

MINUTES OF THE MEETING OF THE COMMITTEE OF SUBORDINATE LEGISLATION
HELD AT 12.30 PM ON THURSDAY, 10 MAY 1990
IN ROOM 5.04 PARLIAMENTARY ANNEXE

PRESENT:

Mr R.D. Barber, MLA (Chairman)
Mr G.B. Fenlon, MLA (Deputy Chairman)
Mr A.A. FitzGerald, MLA
Mr R.J. Quinn, MLA
Mr L. W. Stephan, MLA
Mr R Loewe (Legal Counsel)
Miss J Dingwell (Secretary)

APOLOGIES:

Mr R.K. Hollis, MLA
Mr J.H. Sullivan, MLA

MINUTES OF PREVIOUS
MEETING:

The minutes of the previous meeting, having been circulated to members, were taken as read and confirmed on the motion of Mr Stephan, seconded by Mr FitzGerald.

CARRIED

BUSINESS ARISING
FROM MINUTES:

Services of Legal Counsel

Mr Loewe was introduced to Committee members. He advised that as some of the subordinate legislation in recent Gazettes had been settled by him as an officer of the Crown Solicitor's Office, it would be inappropriate for him to examine that legislation on the Committee's behalf. As well, he had discussed some Committee matters with departmental officers and undertook to mention that fact when such matters arose during meetings.

It was agreed that arrangements be made for Counsel to receive the Gazette regularly to facilitate his work for the Committee.

No.2/90 Regulations - Criminal Code

The meeting considered (1) letter of 5.4.1990 from the Minister for Justice (a) pointing out that significant amendments would be required to the Code to alter the existing arrangement; (b) expressing the view that the Committee's suggestion would be taken into account in the proposed Penalties on Sentencing legislation; (c) advising that two minor errors in the regulations would be corrected. The Secretary advised that those amendments had been gazetted on 5.5.1990.

(2) letter of 10.4.90 from the Attorney-General agreeing with the Committee's suggestion and advising that the matter had been placed before the relevant working party for its early consideration.

It was resolved to await the Attorney-General's further advices.

No.3/90 Regulations - Mental Health Services Act
Letter of 11.4.1990 to the Minister in accordance with resolution of previous meeting, endorsed.

Void regulations

Letter of 29.3.1990 to Parliamentary Counsel in terms of resolution of previous meeting, endorsed.

OTHER BUSINESS:

No.34/88 Regulations - Tobacco Products (Licensing) Act

The meeting discussed the Minister's advice of 5.4.1990 that the matter had been referred to the Crown Solicitor's Office and resolved to await further advice.

Nos.33/88,1/89 Regulations - Credit Act

Consideration was given to (1) Parliamentary Counsel's letter of 5.4.1990 enclosing copy of his letter to the Minister expressing his view that the validity of the regulations is open to challenge and stating that he is unable to authorise the publication of further reprints of the regulations; (2) Minister's letter of 9.4.1990 conveying some of Mr Callinan, Q.C.'s views on the various matters but stating that because of commercial repercussions he is reluctant to totally republish the regulations as suggested by the Committee.

It was resolved that the Minister be requested to forward a copy of Mr Callinan's opinion to enable the Committee to give further consideration to the matter.

No.5/89 Order in Council (Rule) - Supreme Court Act (gazetted 28.1.1989)

The meeting considered Minister's letter of 5.4.1990 enclosing copy of an Order in Council gazetted 7.4.1990. Counsel reported that this Order in Council appears to enumerate two amendments numbered (i) and (ii) to an Order in Council gazetted 1.7.1989; however, while amendment (i) is an amendment to the Rule of Court made by the latter Order in Council, amendment (ii) is an amendment to another Order in Council, namely the Order in Council gazetted 28.1.1989.

Furthermore, the reference to a "Rule of Court dated 2.11.1988" is incorrect.

After discussion it was resolved that the Committee reply to the Minister suggesting that the Order in Council gazetted 7.4.1990 be made in proper form.

No.5A/89 Regulations - Corrective Services Act

The meeting discussed Minister's advice of 5.4.1990 that he envisages validating legislation will be introduced during the present parliamentary session and resolved to await the introduction of such legislation.

No.6/89 By-Laws - Education (Teacher Registration) Act

Consideration was given to the Minister's advice of 30.4.1990 that the matter had been referred to the Crown Solicitor and the meeting resolved to await further advice.

Counsel declined to comment on the by-laws as he had been involved in departmental discussion of them.

No.13/89 Regulations - Intellectually Disabled Citizens Act

The meeting discussed Minister's advice of 20.4.1990 that the only amendment needed is to include provision for a date to be inserted on form 5 and that this will be included with any future amendment of the regulations.

It was resolved to check future amendments of the regulations to ascertain if form 5 has been amended as suggested.

Counsel excused himself from discussion of these regulations as he had been involved in their preparation.

No.16/89 Order in Council (Rule) - Magistrates Courts Act

Consideration was given to the Minister's letter of 23.4.1990 advising that further amendments to the Rules are being undertaken and any further deficiencies will be corrected.

It was resolved to await gazettal of the proposed amendments.

No.20/89 Regulations - Securities Industry (Application of Laws) Act; Companies (Application of Laws) Act

The meeting considered Minister's letter of 30.3.1990 acknowledging that the regulations only commenced operating from the date of their gazettal and stating that no action was taken pursuant to the regulations that would require validating legislation.

Resolved: That the Minister's advice be accepted and no further action taken in the matter.

No.21/89 Regulations - Local Government (Chinatown Mall) Act; Local Government (Queen Street Mall) Act

Minister's acknowledgment of 30.3.1990 was noted and it was resolved to await further advice.

No.1A/90 Regulations - Motor Vehicles Insurance Act

Secretary reported that regulations gazetted 6.10.1989 had not been tabled as required by section 10 of the Act. It appears, however, that the regulations are valid as the Act does not provide any consequences for failure to table, and section 28A of the Acts Interpretation Act does not apply.

The meeting considered that regulations should be subject to the latter Act and resolved that the matter be brought to the Minister's attention requesting that he consider repealing section 10 and suggesting that the repeal be effected by means of the Statute Law (Miscellaneous Provisions) legislation.

No.1B/90 Regulations - Valuation of Land Act

Secretary reported that regulations gazetted 26.8.1989 and 21.10.1989 respectively had not been tabled as required by section 47 (4) of the Act. It appears, however, that in the absence of provisions to the contrary, the regulations are valid.

The meeting considered that regulations under the above Act should be subject to section 28A of the Acts Interpretation Act and resolved to refer the matter to the Minister requesting that he consider amending section 47 and suggesting that the amendment be effected by means of the Statute Law (Miscellaneous Provisions) legislation.

Statute Law (Miscellaneous Provisions) legislation
The meeting discussed letter of 10.4.1990 from the Minister for Employment, Training and Industrial Relations advising that investigations were being made into whether amendment of the relevant provisions of the Rural Training Schools Act and the Grammar Schools Act should be made through the Statute Law (Miscellaneous Provisions) legislation, or whether specific legislation will be necessary.

It was resolved to await completion of the investigations and the Minister's further advice.

COUNSEL'S REPORTS:

No.5/90 Order in Council - Primary Producers' Organisation and Marketing Act

Counsel reported that although Orders in Council under this Act are not subject to the Committee's scrutiny, the Order in Council gazetted 24.3.1990 amends the Act, a practice strongly opposed by previous Committees. He also outlined the difficulties placed in the path of those seeking to find the law in terms of the numerous amendments made to the Act by Orders in Council of this nature.

Following discussion it was resolved to write to the Minister expressing the Committee's concerns in the above matters, outlining action by previous Committees in similar matters, and suggesting that consideration now be given to appropriate remedial action.

No.6/90 Order in Council - Funeral Benefit Business Act

Counsel reported that the Order in Council purports to prescribe for the purposes of section 32 (d) of the Act that the funeral benefit shall not exceed \$5000.00. His reading of sections 32 and 80 of the Act, however, suggests that the desired action should be taken by means of a regulation under the Act, not by Order in Council. Discussed and resolved that the Minister be requested to consider prescribing the relevant amount by regulation.

OUTSTANDING REPLIES:

The Chairman pointed out that replies were outstanding in several matters, some of which had been initiated by the previous Committee. The meeting resolved that follow up letters be forwarded to the respective Ministers and the matters considered in detail as replies are received.

NEXT MEETING:

The next meeting of the Committee will be held at 12.30 pm on Thursday, 17 May 1990, in Room 5.04, Parliamentary Annexe. There being no further business the Chairman declared the meeting closed at 1.15 pm.

CONFIRMED this 17th day of May 1990.

R Balle

Chairman