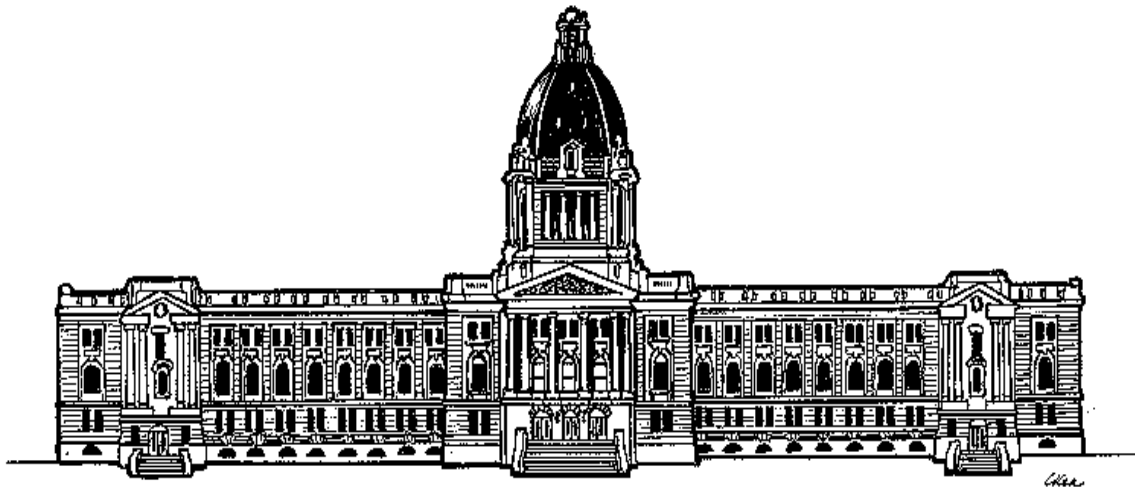




Special Committee on Regulations

Hansard Verbatim Report

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Legislative Assembly of Saskatchewan

Twenty-third Legislature

SPECIAL COMMITTEE ON REGULATIONS
1998

Don Toth, Chair
Moosomin

Larry Ward, Vice-Chair
Estevan

Buckley Belanger
Athabasca

Dan D'Autremont
Cannington

Walter Jess
Redberry Lake

Mark Koenker
Saskatoon Sutherland

Sharon Murrell
Battleford-Cut Knife

Maynard Sonntag
Meadow Lake

Grant Whitmore
Saskatoon Northwest

The Chair: — Ladies and gentlemen, if I could have your attention. First of all, I'd like to begin by thanking everyone for taking the time — as far as committee members — to come and join us this morning. And I understand most of you will be able to join us throughout the day for the luncheon hosted by Mr. Speaker, and then for dinner this evening. Give us the opportunity to certainly show the delegation from Australia what it's like to have the good Saskatchewan hospitality.

And we want to welcome our delegation from Australia. We're pleased they've taken the time to come to Saskatchewan and observe how the Regulations Committee works in Saskatchewan. I'm sure they will, as Mr. Kowalsky and I did when we had the opportunity — back in I believe, '93 I believe it was — to attend a conference in Australia. We certainly found and were quite enlightened by the way the Australians certainly viewed Regulations and their all-party committee work involvement in Regulations.

So we're pleased that they've come to Saskatchewan. We can proudly say that we're one of the more active Regulations Committees in Canada. The delegation will have the privilege of observing how the federal Regulations Committee certainly functions I believe later this week. And so we say welcome to each one of the delegates.

And maybe for . . . We've probably had the opportunity of introducing ourselves but we'll go around the table just so everyone just familiarizes themselves with who we are and you can give your name if you will, and for those who are elected members, the constituency you represent, and we'll allow the Australian delegation to pass that information as well.

I'm going to my start, to my left, and I'll start with our Clerk — Gwenn Ronyk. Well I've said it and I'll just have her . . . we'll go around the table here. Those of us who had the privilege of enjoying supper last night were treated to some good hospitality at Gwenn's house, and we want to thank her for that and certainly opening up her home and in that way giving us an opportunity to make our Australian delegation just feel that much more welcome to our city. So Gwenn Ronyk is the Clerk.

Ms. Ronyk: — Thank you. As you've all met me and my name is Gwenn Ronyk, but I just want to mention that many years ago I was Clerk to this committee so I'll be watching.

Mr. Whitmore: — Grant Whitmore, MLA (Member of the Legislative Assembly) Saskatoon Northwest.

Mr. Ward: — Larry Ward. I'm the MLA for Estevan in the southern part of the province.

Ms. Coleman: — My name is Tanya Coleman and I'm the legal adviser to the Subordinate Legislation Subcommittee of the Scrutiny of Acts and Regulations Committee.

Mr. Thompson: — Murray Thompson from Victoria, Australia, 500 miles south of the 2000 Olympic Games.

Ms. Luckins: — Maree Luckins. I'm an Upper House Member from Victoria for Waverley province which is a suburban set.

Mr. Cameron: — Bob Cameron, a Member of the Legislative Assembly, the Lower House, of the Victorian parliament. I'm the member for Bendigo West which is two hours to the north of Melbourne.

Mr. Jess: — Walter Jess, MLA, Redberry Lake, the heart of the old north-west as you saw from the banquet, and I farm up there in my spare time.

Mr. Koenker: — Mark Koenker from Saskatoon. I have a constituency that is mixed suburbia with old railroad town, and it includes the University of Saskatchewan in the constituency.

Mr. Carli: — I'm Carlo Carli. I represent the constituency called Coburg in a suburban city of Melbourne. It's an area with a lot . . . I suppose it's historically an all working-class community. It's . . . (inaudible) . . . since then it's picked up a lot of people from the University of Melbourne. It's got a particularly large proportion of people who have migrated to Australia particularly from non-English speaking countries and it's also a very safe Labour seat.

Mr. D'Autremont: — Dan D'Autremont. I'm the MLA for Cannington in the very south-east corner of Saskatchewan, about three hours south-east of here. I'm right on the U.S. (United States)-Manitoba border, and I represent a very safe Saskatchewan Party seat, which for your politics would probably be National Party — that flavour.

And I'd just like to take this opportunity, since it's the first time I've met with you, to welcome you to Saskatchewan and Canada.

Ms. Gartner: — Allison Gartner. I'm secretary to the Legislative Counsel and Law Clerk, Bob Cosman.

Ms. Woods: — Meta, or Margaret Woods. I'm the Clerk to this committee, and I think I've met all of you either yesterday or in the past couple of years.

Mr. Toth: — And Don Toth, the newly-elected Chair actually, of the Special Committee on Regulations. And I represent the constituency of Moosomin which begins basically about 40 minutes east of Regina but then goes right through to the Manitoba border. I actually live about two hours outside of the city, south-east of the city.

Mr. Cosman: — And I'm Bob Cosman. I'm the Legislative Counsel and Law Clerk to the Assembly and counsel to the committee.

The Chair: — Well thank you very much and as I say again, a special welcome. We trust that throughout the day, for our Australian visitors, you'll get a better understanding of how the Special Committee on Regulations works in the province of Saskatchewan and get a bit of a picturesque view of our Legislative Assembly and of our capital. We trust this will be an enjoyable stopover for you and we certainly feel honoured to be able to host each and every one of you.

At this time I'm going to invite Margaret Woods to give us a bit of a history and a background on the Saskatchewan committee.

Ms. Woods: — Thank you. Earlier this morning Allison has passed out to you a number of documents and I'm going to be speaking with regard to two of them. The first is the paper entitled "The Review of Delegated Legislation in Saskatchewan." And that's just a brief . . . It's a three-page document; it's a brief overview of the history of this committee, how it came about in Saskatchewan.

And the second one is a single page, which is the terms of reference for this committee.

I think I'll say at the outset that we're going to try to finish this meeting about 11 o'clock so that we'll have a bit more time to give you a tour of the building. I think in the original agenda we had half an hour scheduled for both the photograph and a tour of the building and we've been told by our experts in Visitor Services that you may want a bit more time to look around the building than just, you know, 10 to 15 minutes.

So what I'm going to do is just give a brief highlight of these two documents that I referred to and then you can read them at your leisure, and if you have any questions please feel free to ask.

The Saskatchewan Regulations Committee was first set up in 1963 and it followed the passage of a Bill called The Regulations Act which was passed in 1962. That Act was a result of a movement in government to address some of the concerns that were coming from the citizens and within government about the inconsistencies in the drafting of regulations and in the manner in which they were published.

A committee was set up and it made three recommendations and among those were a recommendation for the central filing and publication of the regulations. It also suggested that the regulations be reviewed by a legislative committee and finally recommended a mandate for the legislature to require that regulations be amended or revoked if they were found to be stale-dated in a sense or not really relevant to the current times.

As a result of The Regulations Act being passed, this committee was set up as I said in 1963. All of the regulations are centrally filed now and the Clerk of the Assembly does receive a copy of them and they are then referred to this committee for review.

The terms of reference of this committee, as set out in the one-page document, haven't changed substantially since they were first set out in 1963. The big exception is a change that was made in 1966 and at that time the responsibility to scrutinize a regulations and bylaws of professional associations was transferred from another legislative committee to this committee. And one of the main reasons for that was that this committee had legal counsel attached to it and it was felt that having a legal adviser available to assist the committee in the review of the bylaws was beneficial. So that change was made.

Currently the legal counsel that is attached to this committee is the Legislative Counsel and Law Clerk in the form of Bob Cosman. Prior to his office assuming that role the legal adviser was a private practitioner, a lawyer in the local bar that was hired on contract to fulfil the duties that the committee required of a legal counsel. But right now Bob fulfils that role and it seems to have worked out quite well in the years that we

followed this.

This committee is referred to as a special committee of the Legislative Assembly as opposed to a standing committee. The majority of the committees that do sit at this Assembly are standing committees. At the time this committee was set up in 1963, standing committees were not permitted to sit between sessions of the Assembly and the members, if they did attend meetings outside of the legislative session, were not entitled to receive remuneration for attending or for their expenses.

Special committees at that time were given the authority to provide for both of those, both the remuneration and expenses for the members attending. So that was a reason why it was set up as a special committee as opposed to a standing committee.

Since that time, standing committees do have the ability to pay per diems and allow members to claim expenses for attending meetings. So the original rationale for creating this as a special committee isn't as relevant nowadays. But the Assembly hasn't seen fit to change the status of the committee. For the most part it does operate like any of the other standing committees.

The committee membership is made up of nine members. They are currently six members from the government side of the House, three members from the opposition. And the three opposition members are further divided between two members from the official opposition and one member from the third party. And those numbers reflect the distribution of seats in the Assembly.

This committee is one of, I think it's three committees, of the Assembly that has an opposition Chair. The other main committee that does have an opposition Chair is the Public Accounts Committee. And both that committee and this committee are viewed as scrutiny committees. And that's why the opposition does provide the Chair to this committee.

The Vice-Chair is from the government side, and currently it's Mr. Ward.

I think I'll leave it at this point and turn it over to Bob and he's going to explain in a bit more detail his role and how the committee goes about reviewing the regulations and bylaws.

Mr. Cosman: — With your permission, Mr. Chair. Thank you, Margaret.

Since you have distributed to you the terms of reference of the committee, I won't read them into the record or anything of that nature. What I thought I might do is just tell you what my practical approach to reviewing regulations and bylaws are.

Under The Regulations Act 1989 the government of the day is required to file every regulation with the Clerk of the Assembly, and in turn those regulations are referred to me for review according to the terms of reference of the committee and my own check-list. And in fact we could turn to that. I've prepared a document, which has been distributed, to you, called the role of the Legislative Counsel and Law Clerk.

And it's essentially a list that helps me in keeping of kind of a uniform approach to the review of regulations. Again I won't

read everything that's there, but I do essentially pay attention to the empowering statute and read the regulation-making power in the Act that allows the Lieutenant Governor in Council to make the regulation. And I compare that quite closely to the regulation to make sure that the regulation is within the terms of reference of the authoritative empowering statute.

And again I'm reviewing to make sure that if the regulation was to be made with the minister's approval or by the minister with the approval of the Lieutenant Governor in Council that in fact those things have taken place.

Does the regulation purport to exclude challenge in the courts? Often we'll have tribunals set up by the statute and the regulations will set out the procedure before those tribunals. And quite often you'll see "and the decision of the tribunal shall be final". And it's probably an attempt to stop the appeal process there cold in its tracks — that's it, the decision is final, no further appeal shall lie to the courts. But we find that traditionally the courts will entertain questions of jurisdiction of the tribunal in any event and often will review those final decisions in the process.

Does the regulation purport to be retroactive? For example we don't allow retroactivity unless the statute says the regulations may be made retroactively and often it's to a specific date; so I'll be checking to make sure that it's not back beyond that date and so on.

I'll look at the forms that are attached to the regulation and often you have to read the form in accordance with the regulation and also in accordance with the Act. Once in a while something is slipped into a form that someone is required to fill out that, just in the enthusiasm of the person drafting or creating the form, they've asked for a little too much information that . . . or put another threshold that isn't required by the Act or indeed the regulation.

I also look at our Canadian Charter of Rights and Freedoms because this part of our constitution pervades all of our legislation and regulations, even though it's not a provincially-mandated charter. I do, as well, review our Saskatchewan Human Rights Code that sets out certain fundamental human rights.

I also review professional association bylaws that are tabled in the Assembly and Meta had mentioned the history of that process and so on; I'm basically looking there for public policy issues that might be offensive to what we consider the public interest. But what I'm finding generally is often these professional associations have disciplinary committees set up and disciplinary procedures set out. And often they have appeals from their disciplinary committees back to the committee, the same committee, and so on. And so I'll report that perhaps the appeal should be to a different body or to a different level, things like this. So basically that's the criteria that I measure the regulation or bylaw against.

In the delivery of this information to the committee, the chairman will convene a meeting of the committee. I will present a report of the regulations that I've reviewed to a certain date, and the bylaws. I'll raise issues that I believe would be of interest to the committee and the committee will deliberate, ask

questions of me, this sort of thing, to determine whether or not they think it is a valid issue to be considered by the committee and to get further information from the departmental officials or from the minister responsible for the Act or regulation that is under review.

Often the committee will say yes, we agree with our counsel. This is an issue of concern; we would like further information. We'd like to draw it to the attention of the minister. And I'll be directed to correspond with the minister or his officials, and sometimes the legal advisor in the department, to get further clarification, to raise the issue, have them address it, and perhaps satisfactorily explain what the situation is by letter back to the committee. Which I will in turn, at a subsequent meeting, report to the committee that we've received the response of the minister with respect to our issue that we raised by my correspondence.

And the committee will consider whether or not that's a sufficient answer, a satisfactory answer, or whether there should be further correspondence and a further encouragement to the ministry to amend their regulation or to remove the offensive provision or to re-write their form, what have you, whatever the offensive provision is.

Now sometimes these issues carry over several years. There's correspondence back and forth, ministers change. There's often a commitment that we're going to be doing a comprehensive review of our Act and regulations and we will address this issue at that time. But government, being what it is, sometimes that takes two or three or four years before there's a comprehensive review of their Act and regulations. And so some of these issues carry on for a number of years.

We'll be getting an example of that this morning because the report that I'm going to give in the time frame that we have available is essentially the review of the ministry's correspondence and how they've addressed several issues that have been raised to their attention over the past year or so.

And the committee will consider and advise me as to whether or not they feel that is a sufficient response and that the file on that issue can be closed. Or that we should continue to seek amendment to the regulation or indeed even the Act under which the regulation is made — change of procedure, change of form, what have you, within the department.

That essentially describes my practical approach to the review of regulations and bylaws. Thank you.

The Chair: — Thank you very much, Mr. Cosman and Ms. Woods. For the sake of the group from Australia, I think it would be appropriate if we just gave them a moment. You may have a question that has just come to your mind as Ms. Woods and Mr. Cosman were making their presentation.

And before we move into some debate on regards to the regulation follow-up. As far as the actual workings of the committee, I would certainly like to present the opportunity for any questions that you may have of our support staff here this morning in regards as to how the committee actually functions in this province.

So if there's someone has a question you'd like to pose, certainly feel free.

Mr. Thompson: — Thank you. Just one comment that I'd like to raise and that would be in reference to your review criteria that a regulation may be excluded from challenging the courts. Do you have in mind any current examples where that has been a basis of review and what the sequence of events was once you drew that to the attention of the responsible minister?

Mr. Cosman: — I don't have a particular one in mind right now, but I know this has been an issue in past reviews. And I'd be pleased to invite you to my office if we have a few moments and we can go through and perhaps pick out some specific material that would be helpful to you. I think to just say something orally here now, I couldn't add much.

The Chair: — Thank you, Mr. Thompson.

Ms. Luckins: — Mr. Chairman, I have a question regarding the review of professional association bylaws which is something that we . . . our processes seem quite different.

With the setting up of those professionals associations, can they be set up separately from legislation? Can a group like the certified practising accountants be a professional association without being created by an Act for example?

Mr. Cosman: — They can be, to a degree, under general legislation, non-profit corporations Acts, things like this. But generally they're created under their own specific statute and that statute often will require that they file their bylaws with the Assembly.

Ms. Luckins: — And that includes the setting of their fees, for membership and registration and so forth and so on.

Mr. Cosman: — Often their bylaws include exactly that. In fact we will see later this morning, there was an example of a professional association that was charging \$250 annual fee and the statute only allowed a maximum of \$25 per annum. And they had been doing this for several years.

So we draw those things to their attention. And in fact in this case there was new legislation brought in and the legislation didn't put a cap on the professional fees. It simply said, whatever the association decides by bylaw that the membership annual fee will be, that's what it'll be.

Ms. Luckins: — And the membership's voluntary in all these organizations.

Mr. Cosman: — I would take it it's voluntary, but often if you're not a member of the association, you're prevented by the legislation from directly carrying on the practice of whatever it is that that statute or regulation governs.

Ms. Luckins: — And one final question on the certainty of fees. In each statute, you'd have the fees set for that particular profession, would you?

Mr. Cosman: — The fees?

Ms. Luckins: — Maximums, yes.

Mr. Cosman: — Not necessarily. I think probably more and more, as we have modern legislation, we are not putting caps on fees because . . . inflation being what it is. And these are self-governing bodies by and large, and they know whether their membership can sustain membership fees or insurance fees, what have you, professional malpractice fees, that sort of thing. They know what the industry will sustain and necessitate.

The Chair: — Thank you very much, Ms. Luckins. Is there anyone else with a question. Yes, Mr. Carli, I believe.

Mr. Carli: — That's right. I was just wondering, are there time limits on these regulations and do you have sunset provisions in regulations?

Mr. Cosman: — Some regulations, very few, have sunset clauses. Mr. Brown, in his presentation later today, plans to address that issue for you specifically. But this committee is not necessarily too concerned with sunset clauses in that regard. It's just not an issue at this point.

The Chair: — Thank you very much. Mr. Thompson?

Mr. Thompson: — One question — it may be something that's addressed later on as well — but I was just wondering, what is the volume of regulations that's coming through the bureaucracy at this stage? And in Victoria, just by way of a general background comment, there has been a concerted effort on the part of government to reduce the regulatory/statutory burden upon industry. And the numbers have been . . . new regulations coming through now have been reduced from some 450 down to 160 or so, the last time I checked the annual rate of regulations being introduced.

Mr. Cosman: — Yes, Mr. Thompson, actually I probably can give some better detail on that. And these are estimates that I'm giving. I believe again we're going to have that addressed by the regulatory reform initiative that the speaker, whom you will hear tomorrow morning . . . there should be some facts and figures there. But my impression would be that we have somewhere between 200, 250 amending regulations, and some new regulations included in that figure, each year published in our *Saskatchewan Gazette*.

The reduction in volume will not be something that this committee will address. There is a regulatory reform initiative taking place in the executive government to review the amount of regulation they have. And that initiative will result hopefully in the reduction of regulations.

The Chair: — Thank you, Mr. Thompson. Mr. D'Autremont has a comment.

Mr. D'Autremont: — On that particular issue, in theory government is working towards reducing regulation but so far it's pretty well only in theory.

The Chair: — Do you have any further questions, or we'll move on to some of the business of . . . the actual business of this committee.

Ms. Coleman: — I have a minor practical question. Would members have access to the material that is to be studied at a meeting prior to the meeting, or do they come to the meeting and see it for the first time?

Mr. Cosman: — The answer is yes to both.

Ms. Coleman: — I see. Okay.

Mr. Cosman: — Actually, if the members were diligent in reading their *Saskatchewan Gazette*, they might see offensive regulations — offensive in the political term as well as in the terms of reference of the committee perhaps.

Theoretically, I review the regulations and should have a report ready, as we did this time, about a week before the committee met. And that is good. However, for various reasons and human failings, I don't always get a committee report out. And Allison could well verify that sometimes the paper is still hot from a photocopier when we convene the meeting down here. And often members are acquainted with the issue for the first time here at the meeting.

I notice one of the members this morning who shall remain unidentified asked, should I have read this material?

A Member: — I was just kidding.

Mr. Cosman: — And he has confirmed that he actually did. This is good. I hope to establish that pattern more regularly in the future so that committee members have a chance to review material before they come into the meeting and it would be much more worthwhile, the discussion that we would have on things.

The question that arises from time to time from certain members, not necessarily just members of the Regulations Committee but members of the Assembly generally, is, can we review regulations, raise issues that are political in nature? Because maybe there's a no-fault insurance scheme that's been detailed in the regulations and politically there may be people in favour or against that particular policy.

And this committee . . . the terms of reference of this committee really don't address . . . if you have a political issue, this is not the committee where you raise that. You raise that issue as a Bill is presented in the Assembly that puts out the framework of the no-fault insurance scheme and the regulation-making powers contained in that Act. And that is where the member who opposes the policy should make their statements and their concerns felt.

But nonetheless I suspect that through the evolution of the committee that there may be a time in the future when a diligent member might have a specific issue that they wish to raise that I haven't raised according to my review, yet they may see some issue within our terms of reference that they'd like to bring . . .

The Chair: — Well thank you very much, Mr. Cosman. I will have to admit that my involvement, and as well I've just recently been re-appointed to this committee and then elected Chair, but we do rely quite heavily on our legal counsel, and when it comes to regulations review in the province of

Saskatchewan.

So certainly it's . . . we're hoping that legal counsel has followed up. But as Mr. Cosman has indicated — on many occasions in the past when I've been on committee — as you begin to review some of the suggestions and Mr. Cosman's report, the political aspect of some of the issues that you may not have really thought a lot of originally, they come back to your . . . they're drawn to your attention.

I think as legislators it's . . . So many times we get engrossed in legislation, and while the debate takes place in the Assembly after the fact, you kind of forget two or three years later when you finally start reviewing, it's a comment that spurs your attention back to it . . . took place where you originally said, this is what I thought would happen; why didn't the minister listen? We try to pass that on, but that's where that takes place.

Mr. Jess: — I just wondered, with the way Mr. Cosman started out with his answer, if he had ever entertained the thought of having a political career?

Mr. Cosman: — A legal career is sufficient for those purposes, thank you.

Mr. D'Autremont: — Thank you. One of the concerns that I've had as an opposition member, and perhaps Mark could comment as a past opposition member also, is that you don't see the regulation until after the Act is passed. And so you can't judge the actual working of the legislation. You can judge it with difficulty, because you don't know exactly what the government's thoughts are and how they're actually going to practically implement the program.

So I would like to see regulations come forward relatively the same time as the Act. It doesn't happen, and it has never happened in Saskatchewan. So it's not a knock against any particular party in government, it's just never happened.

But it certainly is a difficulty when you're trying to understand how an Act is going to impact on the citizens when the regulations carry more of the action than the Act does itself. And that's something I'd like to see changed at some point in time. But so far we've never managed to get beyond that point with government of any stripe, to allow the legislature to have more of a hands-on operation.

Mr. Whitmore: — Yes, I think Mr. D'Autremont's raised a very good suggestion there, and a problem that exists in our legislation is the question of regulation and trying to deal with it at the same time as the Act. Because you don't know the common practice by which that Act's going to be enforced with the power of the regulation.

And I think, as we'll see in some of the things that will be reviewed today, there's a push to change regulation not just to meet provincial standards but national standards and sometimes international standards that go beyond even the scope of the jurisdiction that exists right now.

But you have a great deal of difficulty as a MLA trying to comprehend all that with the legislation we're trying to deal with. There are many pieces of legislation and until the

individuals experience it and show up in your constituency office, you don't know how it works until those problems creep up. How to fix it, I don't know, but it has to be more timely.

Mr. Koenker: — We have one particular example of regulations that I think are following way too long after the legislation itself. And maybe my colleagues can help me here. I'm thinking of The Forest Act that was passed two years ago, and we still don't have the regulations attendant to this legislation. And this represents legislation that basically hadn't been reviewed and I think changed in 30 years.

So it's a huge change in the legislation. The regulations . . . two years afterwards still aren't issued and they're of particular consequence in terms of public policy and public revenues. But there are good reasons, I think, why the regulations are delayed.

First of all the public is often demanding consultation regarding the regulations. And where in the past it might be relatively easy for government to bring forth the regulations without . . . with a modicum of public consultation, in some of these questions you have to do extensive public consultation. For example with the forest regulations, not only with the forest companies — and there are lots of technical issues in terms of the scaling of logs and especially when you're changing a regime that's been in place for thirty years — but also you've got to consult with the environmentalists and that faction of society, and there are often controversial issues there.

So I think that public consultation, to my mind, becomes a key issue. How do you do things with dispatch and yet ensure that there's adequate public consultation, especially when many of these groups don't have a structure or a bureaucracy to review the regulations and to provide input? In fact many environmental groups, for example, won't have paid staff; it's all done by volunteers.

The second factor that I think assists in the delay of the promulgation of regulations is the fact that with government cutbacks and the diminishing role of government, we see many bureaucracies under siege. And in fact, the Department of Environment and Natural Resources in our government was hit probably harder than any other single department of government in the last five years because of the need to cut back on the size of the civil service.

And so you're introducing new legislation — which is a huge job in itself — and then you have extensive regulations that are attendant to that legislation and you want a bureaucracy to produce them when they've . . . I think there was almost a 10 per cent cut in that department involving something like 120 different positions; not all of them in the forestry branch. But it makes it pretty difficult for those civil servants to do back flips and produce the regulations with dispatch, especially if they have to do the public consultation and the consultation with the industry.

But Dan has . . . I agree with him. There's a huge problem here that needs to be addressed because timeliness is everything in this information age, and government often is not very timely with its responses in these matters.

The Chair: — Thank you very much, Mr. Koenker. I think for

the sake of the committee, first of all, I'd like to thank each one who's participated thus far. I think some of the sessions we will have later on . . . And we're certainly looking forward to the privilege of hearing from our Australian delegation shortly after lunch in regards to regulatory review process in Australia. We look forward to that a little later this afternoon as well. We will have some other presentations by individuals such as Ian Brown, chief legislative Crown counsel, that will . . . he will just create a little more light in regards to the regulatory process in Saskatchewan.

With that in mind, we will move on to some business. And I would suggest we'll call an adjournment at 11:10, and that will facilitate an opportunity to tour our magnificent capitol building as well as have a photograph prior to lunch.

I believe you've been handed a file with a number of regulations up for review, and you will note that pretty well everything we're doing this morning, or what we will attempt to do, is basically follow-up material.

REGULATIONS FOLLOW-UP

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

The Chair: — And the first one on the agenda this morning is regarding the Personal Injury Benefits Regulations, The Automobile Accident Insurance Act, January 13, 1995, and at this time I will invite Mr. Cosman to give his presentation as to the issue involved and ask the committee for a short response after Mr. Cosman's remarks.

Mr. Cosman: — Thank you, Mr. Chairman. The issue with respect to the Personal Injury Benefits Regulations was that the Act authorized the regulations to prescribe an educational institution and define it. And the word prescribe does not authorize, in our opinion, the Lieutenant Governor in Council to delegate to a third party such as SGI, Saskatchewan Government Insurance, the power to determine what is an educational institution. That had to be determined in the regulation, not by this third party.

So I considered that to be a matter of invalid sub-delegation which I raised before the committee, and the committee was disposed to agree with me.

I corresponded with the minister responsible for SGI, and you have in your materials, as attachment A in a separate set of documents, the letter of the minister dated April 24, 1997. You can turn to that, but basically I'll tell you that the minister responsible for SGI agreed with the committee's findings, and I quote:

I agree that in one instance of the definition, the regulations appear to subdelegate to Saskatchewan Government Insurance the task of defining "educational institution", and that given the legislative framework, this is not correct.

My officials will correct the matter.

Now I might just add for the visiting delegation's information, this particular issue was raised to my attention not so much by my meticulous review as it was brought to my attention by a letter from a student who had had an accident and had been injured and had been trying to get some personal injury benefits. And she had an issue and didn't know where to turn. And I ended up reviewing this letter and saying, this is a good point.

So I saw that it was within my terms of reference to raise the matter to the committee, and did so. And here we have even the ministry agreeing that it is an issue. So this one had its source from an unusual aspect.

Well back to my recommendation. Personally I feel — as your counsel, not personally, excuse me — I would undertake on behalf of the committee to monitor the correcting change either to the Act or the regulation. And I don't know how the ministry plans to address the concerns of the committee but I'll monitor changes in the regulation or Act. And my own recommendation would be that I'll report back to the committee but that no further action be taken at this time.

The Chair: — Are there any questions of committee members in regards to personal injury benefits regulations? If not, is the committee prepared to accept the recommendation of legal counsel? That's agreed to.

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

Mr. Cosman: — Thank you. Again just for the benefit of our visiting delegation, the reference to the date January 27, 1995 is the date on which the regulation was first published in our official legal publication, the *Saskatchewan Gazette*. So that for ease of reference, people can go to our public libraries and what have you and find that issue of the *Saskatchewan Gazette* and there they will find the regulation attached.

There were four issues raised with respect to this regulation at our last meeting. And the first issue was incorporation by reference to the International Association of Milk, Food and Environmental Sanitation Standards. And it was thought that this might be an invalid subdelegation of powers because the Act contemplated the regulation would actually set the standards when in fact it's simply the Lieutenant Governor in Council adopting standards that have been established outside of the jurisdiction.

And the committee's concerns essentially were, when and under what circumstances is such open referential incorporation proper or in order. I was directed by the committee to correspond with the minister and the minister responded by correspondence in your materials attached as attachment B, dated April 29, 1997. And the minister responds to item one, explaining that the practice is common in order to maintain uniformity and currency with the regulations of other provinces. And those provinces are, as well, going to international standards probably for commercial and trade reasons.

So I refer you to the letter of the minister, dated April 29, '97, and would ask direction from the committee as to whether they

consider the minister's response sufficient.

The Chair: — Committee members, have you any questions or any suggestions in regards to the recommendations made by counsel?

Mr. Koenker: — On issue one . . .

The Chair: — Okay, Mr. Koenker.

Mr. Koenker: — Are you speaking just to issue one?

Mr. Cosman: — Yes. And my recommendation there is that the minister may have satisfactorily answered this. It seems to make sense to me even though there seems to have been a somewhat invalid sub-delegation. I just leave it to the committee to direct me on it.

Mr. Koenker: — I'm wondering if you've contacted Executive Council to confirm what their view of this is. When you say this may be an appropriate case, I mean is there a tendency in Executive Council to move in this direction?

Mr. Cosman: — I don't know, Mr. Koenker. When I say that this may be an acceptable case, I'm really leaving that to the committee's consideration. You, as committee members, may find this to have been compliance with the Act that the regulation adopts international standards rather than actually sets them out.

What the Executive Council might do . . . I'm not certain on this but I'm quite sure that they are finding more and more in our global market that they have to adopt international standards.

Perhaps we could have the Act amended to state that the Lieutenant Governor in Council may adopt regulations which in turn adopt international standards — something more specific like that. That wasn't specifically in the Act but I feel there was sufficient authority to make a regulation setting out standards. It's just a matter of whether they adopt existing standards, which may be in volume, a tremendous volume of criteria, technical criteria, and may not be. But I just leave it to the committee whether they wish me to pursue this further.

Mr. Koenker: — I don't have any particular concern relative to the issue at hand as it's presented and the minister's response is, I think, an adequate response. But it does raise for me the question of what the Department of Justice is doing in terms of its drafting, whether it is taking this into account in its drafting of legislation such that we don't have to continue to deal with this issue in the future. We want to be more proactive through legislative drafting in dealing with it.

Mr. Cosman: — Yes, Mr. Koenker, I think that's an excellent suggestion and I'm sure Mr. Brown reviews our verbatim comments with interest. And should he feel that the committee's concerns and my concern, as I've raised with the committee, are worthwhile. He may as a matter of course begin to draft the regulation-making powers such that they do embrace the adoption of other standards which have been legislated outside of jurisdiction specifically, rather than simply saying that we may by regulation make standards and set out

standards. So it's . . .

Mr. Koenker: — Greater clarity on the front end I think . . .

Mr. Cosman: — Yes in the authorizing statute. Yes.

Mr. D'Autremont: — I agree with Mark that I think we need to change the wording so that we have a standard set of wording, not just for this particular Act but all Acts that use outside regulation.

The Chair: — Is that a consensus or a general feeling of the committee members?

Mr. Whitmore: — Maybe rather than be dependent on Mr. Brown reading the verbatim of the committee, it may be wise for Mr. Cosman to correspond with him directly regarding this concern and other pieces of legislation and to note the committee's concern here as a course of action — to know then that it has been brought to his attention and that they should recognize this.

The Chair: — I think that's a worthwhile suggestion. As Chair, I would agree as well. Mr. Ward, do you have a comment?

Mr. Ward: — Yes I guess what I was looking for was a little clarification here from Mark and Dan. Are you suggesting that the authority be taken away from the outside standards body and put into regulation?

Mr. Koenker: — No. I think that . . . here we have a case where anyone in the dairy industry would understand the reference and the context but just procedurally in terms of the building or the drafting of legislation, we'd be clear on the front end about the relationship of outside organizations and outside standards and how they are included in the regulations.

Mr. Ward: — But you're not opposed to them setting the standards.

Mr. Koenker: — Not at all. I think we're only going to see more of this — more and more in the global village — and we've got to respond in terms of the way we draft legislation.

Mr. Cosman: — I will undertake on behalf of the committee to correspond specifically and directly to Mr. Brown in this regard.

The Chair: — Is that agreed? Agreed. In regards to issue no. 2.

Mr. Cosman: — Thank you, Mr. Chairman. You may recall the committee's attention had originally been drawn to subsection 5(2) of the regulation, setting out provisions respecting milk that meets the quality standard set out in section 16 of the regulation and requires that a dairy producer meet all other requirements respecting dairy facilities, equipment, health, sanitation, and so on.

If an applicant meets all of the requirements of the various provisions of the regulation, why should an applicant not have the right to be licensed as opposed to the minister having discretion, "may license the applicant"?

So on what basis might a decision of the minister not to issue a licence be made? And under clause 15(4)(b), all conditions for the granting of a licence are to be prescribed by the regulation, not the minister. So my question is, that it appears the word "may" ought to be replaced by the word "shall".

The minister was kind enough to correspond to this issue, and it's again the second issue in item no. 2, on page 2 of attachment B to your materials, a letter of the minister dated April 29, 1997. And the minister once again feels that the word "may" was carefully chosen and fully supported by their legal counsel because he feels it is a way of addressing the issue.

I just leave it to the committee members whether they think this is sufficient response to our concern.

The Chair: — Any further questions of the counsel regarding issue 2?

Mr. D'Autremont: — Well, I too have a problem with "may". If a producer has met all of the requirements as laid out under the regulations, then what's the problem with him getting a licence?

Part of those regulations — and I'm not familiar with the dairy Act, so it may or may not be in there, but — part of the requirements could be to have a Dairy Commission number and to have quota available. And I think that's probably where the sticking point is, is the availability of quota.

So those should be made a part of the regulations even though they're in another jurisdiction. If they have met the requirement in the other jurisdiction, which is federal, why should they not then have the licence? But perhaps in the federal legislation, it may say that you have to have a provincial licence before you get a quota number. I don't know.

So I think we need to take a look at those things. Are we in conflict perhaps with the federal legislation if you stick in a "shall" rather a "may".

The Chair: — Thank you, Mr. D'Autremont. I note in the minister's response, he mentions about the committee's concerns being viewed and taken into consideration as the National Dairy Code is finalized and adopted.

Is that an indication, Mr. Cosman, as legal counsel that you feel the minister's indicating that he will certainly be bringing this forward, as Mr. D'Autremont has indicated, in regards to the National Dairy Council's code being finalized? Or should we be doing some further follow-up to indeed determine that this is . . . the guidelines of our recommendations of the committee have been addressed?

Mr. Cosman: — I believe that we should operate on the latter suggestion, and that is that we . . . that I correspond directly with the minister on this issue once again, to see that this issue is addressed.

I originally had felt that the minister's response was satisfactory. I was basically going to suggest the issue be resolved. But I think in view of the concerns of committee members here, my action should be to follow up specifically

with the minister on this issue.

Mr. Koenker: — I note that the minister's response indicates that the National Dairy Code will be finalized and adopted "later this year." And he writes in his letter dated . . . well it was received in your office April 29 of last year, so there are 14 months that . . . We should be able to have some kind of assessment as to what has happened on the national scene which might shed light and bring closure to this matter.

Mr. Cosman: — Yes. I might note for the committee, I don't necessarily receive the national codes automatically, and what I'll do in this case is correspond with the minister, and the department will have received the national code if the national code has been adopted by this time.

And so I think by raising the issue once again with the minister, the officials in the department who know the industry will answer with specific detail and perhaps point out that a new code has been adopted — here's the excerpt with respect to our issue attached — everything is fine. It's better that we have the ministry specifically address that than I go searching on my own for a National Dairy Code that may or may not be adopted as yet.

The Chair: — Mr. Ward, do have a comment?

Mr. Ward: — Yes, I was just going to touch on that. I think if it's going to be taken care of in the National Dairy Code, then we don't need to confuse our regulations by doubling up on it. The less regulation we have, the better it is. I would think Mr. D'Autremont would agree with that, that we don't need to just put it in there for the sake of having it there.

The Chair: — Thank you, members. Is the committee agreed then that we have Mr. Cosman do a follow-up to see if indeed, as the minister has indicated, these issues have been addressed — that we would consider the issue resolved? Agreed.

We'll move on to issue three, then.

Mr. Cosman: — Thank you, Mr. Chairman. Again this is a similar problem to earlier issues raised. Under subsection 10(6) of the regulation there's a prohibition for a dairy producer from having more than one bulk milk tank "unless otherwise approved by the Minister." And it does not appear to be any authority in the Act for such a power to be accorded the minister to exempt the law.

Should not all substantive requirements that the department wishes to impose on licensees be stated in the regulations as the Act demands and not left to the arbitrary discretion of the minister? This issue was raised with the minister, and his response is in item 3 at page 2 of his April 29, 1997 response.

You may wish to take a moment to read that, and I'm open to the recommendation of the committee as to whether or not that's sufficient response.

The minister does indicate that after consultation with dairy producers and processors a policy enabling two storage tanks under defined conditions was established. It was the intent of the regulations to acknowledge this issue.

Again I'll instruct the Department of Agriculture and Food to clarify this aspect of the regulation when reviewing the proposed National Dairy Code. So I think I could include this issue in my correspondence with the ministry.

Mr. D'Autremont: — Why not just change the regulation to allow for approval of one or more tanks? It would solve it pretty easy.

Mr. Whitmore: — Same for me — I think this is rather confusing in terms of the purview of the minister and the power involved. And I agree with Mr. Cosman's recommendation to put this also into that letter in terms of correspondence and to see how this fits with the national code. And the explanation here just doesn't make any sense to me in terms of why the power is there in the first place.

Mr. Cosman: — I'll be pleased to do so on behalf of the committee and I might add that I will attach the relevant sections of the verbatim of the committee with regard to this specific issue so that the ministry has the benefit of your comments specifically to this issue.

If I might, Mr. Chair, I'll just move on to item 4. This issue, the producer's right to ship milk, is dependent on compliance with the regulations, but it's another matter to impose a positive duty to do what the minister orders. This provision of the regulations, at section 21 of the regulation, did not appear to be authorized by the Act.

Again the minister, by his correspondence, addressed this issue at item 4 of attachment B, and the minister agrees to have this particular section repealed. And my recommendation there is that we accept that as a satisfactory response to the issue. So I would just undertake on behalf of the committee to monitor changes with regard to this specific issue and watch for that repeal.

The Chair: — Any further comments from committee members? The committee agreed that we would accept the recommendations of counsel and have counsel follow up and see that the issues have been addressed and resolved as the minister has indicated that he certainly would be doing. Is that agreed? Agreed.

Well committee members, I realize there are a number of issues before us yet. I think we have, however, given for the sake of our delegation a bit of a purview of some of the work of the committee. While it's been more follow-up rather than getting into new debate and new discussion on new regulations, I trust it gives you a bit of an understanding of how our committee will function and operate.

We certainly as well, however, want to allow for a process of allowing our delegation to have the privilege of seeing our building, having a tour, and certainly doing a group photo. And so I am going to ask for an adjournment motion for the committee meeting this morning, and we will then move on with allowing or basically opening up the opportunity for a tour.

First of all, Mr. Koenker?

Mr. Koenker: — Yes. Just a very small point for the benefit of

Mr. Thompson, who had asked about the number of regulations that were being promulgated. I think we would be deficient if we didn't note the third page of the minister's letter in which Mr. D'Autremont . . . he concludes his letter by noting that he is "hard at work consolidating four sets of varied regulations in the province into one" . . . (inaudible interjection) . . . It's going down . . .

The Chair: — It's so acknowledged.

Mr. Whitmore: — Just a logistics question. When do you hope to meet again as a committee? Later this summer or . . . to deal with the some of the follow-up and some new regulations.

The Chair: — I would certainly take guidance from the committee as to when we would . . . Based on what we have here, in regards to follow-up, it probably would be beneficial to move this out of the way so we could get on to debate of new issues and new regulations. So I would seek guidance from the committee members as to whether we should try to meet once more prior to the end of June or whether you'd like to meet early in the fall. Is there any preference?

What we can do to facilitate some time is have — maybe as committee members — just give me an idea of what would work for you. And then through Meta and myself, we will consult and get back to the committee as to the call of a further meeting of the Special Committee on Regulations. Is that agreed? Agreed.

Motion to adjourn? Mr. Ward.

Thank you so much, committee members. At this time we will have Visitor Services . . . I believe the intent is to have a group photo.

A Member: — Yes. Arnold should be arriving momentarily and will take us to the spot.

The Chair: — So we'll adjourn for a group photo and then a tour of the Legislative Building and lunch at noon in the members' dining room, I believe.

A Member: — Do we return here?

The Chair: — At 1:30.

The committee adjourned at 11:15 a.m.