go as far as to disallow a proposed regulation, if necessary. This is just one of the recommendations of the Task Force on Subordinate Legislation. Co-chaired by Messrs. Denis Vaugeois and Richard French, the Task Force included eight other MNAs, Jacques Baril, Réjean Doyon, Maurice Dupré, Henri LeMay, Pierre Paradis and Roland Dussault, the latter replacing Mr. Richard Guay who became Speaker of the National Assembly in March 23, 1983. The report was made public on August 24, 1983.

The question of subordinate legislation has been the focus of considerable attention recently. In 1982, the National Assembly passed seventeen new laws and thirty-seven pieces of amending legislation, whereas the government administration adopted 350 new regulations and 450 amending regulations. Unlike laws, these regulations, which are the exclusive fiefdom of the administration, are adopted without public input or knowledge. Yet, they spell out the methods, terms, rules, standards, qualities and conditions according to which laws are implemented. In 1981, Mr. Raoul Barbe compiled all existing regulations into ten volumes each containing 950 pages. More regulations have since been adopted. On this subject, the Task Force notes that the impact of such a considerable number of regulations is obvious. Some people are protected, and even overprotected by these regulations. Others find their actions hindered and sometimes even paralyzed as a result of them.

In a bid to resolve this dilemma, the Task Force unanimously endorsed two main recommendations, namely that a *Regulations Act* be adopted to establish a framework within which regulatory authority could be exercised and that a specific system for exercising parliamentary control over subordinate legislation be implemented.

Proposed legislation should provide for the monitoring of the regulation-making process by the Ministry of Justice, their publication at least ninety days before adoption, and an analysis of the impact of the regulations. The main component of this legislation would be the creation of a specialized forum, namely a committee of the National Assembly to deal exclusively with the control of subordinate legislation. The committee could, if necessary, delegate responsibility for this matter to a subcommittee. Members would be appointed to the committee for the duration of the legislature and would be supported in their duties by a staff of experts in the field.

Members of this committee or subcommittee could select which draft regulations they would examine in depth to ascertain their legality and/or advisability. Where necessary, the committee could initiate a debate on the timeliness, effectiveness, merit and even necessity of the proposed regulation. Parliamentarians would be free to hold public hearings and to call the authors of the draft regulations to testify before the committee.

To make the committee more than a mere formality, the legislation would authorize it to report to the National Assembly and eventually to report on its negotiations with the administration about a draft regulation, to denounce practices and to initiate discussions and debates. If negotiations to have a draft regulation amended proved fruitless, the committee could even go as far as to request that the draft regulation be disallowed.

The power to disallow regulations is based on a measure in use in the Australian Parliament. A minimum of five MNAs representing at least two political parties could table a motion of disallowance which would be debated in the National Assembly. Unless it is put to a vote within a reasonable period of time, the motion of disallowance would come into effect and the draft regulation would be withdrawn. Of course a motion of disallowance should not be viewed as a vote of non-confidence in the government. Otherwise, it would be impossible to break party ranks and this would prevent the control system from functioning effectively. According to Messrs. Vaugeois and French, where regulations are concerned, many MNAs would not hesitate to take advantage of the freedom to vote according to their conscience.

While this committee would be responsible for exercising some control over draft regulations, each committee of the National Assembly could assume some control over regulations already in force. Any committee could decide to review an entire area, such as all regulations governing construction. Their task would be to verify the timeliness, effectiveness and merit of the regulations under review and to table a report to the National Assembly.

The document concludes with an annotated bibliography listing seventy-six documents on subordinate legislation from various countries.

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REPORT OF THE SECOND COMMONWEALTH CONFERENCE ON DELEGATED LEGISLATION, Ottawa, 1983, 3 vol.

Delegated legislation consists of orders-in-council and other regulations having legal effect because Parliament has, by statute, delegated its law-making authority to the cabinet, a minister or some public agency. The doctrine of parliamentary sovereignty makes it impossible for the executive to make such regulations in its own right. They must have their basis in a law passed by Parliament. Similarly Parliament has an ongoing duty to scrutinize the government's use of delegated legislation. That is a practice which for a number of reasons is more honoured in the breech than in the observance. If all Commonwealth parliamentarians deeply committed to the scrutiny of delegated legislation were gathered together they could fit easily into a medium size room. In fact they do — every three years at the Commonwealth Conference on Delegated Legislation.

These three volumes contain the report, background documents and transcript of proceedings of the second such conference which brought representatives of some twenty-seven jurisdictions as well as many non-parliamentary experts to Ottawa in April 1983. Volume One contains the agenda of the four day conference along with a concise summary of the matters discussed and the conclusions. Volume Two contains background papers divided into four sections: documents from seven jurisdictions (British Virgin Islands, Newfoundland, Northwest Territories, Tamil Nadu, Maharashtra, Sarawak and Zimbabwe) that were not represented at the first conference; updating of material from five jurisdictions (Australia, Canada, Ontario, Zambia and the United Kingdom) that were present at the first conference; papers delivered to the conference; and some miscellaneous statements relating to the need for a Commonwealth Study on Statutory Instruments. Volume Three contains the transcript of the proceedings. Few parliamentarians are likely to read it from cover to cover. Those who do will not be disappointed. It is surprising how seemingly complex issues can be clarified in the cut and thrust of debate. One example is the exchange reprinted elsewhere in this issue, between Professor David Mullen and Richard French of the Quebec National Assembly on the question of scrutinizing delegated legislation on its merits.

The transition from the spoken to the written word appears to follow usual Hansard guidelines with a certain amount of revision to syntax and grammer to make for a more readable report. There are, however, more typographical and spelling mistakes (including names) than one usually finds in Hansard type documents. The only major criticism was somebody's decision to publish three separate volumes instead of one. This followed the practice of the first conference but as a result the delegate list is duplicated in volumes one and three and many of the background papers printed in volume two are also found again in volume three. Despite these problems the conference organizers are to be commended for having continued and improved the dialogue on parliamentary scrutiny of delegated legislation in the Commonwealth. Perhaps the real clue to the Commonwealth's viability is the ever-increasing number of opportunities for members from various countries to come together to discuss problems common to their profession.

Copies of the report may be obtained by writing to the Senate Clerk, Standing Joint Committee on Regulations and Other Statutory Instruments, The Senate, Ottawa, Ontario. K1A 0A4.

The Editor

Letters

Sir:

I have read Bruce Carson's review of *Lawmaking by the People*, which appeared in the Autumn issue of the *Canadian Parliamentary Review*. Mr. Carson considers there is a lack of evaluation and critical assessment of the legal procedures for referendums and plebiscites. I have purposely avoided making my books on election law a vehicle for my personal opinions, because I have felt it important to provide a relatively neutral, though informative, reference work on the subjects being treated. All the same, a closer reading of the initial chapters should reveal that this book is not really "void" of value judgments.

Mr. Carson certainly summarizes the contents quickly, so that he can press ahead to his role as reviewer in noting the "negative" aspects of the book. In so doing, he leaves your readers with the impression that only federal, provincial and territorial plebiscites are addressed (whereas municipal plebiscites are also covered, because this in fact is the level of government at which most occur) and that the introductory chapters deal just with history of plebiscites in Canada and not other general aspects as well. Mr. Carson's lament that these chapters contain "few original thoughts" suggest he must be exceedingly well informed on this subject, which is remarkable since I am not aware of any other book on this subject in Canada. It's too bad he did not use more of the blank page 40 to let readers know more about the book. . .

J. Patrick Boyer

Bruce Carson replies

One should approach book reviews with some trepidation; doubly so when dealing with a work like Mr. Boyer's which concerns a specialized topic upon which little has been written in Canada. On reflection perhaps, my review was indeed too short.

It did not even mention one of the major problems I encountered — namely determining the audience Mr. Boyer was trying to reach. If he was writing for the benefit of political scientists, lawyers or even legislators who may be updating the laws in this area I feel my comments on the lack of critical analysis and value judgments are valid. To devote almost two hundred pages to recounting the applicable law on this subject throughout Canada without telling the reader which facets seem to have best dealt with the problem of finding the most appropriate vehicle to express public opinion on a particular issue is, in my view, a major failing. However, if the aim was to provide us with a readable compendium of the applicable law as of the date of publication, I would agree that he has succeeded admirably.

As for his letter, Mr. Boyer seems to have fallen into the trap which awaits authors who write the first major work in a particular area. As they are the only person writing on the subject they think they must necessarily be the only ones capable of reviewing their books.

But take heart Mr. Boyer, there is no hell for authors in the next world — they suffer so much from critics and publishers in this one!