion throughout. And I actually . . . in thinking about this, it's not unrelated to the previous issue as to setting out some criteria. I note that there's an insulation of the minister's decisions from any sort of scrutiny, but it's not authorized by a power to prescribe terms and conditions; it's not contained in a power to prescribe terms and conditions.

So the regulation could set out, at least in broad terms, what information is required in the application, its form and essential procedures. When the only authority is to prescribe in regulation, then greater specificity is required than appears in these regulations.

One might note that subsection 4(2) is quite similar to section 5, but at least provides the form and information is to be what the minister may reasonably require. So I don't see that this is actually a distinctly separate issue from the previous one. I think it's one that calls for a bit of clarification, a bit more enunciation in the regulation as to what the criteria is, and the minister's options within that criteria.

So with approval of the committee, I'd be pleased to correspond with the minister on this issue as a singular issue.

The Chair: — Agreed? Consensus is there. Thank you. So we're now onto mental health service amendment regulations.

The Mental Health Services Amendment Regulations, 1995
The Mental Health Services Act
June 9, 1995

Mr. Cosman: — Thank you, Mr. Chairman. These regulations contain an appendix. And the appendix contains a map that purports to show the boundaries of the mental health regions established by the Act. There are several problems with this.

Firstly, section 3 of the regulations — and that's the existing section 3 of the regulations, not the amending ones — establish nine mental health regions. The map shows 11. So we have an inconsistency between the section that authorizes the number of regions and the map that actually sets out the regions.

I'm just checking, if I may for a moment, Mr. Minister, to determine whether it is the Act that sets out the health regions or simply the regulation. No, it's section 3, as I had thought, of the regulation but of the existing regulation, and the amending regulation that brings out the new map forgot to go back and amend the section. It simply amended the map.

The other issue, carrying right along; secondly, there's no connection expressed between the regions established by clauses 3(a) to (i) of the regulations and the numbered areas shown on the map.

Thirdly, the map is not of sufficient scale or detail to enable a person to know where the boundaries actually fall on the ground — that is, how to translate the map into useful information.

There are various responsibilities and rights that relate to the mental health region in which one is located, and therefore a citizen and the persons delivering mental health care must know where these boundaries are. The establishment of mental health regions is a legal act that has legal consequences, and while a map of the sort provided may be a useful visual aid, it is not sufficient for the delineation of the boundaries of the mental health districts in a legal sense.

Again, some of you have discovered that I have a copy of both the regulation and the map in the back of the materials.

The Chair: — For this particular situation here, you're asking to amend . . . the recommendation is to go back to the minister to amend the Act to go from 9 to 11 and to clearly identify the regions by specific geographical information as opposed to just visual aid.

Mr. Cosman: — Yes.

Mr. Sonntag: — Well not necessarily. The recommendation isn't to the minister to go from 9 to 11, specific numbers, but rather to make the connection between the two.

Mr. Cosman: — I took it that to go from 9 to 11 meant to, in section 3, amend 9 to read 11 since it's obvious that it was intended there would be 11 regions. It's not a policy decision; it's just a drafting change.

The Chair: — Okay. Is there any questions in reference to this particular recommendation? Are we in agreement? Agreed.

Mr. Sonntag: — These wouldn't be federal constituency boundaries or something, would they?

Mr. Whitmore: — I thought maybe it was his municipal campaign map, or counties, what we talked about.

Mr. Heppner: — Or telephones.

The Chair: — All right, we shall continue on. We have the Canadian electrical code, Saskatchewan amendments. Are we done with the mental health services?

The Canadian Electrical Code
(Saskatchewan Amendments) Regulations, 1995
The Electrical Inspection Act, 1993
September 22, 1995

Mr. Cosman: — Thank you, Mr. Chairman. We have a subsection of the code set out which reads as follows, 92-100(2):

Where additional guying of the yard pole is made necessary, such guying shall **be at the cost of the owner** upon consultation with the utility.

As counsel to the committee, I do not see how the enabling provisions of The Electrical Inspection Act, 1993, authorize the making of regulations that govern who is to pay for electrical installations. Surely this is a matter entirely outside the scope of the regulation and belongs either in some other regulation under some other Act or in contracts between the electrical utility and its customers. The code, that sub (2) that I . . . previous provisions of the code, I should say, is to govern the how of the electrical work, and not the, at whose cost.

The Chair: — So you aren't really debating whether the cost of this pole should be at the owner's cost or the Power Corporation cost. You're debating that that issue should be resolved in a different Act and not under this Act?

Mr. Cosman: — Yes. And certainly as the Act which adopts the code, there is not power for this provision of the code to actually state, you shall pay, or who shall pay. It's simply . . . it governs the safety of electrical work. It's dealing with standards of electrical work, but in this case, it's directing the cost to be borne by the owner. It's just a little beyond the powers given in the Act, at least in my opinion.

And this is where it's useful to go to the ministry for clarification and they may very well, in the context of their response, they may very well be able to provide a reasonable answer that the committee might accept in the future.

The Chair: — Okay. Any questions?

Mr. Ward: — Yes, is the cost of this inspection included in these regulations?

Mr. Cosman: — I'm not certain. It's just this particular

provision apparently laid out a cost to the owner and there's nothing in the Act that authorizes cost to be . . . (inaudible) . . . It doesn't address costs at all. So in a sense it ignores costs and let them fall where they may, I would take it.

Mr. Ward: — There's nowhere else in these regulations that say that it's the owner's responsibility? Like if they go in and do the house inspection and the wiring isn't up to standards and they say you have to redo that.

Mr. Cosman: — I've got to confess I didn't read the code. I had Mr. Schmidt's help in that regard. And I don't know how thick the code is, but . . . This was Mr. Schmidt's point at the time, and I agreed with it from the limited material that I had in front of me when I reviewed his research. But I didn't have the entire code; I just had the provision he was making the point on. So I can't answer your question as to whether it's throughout the code.

Mr. Ward: — Yes, and the only reason I ask the question is that you're picking this one particular area out of the code and I'm wondering if in the rest of the code is there not costs associated with the owners?

Mr. Cosman: — It would seem to me that that might be a reasonable assumption. I'm not sure of . . .

Mr. Ward: — Then why would you think that was just one area of it.

Mr. Cosman: — I'm not sure on this point, but perhaps it would be good for the ministry to point out the error in my ways, if there is error.

The Chair: — Thank you. Did you wish any response to that particular . . . then I'll go to . . .

Mr. Schmidt: — Basically what I can comment on this, is simply that I was reviewing the '95 regulations. So this is the only provision in the '95 amendments that deals with cost. So it may well be that somewhere else in provisions of the code that were not changed in '95, there's also a cost thing. But I was dealing with issues that the '95 ones raise.

Now it may well be that if this were to be raised with them, they would say, you know, you're right; we have no authority to deal with the allocation of cost in this regulation. This regulation is only about how do you do safe electrical installations and cost is dealt with elsewhere. And they may then say, okay, we'd better look at the rest of the regulation and we'll remove the other ones that deal with cost too, because they don't belong in here. So the review was only done of the '95 amendments and this is the only place in the '95 amendments where this issue came up.

Mr. Whitmore: — This was to be changed, so it was changed to a different . . . not regarding the cost, I guess, in terms of saying actual cost. Would one say then, where additional guiding of yard poles is made necessary, such guiding shall be owner's responsibility rather than the utility's? Would that change the intent or would that be the same thing as saying at cost? Does that get around the regulation problem? I ask that

out of curiosity.

Mr. Schmidt: — In my view, the issue is that the regulation shouldn't deal with cost. In other words, it should say . . . What they're talking about is if a yard pole doesn't have sufficient guying wires, put them on there. It's a safety issue. What it's really supposed to be about is saying a yard pole should be . . . should have enough guy wires on it to support it in a stable way. That's what the electrical code is about — saying how should electrical installations be made, exactly.

So it shouldn't talk about the costs because that's just not something that the Act authorizes them to talk about in this regulation. All they're talking about is the how and that doesn't . . . it almost certainly will be at the cost of the owner in any case. The utility will say, this is how you're supposed to do it, and you want us to do it? Here's the bill. So it probably won't change the fact of who pays for it at all. It just will make it clear that this regulation is about how, not about who pays.

Mr. Sonntag: — All those who made a recommendation and amended it to say that this would be paid for by the Legislative Law Clerk.

Mr. Schmidt: — That might be equally unlawful.

Mr. Sonntag: — But we could try.

The Chair: — Thank you. Is there any other, further questions on this matter? If not, do we have a general agreement to get the issue or the recommendation accepted? Carried.

The Mineral Disposition Amendment Regulations, 1995 *The Crown Minerals Act* **October 20, 1995**

Mr. Cosman: — Thank you, Mr. Chairman. I draw the committee's attention to section 99.1 (1) of this regulation that is contained in your . . . it's the last page of your materials. This section provides that the minister may grant an exemption from any expenditure requirements where the holder is unable to gain access to the disposition area to perform the work necessary to meet the expenditure requirements due to a forest fire or other natural disaster or any other special circumstances beyond the control of the holder.

The holder makes an application to the minister in a manner approved by the minister. Firstly, one wonders what more is needed for an exemption to be granted. If nothing more is needed than what is set out in the provision then the word may ought to be replaced with shall. We've seen this issue before. If other factors are to be considered, what are these? Why can't they be set out in the regulations?

Requirements that an application be made in a manner approved by the minister likewise appears to be unnecessarily discretionary. Why is it not possible for the regulations to set out what information is required in an application? Setting these things out in the regulation, at least to the extent possible, enhances the likelihood that the rules will be the same for all applicants, that the rules can be known and that compliance will be tested objectively instead of leaving the applicant subject to

completely unguided discretion.

There is no effective check on the exercise of an unguided discretion and it is an invitation to abuse. That does not say that officials will do so. One expects that, by far, most persons responsible to exercise these discretions choose to do so in a consistent, fair and open way. The problem is that there can be and perhaps inevitably will sometimes be, persons who do not exercise these powers in such a manner.

If the regulations provide no objective standards for the making of such decisions, then the victim of the irregular decision has no remedy. The principle of the rule of law suggests that whenever it is possible to do so, and to the extent that it is possible to do so, the law should be public and knowable and not concealed within the internal administrative policies of a department nor hidden in the mind of some official.

I recommend that this matter be raised to the attention of the ministry responsible for the mineral disposition amendment regulations on this issue.

The Chair: — Any questions for the presenter?

Mr. Sonntag: — Is may or shall an issue that is something that gets raised by yourself more frequently before this meeting?

Mr. Cosman: — It's raised under a number of headings but it's the thought of natural justice, right to a hearing. What good is that hearing if there is nothing to point to? That's one of the issues. The other issue is the Act says it is to be set out in the regulations, and lo and behold, all kinds of criteria is set out in the regulations, but they undermine that at the very end by saying, as the minister may wish to do so anyway; you know, even though the criteria has been met and so on. And so it's in a sense, a kind of sub-delegation to the ministers or some official's — it may not be the minister, it may be somebody within a department — some official's feeling about whether or not a licence should issue or something should happen, when in fact it was supposed to be set out in the regulation — A, B, C, D, you meet these requirements; you get licensed.

There's a little something distasteful, I think, about it, that sort of thing. Because the person has nothing to point to when they've failed to get a licence. They go to the minister to appeal and the minister can point to the word may, and say look, I didn't have to. It doesn't matter. It was may, and so I could deny you the licence. Simple as that. Whereas if it says shall, the issue becomes whether you met the criteria or not. And yes, I installed a new bulk tank. Well no, you didn't. You got one at a salvage place or you got it from your neighbour and it was in use for five years, you know, so you didn't meet that criteria.

So in other words, it leads to a bit more fairness on a subsequent hearing of the applicant, a bit more fairness as to why or why they didn't get the licence. It's something that's set out in the regulation rather than just what the official had for breakfast that morning and they are upset at the world.

The Chair: — Okay, thank you. Are there any other questions? All right. We all agree?

Okay, we've got another half-hour so we'll go another maybe 15 minutes and then we'll break a bit early for lunch if people have to go back and make phone calls. So we'll try and keep it to 15 minutes, if the committee agrees, since we did miss our coffee break.

We go on to item no. 5. I'm not sure if you're continuing with Mr. Cosman, but thank you for your presentation so far. We'll go to item no 5, consideration of regulations follow-up business.

REGULATIONS FOLLOW-UP

1986 REGULATIONS

The Mental Health Services Regulations *The Mental Health Services Act* April 4, 1986

Mr. Cosman: — Yes, Mr. Chairman, under regulations follow-up you do have in your hands a report, a written report, with materials attached.

I'll commence with follow-up on 1986 regulations, the mental health services regulations under The Mental Health Services Act, and these regulations were gazetted April 4, 1986.

Originally there were two issues with respect to these regulations. The first involved the right for a patient or his representative to be at a hearing with regard to the release of the patient — this is a hearing by a review panel. The Act had guaranteed the right that "the appellant shall be notified of the time and place of the hearing" whereas the regulation stated that the chairman of the review panel should "endeavor" to provide notification of time and place. Endeavoring to notify and actually notifying are two different things.

However, I'm pleased to report we have a resolution of the issue with the passage of the amending regulation, Saskatchewan regulation 53/95, gazetted June 9, 1995. And I have attached in the materials immediately after my report — I think it's about the fifth, sixth page there — you have a letter from the Minister of Health dated March 8, 1996 regarding this issue and confirming that they were amending the regulation to provide that the chairman of the review panel shall provide notification. Not endeavour to provide, but shall provide notification of the time and place of the hearing to the appellant. And you can see the regulation attached to the minister's letter that does that.

So I'm pleased to report that that particular issue is solved to my satisfaction, and I'd recommend the committee would find it solved. Would you like me to proceed with the other issue?

The Chair: — No, we'll just deal with that if it's . . . So all we'd do is accept your recommendation. Correct? Okay? Agreed.

Mr. Cosman: — The other issue concerned the desire of this committee to see that other representatives of the patient, for example, the nearest relative or a person appointed under section 26 of the Act, be advised of the patient's right to appeal

to a review panel as well, especially with respect to the administration of the special treatment, which could be taken to include electroconvulsive therapy.

The amending regulation of June 9, 1995 also, in my opinion, resolves this issue. Section 13 of the regulation was amended by requiring that the person representing or interested in the patient, on receipt of notice of motion for a long-term detention order, shall visit the person who is the subject of the application as soon as practicable to provide the person with information concerning his or her rights and obligations with respect to the application and, as far as is reasonably practicable, provide any assistance that is requested including the following: (i) assist the person to obtain legal counsel; (ii) accompany the person to the court hearing; (iii) represent the person at the court hearing.

It would appear to me that the rights of the patients are very well respected. I would recommend to the committee that the issues with respect to this 1986 mental health services regulation be considered resolved.

The Chair: — Agreed? Okay. Agreed.

Mr. Cosman: — If I might, Mr. Chairman, when I do have an issue resolved, I write the minister responsible, informing the minister that the issue is resolved. This way they can close their files. And where it's appropriate, as it is in this case — action was taken on the part of the ministry to resolve the issue — I pass on the thanks of the committee for their attention to the matter.

So I do that as a matter of course. You may wonder with a 1986 regulation how immediate the response was, but certainly it was looked after.

I'll continue. 1988 regulations. And this is not to say that there weren't issues in 1987, for example, but they have been resolved. All the issues with respect to 1987 regulations have been resolved.

1988 REGULATIONS

The Real Estate Brokers' Regulations, 1988 *The Real Estate Brokers' Act, 1987* **December 9, 1988**

Mr. Cosman: — The issue with respect to this regulation concerned the placing of a limitation period in the regulation as opposed to the Act. I'll just digress. A limitation period is something to the effect that you have 90 days to file an application or you've missed the boat, something of that nature.

The committee originally considered that limitation periods should, because of their legal significance, be removed from the regulation and be dealt with in the Act because it's felt that the Act is the empowering statute and it's the one that sets up the substantive legal rights of anybody that's affected by the Act. And so if you've got a substantive legal right that's tucked away somewhere or a substantive legal right that's going to be repealed or missed, expire, because you miss a date, put it in the Act. The previous committee directed me to follow that one up.

I've received correspondence from the Minister of Justice and Attorney General in August, 1994 alerting the committee to the fact that the issue could be concluded by removing from the regulation, the provision that parallels a current provision in the Act.

I have not seen, as of date of preparation of this report, the amending regulation — pardon me — as of the preparation of my last report, I hadn't seen an amending regulation. So I'd agreed to monitor this issue on behalf of the committee. I'm now pleased to inform the committee that regulation 71/94, filed October 5, '94, repealed the offending provision within the regulation and now limitation periods are dealt with fully by the governing statute. You can see that is included in our materials where they repealed a little paragraph and that's what happened there. So I would recommend the committee consider this matter successfully resolved.

The Chair: — Is it the wish of the committee to accept the recommendation? Agreed.

Mr. Cosman: — Again I will undertake, on behalf of the committee, to correspond with the Minister of Justice and Attorney General their thanks in concluding the matter. The next regulation issue to deal with is an outstanding issue from prior days, is the water power amendment regulations, 1988.

The Water Power Amendment Regulations, 1988 *The Water Power Act* **January 22, 1988**

Mr. Cosman: — These regulations were retroactive in nature. They provided for a calculation of water rental under a formula commencing January 1, 1987, yet the regulations were made January 22, 1988. The minister responsible for the Saskatchewan Water Corporation has responded to the concerns of the committee by letter — and it's attached here again in your materials, I believe — in which he undertakes that legislative amendments and organizational changes will indeed come about in the near future and the committee suggestions with respect to curing the retroactivity issue will be addressed.

I have monitored the amendments to The Water Power Act and regulations, and to date, I'm unable to report to the committee that any such promised legislative amendments have occurred. I would consider this an outstanding issue and should be pleased to remind the minister by way of follow-up letter on behalf of the committee, should you so direct.

So retroactivity was the . . .

Mr. Jess: — So you're saying this gets approved by this committee at a previous date and nothing has been done about it?

Mr. Cosman: — The minister wrote to me and through me to the committee — and his letter is here in the material somewhere — that legislative action was being taken. But I've been sitting watching and hoping and have seen nothing.

The Chair: — So you're asking the committee just to remind him that this is what we're waiting for?

Mr. Cosman: — Yes, and what I do is again I'll do a letter to the minister just asking, you know, for an update on it. Probably legislation is being prepared. It takes a long time — two, three, four years — for legislation to work its way through the process.

The Chair: — Okay. So are we in general agreement just to send him just a reminder? Okay. Agreed. Okay we can do one more, then we'll break for lunch.

**The Bacterial Ring Rot Control Regulations
The Pest Control Act
July 8, 1994**

Mr. Cosman: — And, Mr. Chairman, this is an appropriate one to break for lunch on, the bacterial ring rot control regulations.

If I may, Mr. Chairman, the small anomaly in the introductory wording of these regulations was discussed with the chief legislative Crown counsel — you met him this morning. Mr. Brown is the person who drafts the regulations, and I'm pleased to report there's no actual error or omission. The offending words did confuse your counsel, but follow-up discussion has resolved it to his satisfaction. Thus I should be pleased if the committee would consider this matter satisfactorily resolved.

The Chair: — Agreed? Agreed. Okay.

Mr. Sonntag: — Counsel is no longer confused.

Mr. Cosman: — That's better than counsel admitting he made a mistake in the first place.

The Chair: — Okay, if you guys wish, we will break for lunch at this time and we'll meet here again at 1 o'clock.

The committee recessed for a period of time.

The Chair: — Okay, ladies and gentlemen, we'll call the meeting back to order. And, Mr. Cosman, if you may, begin from where you stopped off please, sir.

**The Correctional Services Administration,
Discipline and Security Regulations
The Correctional Services Act
July 8, 1994**

Mr. Cosman: — Thank you, Mr. Chairman. As I understand, we should be considering the correctional services administration, discipline, and security regulations under The Correctional Services Act, gazetted July 8, 1994, and you will find some related materials to this regulation in your package.

Clauses 4 and 5 of these regulations refer to disciplinary rules and procedures being established for various correctional facilities. The committee had asked me to correspond with the Minister of Justice in order to obtain a copy of the disciplinary rules from a correctional centre. The committee had also expressed a desire that the minister consider the addition of a layperson to the disciplinary panel in a correctional institute.

I have, since the date of raising the issue with the committee, corresponded with the Minister of Justice and received his response dated August 2, 1995, together with a copy of the disciplinary rules referred to. It's difficult for me as counsel to the committee to monitor the appointment of laypersons to disciplinary panels in correctional institutes. I'll leave it to the committee to consider whether or not they consider the issues to be dealt with satisfactorily and therefore considered at an end or should counsel continue to monitor the issue in some way.

You should take a moment to review the materials. There's a letter of the Minister of Justice and Attorney General dated August 2, 1995 toward the bottom of your materials, and attached to that letter is a set of rules entitled "Inmate Discipline Class 'C' Contraventions and Sanctions Pursuant to (Corrections Services Act & Regulations)."

You may want to read . . . take a moment to read those sanctions, if you will, and whether or not they seem reasonable in the circumstances. The point in issue at the committee meeting where these were considered: we had a regulation-making section that in effect stated that the warden of a correctional facility could make these rules but we didn't have an example of the rules. And so this is the first concrete example of the rules — first time I'm able to look at them and consider whether they're reasonable or not. And I throw those matters out to the committee.

The Chair: — Okay, is there any particular questions for Mr. Cosman on this, the correctional services?

Mr. Cosman: — My own recommendation would be that we consider the issue satisfactorily responded to, but . . .

The Chair: — Do we have any questions for . . . Is there any requirement for us to have the member of the third party here or is this . . . quorum is fine?

Mr. Sonntag: — I think as long as that word quorum isn't raised, we're okay. As long as nobody challenges you're asking.

The Chair: — What's that?

Mr. Sonntag: — As long as nobody calls quorum we're fine. But we need quorum to start the meeting and since we only recessed, I think we're okay. But she probably knows better — Meta.

The Chair: — Just one question. Do we have to have a member of the third party here to constitute the resumption of our meeting?

Ms. Woods: — No, all you need is quorum.

Mr. Sonntag: — You're a member of the third party. Oh, excuse me. I did that for four years, okay, so I'm sort of in a groove here. My apologies.

The Chair: — That speech I made this morning.

Okay, we have the recommendation of Mr. Cosman and I think the majority of the council agree . . . or the committee agree that

we will accept his recommendation. Okay, continuing on to the second.

**The Child Care Expense and Moving Expense
Remission Regulations
The Financial Administration Act, 1993
January 7, 1994**

Mr. Cosman: — Thank you, Mr. Chairman. The next regulation for consideration, The child care expense and moving expense remission regulations under The Financial Administration Act, 1993, gazetted January 7, 1994.

Your counsel had noted for the committee in a previous meeting of the committee the fact that notice of a tax remission application had to be made before December 31, 1993, and in fact that was gazetted on January 7, 1994. The notice was gazetted on January 7 of '94. If the regulations were to have some purpose as official public notice, the more timely promulgation of the regulation was suggested.

I was directed by the committee to bring this issue to the minister's attention. I've received a copy of the minister's response dated June 27th, 1995 which you have in your materials. The minister, in the second last paragraph of page 2, does explain the reason for the late announcement of the provincial income tax remission, is basically based on the fact that it is paralleling a federal remission.

It would seem that there's little the provincial Minister of Finance can do in this case and I would suggest the explanation of the hon. minister, through the deputy minister, Mr. Jones, be considered sufficient response to the committee's concerns with regard to this regulation.

The Chair: — Okay, do we have any questions for our legal counsel?

Ms. Draude: — What impact has this had on anybody that they'd want to file if . . . (inaudible) . . . sort of people that were . . . that had some kind of an impact on their . . .

Mr. Cosman: — I'm not certain as to the impact on actual persons. I simply have the letter of the minister dated June 27 to the effect that . . .

Mr. Sonntag: — I think the answer's in the first paragraph on the second page of the minister's response.

Mr. Cosman: — Yes, thank you. I'm hesitating to jump in here. But yes, just simply the taxpayers involved were already known to Revenue Canada. And as Revenue Canada administers most of the provincial Income Tax Act, the federal government requested that the province use a date of application for the provincial remissions of December 31, 1993. So in other words, what they're saying is, is there really wasn't first-time notice to the taxpayers on January 7, 1994. All of the taxpayers affected by this remission order were known to Revenue Canada and were duly informed or dealt with prior to that date.

Mr. Sonntag: — There's four or five pages. I don't know if

you've found it there.

Mr. Cosman: — If I might, Mr. Chairman, just remind members, that's the answer of the minister. I'm not answering the question in that sense. That's the answer of the minister and you should judge whether or not you are satisfied with the response of the minister.

The Chair: — However, it's your opinion that the response is sufficient?

Mr. Cosman: — That's my impression. I would recommend to the committee that we treat the matter as resolved; that this answer is a reasonable and sufficient answer.

The Chair: — Do you have any further questions for Mr. Cosman? If not, is there general agreement with his recommendation? Any opposed? Continue on, please, sir.

Mr. Cosman: — The next — actually the next two regulations — could almost be dealt with together, but because we have them highlighted separately, I'll deal first with the helium and associated gases amendment regulations of 1994.

**The Helium and Associated Gases
Amendment Regulations, 1994
The Crown Minerals Act
Gazetted December 2, 1994**

Mr. Cosman: — The issue with respect to this regulation was that it was an old regulation dating back to the year 1964, and the table of amendments to the regulations indicates there have been several amendments through the years. And a previous committee had suggested to counsel, and through counsel to the minister, that consideration be given for a revision and consolidation of that old regulation with all its amendments into a modern, new regulation.

And the minister responded through a letter dated July 17, 1995 — and again you'll find those letters in your materials — wherein counsel was informed that the department plans to revise and consolidate the regulations following the disposition of various issues with the oil and gas industry.

It is pointed out, however, that the department will be giving more priority to the petroleum and natural gas regulations — which are the ones we're going to consider immediately after this one — which are subject to similar comment from the committee, as the helium and associated gases regulations have very few outstanding dispositions at this time. So I'd be pleased to monitor the revising and consolidating of these regulations on behalf of the committee, if you so direct me.

The Vice-Chair: — Any questions? Concurrence? Next topic.

**The Petroleum and Natural Gas
Amendment Regulations, 1994
The Crown Minerals Act
December 2, 1994**

Mr. Cosman: — The next regulation, the petroleum and natural gas amendment regulations, 1994, again it's the same issue.

Actually the amendment is dated 1994 but the regulation that's being amended dates back to the year 1969. And the committee had previously recommended that this regulation be brought up to date and all the amendments consolidated into one document. So that the industry and people affected by the regulation would be readily able to read what the law was with respect to their situation under that regulation.

Again the correspondence from the ministry, dated July 17, 1995, indicates that a revision and a consolidation of the regulations will soon be undertaken. And I undertake, on behalf of the committee, to monitor the regulations to see that in fact a consolidation and revision does take place sometime in the future.

The Vice-Chair: — Any questions regarding this consolidation of . . . If there is none, agreed? Everybody agrees?

The Victims of Domestic Violence Regulations
The Victims of Domestic Violence Act
December 2, 1994

Mr. Cosman: — The next regulation is the victims of domestic violence regulations under The Victims of Domestic Violence Act dated December 2, 1994. The date again, I remind you, is the date in *The Saskatchewan Gazette*. This is when the regulation appeared in *The Saskatchewan Gazette*.

The committee had expressed a concern that there appeared to be no method detailed in the regulation for a respondent to request a rehearing or rethinking of the emergency intervention order outlined in the regulation. Neither is there a form of application attached to the regulation for such a rehearing on behalf of the respondent.

There were certain rights enumerated in the order form that were set out by the regulation, but it's set out in a lower case, unbolded print compared to the words: **"YOU MUST OBEY THE PROVISIONS OF THIS ORDER."** In other words, the right of the respondent to request a rehearing of a particular order was essentially lost in the fine print and it was the highlighted words **"YOU MUST OBEY THIS ORDER"** that stands out.

You can actually see the form in your materials, toward the bottom of your materials. It's the last page of your materials in fact. And you can see that about a third of the way down in that form in small print: you have the right to apply to the Court of Queen's Bench at such-and-such a venue to either set aside or change this order. Well that's a pretty important right of appeal. And yet in bold print you have **"YOU MUST OBEY THE PROVISIONS OF THIS ORDER."**

Well that isn't a fair balancing of rights in so far as the previous committee was concerned and they asked me to correspond with the minister in that regard. And I have received a comment from the deputy minister of Justice, a letter dated July 5, 1995 wherein it's pointed out that the procedures for making an application for a rehearing to the court under section 6 of the Act are set out in the Queen's Bench rules. However, it was noted that the comment with respect to the respondent's right to apply to the court may not stand out enough, and it is suggested

that bolding and capitalizing of the sentence would not change the substance of the form.

Therefore regulation is not required to amend the form. It's just simply a printing, reprinting, of the form they will do when they run out of old forms. I guess when they next reprint their forms they'll do that. And I have no way of monitoring that because they won't republish in *The Gazette* the new form with the bolded print.

But I would advise the committee that we've in the past had good compliance from the Minister of Justice and Attorney General in doing things of this nature, and when we have the undertaking by letter of July 5, 1995 that it likely will be carried out, I personally would consider the issue resolved. But I throw it out to the committee.

Ms. Draude: — Do you have any idea if they are still using this old form?

Mr. Cosman: — They may still be. It depends on how much . . . how many forms they had in stock. Just the next reprint they were going to do it. So it wasn't even going to be a cost to anyone but they . . .

Ms. Draude: — Are they adding just another letter or anything with it so that people would realize and not be intimidated by the way it's written right now?

Mr. Cosman: — I have no idea. I suspect that all they plan to do is just to highlight, by bolding and capitalizing, you have a right to appeal.

Ms. Draude: — But until all the old forms are used up, there's nothing additional given to people to let them realize that?

Mr. Cosman: — I can't answer either way on that one. The department may have done something, but they haven't told us in the letter. All I have is the letter of the minister telling me that next time we reprint we'll bold it. Your idea is a good one, or your recommendation is a good one, is what the deputy minister said. So I don't know about in the in-between time, whether that's being addressed or not.

It's a reasonable thing for me to in fact do a little follow-up. The letter was dated July 5, 1995; we're now February 1997. It might be reassuring to the committee to actually see a reprinted form, because probably by now I would think they've had reason to reprint the forms.

Ms. Draude: — If they haven't reprinted them, at least another photocopied paper or something could be given to let people realize that there is another right.

Mr. Cosman: — A right to appeal.

Ms. Draude: — Yes.

Mr. Heppner: — I would appreciate that too, because I think from the answer that we have it seems that there is some doubt whether our concern, or the concern of this committee in the past, has been taken seriously. It says the court, apply to court,

may not stand out enough. So this committee is sort of in question as to the validity of that concern, so it would be good to know that.

Mr. Sonntag: — Maybe you could just highlight it and indicate in a letter just to . . .

Ms. Draude: — That's right. Just something so that people realize it because . . .

Mr. Heppner: — Put a line underneath it, or an asterisk or something.

Ms. Draude: — I think it's right to assume that people who may be having to deal with this may be intimidated by this kind of a legal document and they may not have time . . .

Mr. Cosman: — Yes, I would be pleased to correspond with the minister in follow-up to this issue as regards the highlighting of the right to appeal, or bolding, if you will. I take it that the other . . . is there another issue? No, I think that's the only issue. I'll undertake to correspond with the minister and get some response, and hopefully an example new form.

The Chair: — All right, is that the general acceptance of the committee, that Mr. Cosman do exactly what he has explained?

A Member: — Agreed.

The Chair: — Okay. Continue on please, sir.

Mr. Cosman: — Well that ends our consideration of regulations follow-up matters, and we would be turning to the professional by-laws follow-up, I believe.

PROFESSIONAL BY-LAWS FOLLOW-UP

1991 PROFESSIONAL BY-LAWS

The Association of Dental Technicians of Saskatchewan
The Dental Technicians Act
Sessional Paper # 4
Tabled December 4, 1991
(1st Session - 22nd Legislature)

Mr. Cosman: — Again in this grouping of materials, if there's some issue that I've raised, you will find a copy of the by-law or the provision that's raised attached to your materials.

Essentially the issue with respect to the dental technicians by-law is that they have set an annual membership fee in excess of that allowed by The Dental Technicians Act. I think, if memory serves me, the Act had a cap, or a limit of \$50 per member per year and they are charging \$125 per member per year, something of that nature, just to illustrate what the issue is.

This matter was referred to the Department of Health and the response from the department dated August 1, 1995 was given in response, and that's included in your materials. Therein the person responding on behalf of the Department of Health agrees

the Act needs major change including more flexibility for the association to set fees. However, in the meantime, members are voluntarily paying the excessive fee as it's impossible for the association to operate otherwise.

Mr. Johnston, who is the person responding on behalf of the Department of Health, does not anticipate the department to be in a position to amend the dental technicians legislation until possibly 1997. So I suggest to the committee this is something that bears watching. An amendment to the Act or a repeal and replacement of the Act might well be forthcoming in this upcoming session and that will cure the problem if they raise that cap or take the cap out altogether. So I would undertake to monitor this on behalf of the committee. We may see something coming up in this session.

Moving right along.

The Chair: — Thank you.

A Member: — Agreed.

1992 PROFESSIONAL BY-LAWS

The Saskatchewan Association of Speech-Language
Pathologists and Audiologists
The Speech-Language Pathologists and Audiologists Act
Sessional Paper #16
Tabled June 8, 1992
(2nd Session - 22nd Legislature)

Mr. Cosman: — This by-law purports to deal with the removal of a member of the council of the association from office held, pursuant to a two-thirds vote of the other members of the council. The authorizing legislation does not appear to have prescribed the making of a by-law with respect to the removal of such council members.

And in addition, there's no mechanism for hearing an appeal. This is a matter contrary to the concept of natural justice. I might just, as an aside, give you my concept of what natural justice is, but it's pretty well what it sounds like. It's just the feeling, the sense, that someone who is aggrieved has a right to go before an impartial body to say look, I've been wronged. The decision was bad; it affected me this way, what have you; could you please hear my side of the story? And that generally is granted.

And in this by-law we don't have an appeal mechanism. If you're removed from the . . . as a council member, it's done by two-thirds of your colleagues and you're out of there. No appeal. So that's one criticism of the by-law of this association.

The last meeting of the committee that considered this matter had resulted in an instruction to me to correspond by letter and telephone to the association urging prompt response. And I've received a response dated July 20, 1995 wherein the association undertakes to repeal the offending provision. This letter is included in your materials. And by a letter to Phil Flory of the corporations branch, dated October 11, '95, and filed with that branch October 19 of that same year, the president of the Saskatchewan Association of Speech-Language Pathologists

and Audiologists states that “at an Executive Council meeting on September 23, 1995 the Association repealed the following bylaw, section 5 of Bylaw 1.”?

That is the offending provision of the by-law. They’ve taken it right out. You can’t remove by a two-thirds vote another member of council without a hearing. That’s gone. They’ve removed the offensive provision. It’s filed as an official amendment, and so I would recommend that the issue is resolved and that the committee so find.

The Chair: — Okay, do we all agree? Agreed.

1994 PROFESSIONAL BY-LAWS

The Saskatchewan Society of Occupational Therapists
The Registered Occupational Therapists Act
Sessional Paper No. 73
Tabled February 18, 1994
(4th Session - 22nd Legislature)

Mr. Cosman: — The society had addressed the issue of an incorrect reference to its governing Act at the May 16, 1995 meeting of this committee. However, there were two outstanding issues not addressed, largely through oversight of your counsel in drawing these matters to the attention of the society. I think by way of explanation, if there is any, simply it appeared there was one issue and I dealt with that issue and missed a couple. But because of the good records keeping of the Clerk’s office and personnel in the Clerk’s office, the tracking forms have been developed and became very useful and the issue appeared on the tracking form. So I commend Pam Scott of the Clerk’s office for her work in this.

The issues that were missed by me were a concern over a matter of removal of council members — again, this sounds very similar to the previous one — council members from their council if they failed to meet certain criteria, such as being absent from meetings, and there was no affording a member an opportunity to be heard. There were disciplinary procedures alluded to, council determining whether or not there is a need to pursue a complaint against a member and whether there should be a hearing and if the member should be present at the hearing, that sort of thing.

In reading the regulations, even though it gave the appearance that there was a right to a hearing, it appeared to me that a disciplinary measure could be taken without holding a hearing at all. It was only if a hearing was going to be held that there was an obligation to inform the member of their right to the hearing. So I thought there was a little something falling through to the cracks on that one, if I have summarized correctly.

So on those two issues, and they were considered by a previous committee to be relevant and proper issues for this committee to follow up, I will undertake to correspond with the society in regards to those two issues. I am not certain that this committee, as constituted today, needs to revisit those issues. They were found to be valid issues at a previous meeting and I’ve just failed to correspond with the department on those.

The Chair: — Okay, shall we continue?

The Rural Municipal Administrators’
Association of Saskatchewan
The Rural Municipal Administrators’ Act
Addendum to Sessional Paper #73
Tabled June 2, 1994
(4th Session - 22nd Legislature)

Mr. Cosman: — The next by-law, the Rural Municipal Administrators’ Association of Saskatchewan.

The committee’s attention had been drawn to the fact that the original by-law as tabled had a certain degree of vagueness and a multitude of spelling errors which had crept into what I felt was an early draft of the by-law as opposed to a final version. But a second and more important issue was whether or not a member of the association being disciplined was granted a hearing as of right.

I had corresponded with the executive director of the rural municipal administrators’ association and I received correspondence dated July 11, 1996 wherein it’s pointed out by the executive director that the grammatical and spelling errors have been cleaned up — in fact a new copy of the by-laws were attached to the correspondence that I received; you’ll see the letter here but not the new by-laws because they were voluminous — and that they have addressed the concern with respect to the appeal process and the right of hearing for disciplined members.

I enclose both the letter and the by-law amendments for your consideration. And I’d suggest the committee consider the issue closed. You perhaps should look at the by-laws for a moment.

Mr. Sonntag: — They’re spelling RM (rural municipality) correctly now, are they?

Mr. Cosman: — Yes. They apologized profusely for the spelling errors. We obviously got like a rough-cut first draft. The issue at the time had been, of course, how many people did this pass through, including being tabled in the legislature, before we actually saw it in this committee. And it obviously had gone through a number of people. But we weren’t complaining about the process. It was just, hey, clean up the by-law, which they’ve done.

I’ll give you a moment to read that by-law number 08 in your materials. What you’re looking for is whether or not there’s a right to appeal from a disciplinary measure. And it seems to be there in clause 5 of the by-law. So my recommendation would be that the committee consider this matter, the matters with respect to this by-law, sufficiently addressed.

The Chair: — Questions? Agreed?

1995 PROFESSIONAL BY-LAWS

The Association of Dental Technicians of Saskatchewan
The Dental Technicians Act
Sessional Paper #105
Tabled February 23, 1995

(5th Session - 22nd Legislature)

Mr. Cosman: — The next by-law for consideration in follow-up is a 1995 professional by-law — the Association of Dental Technicians of Saskatchewan. The issue with respect to this new by-law of the dental technicians of Saskatchewan is precisely the same issue that related to a 1991 by-law that we may have reviewed moments earlier here.

The association has enacted a by-law which contains a violation of a fee cap or limit, upper limit. I would suggest to the committee that the response of the ministry of Health with respect to the 1991 by-law is relevant to these by-laws. They're one and the same issue and I would anticipate the Act would be amended in due course, and I'll undertake to monitor for that amendment.

You'll see, if you go back to page 1 of your materials, we really addressed that material and this is just a later amendment that increased the fee. And so I had to comment, whoa, this is beyond the limit as well.

The Chair: — So again, it's the same . . . pretty well they're the same direction as the first one.

Mr. Cosman: — Yes, I'll simply monitor, on behalf of the committee, an anticipated amendment to the Act, removing that upper limit on their association fees such that they can pass a by-law to place any amount as a fee.

The Chair: — Okay. Are there any questions? Do we agree? Agreed.

**The Registered Psychiatric Nurses
Association of Saskatchewan
The Registered Psychiatric Nurses Act
Sessional Paper #105
Tabled February 23, 1995
(5th Session - 22nd Legislature)**

Mr. Cosman: — The next by-law for consideration, the Registered Psychiatric Nurses Association of Saskatchewan. One minor problem with this by-law has been the fact that the word "draft" had been stamped on each and every page of the by-law tabled in the legislature, when the as passed version of the by-law ought to have been submitted.

Again, that probably went all the way through the corporations branch and various people; the word "draft" . . . it came through to me with the word "draft" on every page. We should be, of course, dealing with by-laws that have passed and been accepted by the membership of an association and duly filed with the corporations branch.

The second and more important issue with respect to the by-law, regarded the registration of a person who is a registered psychiatric nurse from another jurisdiction in Canada who must, in addition to meeting the requirements of subsection 2(1), meet the English language requirement set by the association.

Our committee in a previous meeting had questioned whether

or not this English language requirement might be contrary to the Saskatchewan Human Rights Code or the Charter of Rights and Freedoms, or indeed public policy, with which the committee is concerned.

Some clarification was sought, and a response from the registered psychiatric nurses association was received by letter, dated July 11th, 1995 — and you have this letter in your materials; probably at the very bottom of your materials — wherein the executive director of the association responded to our concern. Enclosed was a fresh copy of the by-laws with a letter of approval from the Minister of Health . . . course the word "draft" had been removed.

Also, an explanation is made with respect to the English language requirement. Basically it boils down to standard tests being used by a number of professional associations to ensure that professionals can both understand and be understood by clients. They should submit lawyers to this test.

I presume in a predominantly English language environment, such as we would take Saskatchewan to be, that this would be acceptable; that the English language test is sufficient. But I'm at the direction of the committee as to whether or not they wish me to follow up in this regard.

The Chair: — Questions? Okay are we all in favour of the recommendation? Okay.

Mr. Ward: — That he not follow up. That the issue be deemed closed.

The Chair: — Okay. And that the written exam is acceptable? Okay. Is that the agreement? Agreed. Okay.

Mr. Cosman: — I might mention, in the future I will not say as to whether or not I should follow up. I will state as to, you know, I shall follow up one or the other but not both.

The Chair: — All right, does that conclude our item no. 6 on the agenda?

Mr. Cosman: — It does, Mr. Chairman.

The Chair: — Thank you, Mr. Cosman. I believe we have other business so we'll continue on with the agenda.

Mr. Sonntag: — Just one question here. There's a couple things listed in this sheet that we didn't cover, or unless I missed it.

Mr. Cosman: — Some things in this list may have been disposed of, and so we didn't revisit them this time. We've . . .

Mr. Sonntag: — I see. Okay.

Mr. Cosman: — So it may well be that there are some things listed here that of course we didn't touch.

The Chair: — All right. You're finished, Mr. Sonntag? Okay. We'll continue on to item 7 now.

Ms. Woods: — The next item is something that we just wanted to advise the committee about. We received an e-mail letter in the Clerk's office earlier this month from the senior legal adviser to the Scrutiny of Acts and Regulations Committee of the Victorian State Parliament which is in Melbourne, Australia. That committee is a committee that scrutinizes all the Acts and regulations of the Parliament of Victoria for possible breaches of human rights and inappropriate delegations of powers.

They are proposing to do a rather extensive visit to North America, in particular to Canada, and they have sent a sort of informal request that they may visit us here in Regina. They have asked for names of contact people and of committees here that do similar type of work. In our case it is this committee.

They are proposing to come to Canada some time in May and June of this year. So we're just bringing it to the attention of the members that this committee or representatives of this committee may be coming here later in the year. And if the committee wishes to hold a meeting and conduct regular business while they're here, or just informally meet them, that will be up to the committee to decide.

But if we do hear anything further about this we will of course send it out to the members of the committee.

Mr. Whitmore: — I guess the procedural question is that then one reciprocates such visits when a committee comes to visit you in North America?

Ms. Woods: — That would be up to the committee to decide, whether they wanted to send someone to Australia. I can say that Australia in general is very advanced in regards to reviewing delegated legislation; so there could be a lot to learn from visiting their parliaments, or even any of their conferences that they have with regard to this. But that would be up to the committee to decide and get the funding approved . . . (inaudible interjection) . . . I won't object to that.

Mr. Whitmore: — Do you want a recommendation from the committee on this or should we just wait for further information, whether they're attending or not in terms of their official agenda.

Ms. Woods: — I think it may be best just to wait to see what response we get back. They did ask some other procedural-type questions which we did answer and send back to them. So we are expecting to hear back if they are in fact coming or if they're simply going to other jurisdictions or not.

The Chair: — Okay. So that's just for information at this point in time. And once we hear more we will certainly convene two years from now. It's the first meeting in two years.

I guess that concludes item no. 7. We have item no. 8. And I believe this is also Mr. Cosman's responsibility, so he's going to give us a report.

Mr. Cosman: — Thank you, Mr. Chairman. This may turn out to be a little bit of a joint report because what I'm going to talk on for a brief moment leads into something Mr. Schmidt will

refer to.

On your behalf, before you were struck as a committee, I attended a conference in Ottawa in November of 1995 on regulations and by-laws in the real world. The Clerk of the committee and I thought at that time that since there was no committee formed, that it might be valuable for myself, at least, as counsel to the committee or to a future committee, to attend this conference. And I did.

Now that was almost two years ago. What I have is some comment on my impressions, as I now recall them, on the conference and some issues that might be relevant to you. And I also have a copy of the agenda of that conference and what I might point out to you is that I have materials that relate to agenda items. Should you have an area of interest that you find from the agenda and something you want to get in depth on, come to my office and I have the materials and I can photocopy them for you and discuss them to some degree. I think that would be a better forum than my going through item by item, question by question, here with you now.

But you can just see some of the things that were touched on from the agenda that's been circulated to you. And I just want to give you the comment on my impression. There was a very lively, almost a debate, on the issue of whether government business is unnecessarily trammelled, unnecessarily disrupted by the work of a committee such as ours.

In other words, this committee — its counterpart in Ottawa — is seen by some government departments and some of their official representatives that were at this conference as a thorn in the side: we want to get on with government; why do we have to answer these questions; why do we have to pay attention to this committee; this committee is a roadblock to our future plans because we can't get by the issue that has been presented to us by the committee, and so on.

So there was a bitter feeling on the part of some departmental representatives who were at the conference and they voiced that on the record. I'm not so certain that it's in the materials, but certainly for those who were present they saw that reaction.

On the other hand, the counsel for the committee in Ottawa felt that they weren't quite the thorn in the side. They were arguing for the point that they were improving government to a degree by having them question certain issues and so on.

My colleague, Mr. Schmidt, who did some work for us last year on our regulations, actually is eminently qualified to speak on some of the process in Ottawa by a committee similar to ours. It's the Joint Committee of the Senate and House of Commons on Regulations, I believe. He has a unique approach to what might be a resolution of the problems in Ottawa — I'm not so sure that we have the problems here as yet — and that is the problem of interfering with the government's work and getting on with the government's work.

So that's all I have to say about the conference I attended, but if we may, Mr. Chairman, I'd like Mr. Schmidt to present his picture on things from Ottawa. You worked, what, for two, three years as counsel to the committee in Ottawa; so, Ed, please.

Mr. Schmidt: — I don't know that I quite expected to have to say something more generally about the work of the committee in Ottawa. I think committees like this can learn from each other in the process, but if you keep in mind the basic task of the committee, which is to ensure that those people who are delegates of the legislature do what the legislature authorized them to do and not do something else, then it becomes obvious that in doing that task, all the legislature is doing, all the parliament is doing or this legislature is doing, is saying this is the law that has been made; live by it. Don't do something other than what we allowed you to do.

So I find it hard to understand a comment that sort of says, well you ought not to be doing this. Any effective manager eventually calls subordinates to account and says okay, this is the authority you were given, what have you done with it? Have you stayed within the authority we gave you? Have you exceeded it? It's part of the whole role of being in charge. If the legislature is going to give authority to others to make regulations, then it seems to make a lot of sense to me for the legislature also to say okay, so from time to time in a minor way — we don't want to do your work for you — but we are going to check up on what you've done on our behalf.

There was one other thing that we tried this summer that might be worth just discussing or thinking about as this committee to see whether they'd be interested in doing something like that. I checked with Bob first whether it was worth doing one sample, one test of this, and he said well try it, and then the committee can evaluate whether it's something they would like to do. And basically it's only a minor procedural difference from what has been happening here today.

The federal committee after a while . . . Originally they did their function the way you do yours as well, where the work was done by counsel, brought to the committee, and then the committee decided yes, pursue it or don't pursue it. And after a while, the committee federally said we think we're not being as efficient as we might be. What we'd like you to do as counsel is write directly to the department with your concerns, get a response from the department to those concerns, and bring us both. Bring us your concern and the department's answer and then we can perhaps deal with it at once. We don't have to wonder what their response is — we know; it's before us.

So just as a sample, as a trial, to see whether this committee might like or not like that procedure, Mr. Cosman suggested that I do this on one file. So we chose a fairly innocuous question. It was a regulation that set rents. And it was a 1995 regulation setting rent for 1994, and so the letter going out to the department simply said, it's unusual. The authority under which this regulation is made is set out there in that indented paragraph. The authority was the authority to make regulations prescribing the rent to be charged for any Crown land that is leased.

Now it's not absolutely clear, but it does sort of suggest, hey, we're talking about something that you've going to charge in the future. We're not talking about in 1995, saying what we're going to charge you for land you've already used. And simply as a matter of practicality, normally people want to know, hey,

what's this going to cost me before they agree to rent something for a year. So we simply raised that issue with them in the letter.

They replied, saying yes, there are some administrative processes that they have in place that normally take until March or April of a year before they know what it is to be. And they start charging around April or May. And this time it just took them an awful lot longer than they intended to get the regulation made.

I don't know that they say it in so many words, but it seems to be implied that they don't intend to make their regulations setting rentals in the future as late as this one for '95 was.

So I'm not sure the particular issue was . . . It's not an earth-shaking issue or anything like that. The purpose of it was mainly for you to consider whether this would be a useful process to follow in the future. That was why we did it, to put the question before you — could it be useful to this committee if counsel were to write the departments, get the departments' response, and present both to you at the same time in your deliberations?

The Chair: — Okay, do you have any questions for the presenter?

Mr. Heppner: — Some of these, I think, are just errors and oversights and I think when they would see that they'd say, well fine, we'll just make that correction. It would just take . . . it seems we only have . . . you know meet once every two years It would mean that some of those things would get cleared up a long time before this. And the ones where this committee that looks at it and says well, you know, we're not quite satisfied with that, well then, you know, we can direct whatever we need to. It would probably have taken care of half the things we did today, I would hope.

Mr. Schmidt: — You're saying with the committee not meeting that often, some of these things might have already been looked after long before the committee got to meet. Yes, that may well be.

Mr. Whitmore: — I accept the premiss of the question, particularly from the efficiency standpoint of doing it sooner to deal with some of the cleaning-up of that. The other side of the argument though too at the same time is the decision-making process of what . . . where you make the . . . who makes the decision to act on a particular regulation. Where here, depending on the regulation that comes back here, and I guess there's some sober second thought, one could say, in terms of presenting it to the committee and then discussing it, where it is a decision first by the Clerk or legal counsel to act on that and then it comes here.

I'm just saying that is a possibility, but at the same time it does appeal to me to move, in light of what we dealt with today, is to move a little more quickly in terms of some of those regulations, particularly in the area of by-law, where you get professional by-law regulations that could be acted upon maybe much, much more quickly to respond.

Mr. Schmidt: — If I could respond briefly to that, Mr.

Chairman. In the procedure like this, it has to be clear when the letter goes out that it's the letter of counsel and they're raising concerns. The committee has not ruled on it. It's simply the raising of a concern that counsel has identified; they're inviting a response. And it's not that the committee has made any determination with respect to that. I think that is an important element in that process.

The Chair: — More so I guess, this situation is to try and tidy up some of the work before it comes here. That's really what the whole intent is.

Mr. Schmidt: — I think that is one benefit. The other potential benefit is that you have both sides before you, instead of waiting. So that's also efficiency in a sense, in that instead of now waiting an issue that comes before you, you say yes, pursue it, it will take two meetings before you have a response which you can then evaluate together with the concern and say, is this worth pursuing or not.

The Chair: — So in essence what you're asking the committee today is not really contrary to what our role is and not really contrary to what you guys do. It's just an understanding that you are going to be at both sides of the situation in front of us on your own, and with our permission and our blessing to have it come to us in a more efficient form. Is that the way . . .

Mr. Schmidt: — Yes. It's a procedure that was found useful by the federal committee, and I simply — we — thought it might be something that this committee would want to consider whether it might also be useful to you. I don't know that it's . . . I don't think it's our role to say yes, you should do this or shouldn't do it. It's a matter of, do you think this is a useful idea to you.

Mr. Cosman: — If I might too, Mr. Chairman, basically I could almost make that value judgement from my office as we did with respect to this regulation. We just saw an issue, what we felt was a relatively minor issue and wrote the letter. And I might point out too, that in terms of drafting style and drafting errors that I sometimes observe, a previous committee had instructed me, as essentially I'm getting the sense from you in the same way, not to bring those issues or non-issues to the committee. Simply deal with the draftsman. Call Mr. Brown and suggest that maybe there's a bad reference or a wrong number or something in his regulation.

And by and large I've been doing that. So I'm doing that before I bring something to the committee — already dealing with the department to a degree, the Department of Justice.

The thing to be said for bringing a regulation or an issue on a regulation to the committee rather than my dealing with it first, is first of all, I'd almost be guilty of my own criticism of sub-delegation. I'm doing the committee's work in a sense, prejudging to a degree. So that would be sort of the flip side of it.

But also in support of the current method of doing things, the Department of Justice finds some benefit. When they are asked to draft regulations that far exceed the powers that are given in the Act, they are able to point out to the departmental official,

there's a higher authority that's going to look at this regulation somewhere down the road sometime, and they're going to question the abuse of the regulation-making power. And that's going to come back right to your desk to answer to.

And so they find it a very powerful drafting tool, if you will, to be able to hold out to their departmental people the fact this committee exists and that it does look at these regulations and make considerations with respect to their validity and so on. If we get to a point where it's only counsel reviewing most of the regulations and ferreting out, you know, the little issues and so on, there may be some issues that are important to you.

There was one here today, for example, that I thought was easy to recommend that it was closed — I believe Ms. Draude raised an issue on the seeing the new form. Let's have proof that it's taken place; it has been reprinted. That's one of the benefits of coming to the committee.

But you won't get too many — switch back to the little drafting errors and things like that — you won't get too many of them from me unless there was a big issue with the regulation and then sometimes I like to dump all over the regulation if there is a big issue, big problem, and it had a lot of little problems — poor drafting, poor reference, whatever — then I'll raise them all just to hammer that regulation.

The Chair: — Thank you.

Mr. Whitmore: — I guess just looking at where this committee goes from here too, in terms of when will the review of the '96 regulations be done, that we would be able to look at that as a committee rather than waiting two years in terms of dealing with this, is to deal with things in a much more timely basis too would help in terms of what we're dealing with today.

Mr. Cosman: — Yes. Short answer is sometime during the 1996 session, sometime before June, May/June, 1997, before this spring is out. And the two years that we have been in abeyance largely resulted from the dissolution of the legislature and the committee was not a standing committee. It didn't survive the dissolution; none of the committees survived the dissolution in fact. But it wasn't struck until the session of 1996, the early session of 1996, so we had a whole year, it seems, to have passed already at that point before the committee was even struck.

The Chair: — We should undertake as chairmen to be diligent in our duty to call meetings when the work is there.

Mr. Whitmore: — Particularly when session is on, you know, noting that July and August we'll also be available too.

The Chair: — Okay.

Mr. Ward: — Yes. Just on this issue that you brought here. Like I much prefer this way. I'll leave it up to your discretion as to whether you think there is an issue or not in the regulation. And if you think there is, then I would like to get the response from the department before it comes here. Then I think that would shorten it up also a lot. Like you say, it would make it more efficient.

That leaves it at your discretion to pick what's wrong with the regulation, but brings it here to determine whether it really is something that we want to deal with or not; and we have the information already then and we don't have to wait for the information to come back and say, well this was the answer I got, two years down the road, you know.

Mr. Cosman: — I think it would make my work with respect to follow-ups, and follow-ups upon follow-ups, a whole lot easier to simply have gone to the department first. So it's a mixed bag of how we want to go.

For 1996 regulations, I'm not going to have enough time between this meeting and the next meeting of two months from now to have much response back from, so you probably wouldn't see . . . if we were to gradually go over to that method, you wouldn't see much of a change.

The other thing I might say in defence of the detail and perhaps confusion that we had here this morning and hence it seemed to be a lengthy process, it's . . . We're all . . . well I'm not new at the situation, but you're relatively new in some cases and there were a lot of things that we tried to do to brief the members. In terms of actually . . . when I was making a presentation, I'd actually say, well that's gazetted in a *Saskatchewan Gazette* and so on. I did a few little things, threw them in there, and it became unduly long. Plus the chairperson, in good humour, asked me not to follow my script, and it was worse.

The Chair: — Ed, did you have a comment before we go to Maynard?

Mr. Schmidt: — I just wanted to clarify one thing in response to Mr. Cosman's earlier comment. I don't see the procedure that you were considering here as in any way removing anything from the committee's review. Any time a letter goes out on an instrument, this committee could say, regardless of whether counsel thinks this response is satisfactory or not, all of these things should come to this committee for consideration.

So I don't see the procedure, at least, as necessarily taking anything away from the committee's review. It's simply a different process before it gets to committee, not intended to take the committee out of the . . .

A Member: — Loop.

Mr. Schmidt: — . . . job.

Mr. Sonntag: — Well I think it's not a bad idea at all, providing some additional information. It gives us a bit more material to make some good judgements on.

But I would be maybe more interested in whether or not — and I saw some alluding to that this morning — whether or not we would get this information prior to the meeting so we can make some good, informed decisions in advance of the meetings. And we probably will, I see.

Ms. Woods: — Normally that's what would have happened. But in this case, because the meeting was called at such relatively short notice, we didn't feel that if we sent the reports

out, you would receive them in your constituency offices or wherever you might be and then have time to look at them before you came here. So we just made that call, that we would provide them to you this morning so that we didn't lose them in the mail somewhere.

The Chair: — Yes, you could also blame the chairman for that, Maynard.

Mr. Sonntag: — I'd never do that. I didn't know who the chairman was at that time.

The Chair: — Well I think I was appointed by the opposition and the opposition chairs this thing, so it was my call and I've just been . . . I take the responsibility of getting that package to you.

Mr. Sonntag: — That's fine.

The Chair: — All right, if that concludes our presentation, nothing else on the agenda, I would sincerely like to thank Mr. Cosman for all his time, and his assistant — I shouldn't say assistant — his partner, Edgar. Schmidt and Cosman. Thank you for your time. And also to Meta and our record keeper and Donelda. And once again, thank you very much.

And as chairman, the meeting's over. I adjourn the meeting.

The committee adjourned at 2:20 p.m.

**SPECIAL COMMITTEE ON REGULATIONS
1997**

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