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No. 23

Thursday, January 16, 1997.

8.30 o'clock a.m.

Prayers.

Bills Introduced

The following Bill was introduced and read the first time:

By Hon. Mr. Lee,

Bill 41, *An Act to Amend the Motor Vehicle Act*.

Ordered that the said Bill be read a second time at the next sitting.

Standing Committee on Law Amendments

At the request of Hon. Mr. Duffie, Mr. Speaker reverted to the Order of Presentation of Committee Reports. Hon. Mr. Duffie from the Standing Committee on Law Amendments, presented the First Report of the Committee which was read and is as follows:

January 16, 1997.

To The Honourable

The Legislative Assembly of

The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present the First Report of the Standing Committee on Law Amendments.

This Report is the result of your Committee's deliberations on Bill 83 - *Clean Air Act*, and the discussion paper entitled *Hospital Corporation Accountability*.

Your Committee held public hearings in Fredericton on June 12, 1996, on the issue of *Hospital Corporation Accountability*. Public hearings regarding Bill 83 were held in Fredericton on September 18 and in Saint John September 19, 1996.

Your Committee met on November 28 and December 5, 1996 and January 15, 1997 to consider the submissions received and to prepare a report and recommendations to the House.

Your Committee expresses appreciation for the cooperation provided by officials in the Department of the Environment and the Department of Health and Community Services and for the assistance provided by staff of the Legislative Assembly. Finally, Your Committee expresses its thanks to the many presenters who appeared at the public hearings or submitted written briefs.

And your Committee begs leave to submit a further report.

Respectfully submitted,

Hon. Paul Duffie, Q.C.

Chairman.

The full report of the Committee as presented follows:

To The Honourable

The Legislative Assembly of

The Province of New Brunswick

Mr. Speaker:

Your Standing Committee on Law Amendments begs leave to submit this their First Report.

This Report is the result of your Committee's deliberations on two of the matters referred to it by the House; namely, Bill 83 - *Clean Air Act*, and the discussion paper entitled *Hospital Corporation Accountability*.

An organizational meeting was held on April 25, 1996 in which it was agreed that public hearings would be held on the various matters referred to the Committee. Advertisements were placed in provincial newspapers giving notice of the hearings and inviting individuals and organizations to appear or submit a written brief.

Public hearings were held on the *Hospital Corporation Accountability* discussion paper on June 12, 1996 in the Legislative Council Chamber in Fredericton. A list of the organizations and individuals that appeared or submitted written briefs is attached hereto as Appendix "A".

Public hearings on Bill 83 were held in the Legislative Council Chamber in Fredericton on September 18, 1996 and in the Saint John Trade and Convention Centre on September 19, 1996. A list of the organizations and individuals that appeared or submitted written briefs is attached hereto as Appendix "B". Additional briefing sessions were held with officials of the Department of the Environment on October 2, 1996 and with representatives of the Saint John Citizens' Coalition for Clean Air on October 3, 1996.

Your Committee met on November 28 and December 5, 1996 and January 15, 1997 to further consider the submissions received and to prepare a report and recommendations to the House.

I. HOSPITAL CORPORATION ACCOUNTABILITY

The discussion paper *Hospital Corporation Accountability* was tabled in the House on March 26, 1996 by Hon. Russell H.T. King, M.D., Minister of Health and Community Services, and referred to the Standing Committee on Law Amendments for review and input. The document examines certain aspects of hospital corporation accountability and identifies options regarding governance and accountability of regional hospital boards.

OPEN MEETINGS

All of the presenters who commented on this point stated that hospital corporation boards should be required to hold public meetings, and most agreed that in-camera sessions may be necessary for legal, personnel and patient-related issues. As one presenter stated, "open meetings of the board provide an opportunity for the Corporation to forge closer links with the community and the media as well as promote greater understanding of the Corporation's role within the community."

Your Committee is divided on the issue of whether senior administrators or board members from hospital corporations should be required to appear before a committee of the Legislature. Your Committee does agree, however, that a requirement for open meetings would ensure a means of public accountability. Such requirements already exist in relation to municipal councils and this may provide a basis on which to model new legislation relating to hospital corporation boards.

Section 10 of the *Municipalities Act* outlines the requirements and procedures pertaining to meetings of council, including the requirement that all decisions be made in a regular or special meeting, and that all such meetings be open to the public. Provisions are made for in-camera meetings of a committee of council. Section 10 also provides that a council shall hold at least four regular meetings in each year and that all votes shall be open with no provisions for secret ballots.

Your Committee therefore recommends:

That in preparing legislation, the department consider a form of open meetings patterned after the relevant sections of the *Municipalities Act*.

PUBLIC INPUT AND PARTICIPATION

Most presenters agreed that further measures should be taken to inform the public of the activities and decisions of hospital corporations, including increased publicity and communication between the board and the community. Most agree there is a need for increased accountability at the local level and that

the board and senior administrators should be more directly accountable to the citizens affected by the policies and decisions made.

Your Committee believes this may best be achieved by requiring, as part of all regular and annual meetings, that a period be reserved for public input and participation at which members of the community have the opportunity to question officials on matters of concern.

It is imperative that each hospital corporation operate to a minimum standard of accountability and that information be available and accessible to the citizens of the various regions. The aim is to strengthen input and participation at the local level, and to provide a forum for interaction between the public and the corporation.

Your Committee therefore recommends:

That a period of public input and participation be included as a mandatory part of all regular and annual meetings of hospital corporation boards.

BOARD COMPOSITION

Many presenters stated that the question of composition of regional hospital boards was an important issue with regard to accountability. Although various presenters stated that elected boards are more accountable to the people they serve, many pointed out that board members are mainly appointed by their local communities, including municipalities whose councils are already elected.

Currently, the size of regional hospital boards vary according to region. The majority of appointments to the boards are made at the municipal/community level. Others members are appointed either by the Minister or by the board itself.

One of the main concerns of those opposed to elected boards is that voter turnout is often poor and that qualified people are often reluctant to let their name stand on a ballot. As a result, many board members may be chosen by acclamation, a less effective method than appointing members who are often more qualified. Some suggested that a combination of elected and appointed boards would be an appropriate and representative way of choosing hospital corporation boards.

The New Brunswick Advisory Council on the Status of Women addressed the issue of the percentage of women who are currently hospital corporation board members. The Advisory Council provided examples of the percentage of women appointed or elected on New Brunswick government boards, and found that appointment is no less effective than election for the representation of women. The Advisory Council did recommend, however, that the Minister of Health and Community Services increase the number of women that the Minister appoints to the board.

One area of concern raised by presenters was that although most appointments are made at the municipal/community level, every regional hospital board has three members who are appointed by the board itself. Many were not comfortable with this process where a board has the opportunity to appoint a number of its own members.

Your Committee does not agree, in principal, with the concept of a board appointing members to its own board.

Your Committee therefore recommends:

That the Department of Health and Community Services establish a process whereby the members who are currently appointed by the board are elected instead through a democratic process.

II. BILL 83 - CLEAN AIR ACT

Bill 83, the proposed *Clean Air Act*, was introduced during the First Session of the Fifty-third Legislative Assembly by Hon. Vaughn Blaney, Minister of the Environment. The subject matter of the Bill was referred to the Standing Committee on Law Amendments on April 12, 1996.

Your Committee has undertaken a thorough review of the Bill and has agreed to the recommendations outlined below.

Your Committee further recommends that the proposed *Clean Air Act* be reintroduced incorporating the changes outlined in the Committee's recommendations.

Section 1 - Definitions

Concerns were expressed regarding inclusion of the word "odour" under the definition of "contaminant" in section 1. There were fears that this section could be used to interfere with legitimate farming

activities and considered in some products of regular and accepted farming operations being considered contaminants.

The Act is intended to provide the public with protection from dangerous or unhealthy emissions and should not result in interference with legitimate farming practices.

Your Committee therefore recommends:

That the Department of the Environment work with the Department of Agriculture and Rural Development to establish a protocol regarding odour levels that would be considered normal in approved practices of farming.

Section 2 - Purpose of the Act

Paragraph 2(j) states:

the Government of New Brunswick should consider the principles set out in this section in the development and implementation of all of its policies, programs and practices.

It must also be clear that the government should consider the principles set out in section 2 when developing and implementing regulations. Regulations developed by government should be consistent with the purpose of the Act.

Your Committee therefore recommends:

That the words "and regulations" be added to the end of the paragraph 2(j).

Section 8 - Establishment of Objectives

Substantial concerns were raised regarding the decision to direct the Act around objectives as opposed to standards. Standards are what currently exist in the air quality regulations that are part of the *Clean Environment Act*. Standards are set out for five contaminants, which is the basis on which one can judge whether emissions have exceeded the limits. A number of concerns were raised regarding the move to objectives as a basis for enforcement under the new legislation.

Your Committee agrees with the concerns of presenters on this issue but acknowledges the need for a degree of flexibility to recognize that standards may have to be adjusted. This may be achieved by incorporating the appropriate standards into the regulations.

Your Committee therefore recommends:

That the department ensure that the regulations made under the Act contain the appropriate standards rather than merely objectives.

Section 11 - Registers

Subsection 11(2) states:

The Minister may withhold from a register kept under subsection (1) any documentation or other information the confidentiality of which is established in the regulations for the purposes of this section.

Concern was expressed that through subsection 11(2), changes in regulations could be used to provide increased protection of information.

Subsection 11(2) should be modified to ensure consistency with the *Right to Information Act*. In other words, information that would be available under the *Right to Information Act* should also be available under subsection 11(2). Regulations should not be used to provide protection of information greater than that which is contemplated under the *Right to Information Act*.

Your Committee therefore recommends:

That section 11(2) be modified to ensure consistency with the *Right to Information Act*.

Subsection 11(4) states:

The Minister shall remove from a register kept under subsection (1) the documentation and other information kept under paragraph (1)(b) or in relation to administrative penalties paid, or convictions that occurred, more than three years previously.

It was suggested that this period be extended from three years to five years to provide the public with a better picture of the overall record of a company in complying with the Act. A five-year period would allow for a more accurate tracking and assessment of environmental performance and a better picture of the compliance or good corporate citizenship of the companies involved.

Your Committee therefore recommends:

That the three-year period referred to in subsection 11(4) be changed to five years.

Subsection 11(5) states:

11(5) The registers kept under subsection (1) shall be open to the public at the Minister's office during normal business hours and any person, on payment of the fee established by regulation,

(a) may inspect the contents, and

(b) may obtain copies, if the making of copies is authorized under the regulations.

This section gives the public permissive powers to inspect a register and to obtain copies. That right, however, is subject to the payment of a fee established by regulation.

Various presenters were of the view that access to information should be provided without cost to the public. Your Committee agrees that no fee should be charged for the public to inspect the contents of the register. It would be fair, however, to require that a certain amount be paid for copies requested.

In addition, department officials have indicated that they are contemplating an electronic register. No fee should be charged for access to such a system.

Your Committee therefore recommends:

That subsection 11(5) be redrafted so that there will be no cost for the public to inspect the contents of the register.

Section 12 - Agreements entered into by Minister

Section 12 provides authorization for the Minister to enter into agreements. Concerns were expressed that agreements may be entered into that could affect negatively on the environment.

Your Committee is of the opinion that any agreement entered into under section 12 should be made public. If public disclosure were not required, the public could not be certain that the Act has been followed. Further, any agreement entered into by the Minister should be consistent with the principles of the Act.

Your Committee therefore recommends:

That section 12 be amended to provide that any agreement entered into under section 12 shall be consistent with the purposes of the Act and shall be publicly disclosed.

Section 15 - Public Notice

Section 15 provides that anyone seeking a Class 1 approval is required to refer their proposal to public consultation. It is not clear, however, if there are going to be changes to such an approval, that an applicant must go back to public consultation.

Concerns were raised regarding ministerial discretion, specifically in relation to section 12, which authorizes the Minister to enter into agreements. There were concerns that the Minister could enter into an agreement with a company that has already obtained an approval. This could result in a change to an approval without requiring further notice or consultation.

There should be assurances that any significant change, or any change that would increase emissions, will be referred back to public consultation before the changes in a Class 1 approval can be adopted.

Your Committee therefore recommends:

That section 15 be modified, perhaps through a redrafting of subsection 15(2), to provide assurance that any changes to a Class 1 approval that are of a substantial nature, or changes that would result in any increase in emissions, are to be referred back to public consultation.

Section 29 - Protected Information

Section 29 has been referred to as the "whistle blower" section. Many presenters were concerned with the wording of this provision. It was submitted that although the intent is to protect "whistle blowers", the wording of the section does not adequately serve to meet this purpose and intent.

The major concern was that although information is protected under subsection 29(1), the source of that information is not protected. The provision should be clear that its intention is to protect "whistle blowers", and not simply leave this to interpretation.

It was also suggested that the wording is too ambiguous and the provision might conceivably be used for purposes other than what was intended. A concern was raised that section 29 could be used by industry and polluters to seek protection of certain information and to prevent that information from being publicly disclosed.

Your Committee therefore recommends:

That section 29(1) be redrafted so that the wording better serves the purpose and intent.

Section 45 - Regulations

Section 45 sets out the authority for the Lieutenant-Governor in Council to make regulations under the Act. Various presenters stated that the *Clean Air Act* could not be adequately assessed without detailed information on the regulations to be proposed. It was suggested that in many cases the regulations have more real impact than the Act itself. Many presenters suggested that public input should be sought before the adoption of any regulation and that this be formally recognized in the legislation.

Particular concerns were raised regarding paragraph 45 (k) which provides for the making of regulations respecting the exemption of persons or classes of persons from the requirements stipulated under the Act.

The Department of the Environment indicated that it is committed to providing opportunities for public review and consultation during the regulation making process. Your Committee agrees that a process of public consultation should be adopted and a system established whereby notice is given and objections can be filed.

Your Committee therefore recommends:

That under section 45 the Department of the Environment, on its initial drafting of regulations, put all of them to public consultation, and that it consider on a permanent basis under paragraph 45(k), that a notice provision be formulated with a form of public consultation.

Respectfully submitted this 16th day of January, 1997.

(Sgd.) Hon. Paul Duffie, Q.C.

Chairman

Ordered that the Report be received and that leave be granted, and the Committee continued.

Notices of Motions

Mr. Volpé gave Notice of Motion 99 that on Thursday, January 30, 1997, he would move the following resolution, seconded by Mr. Mockler:

WHEREAS the rate of unemployment has reached alarming proportions especially among our youth who in November 1996 had a rate of unemployment of 19.5% according to Human Resources Development Canada Youth Stats New Brunswick Region. This has meant that many young people must leave their communities and the province to find work;

WHEREAS there is a growing sense of desperation among the younger population of our province;

WHEREAS our society has an obligation towards all segments of the population to ensure each can develop their full potential not only for the future, but for a better society today;

BE IT RESOLVED THAT this House recommend to the government that it review its programs and policies aimed at youth by way of a special committee tasked with offering better opportunities for youth and by youth.

BE IT FURTHER RESOLVED THAT this special committee be made up of youth leaders and adults and that it be given the means to undertake meaningful public consultations if so required.

Second Reading

The following Bills were read the second time and ordered referred to the Committee of the Whole House:

Bill 39, *An Act to Amend the Income Tax Act*.

Private Members' Motions

Debate resumed on Motion 65 by Hon. Mr. Valcourt, seconded by Mr. Robichaud, as amended, as follows:

WHEREAS the government has undertaken to blend the *Provincial Sales Tax* with the federal Goods and Services Tax because it would create an advantage, among others, to the retail sector in New Brunswick and therefore to consumers;

BE IT RESOLVED that this House ask the government to consider adopting flexibility and balance of business and consumer interests in facilitating consumer awareness of retail prices when it legislates the Harmonized Sales Tax.

And after some time, Mr. D. Graham moved in amendment, seconded by Ms. Weir:

AMENDMENT

THAT Motion 65 as amended be further amended by:

Adding the word "apparent" between the words "an" and "advantage" in the first sentence;

and by deleting the period at the end of the second sentence and adding the following ", by means other than tax-inclusive pricing."

And the question being put, the amendment was negatived.

And the debate being ended, and the question being put, Motion 65 as amended was carried on the following recorded division:

YEAS - 36

Hon. Mr. Duffie	Hon. Mr. Smith	Mr. A. Landry
Hon. Mr. Blanchard	Hon. Mr. Savoie	Ms. de Ste. Croix
Hon. Mr. Frenette	Mrs. Jarrett	Mr. Kavanaugh
Hon. Mr. Graham	Mr. McAdam	Mr. Olmstead
Hon. Mr. Lee	Hon. Mr. MacIntyre	Mr. Flynn
Hon. Mr. King	Hon. Mr. Richard	Mr. O'Donnell
Hon. Mrs. Barry	Hon. Mrs. Day	Mr. MacDonald
Hon. Mr. Blaney	Mr. Allaby	Mr. MacLeod
Mr. McKay	Mr. Steeves	Mr. Doyle
Hon. B. Thériault	Mr. Wilson	Mr. D. Landry
Hon. Mrs. Mersereau	Mr. LeBlanc	Mr. Armstrong
Hon. Mr. Lockyer	Mr. Jamieson	Mr. Devereux

NAYS - 7

Mr. Sherwood	Mr. Mockler	Mr. Volpé
Mr. Robichaud	Ms. Weir	Mr. D. Graham
Hon. Mr. Valcourt		

Pursuant to Notice of Motion 66, Hon. Mr. Valcourt moved, seconded by Mr. Robichaud:

WHEREAS the Department of Health and Community Services is ploughing ahead with an insensitive "Long Term Care Strategy" despite the protests of nearly all families and service providers directly affected by this policy;

WHEREAS, in the words of the NB Association of Community Living, "*this Long Term Care Strategy is a radical leap into a discredited past*"; and

WHEREAS the Minister has refused to release or table any scientific sociological, medical and psychological impact analysis and/or research in support of the "New Residential Model" implemented by the Department of Health and Community Services beginning January 2, 1997;

BE IT RESOLVED that the Legislative Assembly ask the government to consider suspending immediately the application of the new "Residential Model" component of the Long Term Care Policy and to consider adopting instead the citizenship / support model of service delivery in order that it may honour the government's formal 1995 election campaign pledge to *"work with provincial organizations representing people with disabilities to implement a plan to facilitate the participation of people as full participants in New Brunswick society and in the economy."*

And the question being put, a debate ensued.

And after some time, Mr. Speaker interrupted proceedings and announced that the time for Private Members' Motions had expired.

Government Motions re Business of House

Hon. Mr. Frenette informed the House that the House would adjourn on Friday subject to the call of the Speaker, to provide ample time for public hearings of the Standing Committee on Law Amendments relating to the White Paper on the Proposed Education Act.

Committee of Supply

The House, according to Order, resolved itself into a Committee of Supply with Mr. MacDonald in the chair.

And after some time, the Chairman declared it to be 12.30 o'clock p.m., and left the chair, to resume again at 2 o'clock p.m.

2 o'clock p.m.

The Committee resumed with Mr. MacDonald in the chair.

And after some further time spent in the Committee of Supply, Mr. Speaker resumed the chair and Mr. MacDonald, the Chairman, after requesting that Mr. Speaker revert to Presentations of Committee Reports, reported that the Committee had made some progress in the consideration of the matters referred to them, had passed several items and asked leave to sit again.

Pursuant to Standing Rule 78.1, Mr. Speaker put the question on the motion deemed to be before the House, that the report be concurred in, and it was resolved in the affirmative.

The following are the items reported:

MAIN ESTIMATES - 1997 - 1998

ORDINARY ACCOUNT Voted

DEPARTMENT OF EDUCATION

Resolved, That there be granted to Her Majesty a sum not exceeding \$620,416,800 to defray the expenses of the Ordinary Account program allocations of the Department of Education for the fiscal year ending the 31st day of March, 1998.

CAPITAL ACCOUNT

DEPARTMENT OF EDUCATION

Voted, Supply in the following amount and to defray the expenses of the following program:

20 50 Public Schools - Capital Equipment 900,900

WORKING CAPITAL - MAXIMUM BALANCES

1997 - 1998 Voted

WORKING CAPITAL ADVANCES

Education - Atlantic Provinces Special Education Authority 350,000

INVENTORIES

Education 1,500,000

The said items were concurred in by the House.

And then, 4.05 o'clock p.m., the House adjourned.