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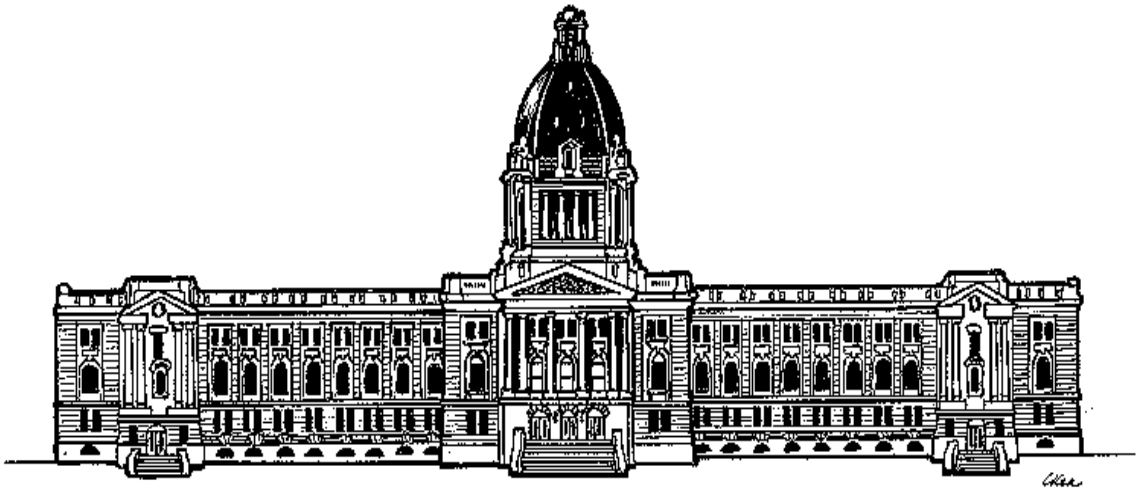

Legislative Assembly of Saskatchewan

Twenty-third Legislature

SPECIAL COMMITTEE ON REGULATIONS
1998

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The Chair: — Welcome to the members. We're pleased to have you here this morning. I understand due to weather conditions some members are still wondering whether they're going to make it. But we do have quorum this morning which allows us to proceed which is excellent.

First of all a special welcome to Mr. Garnet Holtzmann who is our Law Clerk for the time being and he has put together a report for us to consider this morning.

And just for Mr. Holtzmann's information, this is somewhat informal and I think we're quite easy to get along with. We'll certainly seek your advice. When we go into any of the regulations we'll ask for you to explain the rationale within your report and then we'll have responses by the members, and a debate and discussion, and motion as to where we proceed in regard to the report. So we appreciate your presence and thank you for coming and putting together this report for us.

Members, I believe you have in front of you regulations follow-up from Mr. Holtzmann, dated November 23, 1998. As well a supplemental report dated November 30, and we will be considering those regulations this morning.

And also in front of you, you have a chart. Now this chart is basically, as I understand it, for our information regarding regulations and bylaws that have been considered in the past and where they are to date. It just gives us a basic rundown of where we are in regards to a number of the regulations and bylaws that we've addressed in the past and the follow-up that has either taken place or not, or the responses that we're still waiting for. So it's more of an informational package that we can certainly look at and review at a future date as responses are received in regard to recommendations from the committee.

With that in mind if there are no questions we will move to regulations follow-up, the information received November 23. And we'll be looking at The Water Power Amendment Regulation, 1988 and I would ask Mr. Holtzmann to give us a brief review of his follow-up in regard to this regulation and then your responses following. Mr. Holtzmann, please.

REGULATIONS FOLLOW-UP

The Water Power Amendment Regulation, 1988

Mr. Holtzmann: — Thank you, Mr. Chairman, committee members. These particular regulations have been before this committee for some time — I believe in longevity probably more than any other regulation that you've looked at. The issue is a five-year lease for the use of water power.

In 1988, the change was made to the regulations to provide a different rate be charged for the use of the water power. Notwithstanding that the lease of the water powers had been entered into some years before that, discussions had with the department, Sask Water, about the matter of retroactivity as well as the regulations being prospective.

The Minister responsible for Sask Water has endeavoured, on several occasions, to bring legislation forward to allow for the making of retroactive regulations. On the basis that while the right to the use of water is under a lease which is for a five-year period, the rental would be payable at the end of the lease. And therefore there seemed to be some justification in the minds of the officials at Sask Water that this was not too onerous a situation. That the people entering into the lease for the water, being aware of the likelihood of a change being made, would be prepared for it.

The Minister — the latest minister — of Sask Water has undertaken to bring the matter forward again for curative legislation, hopefully this year. Presumably it won't be this year — perhaps next year. That's all I have to report on that.

I recommended that the committee direct me or my successor to keep a watch on the corporation, that is Sask Water Corporation, to see where they go with this. There are some statutes which do provide for the changing of rentals under a lease or under an agreement after the agreement has been entered into and indeed, even after the term has expired — oil and gas leases in some respects. So it is not unknown in law, but its not that common.

The Chair: — Thank you, Mr. Holtzmann.

Mr. Hillson: — I'd like to know from Mr. Holtzmann, what is this in practical terms . . . You say 1988, that's a long-time ago, is this really an alive regulation that has practical effect, is being used today as we speak?

Mr. Holtzmann: — The water power regulations, Water Rights Regulations . . . when I was with Justice I directed a letter to the corporation saying that upon reviewing these regulations I noticed that they were originally gazetted at the same time that the Japanese bombed Pearl Harbor, and I suggested that they bring them up to date. But to the present time they have not, and I think that's indicative of the fact that there's really not all that much activity.

Mr. Hillson: — Not a lot of activity. Okay.

Mr. Holtzmann: — No, very little if any as a matter of fact. But I think they have one or two lessees that still . . .

Mr. Hillson: — So where would they be? We know we've got Island Falls, does that apply or not . . . is that a new application?

Mr. Holtzmann: — I couldn't tell you.

Mr. Hillson: — Couldn't tell me.

Mr. Holtzmann: — No, I don't know.

Mr. Hillson: — Okay, thank you.

The Chair: — Any further comments with regards to The Water Power Amendment Regulation, 1988?

Is it the committee's wish then to follow the recommendation of the Law Clerk to monitor the legislative program of Sask Water? Agreed? That's agreed to. Those opposed? Okay. It's carried.

The Mental Health Services Amendment Regulations, 1995

Mr. Holtzmann: — These original regulations had some errors with respect to a map which was attached to the regulations, as well as some errors in the regulations themselves. Since that time, since receiving a report from this committee, the regulations have been, for the most part, redrawn. And the matters which were the subject of this committee's attention have been rectified.

The Chair: — Thank you, Mr. Holtzmann. Any response or any questions regarding The Mental Health Services Amendment Regulations, 1995? I would take it the committee agrees with our Law Clerk, Acting Law Clerk, that we should consider the matter resolved. Is the committee agreed? Agreement. That's agreed. Carried.

Helium and Associated Gases Amendment Regulations 1994 and The Petroleum and Natural Gas Amendment Regulations, 1994

Mr. Holtzmann: — These two sets of regulations . . . Or this set of two regulations have been considered together. They're very specialized. The oil and gas industry by the main are very aware of existing regulations. The oil companies, the associated industries are all up on what the regulations provide.

The concern of the committee was that the oil and gas regulations, the Petroleum and Natural Gas Amendment Regulations which provided the amendment which we're looking at here, haven't been consolidated or revised since 1969. And when one looks at the parent regulation and then the list of amendments, it's mind-boggling. But in effect the industry are aware of all the regulations. They have legal departments for the most part that, that look after those concerns. And the department has taken the view that since the industry has not advocated for a revision and consolidation that they are loath to expend the time and the manpower to making a revision of the regulations.

With respect to the helium regulations, we don't have any air ships flying around so there's very little interest in that, so it's really not of much concern to the department.

The Chair: — Thank you, Mr. Holtzmann. Any questions regarding The Helium and Associated Gases Amendment Regulations, '94?

Mr. Hillson: — I take it then from what you've said, Mr. Holtzmann, if there is renewed interest in helium this is an issue that the department would have to take up and address, but in the current market situation there really is no reason to make this a priority item.

Mr. Holtzmann: — No. I think in the main the committee's concern was to do a revision. As far as a consolidation, there is a consolidation of the regulations available. It's put out by the Department of Justice and it's a continuing revision. So if one wanted a set of the regulations with all amendments included, that's available.

The concern of the committee I believe was that the regulations haven't been revised since 1969 or subsequently as each amendment came along. So some of the provisions may be out of date, some of the provisions may not be appropriate for the particular situations that they want to cover, but nonetheless they're going with them.

With respect to the helium regulations, if interest did increase I think they might do that because I don't think the helium regulations are as extensive as the oil and gas regulations.

The Chair: — Are there any further questions? Just a question from the Chair, Mr. Holtzmann. From what you're indicating here this is something that, because of the fact that it isn't a major issue today, the department is basically saying they don't really feel they have the time or the energy to make the necessary changes.

I guess the question I would have is, if changes are going to be necessary down the road, wouldn't it be appropriate to bring the regulations up to date with the legislation so that they don't have to be revisiting it. Say we run into a period where there is a demand and then we really have to seriously look at it, wouldn't it be better to be prepared ahead of time rather than after the fact again?

Mr. Holtzmann: — Yes, if the department could be persuaded that that would be a reasonable step to take at this time. I think they're aware that a revision should take place and that changes are happening very quickly in the oil patch — offset drilling, slant drilling, whatnot.

They feel, however, that because it's a specialized set of regulations, that if really the main people who are concerned are the people in the oil industry and they're very aware of their . . . they're very aware of what the regulations contain and they have these consolidations, that looking at the resources at this time they say, at this time we really can't go ahead with it.

I think they agree that it would be a good thing to do but they say they can't do it at this time.

The Chair: — Any further comments?

Mr. Whitmore: — I wonder then if the Law Clerk should maybe continue to monitor it. There was no recommendation here but just to monitor and see if the department, see if any changes take place to bring it forward to the committee's attention.

The Chair: — Thank you, Mr. Whitmore. I was going to ask for the committee's wishes because I know that there wasn't a recommendation here and it was . . . If that's the committee wish or desire that the Law Clerk continue to monitor this concern or this issue, and certainly that's something we would ask of the Law Clerk. Would you care to make that into a motion?

Mr. Whitmore: — I would move that then:

> That the Law Clerk continue to monitor The Helium and the Associated Gas Amendment Regulation, 1994, and The Petroleum Natural Gas Amendment Regulations, 1994.

The Chair: — Thank you, Mr. Whitmore. Do we have a

seconder for that? Ms. Murrell.

Any discussion regarding the motion? Does the committee wish to accept the motion as it's presented.

A Member: — Agreed.

The Chair: — Carried. Thank you, Mr. Whitmore.

Moving onto consideration of '98 regulations — 1998, and The 1997 School Grant Regulations. It should provide some interesting discussion.

The 1997 School Grant Regulations

Mr. Holtzmann: — Each year the department has a new set of school grant regulations, and of necessity they come at the end of the school year. These actually were passed, I believe, in December 1997, appeared in the *Gazette* of January 1998. The regulations are very technical but they provide, in the main, for grants for a variety of purposes — transportation, number of students, capital costs, operating costs of schools in the province.

The regulation-making authority is very general in nature as it has to be. However, one of these sections jumped out at me when one reads the regulations to see that there are detailed calculations made as to how expenditures are to be calculated. And section 26 jumped out at me and said: "The minister may recognize any expenditures, in addition to those described in Parts II, III, and IV as the minister considers appropriate."

One then has to ask the question: if the minister can consider any expenditures that he considers appropriate, what are the limits? What are the guidelines for this?

As well in section 22(2), clause (b), in determining the recognized local expenditure of that school:

> (b) may recognize any additional expenditures that the minister considers appropriate.

Now realizing that it's very difficult when you're an administrator of a program to read the words of a statute, to look at the empowering words on a regulation-making power, and to avoid the problem of a body that is delegated a power to pass a regulation not being able to pass a regulation saying that somebody else under the regulations may decide something. It's called, in law, a delegation of delegated authority, which is prohibited unless a statute specifically says that that could be done.

This particular statute, The Education Act, 1995, does not give that authority in express terms. Now I hate to talk like a lawyer, but there is a school of drafting adhered to mostly by people who draft, that if the empowering words of a statute are broad enough — such as the Lieutenant Governor in Council may make regulations governing the making of grants — that in certain cases that includes the power to say to the minister that you can make a grant if you think this and this happens.

I don't subscribe to that. I think it's stretching things a little far. There is some case authority to say that that is acceptable if what is passed on is an administrative function; that is, that if it's just to pick between one or two circumstances or whatnot.

But as far as something that is of a legislative nature, i.e., such as this case where you say, well, that is a proper expenditure, because the result of that is that the amount of your grant is going to increase because grants are supposed to be equivalent to revenues less expenditures.

So I think that this is a delegation of authority which is not warranted under the statute. I might say it's not the only one but if one looks at the entirety of the regulation, which is some 30 or 40 pages long, you can find other examples but this is the most glaring one that I've found.

And my recommendation is that we communicate with the department to get their views. They may have cured the approach with respect to this coming year's regulations which won't come for some time now. But that's my report, Mr. Chairman.

The Chair: — Thank you, Mr. Holtzmann. Any comments or questions from members?

Mr. Ward: — Yes, just the first part of this, in addition to those described in (2), (3), and (4). So what kind of circumstances is this then put in place to cover? Not knowing what's in (2), (3), and (4), I guess I . . .

Mr. Holtzmann: — Well (2), (3), and (4) was just certain parts of the regulations. One part dealing with capital grants, another part dealing with operating grants, another part dealing with transportation grants. These are all costs that the school incurs and the grants are supposed to cover the expenses associated with those, so that if the minister considers additional expenses, of course the amount of the grant will go up.

There are in the regulations certain expenditures set out. But then this section says well, even though those are set out, the minister can consider anything else as an expenditure that he considers appropriate. It's a catch-all.

Mr. Ward: — If I might just continue here. Okay, so if the other parts cover the formulated grants, is that what you're trying to say here? Like, there's formulas for the way those ones are appropriated?

Mr. Holtzmann: — That's right, yes.

Mr. Ward: — Then this one would kick in if there was a shortfall in one of those other areas? Like a small school for instance, I'm thinking in a rural area . . .

Mr. Holtzmann: — Yes.

Mr. Ward: — Like if the population dropped in the school, it wasn't possible to transport or move them and they had to raise the level of the student grant say because of the small numbers, then this would kick in and they could add extra here?

Mr. Holtzmann: — This would kick in if a school incurred an expenditure which did not fall within any of the categories of expenditures, the calculations or whatnot, that are in the

regulations now. That, if there was something that didn't fall anywhere in those regulations to be categorized as an expense, the minister could lop onto this one and say that is an expense that I will recognize and therefore the amount of the grant will go up to cover that.

Mr. D'Autremont: — Yes, picking up on what Mr. Ward was saying. I would think though that your example of a small school would already fit into some of the regulations that are already in place . . . the Act, because there are special provisions to provide for small schools.

So I do kind of wonder just what kind of extra expenditures the drafters or the government was thinking of when it actually presented this. And I'm trying to think of a situation where additional needed funds were being presented and I'm having difficulty thinking of what those might actually be that you would need that kind of appropriation for.

You know, because of my personal circumstances, I'm thinking of a school say putting in a lift for a wheelchair access, but I believe that would already be covered under some of the other parts of the regulation for high-cost students. So that part's already in there. Different needs for transportation under those circumstances — it's already covered because it's covered under high-cost students and special needs.

So perhaps we need to find out exactly what the opinion . . . what the department wanted, what they felt they needed with this kind of an inclusion in the regulations before we really make a determination. Because I'm having difficulty thinking of what kind of examples we could use that say, this falls outside of the normal category.

The Chair: — Okay. Any response? And then Mr. Hillson.

Mr. Holtzmann: — In response, I think if you talk to the department they would say if we knew or we could foresee that there might be some expenditures, we've got those already in there. We've covered those. This is our catch-all.

And I think if you go to any department of government that is administering a program, it's always going to come up with this approach that, all right we'll have to set this out and this out and this out and this out. But when they come to the drafting they will say: well from sad experience we know that we're not going to cover everything; so let's try and cover it this way. And they resort to this technique.

It's fine for the administrators. It gives the lawyers a headache because at times they end up in court and they say the regulation is ultra vires, that is, it's bad, you can't do that. But in the nine times out of ten that the regulation isn't challenged, they can do it. And it works and the program goes ahead.

If you were to say to them, what circumstances do you envisage that you would want to have the minister say that's an appropriate expenditure, they would probably say if we could come up with an idea what it might be, we'd already have that in there.

And I think the regulations as they are now, they've been built up by cases where, when they experienced something the first time it probably wasn't covered. They've had to resort to this approach, but then in the next year they've locked it in there. They're always trying to give themselves an out by this approach. It's wrong but it's what they do.

Mr. D'Autremont: — Well perhaps though the department could come up with some of those examples from the past that didn't fit into their neat little boxes and could persuade us that that was valuable, that they have the opportunity to fund those outside of the normal channels, and if they can convince us, well then, fine. If they can't, well then they'll have to go back to the drawing board.

Mr. Hillson: — Yes. Well of course one of the specific examples given here in the regulation is the community schools program which you know is certainly important, but it is quite a change in the way we do education in Saskatchewan.

My questions to you, Mr. Holtzmann, is the community schools program in legislation or just in the regulation here approving that additional amounts may be granted by the minister for the operation of community schools? And is there a need to put in legislation, as I say, what amounts to an important but none the less a major change in the way we do education in this province?

Mr. Holtzmann: — I think it's within the jurisdiction of the Department of Education now that these schools, which are . . . (inaudible) . . . through their . . . (inaudible) . . . Here again I suppose it's a somewhat new development and they don't, pure and simple, they just don't.

Mr. Hillson: — So the community schools program isn't found anywhere in legislation?

Mr. Holtzmann: — Well I think it's contemplated under The Education Act, 1995 but I'm not sure, I'm not sure. But I'm sure that anything dealing with education if not under The Education Act, 1995, is under an Act administered by the Department of Education. Now I might be wrong. I'm just projecting that it might be under some legislation that we have dealing with the Indian and Native Affairs. But I would gamble that it's in The Education Act, 1995.

Mr. Hillson: — Okay, I'll have a look at that.

Mr. Holtzmann: — If you're a gambling man!

Ms. Murrell: — I just wondered if that's where the dental plan and the EDF (education development fund) program came from, was extra expenditures that were not accounted for and there was a need for it?

It's the educational development plan, and it was put in place so that schools could upgrade their library systems and their resources because of going to . . . they changed the programs to core language and a lot of those programs. And there weren't the resources available so a special fund was put in place so that schools could access it. And that's what it was — it was EDF and it was discontinued.

Mr. Holtzmann: — Yes, I don't think that would relate to this because . . .

Ms. Murrell: — That wouldn't be an extra one?

Mr. Holtzmann: — If a special fund was established there'd be regulations governing the administration payout of that special fund.

Ms. Murrell: — What about the dental plan then?

Mr. Holtzmann: — That I don't know whether . . .

Ms. Murrell: — Would not that be something that would be extra through this?

Mr. Holtzmann: — I rather doubt that costs associated with a dental plan would fall probably within this. It might, but I rather doubt it. If I were looking at the program I would think that that was an association with the Department of Health and the Department of Education and there would be special considerations, special regulations governing that. That's not to say that if a new program was brought into a part of the curriculum probably under The Education Act, 1995, for schools, it would of course fall in with the general application of the regulations. But the specific programs, I'm sorry I'm not aware.

Ms. Murrell: — Thank you. No I just, that was . . .

Mr. D'Autremont: — Yes, I was going to comment on the EDF funding. I would think that would have been done through the Education department and through legislation because it was a major ongoing program. Is this appropriation envisioned as an ongoing basis in your interpretation, or is it a one-time thing that would, you know, you would all of a sudden there's a critical need in a certain area, you provide the immediate funding and then the next session of the legislature you would provide statute law to deal with that situation.

Mr. Holtzmann: — This is an ongoing program. A regulation like this is passed each year.

Mr. D'Autremont: — But the projects that it might fund though, would they be one-time projects or on ongoing basis?

Mr. Holtzmann: — Or on ongoing — transportation costs, operating costs, capital costs, special needs costs — an ongoing program. And I must say that with respect to each of those categories, that there's a detailed, a very detailed in some cases, calculation of how you arrived at an expenditure. As I said the . . .

Mr. D'Autremont: — Well, I'm not thinking so much though of the recognized expenditures that are described in parts (2), (3), and (4) but rather those additional appropriations that were made.

Mr. Holtzmann: — I would guess that there aren't that many. That if one does arise that it looks like its going to be a continuous one, they will then in the next year's regulations they would include it.

Mr. D'Autremont: — Yes, I think that would be important that that be understood. That this is sort of a one-time shot and now if it needs to carry on then it would be recognized in the statute.

Mr. Holtzmann: — I think they recognize that they're on thin ice by attempting to justify an expenditure under that authority because the Provincial Auditor will be looking at it and . . .

Mr. D'Autremont: — I think we still need to find out what it's been used for in the past to judge what it might be used for in the future.

The Chair: — Any further comments or questions? As the committee will note, the Law Clerk has recommended that he be directed to contact the department respecting this regulation for clarification and better understanding? Is the — from the comments — committee agreed that we accept the recommendation of our Law Clerk? Great, carried.

Emergency Services Telecommunications Programs Regulations

Mr. Holtzmann: — Mr. Chairman, members of the committee, this is a regulation which is purported to be made under The Government Organization Act, section 24, which appears before you in the report. The regulations establish an emergency service telecommunication program. This is a program wherein rural municipalities may establish a communications network. Grants are available to purchase equipment, services — a worthwhile cause, no doubt. In my view completely ultra vires of the statute.

The Government Organization Act never contemplated the establishment of a government program or activity. The Government Organization Act provides for the establishment of government departments or agencies — that is the shell itself, the department or the corporation or the agency, and its staff. It does not contemplate in any sense that under The Government Organization Act regulations may be passed creating programs for those agencies.

The Government Organization Act does contemplate that you may establish a government department if you wish, or an agency, and you may transfer to the administration jurisdiction of that department or corporation any powers or any programs that are established elsewhere by statute.

I'm unaware of any other place where this telecommunications program was established. It would have to be established under some lawful authority — we can't just pick it out of the air — and then make grants with respect to the administration of this telecommunications program. And in my view the regulation is ultra vires. The telecommunications program is not authorized by statute. Now I may be wrong. It may be established somewhere in the Department of Telephones — I don't know. But I am unaware of it.

And the regulation itself says that the telecommunications program was established under section 24 of The Government Organization Act. Section 24 allows regulations to be made under that Act prescribing, "any matter or thing required or authorized by this Act to be prescribed in the regulations . . ." Section 24 was intended to authorize regulations to carry out anything in The Government Organization Act, not to create a new program and give it to a department to administer.

The Chair: — Comments, Mr. Hillson.

Mr. Hillson: — To put it another way if this section 24 authorizes — can be used to authorize the 911 service being established — then you could almost say that this would be the only piece of legislation the government would need for almost anything.

Mr. Holtzmann: — That's right. Taking it to its logical extent we used to jokingly say in the department, why do we have to abide by the rules of the statute. Why don't we just eliminate all the statutes and say that the Lieutenant Governor in Council may pass regulations for the peace, order, and good government of Saskatchewan, period.

Mr. Hillson: — And you're saying in this particular case that appears to be the way section 24 is being interpreted and followed.

Mr. Holtzmann: — That's the way that I see, in this case, that section 24 is being used.

Mr. Hillson: — Notwithstanding the fact that as you say a 911 service is something that we all see as . . .

Mr. Holtzmann: — A worthy endeavour? No doubt.

Mr. Hillson: — Okay.

Mr. Whitmore: — Thank you, Mr. Chair. Regarding the 911 service then, in light that this 911 service is maybe within days or weeks of being fully established across the province and . . .

A Member: — 2002.

Mr. Whitmore: — I guess, starting to be established across the province. I stand to be corrected. And in light of that the opinion here speaks of the possibility of a municipality even challenging the grant. I guess they could in accord if it's deemed to be that the power of the authority isn't there for the minister to do so. I think we need to find clarity as quickly as we can from the departments to determine this and what provision it falls under.

Now I'm interested when you say in terms of the establishment of this, I guess the way to get around it would be have its own piece of legislation.

Mr. Holtzmann: — That's one way. I would guess that SaskTel, that there would be some powers within SaskTel to establish such a program. Once it's established you could then by order in council transfer the administration and control of that program to the administration of whatever department you wanted to create out of the government organization.

Mr. Whitmore: — But it's to follow the right pattern here and it has not followed the right pattern.

Mr. Holtzmann: — The Government Organization Act — and I remember this clearly — when that Act was set up, we were all of the view that there was to be no authority in that Act to create new law. It was just to create or to just extend what had been in The Executive Council Act for years before — to transfer the administration and control of powers and duties that is existing in statute from one member of the Executive Council to another.

No new laws; you couldn't establish new laws under this. If there's other regulations where you can establish the program or other legislation where you could establish a program, yes, then you may transfer. But that has to be done first.

You can't pull yourself up by your bootstraps and then revolve in the air without touching the ground.

Mr. Ward: — Yes, I guess I'm just trying to think of some place this might fit into. And where would the EMO (Emergency Measures Organization) organizations fit in then with their grants? Is that covered by this or is that a separate . . .

Mr. Holtzmann: — No, no. They're a separate entity. I think they're administered by Municipal Affairs.

Mr. Ward: — Well then this would just cover individual 911 systems? Is that what it would cover?

Mr. Holtzmann: — It might, it might.

Mr. Ward: — Because there was a number of those around the province before, like Swift Current had one, Estevan had one, some other areas, Saskatoon had one.

A Member: — But those were municipal.

Mr. Ward: — Those are municipal, but does that fall under this authority then?

Mr. D'Autremont: — They weren't receiving grant money.

Mr. Ward: — Well that's why I wondered, because EMOs all receive grant money. That's why I wondered if they fell into here, if they were part of the 911 system because I know there was some EMO money came through to the 911 system when they put it into the municipality.

Mr. Holtzmann: — Yes, as I said, it may be that there is some authority somewhere. But then the one step is missing from this regulation, that if this telecommunication program was lawfully set up somewhere else, it's never been transferred anywhere. It's purported to be established by these regulations. It doesn't contemplate their existence anywhere else. It goes . . .

Mr. D'Autremont: — Okay, thank you. My thoughts on it were similar to Larry's. I wondered about the EMO situation, whether that wouldn't be perhaps the area to have it under the jurisdiction of, or perhaps Municipal Government, as a program under Municipal Government which would deal across the board with it, and receive its authorizations and funding through that department.

So I think what we need to do here is go back and get this clarified as to what the exact legal terms are here and which department or which area of authorization is the appropriate one to deal with this program.

Mr. Hillson: — Yes, while I agree with the comments other members made, it seems to me it is necessary that we tighten up the recommendation here, because the recommendation is in

effect the same recommendation we passed under water power, where I think we all agree that's kind of in never-never land and the helium regulations. Those both seem to be sort of in never-never land. And so I think that we don't want to pass the same recommendation here.

I think it requires something. Hopefully we'll have all members' approval, but it does require something a bit tighter. Mr. Holtzmann, do you have a recommendation or is that not an appropriate question to put to you as to how we can firm up this recommendation?

Mr. Holtzmann: — Yes, well my contact with the departments will be governed by what I think the problem is. In this one I see a problem the way they have drafted it, the approach they've taken.

Now if there is a program somewhere which contemplates this and it exists within government, fine. Then I'll want to know has that function been transferred somewhere else? And if so, where? And if it has been transferred, what is the approach in these regulations because these regulations purport to establish it. If it's already established, why do you purport to establish it? In other words, what are you doing? What is this approach? Why was The Government Organization Act used? What other authority was considered?

And give them a chance to explain. Maybe they've got a logical path through the legislation that is certainly not apparent on the regulations or by the way the regulations are drafted, because the regulations appear to be self-standing, that it establishes the program, provides for grants, and it looks like it's all inclusive.

Mr. Hillson: — May I try out this then, Mr. Chairman, that we add the additional sentence, after what is already there:

> This committee expressed its concern that proper legislative authorization for a provincial 911 service may not be in place.

A Member: — Could you repeat that?

Mr. Hillson: — This committee expressed its concern that legislative authorization for a provincial 911 service may not be in place.

The Chair: — Any comments regarding the recommendation and the addition to the recommendation? I think certainly what Mr. Hillson has come forward with expresses a little more succinctly some of the discussion. Have we got any comments from anyone, including the Law Clerk, in regards to the recommendation?

Mr. Holtzmann: — I wonder if there could be two contacts made with the department, one by you, Mr. Chairman, on behalf of the committee, and . . .

Mr. Hillson: — I thought I was just repeating what you had said frankly. I thought I was merely, I was merely repeating your words.

Mr. Holtzmann: — I don't recall ever saying anything about 911 not being in place.

Mr. D'Autremont: — But it disallows us or the government or the telecommunications area to be subject to prosecution or . . . I think we need to get this cleared up as quickly as possible. And Jack's addition would certainly get attention.

The Chair: — For the sake of . . . For the Law Clerk's information, he can basically say the committee has directed me to. That's not putting the onus on him. Any further comments regarding the recommendation and the addition to?

Mr. Ward: — Yes, I guess my only concern here is that we've taken this out of context somewhere. Because as I look at this paragraph right under the regulation where it's available for municipalities, and I guess if we're jumping up to the provincial level with this, I'm not sure that's where it is supposed to be. Like it makes sense up to a point where municipalities needed order in council authority to go ahead with one of these with an emergency service. I'm not sure that this also covers the provincial government if they go ahead with it. That's all I would . . .

Mr. Holtzmann: — These regulations appeared in the first half of '98 and had it been the government's intention to pass the regulation and then come along with legislation to ratify and confirm it which is done at times. I would have thought that it would have been in the legislative program that ended in June.

The Chair: — Any further comments? The committee then ready for the question that we accept the recommendation as presented? With the addition?

A Member: — As amended?

The Chair: — As amended? I think it's basically with the addition to the recommendation to ask for . . . Basically what I believe I hear from committee members is a sound clarification in raising the 911 question which brings the issue a little more to the fore rather than . . . so it's addressed rather than maybe put off. Are we agreed on this recommendation with the addition to it? All in favour? Agreed. Carried. Thank you.

Moving on then to Condominium Property Regulations 1997. Again, Mr. Holtzmann.

Condominium Property Regulations 1997

Mr. Holtzmann: — These regulations were passed under the authority of The Condominium Property Act, 1993, and the general purpose of the regulations was to apportion assessments with respect to condominium units. All the regulations are directed towards how assessments are apportioned and whatnot, and as the committee members know, municipally all property is assessed whether it's liable to taxation or not.

The authority for the regulations is section 112 which talks to establishing a scheme of apportionment of assessed value. We then see that the regulations go on to provide for the purposes of apportioning property taxes. Taxation is the step which follows assessment. The regulation provides for apportioning assessment. It doesn't speak to what you do with taxation afterwards. Taxation is governed by, specifically, by The Urban Municipality Act and The Rural Municipality Act as well as some other Acts which detail how taxation is to be struck.

I don't think these regulations are proper, including how the taxation is to be apportioned. It can apportion assessments, taxation will then follow by whatever dictates the taxation provisions of the relevant statute called for. But when you are apportioning assessments you are not to speak to taxation.

Mr. Hillson: — Just one question, Mr. Holtzmann. Obviously I understand assessment is not taxation but surely, though, assessment does tell me what my proportionate share of the tax load is, does it not?

Mr. Holtzmann: — That's taxation. These regulations report to say for the purposes of apportioning property taxes among owners, the assessing authority shall apportion property taxes based on that and that. We have these regulations properly saying how you apportion the assessments. But once those assessments are apportioned, that is let's say once they are fixed, then the appropriate municipal Act should say here's how you tax. You take this assessment and you run this mill rate against it or whatnot, or you deduct so much because it's only taxable for half or whatnot.

I don't think when you have a scheme for apportioning assessments that you should also be talking about apportioning taxes. That's the next step. And if they wanted to do that, if they wanted to change the taxation scheme under the relevant municipal Act, they should have authority somewhere else to do that — how to tax condominium property once the apportion of it is made.

Mr. Hillson: — I think I understand. Thank you.

Mr. Ward: — I think you just about answered that. So what you're saying is that for the common property in a condominium the regulations for that should be somewhere else? As I understand this, this looks like it's dealing with the common property — the land, the hallways, whatever, swimming pool if they have one, whatever other common use facility that all the condominium owners have access to.

Mr. Holtzmann: — And also the units. And also the units.

Mr. Ward: — Yes but is it not saying that it would be proportioned into the units?

Mr. Holtzmann: — Well the assessments are related to land and personal property. But in this case it would be the land, the ground, which in a lot of cases is the common property, as well as the units themselves, and of course the registered owner of the units, that assessment would go against him, and then whatever portion of the common property assessment would be attributed to him as well.

That's what these regulations do in effect. That's all that these regulations should do — is say we'll take all the assessments and we'll apportion them to the people that are liable to be assessed in respect of property in that condominium. Once they've made that apportionment, a taxation statute will then come along and say, all right here's a mill rate which will be struck against that assessment. This is now taxation, and whatever the rules are for taxation, whether there is to be some deductions made because it's for whatever reason, that would be up to the taxation provisions of a statute to provide.

Here we are saying that the assessing authority, under the guise of apportioning assessments, shall apportion the property taxes based on . . . And I don't think that's right. Whatever the taxation provisions are, they should stand alone. They, I don't think, could be changed by a regulation which was passed under the authority of words directing an apportionment of assessments.

In other words, I think they should have left 30.3 out and put it in their regulations under taxation if they have such regulations.

Mr. D'Autremont: — Is it 30.3 that should be left out or 30.3(1)(b) that should be left out?

Mr. Holtzmann: — Actually the whole thing should be left out, because it's all tied together with the opening words.

Mr. Ward: — If you're saying then . . . to clarify this, just for the purposes of apportioning property assessments — would that make you feel better — among owners of a unit?

Mr. Holtzmann: — No, because in the second line it says that the assessing authority shall apportion the property taxes based on . . . Now the property taxes are going to be going against owners in the condominium based on the assessments which are attributed to them. Now you can change the amount of taxes which would be levied because taxes always follow assessments.

Mr. Ward: — Right, yes, yes, I understand that.

Mr. Holtzmann: — And if you do that, all you're allowed to do under this is to apportion assessments. Whatever the property tax laws are, they are to apply. And I don't think you can change them by this.

Mr. Ward: — I guess what I'm thinking is I don't see this as a tax tool; I see this as an assessment tool. And I think that's where we're differing here. Like I see this written out for the purposes of apportioning the assessment into the condominium so that the taxes can be divided equally amongst those condominium owners for the common property.

Mr. Holtzmann: — Yes. But I don't think you can take that last step and say because of this regulation you can apportion the taxes, because the taxes are governed by the taxing provisions of the statute.

Mr. Ward: — No, no. No, they're not — not in a condominium. If you have a condominium with ten people in it, and the common property is assessed at 10,000, you've got a thousand dollar assessment on each one of those condominiums above and over the condominium assessment.

Mr. Holtzmann: — But that's directed by the taxation provisions of the statute, not the . . .

Mr. Ward: — The common property is?

Mr. Holtzmann: — Oh yes, sure. In The Rural Municipality Act, 1989 and The Urban Municipality Act, 1984 there is detailed provisions as to how taxes are to be levied.

Mr. Ward: — Yes, how taxes are levied, not how the assessment is distributed.

Mr. Holtzmann: — Yes. This is what I'm talking about, the taxes here.

Mr. Ward: — Well, I think this is talking . . . I think that's where we're differing here. This is talking about assessment. And you're thinking it's talking about taxes. And I think that's where the difference is that . . . and I think that's what we'll find out. I'm not sure. But just when I read this, that it certainly looks like it's an assessment tool rather than a tax tool.

Mr. D'Autremont: — When we — again, gee — I'm agreeing with you a lot today Larry. I'll have to go back and check and see what the problem is.

Would it be of value to take the word taxes and taxation out of there, and insert or correct the sentence structure to make the system work?

Mr. Holtzmann: — I think you could take the whole section out and then it would . . . then it would be fine.

Mr. D'Autremont: — But is there a need though in the condominium Act to explain how the division of assessment will be appropriated to the various units?

Mr. Holtzmann: — I think so because of the peculiarity that there is common properties — hallways, yards, and things like that. I think it has to be done.

Mr. D'Autremont: — So we need some sort of regulation like this to determine the levels of appropriation for each assessment . . .

Mr. Holtzmann: — Assessment, yes.

Mr. D'Autremont: — . . . of the assessment. So we need something like this in there. It just doesn't need to talk about taxes.

Mr. Holtzmann: — And the regulations . . . in fact the other provisions of the regulations do that. They do that.

Mr. D'Autremont: — So there is already an area of distribution of the assessment outlined in other areas of the Act?

Mr. Holtzmann: — Yes, yes. Then this comes, it does . . . They're quite detailed sections of how it's apportioned.

Mr. D'Autremont: — Maybe this is redundant then, is it?

Mr. Holtzmann: — Well, I think so, yes. I don't think it's needed. I think it follows as a matter of course.

Mr. Ward: — I guess before I'd want to jump up and down . . . I know condominiums were a problem from an assessment point of view. And I guess before I jump up and down and say that the condominiums were all covered in The Urban Municipality Act, 1984, I really think we should check with the minister because I think this is an assessment tool, not a . . . I still think it is and I think it needs to be there I guess.

Mr. D'Autremont: — Perhaps we need to check The Condominium Act, 1993 which I believe just went through the legislature in the last session, to determine whether a division of assessment is included in that Act. And I think this is part of that but perhaps it's redundant.

Mr. Holtzmann: — See what I'm looking at is that — looking at what the regulation making authority intended — they're basing their regulations on 112 clause (0.1) which talks about establishing in a scheme of apportionment of assessed value. All right, if you're acting under that authority all that allows you to do is to apportion assessed values.

Mr. Ward: — Right. Assessment values — not taxable values.

Mr. Holtzmann: — Right. Not taxes, yes.

Mr. Ward: — Not tax value but assessment value.

Mr. Holtzmann: — Assessed value, right. Assessed at so much. It used to be that it's supposed to be assessed at fair value until evaluators started using manuals. I digress, I'm sorry.

Mr. Ward: — We could get into that. And I guess the problem comes in when you try to assess like a hallway in a condominium because it is certainly part of the assessment value. And to make it part of the tax value, it has to be put onto the units.

Mr. Holtzmann: — But I suppose it's not an exact science because in assessment, if you're fair, it's fine. You could be out by 50 per cent. As long as you're out that much with respect to everyone because your taxes are based on mill rate.

Mr. Ward: — Are you in a condominium?

A Member: — Ask to talk to Maynard about that . . .

The Chair: — Any further comments regarding The Condominium Property Regulations?

Mr. Ward: — I'll move that we follow the recommendation to find out why the minister says this in there or why the department put that in there; and it may very well be obsolete now that the condominium Act was passed.

The Chair: — Do we have a seconder to the motion? The motion on the floor? Mr. D'Autremont. All agreed on the proposed motion?

A Member: — Agreed.

The Chair: — Carried. Thank you.

Enforcement of Maintenance Orders Regulations, 1998

Mr. Holtzmann: — These regulations provide the procedure for enforcing maintenance orders. They're detailed, and as the report says, they're initiated by the person who holds a maintenance order. This person applies to a court official, and as part of the application the person in whose favour the order is made must supply a certified copy of the order to be enforced,

any forms or documents that the official may request, and an affidavit of arrears.

In many cases that requirement would not be particularly onerous, but if we realize that the official who enforces these orders has access to court records, has the resources to search those records to find particulars of the person against whom the order is made, it seems that that official is in a far better position to secure a certified copy of the order once it's identified to him by the person who has the order. Since all payments of maintenance which are to be enforced must be made through the office of this officer of the department that is looking after enforcing the orders, he then would have a list of all payments that had been made. He would be able to calculate what the arrears were.

And it just seemed to me that in reading this, that he is sitting in a position where he can do a lot of this by phone calls or by directing someone in his staff to do it. Whereas a person that is from out of the city, or doesn't have the resources such as transportation or finances, to be able to do these things . . . and I was just wondering why the official didn't do more in this case then.

The Chair: — Thank you, Mr. Holtzmann.

Mr. Hillson: — Yes, this is something I know a bit about from my former life and I'm sure every MLA (Member of the Legislative Assembly) knows something about because I'm sure you all get MEO (maintenance enforcement office) calls all the time. So you all know that MEO is very backed up. And I assume that everyone in this room would be reluctant to back them up any worse than they already are.

Now the first place is they do . . . the women do qualify for legal aid to have some of this leg work done. I agree with Mr. Holtzmann that whenever a maintenance order is to be enforced by MEO, it would make sense for the court officer just to automatically send a copy of the order to MEO. That part of it seems to me to make sense.

With respect, the rest I think is wrong in that the provision presently is that all orders are enforced by MEO unless the parties opt out. Why would we prevent parties from opting out? I mean it's their decision, their order. If the mother doesn't want MEO and there are good reasons for her not wanting MEO, why would we force her to go through the office when she says I don't want to.

For instance, if daddy turns up on December 20 with a cheque and she says I can't take it, you have to send it to Regina. It has to come back here. She doesn't get the money before Christmas. She's got a two-week wait. So there are excellent reasons why a woman is for . . . I'm using gender here but I mean generally we're talking . . .

There are excellent reasons why someone who's got a maintenance order does not want to use maintenance enforcement unless the ex is being a jerk. I mean, that's really . . . I mean, it really seems to me that we do.

Mr. D'Autremont: — On either side.

Mr. Hillson: — On either side, yes. I mean, we know mostly it's the one but on either . . . of course, you're right, Mr. D'Autremont, on either side. I mean both from a standpoint of a timely service, keeping down on the cost, it is to everyone's advantage if parties are able to handle this on their own. Maintenance enforcement exists where parents are not prepared to do the honourable and decent thing and meet their obligations.

But in cases where they are, neither of the parents wants maintenance enforcement involved. They shouldn't have to have maintenance enforcement involved and we shouldn't want maintenance enforcement involved. We should let the parties deal with it on their own. That's to everyone's advantage.

So with the exception of the fact that I think when maintenance enforcement is going to be enforcing an order it's . . . I certainly agree that it makes sense for the court to just automatically send a copy of the maintenance order on to MEO. I agree with that. The rest to say, respectfully, I do not agree.

Mr. Ward: — Now I'm worried. I'm agreeing with Jack.

The Chair: — Any comments, Mr. Holtzmann? Or would you like to hear from someone else first?

Mr. Holtzmann: — No, I agree. The process where the parties agree not to use the offices of the enforcement officer, that's fine, they're on their own.

Mr. Hillson: — They file an opting-out form with the court.

Mr. Holtzmann: — And then the enforcement officer isn't there. In the event that there isn't such an agreement, such an opting out, and the order is to be enforced through the enforcement officers' office, then this is the procedure that that party has to follow. To supply an affidavit and a certified copy of the . . . and what not. And at that stage, yes legally it is available in some cases but it's with respect to those cases where the enforcement officer is involved, if they have not filed an opting-out certificate, then the payments would be made through the office, I guess. No?

Mr. Hillson: — In many cases they would, but as I say the fact is, you know, a dad comes to pick up the kids and mom says, how about that cheque? Do we want to put them in a position where, you know . . . No, I can't pay you, you know. I can't accept a cheque from you. You've got to mail it to Regina. It's got to come back to me and that's a two- or three-week wait. I don't think the parties want that.

Mr. D'Autremont: — Well I agree with Jack in a sense that the courts should be providing this automatically to the maintenance enforcement office if an order is in place and the parents haven't opted out.

Some parents seem to manage quite well outside of the system. Any that phone me, it's after they've had problems and I strongly recommend to them that they deal through the maintenance enforcement office; it's protection for both sides.

I do have a question though, Mr. Holtzmann, on the affidavit of arrears. I'm not familiar with that and what's its purpose and

what's it's supposed to be doing?

Mr. Holtzmann: — Well it's to notify the enforcement officer just how much he is to collect, how much is due and owing on the order.

Some may have been paid. The full amount may not be owing, very little may be owing, but just so he goes out and says, you pay up X dollars.

Mr. D'Autremont: — So this is a determination made by the court.

Mr. Holtzmann: — No, by the complainant or the person whose favour the order . . .

Mr. D'Autremont: — Okay. But so there's an order in place because it's gone before a court some place and the court has determined, yes, there's a failure in maintenance and this is the amount of the arrears. So there is an established track that this is the amount owing so I see no reason why that should also not be included in the maintenance order when it is done by the courts. And that should be passed on to the maintenance office.

Mr. Holtzmann: — Well the order will say whether to pay $200 a month in respect of so-and-so beginning on a certain date. Payment might be made for a series of three or four months or whatever, and then half a payment, then no payment, then another half payment. Well you take the amount of the half payment, the full payment, and the half payment and say that those are the arrears, that's how much I want you to go out . . .

Mr. D'Autremont: — Yes, I would think that the onus should be placed on the court to provide that information to the maintenance office so that they can proceed with the foundation that this is the money owing, here's the order.

Mr. Hillson: — I guess, Mr. Chairman, the problem is that only the parties will know what that figure is. You see what Mr. Holtzmann was saying, you've got an order for 200 a month; it's been outstanding for a year so that means $2,400. Well the court is not going to know that in fact 1,600 has been paid. So . . .

Mr. D'Autremont: — But where's the record that it's been paid?

Mr. Hillson: — Well there will never be, because you cannot — even with all due respect to Mr. Holtzmann's recommendation — you cannot prevent the fact that parents are just going to hand the cheque to each other when they pick up the kids, etc. That's going to happen.

Mr. D'Autremont: — Yes, it does. And then the guy comes back and says, I've made that payment and the other spouse says, no, it wasn't, there's no record of it — you owe me X.

Mr. Hillson: — And you can't prevent that, sir. They have to make sure they pay it in such a way that there will be documentary evidence.

But in the case . . . let me come back to my situation. So there's 2,400; two have been paid, 1,600 was paid. You have the affidavit that says he's 800 in arrears plus 200 a month. So then maintenance enforcement knows that what they are supposed to collect is ongoing of 200 plus an arrears of 800.

The court can't be expected to have that. I mean you're just simply just going to bog down our courts . . . and as you know, from being an MLA, our maintenance enforcement has a serious problem of providing timely service.

Mr. D'Autremont: — But wouldn't the court have already made that determination though? Isn't that part of when the couple go back into court again to say, ex hasn't been paying their maintenance or this is . . .

Mr. Hillson: — They don't go back to court. They don't go back to court.

Mr. D'Autremont: — Oh, okay.

Mr. Hillson: — Basically the courts make an order, make a maintenance order of 200 a month. And I'm simplifying here, but basically that's the end of the court involvement. The court has made an order. Here it is. Now you enforce it.

But once the courts say 200 a month maintenance, that is the end of the court's involvement and the court will have no way of knowing whether that has or has not been honoured.

Mr. Holtzmann: — Yes, you see my recommendation was made on the basis that if they are using the enforcement officer then payments are to be made through his office. You would have a record. But as you say if the husband or wife comes along and says here's a cheque for the arrears certainly they're going to take it. And the enforcement officer is not going to know about it.

In that case I acknowledge that the enforcement officer will not have a record where payments are made outside the established procedure. And I guess we don't want to dissuade those . . . (inaudible) . . . those payments.

The Chair: — So what that basically does then is the onus then is on the individual who has made that payment to inform the office if indeed they have been . . . (inaudible) . . . to make sure that the office is aware of the fact that this payment has been made. Otherwise it could show up as a non-payment and just start adding up to on the arrears.

Mr. Holtzmann: — And that's why an affidavit of arrears from the person in whose favour the order has been made would be proper. Because that person would have to include in that affidavit the payments that had been received through the office as well as the one at the back door.

Mr. Hillson: — Sure. She or he has to now swear this is how much I've received.

The Chair: — So we would strongly recommend to anyone whenever they're making a payment to make sure they make a cheque out. It's easier to follow than cash.

Mr. D'Autremont: — And explain what the cheque is for on the cheque.

The Chair: — Are there further comments? I'm not exactly sure. Where do we go with the recommendation?

Mr. Hillson: — Well, as I say, I do recommend that the Clerk contact the department with a recommendation that where maintenance orders are to be enforced by MEO, the court automatically send a copy of that order to the office . . . (inaudible interjection) . . . I think it is. Yes.

Mr. Holtzmann: — Can I turn that around and say that it's the obligation of the enforcement officer to secure a copy of that. If we tell the court of what it has to we might be running into some problems.

Mr. Hillson: — Well the court regulations direct . . . (inaudible) . . . where you sent out orders, I mean I guess what . . . I'm certainly prepared to have heard you here. But I'm trying to avoid the problem that the MEO has to write a letter to the court. And again the MEO isn't even going to know who to write a letter to the court about . . . If it is the court officers . . .

A Member: — Clerks.

Mr. Hillson: — The court Clerks, yes, maybe . . . (inaudible) . . . the court Clerk. If the court Clerk, part of issuing an order is, this is where it goes. I don't know. Mr. Holtzmann, do you want to react to that?

Mr. Holtzmann: — I would agree with that. I would feel comfortable with that having the registrars direct copy once the ruling's made.

Mr. D'Autremont: — The court . . . people to know what's going on . . .

The Chair: — Just personally, too, just from a personal case I've been dealing with, I think that would certainly address a concern that's been on my desk for the last three months where, if the court was obligated to make sure that that wasn't passed on to maintenance enforcement, it would simplify the process. It appears to me just from some ongoing dialogue I've had in this case so . . .

Mr. D'Autremont: — Maintenance enforcement is a real quagmire.

The Chair: — So I hear agreement then that we accept the recommendation as presented by Mr. Hillson, that we ask the court to make sure that the requirements of the orders are then passed on to maintenance enforcement — just for clarification — that's where maintenance enforcement is involved in collection?

Mr. Hillson: — Enforcement, yes.

Mr. D'Autremont: — The only provision will be where the parents have opted out at the court.

Mr. Holtzmann: — Your recommendation wasn't that in each case in which the court issues an order directing the payment of maintenance, the registrar send a copy of that to the MEO?

Mr. Hillson: — That's probably simpler.

The Chair: — Maybe just for sake of . . . so we can . . . maybe let's just get a clarification so we know exactly what we're voting for.

Mr. Hillson: — In each case where the court makes a maintenance order and no opting out form has been filed, the Clerk of the court . . . we recommend the Clerk of the court be directed to send a copy of the order to maintenance enforcement office.

Mr. D'Autremont: — Jack, what if the parents opted out initially and want to come back into the system. Does that go back through the court system somehow? Or what will happen in that case?

Mr. Hillson: — No, in that case actually the person who's got the order would have to get an order, and actually maybe Garnet's right from that standpoint. This does often happen. Oftentimes obviously a parent thinks she's going to be able to collect and finds out she can't. So this does frequently happen.

Mr. D'Autremont: — But that goes back through the court?

Mr. Hillson: — No, it doesn't go back through.

Mr. D'Autremont: — Oh, it doesn't go back through the court.

Mr. Hillson: — But it does often happen that a parent does not want to use MEO to begin with and later finds out they have to.

Mr. D'Autremont: — What if we were to include in our recommendation then that all maintenance orders be passed onto the maintenance office, including those that are opted out with the form — the opt out form — included in that so they know this one is not being worked on right now but may come back at a later point.

Mr. Hillson: — I wouldn't be opposed to that. Mr. Holtzmann, do you want to comment on that? I'll accept Mr. D'Autremont's amendment.

The Chair: — So do we have an understanding of what our recommendation is now?

Mr. Hillson: — I think Mr. Holtzmann understands where we're at.

The Chair: — Are we all agreed? Agreed. Carried. Thank you.

The Public Libraries Amendment Regulations, 1998

Mr. Holtzmann: — These regulations deal with the making of grants again. The grant making section — in accordance with any terms and conditions that are prescribed in the regulations, the minister may make grants — the minister may make grants.

The regulations in sections 21 to 29 state that in certain cases the minister shall make a grant. I know that lawyers will discuss long and loud the difference between shall and make. In this case the sections of the regulations provide terms and conditions for the regulations but then say the minister shall make a grant.

I think the regulation making authority would contemplate that where the minister is to make grants these are the conditions upon which he may make those grants. He's got the discretion under the Act whether to make the grant or not. That discretion is to be exercised according to the terms and conditions validly made, set out for him. Once those conditions are set out argument can be made that the minister can look at them and say, well I'll make a grant or I will not make a grant. I have that discretion under the Act. The ultimate discretion is mine.

Another school of thought would say that if the regulations are detailed as to terms and conditions then the minister's discretion is taken away and he is to make the grant. In this case I don't subscribe to that. I think in this case may means may.

The Chair: — Any comments regarding the . . .

Mr. Ward: — Is one Act superseding the other Act? Like does The Government Organization Act supersede The Public Libraries Act, 1996? Or vice-versa?

Mr. Holtzmann: — Well there is a general regulation grant making authority in The Government Organization Act but it's discretionary as well. The minister may make grants under The Government Organization Act. This one says that the minister may make grants. This is specific. This I think would allow you to make grants under these terms and conditions.

Yes the ministers sometimes, I must say, that they have used The Government Organization Act to make grants where they couldn't make a grant under the specific Act that they're dealing with — that's happened. That is a result of the bringing on-line of The Government Organization Act.

Mr. Ward: — Are we dealing here then with a situation where you might have two different ministers? What I understand this to say — maybe I should clarify what I'm thinking here — what I understand this to say is that you're saying it's in two different places, in two different Acts, right, and you don't think it's necessary in both?

Mr. Holtzmann: — No, no. I'm saying under this one that The Public Libraries Act, 1996 gives the minister the discretion whether to make grants or not. The Act gives the minister that discretion, but it says that the Lieutenant Governor in Council may make regulations describing . . . prescribing terms and conditions for the grants. These regulations do that but then they say that the minister in these cases shall make a grant. It takes away his discretion. I don't think that's right.

We can't even resort to The Government Organization Act here because the grant-making powers in The Government Organization Act, they're discretionary as well. It would be not an uncommon thing that if the statute said . . . The Public Libraries Act, 1996 said the minister shall make a grant under certain conditions and those conditions didn't apply, he could then jump over into The Government Organization Act and make a grant. But it would have to be the minister in charge of The Public Libraries Act, 1996, that would do that.

Mr. Ward: — But the minister in charge of The Public Libraries Act, 1996 may not be the minister in charge of government organizations?

Mr. Holtzmann: — Well The Government Organization Act deals with all the ministers. It just talks about the minister who is responsible for a certain government activity or program may make grants. And then you have to look at whatever program you're considering, i.e., libraries, and say that the minister under that Act could make this grant.

The Government Organization Act was to provide an umbrella authority because quite frankly the grant-making powers in the individual Acts were cumbersome in the minds of the individuals that administer those programs.

Mr. D'Autremont: — Well as I would understand this, the governance Act says you may make grants to X, so then you come down to the libraries Act and the minister may make grants if you meet these . . . Okay, we're going to . . . he can determine whether or not he wishes to make a grant available. Once that determination has been made, then he sets out the requirements to receive that grant.

Now the question is, should he have the authority to again make a determination even though the applicants may have met all the requirements to whether or not give them the grant? If they've met the requirements, should the Act say you shall then give them a grant or does it again allow the minister to make a determination?

Mr. Hillson: — Say we've run out of money.

Mr. D'Autremont: — Yes or your library got enough money last year, I'm not going to give you any money this year even though you meet the requirements.

Mr. Holtzmann: — Yes, your statement is complete except that in this case the terms and conditions are set by the Lieutenant Governor in Council, not the minister himself. But the minister has to work within those. And as you say there are a lot of instances why he would not want to make a grant even though an applicant fell within the eligible terms.

Mr. D'Autremont: — Well I would almost be of the opinion that if for some reason the minister wanted to exclude someone from receiving the grant then it would be incumbent on himself or the Lieutenant Governor in Council to change the requirements for that grant in a manner that would exclude all in that position and not simply pick the winners and losers.

Mr. Hillson: — This may or may not be on the point and if it isn't please correct me, but it seems to me that we've got that in the case of municipal heritage grants where their criterion is still in effect, their rules and regulations and procedures and forms, but in point of fact I think we haven't given out heritage grants for a number of years now. Is that not correct?

So in a sense all programs are subject to financial availability. Now, as I say, I don't know if that comment is on point or not. Is it Mr. Holtzmann?

Mr. Holtzmann: — I don't know what the authority for the heritage grants are. When I'm reviewing these regulations I just look at the authority that the department is purporting to act under and my experience is that if they're not sure of the authority that they have under the particular statute, they will

resort to The Government Organization Act or they will resort to two Acts; they'll use the authority of two Acts which was frequently done with the Department of Social Services years ago.

Now the minister who was in charge of the program for the heritage grants, again the heritage grants would be grants authorized by some particular statute and the minister could make grants from that program, again according to any terms and conditions that were prescribed for those grants.

Mr. D'Autremont: — Well not being a minister and not being in government, I hate allowing ministers discretionary powers. However, I see there are times when you have to make those discretionary choices and if the word "shall" was in there it wouldn't allow you to make those. I'm thinking of education where schools apply with the B-1 forms for construction. You may have a hundred schools applying and they are equally qualified to receive the grant. You simply don't have the money available to fulfil all of those 100. So over a period of time you hope to do that, but as of today's issuing of grants you can't possibly do that so maybe we need to leave "may" in there.

Mr. Holtzmann: — See there's another approach made with respect to grants where the Lieutenant Governor in Council decided that the grants shall be paid and those were the school grants that you looked at at the beginning of the meeting, and there there's very detailed calculations of what grants are to be paid. They're entitled to those grants according to those calculations, and once those calculations are done there's no option, the minister pays it.

The Chair: — Further comments? I'll ask the committee for their wishes in regards to the recommendation put forward by counsel.

Mr. Ward: — I'll recommend that we follow the writer's recommendation and get a . . . secure an explanation for the particular approach to providing library grants because I think that's what seems to be the problem here, and if we had it laid out it would work and we'd all feel a little more comfortable.

The Chair: — Is that agreed? Agreed. Carried.

The Department of Intergovernmental and Aboriginal Affairs Regulations 1997 (No. 2)

Mr. Holtzmann: — The Department of Intergovernmental and Aboriginal Affairs, if you've looked in the index of the "Table of Public Statutes" for this departmental Act you won't find it because it's a department that's been created under The Government Organization Act by an order of the Lieutenant Governor in Council.

One of the functions of this department is to coordinate, develop, implement, and manage the programs and policies of the Government of Saskatchewan relating to local government elections. And when I read that, having advised for a short while Municipal Affairs folks about municipal matters, I just wondered what coordination would be administered to municipalities, urban and rural school boards, with respect to elections.

The statutes providing for election procedures are very detailed, all inclusive other than what happens in the case of a controverted election.

And I couldn't visualize what participation a government official would have in this process because the returning officers, deputy returning officers, clerks are all directed every step of the way as to what to do in a municipal election, school board election, etc., etc., etc. So I don't know what they envisaged by that power. I don't know.

Mr. Hillson: — Would this be Metis Nation? I'm sorry. Pardon me, Mr. Chairman.

Mr. Whitmore: — It certainly jumps out at me that the local government, I think it applies, as Mr. Hillson has just indicated, to Metis Nation elections. The coordination there that's been involved with the department in terms of working on enumeration, elections, and that point.

But I'm not quite sure how it — and rightfully so — bringing up the question on how it deals with local government, because it brings in the whole question in the area of municipal governments. And I'm not quite . . . And I don't think that's the extent of the regulation by any stretch of the imagination.

The Chair: — Further questions?

Mr. Ward: — Yes. I guess if I had to look at this, and I'd look under the Act that it's in and not look at the local government words, you're dealing with the Intergovernmental and Aboriginal Affairs. And I think to make allowances for cultural differences in northern municipalities or northern governments, that local was probably just used as a catch-all because there may even be different methods within their . . . within themselves. So whatever they determine to be their local government, this would cover it.

That's how I would look at it. And I would think it has to be there to cover those situations, because all governments are not legislated the same and this has nothing to do really with the urban and the rural municipal Acts. This is a different Act altogether, and it has to cover those people I think that may make that decision on their own or may have the right to make that decision on their own.

Mr. Holtzmann: — Well the term local government is not a term of art but it's generally understood to apply to urbans, rurals, northern municipalities, school boards, hospital boards, on and on.

But in each of those cases there are pretty specific provisions dealing with nominations, voting, all the aspects of elections before and after, including northern Saskatchewan. And The Northern Municipalities Act applies in that case.

School board elections, they're all pretty detailed as far as voting and procedures for voting and for what not. And unless those particular Acts make allowances for variances, you can't have any variances.

You couldn't have somebody from Intergovernmental Affairs come along and say, well in this case we won't do that.

Mr. Ward: — What about an election of a chief on a reservation, under the Indian Act?

Mr. Holtzmann: — Well that's under the Indian Act.

Mr. Ward: — But that's Intergovernmental Affairs.

Mr. Holtzmann: — No, no federal. That's federal . . . that's a federal statute.

Mr. Ward: — But that's part of that . . .

Mr. D'Autremont: — We have no jurisdiction whatsoever.

Mr. Ward: — No, no I know we don't. But we may want to assist them which is what this is saying, right?

Mr. Hillson: — No jurisdiction.

Mr. Holtzmann: — No, no jurisdiction to do that. Because it's a federal, federally controlled matter.

Mr. Ward: — No, no you may not . . . no, but it's there if they act. Like I'm just saying that there's local . . . I think there's . . .

Mr. Holtzmann: — See the aboriginal affairs, I think, there would relate to those matters which the Government of Saskatchewan is really dealing with these people in — land claims, treaty obligations, those kinds of things.

I know that there's been an agency of the government that's been at work now for over 10 years dealing with land claims and treaty organizations, also dealing with the Metis societies and whatnot on grants and things like that. That's the kind of thing that that department is doing.

But when it speaks to local government elections, I'm just at a loss. I don't know what an official of the department would do if he went out to an election in Prince Albert — do you need forms or can I supply transportation — which I don't think was contemplated.

I don't know what they had in mind on this. I haven't a clue.

Mr. Hillson: — Yes, I was going to say in answer to Mr. Ward too, is that northern municipalities too also have an Act which, as you say, details election procedures for northern municipalities.

So the recommendation I see is just for the Clerk to contact the department and see what in fact they are talking about. And the only one we have been able to come up would be Metis Nation. And it seemed to me, I guess it's a good recommendation to see what in fact they are talking about because it's certainly not instantly obvious. So I concur on the recommendation.

The Chair: — Any further comments? Is the committee prepared to agree with the recommendation? Agreed? Opposed? Carried.

For the sake of committee members, we have two more issues to deal with. It's near the hour of noon. I would seek guidance of the committee. I'm prepared to continue to work through and complete this before we break for noon, unless committee members feel they'd like to break for noon and come back at 1 o'clock. What's the wish of the committee? How about our counsel? Is that . . .

Mr. Hillson: — Can I just ask a question before we do vote on it. Certainly the last on the report sent out here is pretty simple, straightforward. I don't think that should take us any time.

The supplementary, I don't know about. And may I just inquire if that is something that maybe requires some more time and consideration for us to digest. But on the Provincial Court one I don't think there's much there that need concern us.

Mr. Holtzmann: — No, I would say the supplemental report, the issue there is the same as the water powers, almost identical, almost identical.

Mr. Hillson: — Then let's complete the agenda, Mr. Chairman.

The Chair: — With the understanding of the committee, we'll just move forward and complete our agenda. Thank you very much.

The Provincial Court Amendment Regulations, 1998

Mr. Holtzmann: — This amendment purports to provide the salaries payable to judges and was passed in 1998. It's worded to say, effective November 1, 1997.

In my opinion this is a retroactive provision. The statute doesn't call for this kind of retroactivity or any kind of retroactivity. Even if you say, well we'll interpret this on the basis that we're looking at it right now and we're saying right now you can consider him to receive $350 a day, calculated from November 1 on.

I might say that when I was doing these things, that is the approach that I would take when you were dealing with something that had happened in the past that you wanted to pass a regulation about. You would say, you're entitled to $350 a day for each day that you attend to your duties as a judge. And if you attended to your duties as a judge on November 1, or any time after that, from this time you're entitled to be paid $350 a day to it.

Now that is not a retroactive treatment of that matter because you're talking about what you're doing now and forward. You're paying him right now. The paying is the action that you're doing.

But this regulation is purporting to say that it was in effect from November 1, 1997 and you can't pass regulations which say, we pass them now but we'll deem them or the issue will be taken to have been in effect from a date in the past. That is bad; the law doesn't allow that to be done.

And this is my favourite department; it's the Department of Justice that did this so I would like to talk to them about it.

The Chair: — Any comments from committee members?

Mr. D'Autremont: — Don't we often provide, and I'm not

sure whether it's done through regulation or statute, but let's say there's a union agreement that has been . . . there's no agreement in place for two years and there's an agreement made and it goes back retroactive to the beginning of the agreement, and salary changes and . . .

Mr. Holtzmann: — Well, they agree to that. They agree that that's when they're going to have this apply.

Mr. D'Autremont: — Okay, so this will have no impact on those kind of things.

Mr. Holtzmann: — No . . . (inaudible) . . . even statutes — not regulations, but statutes — the courts interpret them that they are not to be interpreted as related to anything in the past. It's only with respect to the future unless the statute itself says that you can enact this provision and then say that this provision shall be deemed to have been in force for the last ten years.

Mr. D'Autremont: — And we've seen lots of deeming in the last while.

Mr. Hillson: — Another thing you're going to have to correct.

Mr. D'Autremont: — You're darn right.

The Chair: — Is the committee prepared then to act on the recommendation or to agree to the recommendation as presented to us by our Law Clerk? Are we all agreed? Agreed. Carried.

SUPPLEMENTAL REPORT

The Provincial Lands Regulations

Mr. Holtzmann: — As I said a few moments ago, this regulation is almost identical with The Water Power Amendment Regulations that has been before this committee for some time. It talks about a rental for leases being calculated as set out in that regulation and states that it is to commence on January 1, 1997 for leases pursuant to these provisions, whether the lease was entered into before or after this particular provision comes into force.

It's clearly retroactive on the same basis that the water power amendment was considered to be retroactive and I've just cited one example here of this particular approach to this rental being calculated. The other provision in these same regulations also provides for a calculation in the past and they are retroactive. I saw nothing in the statute which says that they had power to pass retroactive regulations so I'll leave it with the committee.

Mr. Whitmore: — Just a note for the committee. I hold one of these provincial land leases and I will note I will not be voting or participating in the debate in this.

Mr. D'Autremont: — But you can explain them to us.

Mr. Whitmore: — I just pay the bill.

The Chair: — Thank you, Mr. Whitmore. Any comments or questions regarding provincial lands regulations? Hearing no comments or questions, is the committee prepared then to recommend . . . accept the recommendations of the Law Clerk? Agreed? Agreed, carried.

Mr. Holtzmann: — I would like to say to you, Mr. Chairman and members of the committee, that this is my first approach at being of service to the committee. I was not really aware of how quickly you go through the reports or just how much work you would like to have.

I had a limited time to get this together. As my report says, it covers a period of January 1 to somewhere in June. I don't profess to have examined in minute detail the regulations but I've merely picked the high spots. I promise to do better next time for the next meeting when I would have more time to prepare. And if this is not enough for the committee to meet, I shall endeavour to supply more agenda items for the committee.

The Chair: — I thank you, Mr. Holtzmann, and on behalf of the committee I thank you as well for the work and effort you've undertaken in providing us with this report and making it as concise and to the point as you have. We certainly appreciate your work and efforts considering the fact that it's fairly short notice.

In fact, for committee members' sake, we're well aware of the fact when I had chatted with the Clerk at that time, the past Law Clerk was involved and had indicated that we should maybe set aside two dates. He had a number of issues to address and of course he had been working at it for quite a period of time. So we took that into consideration.

And then of course events changed in the meantime and as a result we had to reschedule. And then Mr. Holtzmann was invited to take over and I think Mr. Holtzmann has done a commendable job for the short notice he's been given, and on behalf of the committee we certainly want to thank you for your work and efforts.

I thank the committee for giving of their time, coming in on what appears to be a beautiful day although I hear in other parts of the province it may not be quite as rosy as it appears to be here in the city of Regina.

So I thank you for your time, for dealing with the regulations that have been presented to us as concisely as we have, and I would now entertain a motion of adjournment. Mr. Whitmore. Is that agreed?

Thank you so much and look forward to meeting with you in the new year and certainly, Mr. Holtzmann, look forward to working with you as long as you've been given the privilege of serving us in this capacity and we thank you. And to committee members, if you want to just pass your expense sheets to the Chair, we'll certainly make sure they're taken care of appropriately.

Thank you very much. Have a good day.

The committee adjourned at 12:08 p.m.