Regulation Review Committee
Parliament of New South Wales

Comparisons with International Practice: Regulatory Scrutiny & Reform in England, Regulatory Impact Assessment in the Netherlands, Regulatory & Public Sector Reform in Ontario Canada, Legislative oversight & sunsetting in the United States, and a case study on Boxing Regulation in North America

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REGULATION REVIEW COMMITTEE

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Mr D. Beattie, Clerk to the Committee
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THE FUNCTIONS OF THE REGULATION REVIEW COMMITTEE

The Regulation Review Committee was established under the *Regulation Review Act 1987.* A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

(a) that the regulation trespasses unduly on personal rights and liberties;

(b) that the regulation may have an adverse impact on the business community;

(c) that the regulation may not have been within the general objects of the legislation under which it was made;

(d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;

(e) that the objective of the regulation could have been achieved by alternative and more effective means;

(f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;

(g) that the form or intention of the regulation calls for elucidation; or that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable, including reports setting out its opinion that a regulation ought to be disallowed.

CHAIRMAN'S FOREWORD

In August 2001 the Regulation Review Committee sent a delegation comprising Ms Marianne Saliba MP Mr Russell Turner MP and Mr Greg Hogg Project Officer to Europe and North America to compare Regulatory Scrutiny and Reform practices in several Legislatures with those in New South Wales.

In England the delegation found that The new Regulatory Reform Act 2001 was making marginal reforms by achieving consolidations of large numbers of statutes but that there was no procedure like the staged repeal program in New South Wales to systematically address the underlying regulatory burden of obsolete legislation.

In the Netherlands the delegation found that the agenda for regulatory reform is largely set by the respective Ministries. However unlike New South Wales Regulatory Impact Assessment is required for all Bills in the Netherlands and this includes business, environmental and compliance assessment.

In Ontario Canada, the delegation noted that the Red Tape Commission is developing a Business Impact Test to forestall burdensome regulation. Regulatory reform is also accompanied by Public Sector reform in order to implement a Citizen First approach to Government.

The Delegation found that legislative oversight by State Legislatures in the United States is significantly different from New South Wales.
The strict application of the separation of powers doctrine in the United States means that the roles of the Legislature to enact legislation and appropriate funds and the role of the Executive to implement the legislation are clearly distinguished.

Scrutiny by State Legislatures is therefore directed to whether agencies in the executive are implementing programs in accordance with the objects of the relevant legislation and whether they are efficiently using their resources.
Agencies rather than regulations are subject to sunsetting if they have failed to achieve their objects.

The delegation also made a Case study on the regulation of Boxing and Wrestling in North America by consulting authorities in Canada and the United States in order to assist the Committee with its current inquiry into the Boxing and Wrestling Control Regulation 2000 of New South Wales.

Mr Gerard Martin MP
Chairman

REGULATORY SCRUTINY AND REFORM IN ENGLAND

On Friday 3 August 2001 the delegation met with Mr Bill Proctor Principal Clerk of Delegated Legislation to the House of Commons and Mr Tom Mohan the new Clerk to the House of Lords Delegated Powers and Regulatory Reform Committee

Mr Proctor said that all statutory instruments laid before Parliament are scrutinised by the Joint Committee on Statutory Instruments which considers whether the instrument is made within the powers conferred by the parent legislation, and whether it is properly drafted.

He said that in England there are two principal types of statutory instrument reviewed by Parliament: "affirmative instruments", which require a positive Resolution of each House to come into effect, and "negative instruments", which can be annulled by a Resolution of either House if passed within 40 days of tabling. Affirmative instruments are automatically referred for debate in the Standing Committee on Delegated Legislation unless they are debated in the House.

This is unlike New South Wales where the system of Parliamentary scrutiny of regulation is based almost entirely upon the negative instrument model.

Negative instruments are not debated unless a motion is tabled "praying" that the instrument be annulled.

Concern has been expressed that instruments do not receive scrutiny in proportion to their merits because many affirmative instruments are not as significant as negative ones. Members time is frequently wasted in considering 'trivial affirmatives', while significant negative instruments may proceed without debate.

Mr Mohan indicated that the House of Lords Select Committee on Delegated Powers and Deregulation was set up in 1992-93 and has since been re-appointed on a sessional basis. It reports whether the provisions of any bill

inappropriately delegate legislative power, or whether it subjects the exercise of legislative power to an inappropriate degree of parliamentary scrutiny.

In May 1994 the Committee was given the additional role of scrutinising proposals for deregulation orders under the Deregulation and Contracting Out Act 1994.
Deregulation Orders amended primary legislation to achieve regulatory reform.

Mr Proctor said that the House of Commons Deregulation Committee also oversees the Deregulation and Contracting Out Act 1994 but does not have any functions with respect to delegated powers.

The Deregulation and Contracting Out Act 1994 was recently amended by the Regulatory Reform Act 2001 which commenced in April of this year. That Act provides Ministers with a wide power to change primary legislation for the purpose of removing or reducing burdens on business and others.

The order-making power allows a Minister to amend or repeal any pre-1994 legislation which imposes a burden affecting any person in the carrying on of any trade, business or profession or otherwise, provided doing so would not remove any necessary protection.

The Minister may impose a new burden in the order provided it strikes a fair balance between the person burdened and the public interest. The order is also subject to limits on the maximum penalties which can be imposed and the prevention of new powers to enter, search or seize property by force or to compel people to give evidence.

Interested parties have an opportunity to comment on any proposed order and their comments must be considered by the Minister and Parliament before the order can be made.

Mr Proctor considers that the new Act contains elaborate provisions for dealing with problems at the margin. Very often it involves shifting burdens rather than removing them. He said that the difficulty was that there were many thousands of pages of legislation in obsolete acts and regulations which are still in force but which will never be the subject of a Regulatory Reform Order.

What was needed in his view was a systematic review of all legislation similar to the staged repeal program in the New South Wales Subordinate Legislation Act 1989. In this respect he believed that New South Wales had the advantage over the United Kingdom, although he was aware that the staged repeal program only applied to Subordinate Legislation.

He said that while the Regulatory Reform Orders may reform a particular area of regulation, very often they only replace one set of regulations with another. He cited as an example the fire safety regulations where an order is being made to consolidate the regulations, however there are still many thousands of pages of regulation which have not been the subject of any comprehensive review.
In general Mr Proctor considered that the Regulatory Reform Act was not as it seemed, in that it was not a means of reducing the regulatory burden, but, in fact, another way of making legislation.

He said that in addition to the existing body of obsolete regulations, a new problem was arising with European Union directives which are being ratified by regulations published by the respective departments in England.

Mr Proctor believes that a number of Departments are, what he terms, "gold plating" these directives in the regulations by prescribing requirements in excessive detail. He considers that this contrasts markedly with other Members of the European Union, for example Germany, where the requirements of directives are only specified in general terms in the legislation and may not be as enforceable as in England.

The Regulatory Impact Unit and the Cabinet Office

The delegation also met with Mr Jeremy Cole, Secretary of Regulatory Impact Unit and the Better Regulation Task Force and Mr Dafydd Foster Evans of the Regulatory Reform Bill Team of the Cabinet Office on 3 August 2001.

Mr Cole indicated that his Regulatory Impact Unit's original role was to support the Better Regulation Task Force and to promote the Principles of

Good Regulation. These principles require that regulation be transparent and easy to understand, accountable to Ministers and Parliament, targeted so as to reduce side effects, consistent with regulation that is already in place and proportionate to the risk involved.

The Better Regulation Task Force is an independent advisory body that was established in 1997 to advise the Government on action which improves the effectiveness and credibility of government regulation taking particular account of the needs of small businesses and ordinary people

Mr Cole said that while originally the emphasis of the Unit was reviewing and improving the assessment of regulations which impact on business, it now concentrates more on ways of reducing bureaucracy and red tape in the public sector It is currently looking at the regulation of doctors.

The Unit also provides Government departments with advice on the requirements for the preparation of Regulatory Impact Statements. Since August 1998 any proposal for a regulation which has an impact on businesses, charities or voluntary bodies must be accompanied by a regulatory impact assessment.

A new guide to preparing these statements was recently issued by the Unit in order to overcome a problem which had emerged in the early statements. Regulatory impact assessment was considered by many Departments as an add-on to the decision making process after the critical decision had been made to proceed with a regulation.

The Prime Minister, Mr Blair, in his introduction to the new guide states that regulatory impact assessment is an integral part of the advice that goes to Ministers helping to inform options.

He says "Getting the right balance between costs and benefits is rarely straightforward. Important though regulation is, there will be many occasions when alternatives such as codes of practice or improved advice are a better answer. Good economic analysis will help to inform these choices, and open public debate will ensure that we make the right decision. That is why I am determined that those consumers and businesses, particularly small businesses, should be able to comment on regulatory

proposals and have their views taken into account."

Mr Cole indicated that a comprehensive training program for government departments in the regulatory impact statement requirements was being developed and that the Unit was also bringing Ministers together for the purposes of discussing the requirements of the new Act.

A new role of the Regulatory Impact Unit is oversighting compliance with the Regulatory Reform Act 2001 referred to above.
Mr Evans indicated that under this new Act, significant reforms were likely to be made to a number of areas of regulation. He referred to the fire safety laws where over 120 different acts were being reviewed to reduce regulatory burdens. He did not share the view of Mr Proctor that the Regulatory Reform Act was another way of making legislation rather than a means of reducing the regulatory burden.

REGULATORY IMPACT ASSESSMENT IN THE NETHERLANDS

On Monday 6 August 2001 the delegation met with Dr Jos Holtus and Ms Georgie Fredricks of the Competition, Deregulation and Legislative Quality Project of the of the Netherlands Ministry of Economic Affairs in the Hague.

Dr Holtus indicated that the Netherlands has requirements under which Ministries must now report on the administrative, ecological and financial consequences of new legislation before it is presented to Parliament. The Ministries must also set out whether alternatives to legislation could be used.

Dr Holtus said that while there is no sunset requirement for legislation under Dutch law, as there is in New South Wales, his Project has been appointed to look into particular problem areas identified by individual ministers. Each year Ministers are invited to select particular problem areas connected with government regulation which are to be investigated by the Project.

In addition to this inquiry process, since 1994 all new Dutch legislation is required to undergo three regulatory assessments:

1. The business impact assessment
2. An environmental impact assessment
3. A Compliance test.

The tests are conducted by means of a questionnaire, and the quantified impacts are required to be stated in the explanatory note to the legislation.

The questions asked in the Business Impact Assessment are:

1. The number of firms influenced by the legislation
2. Specific characteristics of these firms (e.g. size, branch of trade)
3. Costs and benefits for the firms influenced.
4. Capacity to bear the effects

5(a) State of the law in competing countries

5(b) Comparison to underlying European Union regulation

6. Effects on competition
7. Social-economic effects

The choice of legislation to be subjected to a BIA is initially in the hands of each department but is subject to the supervision of the Ministry of Economic Affairs.

A common support center staffed by the Ministry of Economic Affairs, the Ministry of the Environment and the Ministry of Justice assists the departments in carrying out the tests.
190 new laws have been tested by BIA's since 1995 and each year approximately 50 BIA's are prepared.

A new test has been developed to assist in the process called the "Quick Scan" test which submits all new legislation to a scan of the critical aspects of the BIA and this is completed within a maximum of three weeks.

Dr Holtus and Ms Fredricks considered the Business Impacts Test different from similar assessments required in the United States where there is greater emphasis put on the quantification of impact. In the Dutch model consultation and consensus is considered more important. This is commonly known as the "Polder" Model and has long been a feature of decision making in Holland.

(L-R) Dr Jos Holtus, Ms Marianne Saliba MP, Mr Greg Hogg
Ms Gerogie Fredricks & Mr Russell Turner MP

REGULATORY AND PUBLIC SECTOR REFORM IN ONTARIO, CANADA

On Wednesday 8 August 2001 the delegation met with members of the Red Tape Commission of Ontario Canada: Mr Frank Sheehan, Co-Chair, Mr Steve Gilchrist, Co-Chair, Mr Bert Johnson, MPP Perth-Middlesex and Mr John O'Toole, MPP Durham and Parliamentary Assistant to the Minister of Finance

The delegation also met with the Red Tape Commission Secretariat Staff: Mr Scot Weeres, Director, Ms Carol Harris Lonero, Senior Policy Advisor, Mr Rob Swaffield, Senior Policy Advisor, Mr Alan Kirschbaum, Policy Advisor, Ms Jackie Wood, Policy Advisor, Ms Susan Serena, Legal Advisor, Mr Tim Paleczny, Manager, Communications and Mr Mike Mackenzie, Executive Assistant to the Co-Chairs

The Red Tape Commission's charter is to eliminate existing red tape and prevent unnecessary rules and regulations from being created in the future. Unlike some jurisdictions where red tape reduction is conducted by the executive, Ontario established a committee of legislators to prevent and reduce red tape.

"Red tape" is defined by the Commission as 'measures which diminish economic competitiveness by adding unjustifiable requirements, costs or delays to the normal activities of business or institutions'.

The Commission was initially established as a red tape review commission, and in a report in 1997 outlined 132 recommendations to reduce red tape. It developed the Regulatory Impact and Competitiveness Test to prevent the creation of additional red tape and in May 2000 was established permanently as the red tape commission.

While its red tape prevention role remained unchanged, its new role was to concentrate on red tape elimination and to focus initially on four areas:
1. Retail sales tax administration

2. 'The government paper burden on business
3. Highway incident management
4. The drug approvals process.

A major element of the prevention role is the review of annual ministry red tape reduction plans. The Commission introduces government efficiency bills each year to reduce red tape in legislation but has recently recommended a new test, "The Business Impact Test", to eliminate red tape.

The proposed BIT process would ensure that Ontario does not apply its regulatory powers to business activities unless there is clear evidence that:

- A problem exists
- Government action is justified
- Regulatory action is the best alternative open to government
- Benefits outweigh the costs
- Stakeholders have been properly consulted and their views fully presented and addressed.

This new test is seen as more effective than the existing Regulatory Impact and Competitiveness Test because the RICT forms only part of the voluminous cabinet submission documentation and does not require a specific "sign off" by the respective Minister.

The BIT process will be required to be completed prior to items being scheduled for Cabinet and will involve greater use of cost benefit analysis.

Public Sector Reform

The Delegation also met Mr Art Daniels of the Office of Public Service Restructuring Secretariat in Toronto on 8 August 2001

Mr Daniels indicated that regulatory reform in Ontario was being integrated with reform of the public sector. The government was developing a customer-centered approach structured around significant life events of average citizens. He said that this model had been developed, taking into account the centrelink model being adopted by the Australian Commonwealth

Government.

Government services are now clustered around life events from birth through schooling, higher education, employment, retirement, health needs etc. Many forms and procedures that were required by different departments have now been reduced to a "one-stop shop" approach. Internet access is available to all citizens in Ontario through service kiosks and simply by completing an online questionnaire, Citizens can now access services from a number of departments without completing separate departmental forms.

This has the effect of significantly reducing red tape and enables rationalization of services provided by departments. Many of the internet services are provided in partnership with private corporations. The following services are provided in partnership:

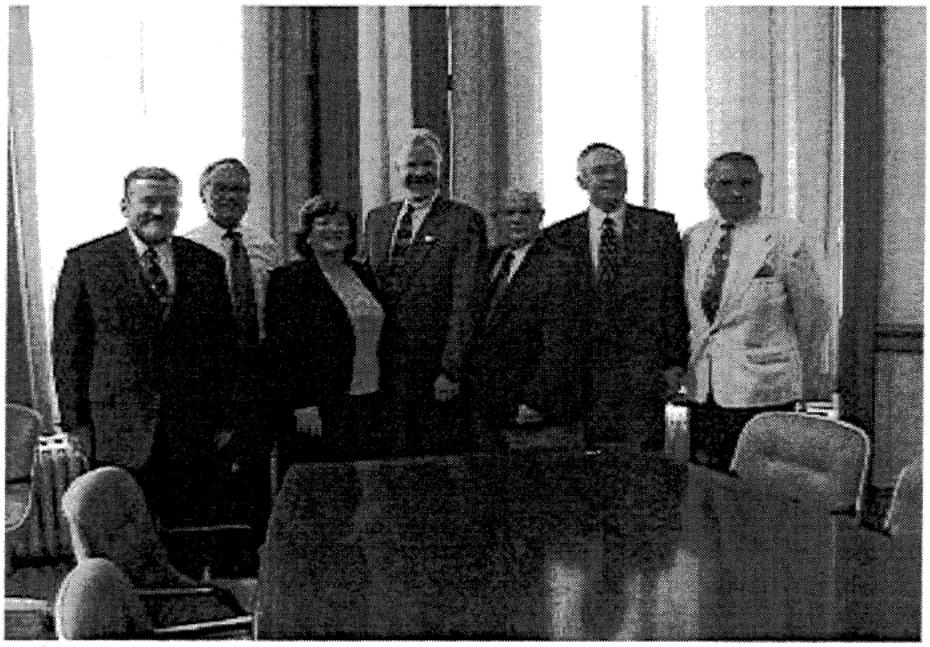
- *Service Ontario Kiosks* – partnership with IBM-Canada (Fee for Service)
- *Ontario Business Connect* – partnership with Dye&Durham, Cyberbaum, OntCorp
- *Integrated Justice* – partnership with E.D.S., D.M.R. & Teranet (Benefits Driven)
- *Government Mobile Projects* – partnership with Bell Mobility (Benefits Driven)
- *Teranet* – last info system partnership with EDS, Integrated, KPMG, LIS & Teramira

The object of these reforms was to place citizens first as the clients of government, to establish measurable objectives for these services and to ensure accountability for results in performance and service delivery agreements.

The delegation asked whether it was intended that regulatory reform and reduction in red tape would also be made the subject of departmental performance agreements and contracts. Mr Daniels and Mr Weirs indicated that this was an issue still being considered by the Ontario Public Service Restructuring Secretariat and the Red Tape Commission.

The delegation also discussed the Commissions proposal to hold the next International Conference on Regulation Reform Management and Scrutiny of Legislation in Toronto in July 2002.

Mr Greg Hogg (left), Ms Marianne Saliba (3rd left) and
Mr Russell Turner (2nd right) with Members of the
Ontario Red Tape Commission



LEGISLATIVE OVERSIGHT AND SUNSETTING IN THE UNITED STATES

The delegation attended the National Conference of State Legislatures Annual Meeting & Exhibition from August 11 to 15,2001 at the Henry B. Gonzalez Convention Center San Antonio, Texas.

Major themes at the conference included Legislative Oversight which includes performance auditing and program evaluation, and the Sunset Process.

Legislative oversight by State Legislatures in the United States is significantly different from New South Wales.
The strict application of the separation of powers doctrine in the United States means that the roles of the Legislature to enact legislation and appropriate funds and the role of the Executive to implement the legislation are clearly distinguished.

Scrutiny by State Legislatures is therefore directed to whether agencies in the executive are implementing programs in accordance with the objects of the relevant legislation and whether they are efficiently using their resources.
Agencies rather than regulations are subject to sunsetting if they have failed to achieve their objects.

The Sunset process was one of the first government accountability tools and was first introduced in the United States by the State of Colorado in 1975 Some have questioned whether it still has value today, or whether it might be time to "sunset" sunset, as the State of South Carolina has done.

The Texas Sunset Advisory Commission defines the sunset process as the regular assessment of the need for a state agency to exist. While standard legislative oversight is concerned with agency compliance with legislative policies, Sunset asks a more basic question: Do the agency's functions continue to be needed?
The Sunset process works by setting a date on which an agency will be abolished unless legislation is passed to continue its functions.

This creates a unique opportunity for the Legislature to look closely at each agency and make fundamental changes to an agency's mission or operations if needed.

In Texas the Sunset process is guided by a 10-member body appointed by the Lieutenant Governor and the Speaker of the House of Representatives. Assisting the Commission is a staff whose reports provide an assessment of an agency's programs, giving the Legislature information needed to draw conclusions about program necessity.

About 150 state agencies are subject to the Texas Sunset Act. The Sunset Act, which became effective in August 1977, specifies each agency's review date. Agencies under Sunset typically undergo review once every twelve years. Certain agencies, such as universities and courts, are not subject to the Sunset Act.

Generally, the Legislature groups and schedules agencies for review by function to allow the examination of all major state policies related to a particular function at once, such as health and human services, natural resources, and financial regulation. About 20 to 30 agencies go through the Sunset process each legislative session.

An agency is automatically abolished unless the Legislature passes legislation to continue the agency. If an agency is abolished, the Sunset Act provides for a one-year wind-down period to conclude its operations. The agency retains full authority and responsibility until the end of that year, when all property and records are transferred to an appropriate state agency.
Any enabling legislation is usually repealed at the end of that year.

The Sunset process has streamlined and changed government in Texas. Since the first reviews, 43 agencies have been abolished and another 10 agencies have been consolidated. It is estimated that savings of $663.2 million have been made by the process compared with expenditures of $13.9 million for the Sunset Commission.

CASE STUDY ON BOXING REGULATION IN NORTH AMERICA

On 8 August 2001The delegation met Mr Ken Hayashi, Ontario Athletic Commissioner to discuss boxing regulation in Ontario. The delegation indicated that the Regulation Review Committee is currently investigating governmental regulatory controls of boxing, particularly with respect to the *Boxing and Wrestling Control Regulation 2000.*

The delegation supplied Mr Hyashi with a copy of the regulation and invited him to forward any comments on the inquiry to the Committee.

Mr Hyashi indicated that he had recently returned from a meeting of all the boxing commissioners in North America and was able to provide an oversight of the position in North America. He said that there was currently a move towards uniform legislation on boxing in the United States. For some time there has been concern that boxers who have been prohibited from boxing in one state because of their medical condition, may go to other states where the controls are less stringent in order to box. The current move is towards a federal law in the United States which would require all states to implement a suspension of a boxer if that had been made on medical grounds.

Currently in the United States, the Muhammad Ali Boxing Reform Act imposes minimum safety standards in all contests and provides protection from coercive contracts forced upon boxers by unscrupulous promoters. Senator Reid is seeking to introduce a Bill entitled *The National Boxing Commission Act* to establish a national boxing commission and to impose national uniform codes for boxing.

The delegation informed Mr Hyashi of the requirements currently applicable in Victoria Australia where MRI (Magnetic Resonance Imaging – brain scans) are required on registration and renewal of a boxer and now may be required at any time during the registration period. My Hyashi said that these tests were quite expensive and were not mandatory in Ontario or the United States. CAT scans are, however, required on the initial examination and the promoter is

required to pay for this.

In order to prevent mismatches, most North American jurisdictions employ a company named "Fight Facts" which monitors the performance of each boxer and establishes their comparative record to determine their relative ranking. This enables boxing commissioners to not only avoid mismatches but to weed out boxers which may be too old or may have had too many knock-outs in their career.

My Hyashi indicates that Ontario also regulates kick-boxing and wrestling although the level of supervision of wrestling is not as strict as for boxing.

On Tuesday 14 August 2001 the delegation met with the following representatives of the Texas Department of Licensing and Regulation: Mr Jimmy Martin, Director of Enforcement, Mr William Kuntz, Department Executive Director, Mr Brian Francis, Deputy Director, Mr Dick Cole, Boxing Administrator and Mr Greg Alvarez, Assistant Boxing Administrator.

Mr Martin confirmed the advice given by Mr Hyashi that MRI scans are considered too expensive for the average contestant in America, however he said that an EEG and an EKG examination is required before a boxer can be registered. Each year a comprehensive physical is also required, including a medical and ophthalmologist report.

On the day of the weigh-in each boxer goes through a vital sign report, and after each fight or knock-out a comprehensive medical examination is required. Minimum rest periods of sixty days are required after a knock-out.

Texas also employs the "Fight Facts" record to ensure that there are no miss-matches and that older boxers do not participate in contests beyond their ability. Mr Martin indicated that the Muhammad Ali Act has worked effectively in Texas to prevent the control of the industry by one promoter and it also ensures that the fighter gets his appropriate remuneration.

As part of the medical testing, an examination is made for Hepatitis B and Hepatitis C but the Department is not able to screen for HIV because of privacy requirements.

Mr Kuntz said that the uniform legislative proposals being put forward by Senator Reid will remedy a number of problems in the industry which effect Texas, for example young Mexican fighters with an inadequate record have from time to time been put forward as contestants.

Texas currently regulates kick boxing through the Department of Licensing and Regulation but wrestling is under the administration of the Secretary of State.

Problems arise from time to time in classifying a number of combative sports, for example "Shoot Wrestling", which originated in Japan involves a mixture of martial arts and wrestling and may require more strict supervision. Women are permitted to box in Texas provided they return a negative pregnancy test.

APPENDIX

DOCUMENTS ACQUIRED DURING TOUR HELD IN

COMMITTEE RECORDS

A. Regulatory Reform Act 2001 and Explanatory Notes
B. First Special Report of the House of Commons Regulatory Reform Orders and other reports and consultation papers on Deregulation and Regulatory Reform Orders.
C. Annual Report 1999-2000 of the Better Regulation Task Force of the United Kingdom and in particular on being an effective legislator, legislative oversight and sunsetting
D. Guide to Regulatory Impact Assessment, Regulatory Impact Unit of the U.K. Cabinet Office
E. The Dutch Business Impact Assessment and BET Checklist
F. Final Report of the Red Tape Review Commission of Ontario, Canada 1997
G. Presentation by Ontario Red Tape Commission 8 August 2001 and materials on the new Business Impact Test
H. Citizens First 2000 – Report on Improving Government Services, Institute of Public Administration, Canada
I. Government from the Outside In – presentation by Mr. Art Daniels 8 August 2001 and reports on Transferring the Public Service and Alternative Service Delivery, Ontario Public Service Restructuring Secretariat
J. Athletics Control Act and Regulation of Ontario

Muhammad Ali Boxing Reform Act of the United States

Proposal for Senator Reid's National Boxing Commission Act 2001 of the United States

Material of the Association of Boxing Commissions of the United States

Press Clippings on Boxing in Canada

K. Texas Department of Licensing and Regulation Combative Sports Occupations Code.

L. Documents of the National Conference of State Legislatures in the United States