LEGISLATION - PART IV*

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THE EMERGENCIES ACT

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THE WAR MEASURES ACT

and

THE CANADIAN BILL OF RIGHTS

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CHAPTER IX

The War Measures Act and the Canadian Bill of Rights

1. Section 6 of The War Measures Act

Section 6 of the *Bill of Rights* repealed s. 6 of the *War Measures Act*,[1] and provided the following substitution:

> (1) Sections 3, 4 and 5 shall come into force only upon the issue of a proclamation of the Governor in Council declaring that war, invasion or insurrection, real or apprehended, exists.
> (2) A proclamation declaring that war, invasion or insurrection, real or apprehended, exists shall be laid before Parliament forthwith after its issue, or, if Parliament is then not sitting, within the first fifteen days next thereafter that Parliament is sitting.
> (3) Where a proclamation has been laid before Parliament pursuant to subsection (2), a notice of motion in either House signed by ten members thereof and made in accordance with the rules of that House within ten days of the day the proclamation was laid before Parliament, praying that the proclamation be revoked, shall be debated in that House at the first convenient opportunity within the four sitting days next after the day the motion in that House was made.
> (4) If both Houses of Parliament resolve that the proclamation be revoked, it shall cease to have effect, and sections 3, 4 and 5 shall cease to be in force until these sections are again brought into force by a further proclamation but without prejudice to the previous operation of those sections or anything duly done or suffered thereunder or any offence committed or any penalty or forfeiture or punishment incurred.
> (5) Any act or thing done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the *Canadian Bill of Rights*.

As pointed out in the last part of Chapter I, when the Statutes of Canada were revised in 1970, the *Canadian Bill of Rights* was printed without s. 6, as Appendix III to the Statutes, and the *War Measures Act* was revised with the new s. 6 as quoted above.

Before dealing with the adoption of S. 6 and its possible effect and interpretation, it is necessary to survey the constitutional and historical background of the *War Measures Act*.

2. The Overriding Power of Parliament in "Emergency" Situations

The source of the federal Parliament's jurisdiction to pass the *War Measures Act* is to be found in the opening words of s. 91 of the B.N.A. Act:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government of Canada. . . .

This is supported by two other provisions in the B.N.A. Act which give the federal exective and legislature what might be called the "war" or "military" power.[2] Section 15 provides:

> The Command-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces in Canada, is hereby declared to continue and be vested in the Queen.

By s. 91(7) Parliament is given legislative power with respect to: "Militia, Military and Naval Service and Defence." However, the latter clause seems to have been mentioned in only two major constitutional cases, and in both cases it was deemed to be a supplementary power in aid of some other head of power giving legislative authority to Parliament.[3]

There has been considerable controversy over the interpretation given by the Privy Council to the peace, order and good government clause.[4] As all the implications of the interpretation of this clause do not bear on the topic here, only a brief outline will be given. In the *Board of Commerce* case,[5] in 1922, Viscount Haldane declared that the clause would operate only "[in] special circumstances, such as those of a great war;" that the power could be exercised "only under necessity in highly exceptional circumstances." He stated that in normal times the distribution of powers under the heads of ss. 91 and 92 would operate but that "circumstances are conceivable, such as those of war or famine, when the peace, order and good government of the Dominion might be imperilled under conditions so exceptional that they require

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legislation of a character in reality beyond anything provided for by the enumerated heads in either s. 92 or s. 91 itself." A few years later, in *Toronto Electric Commissioners v. Snider*[6] Viscount Haldane emphasized that the power under the peace, order and good government clause was to be used only in highly exceptional circumstances:

> No doubt there may be cases arising out of some extraordinary peril to the national life of Canada, as a whole, such as the cases arising out of a war, where legislation is required of an order that passes beyond the heads of exclusive Provincial competency. Such cases may be dealt with under the words at the commencement of s. 91 . . . simply because such cases are not otherwise provided for. But instances of this . . . are highly exceptional.

This view was affirmed by Duff C.J.C. in *Reference Re Natural Products Marketing Act*,[7] and by Lord Atkin in *Attorney General for Canada v. Attorney General for Ontario (Labour Conventions* case).[8]

The Privy Council went some way towards redressing Viscount Haldane's "emergency" interpretation of the peace, order and good government clause in *Attorney General for Ontario v. Canada Temperance Federation* in 1946.[9] In the cases discussed in the previous paragraph, the early Privy Council decision in *Russell v. The Queen*[10] (which upheld the *Canada Temperance Act*, 1878) was interpreted as dealing with an emergency situation. Indeed, in the *Snider* case Viscount Haldane suggested[11]

> that the evil of intemperance at that time amounted in Canada to one so great and so general that at least for the period it was a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster. An epidemic of pestilence might conceivably have been regarded as analagous.

However, in the 1946 *Temperance Federation* case Viscount Simon declared that their Lordships found nothing in the *Russell* case "which suggests that it proceeded on the ground of emergency; there was certainly no evidence before that Board that one existed."[12] This was not the last word on the subject, however, as in two later cases decided by the Privy Council[13] the view was expressed that Viscount Simon's statement in 1946 should be read in conjunction with the *Labour Conventions* case. Whether this leaves the whole issue open once again, or whether the "emergency" doctrine of Viscount Haldane is revived, is impossible to say. The one thing that all these cases agree on is that in time of emergency, such as that of war or national disaster, the federal Parliament has full power to legislate under the peace, order and good government clause, and in that case the power overrides all other powers in the B.N.A. Act. From these cases, and those that follow, it is clear that the *War Measures Acts* passed by Parliament are valid legislation.

The first *War Measures Act*, which was passed by Parliament in 1914,[14] was similar to the English *Defence of the Realm Act*.[15] There was an important difference in that whereas D.O.R.A. was intended to operate only for the duration of the war, the Canadian Act was so drafted so as to remain on the statute books to be invoked when deemed necessary by the executive. As is too often the case when a Parliament devises emergency legislation during an emergency, the Act was debated for only about two hours, and passed unanimously.[16]

This Act came before the Privy Council for decision in *Fort Frances Pulp & Paper Co. Ltd.* (reported as *Fort Frances Pulp & Power Co. Ltd.*) *v. Manitoba Free Press Co. Ltd.*[17] Acting under provisions of the *War Measures Act* the federal government had issued a number of Orders in Council authorizing the Minister of Customs to fix the quantity and price of newsprint paper. Subsequently, by a later Act of Parliament which referred to the Orders in Council and the *War Measures Act* under which they were issued, control of paper was continued after World War I, and was to be continued until a final proclamation by the Governor in Council declaring that the war no longer existed. This action by the respondents against the appellants was for the recovery of sums they had paid for paper in excess of the prices regulated under these orders. The only defence was that these orders were *ultra vires* as dealing with "Property and Civil Rights" within provincial jurisdiction. This contention was rejected by the Privy Council, after an examination of the constitutional validity of the Orders and the Acts under which they were made. Viscount Haldane spoke at length of Parliament's jurisdiction under the peace, order and good government clause. As his statement is relevant, and has subsequently been relied on, it is set out at some length:[18]

> It is clear that in normal circumstances the Dominion Parliament could not have so legislated as to set up the machinery of control over the paper manufacturers which is now is question . . .
>
> In the event of war, when the national life may require for its preservation the employment of very exceptional means, the provision of peace, order and good government for the country as a whole may involve effort on behalf of the whole nation, in which the interests of individuals may have to be subordinated to that of the community in a fashion which requires s. 91 to be interpreted as providing for such an emergency. The general control of

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> property and civil rights for normal purposes remains with the Provincial Legislatures. But questions may arise by reason of the special circumstances of the National emergency which concern nothing short of the peace, order and good government of Canada as a whole. . . .
>
> It is proprietory and civil rights in new relations, which they do not present in normal times, that have to be dealt with; and these relations, which affect Canada as an entirety, fall within s. 91, because in their fullness they extend beyond what s. 92 can really cover. The kind of power adequate for dealing with them is only to be found in that part of the Constitution which establishes power in the State as a whole . . .

This judgment was referred to in two cases after World War II when the *War Measures Act* had once again been proclaimed. The first of these was *Co-operative Committee on Japanese Canadians v. Attorney General for Canada*.[19] The Judicial Committee of the Privy Council upheld the validity of deportation Orders in Council passed under the *War Measures Act*, and the *National Emergency Transitional Powers Act*, 1945.[20] Lord Wright, who delivered the judgment, referred to the *Fort Frances* case as having established the validity of such legislation and such Orders in Council, and went on:[21]

> Under the British North America Act property and civil rights in the several Provinces are committed to the Provincial Legislatures, but the Parliament of the Dominion in a sufficiently great emergency, such as that arising out of war, has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected and it rests with the Parliament of the Dominion to protect them. What those interests are the Parliament of the Dominion must be left with considerable freedom to judge.

In *Reference Re Validity of the Wartime Leasehold Regulations*,[22] the Supreme Court of Canada dealt with *Wartime Leasehold Regulations* made under authority of the *War Measures Act*, and continued in force after the war by the *National Emergency Transitional Powers Act*, 1945, and the *Continuation of Transitional Measures Act*, 1945, and the *Continuation of Transitional Measures Act*, 1947, and amendments to the latter. The Supreme Court held unanimously that the *Leasehold Regulations* were not *ultra vires* in whole or in part. Under powers implied in the constitution Parliament could, for the peace, order and good government of Canada as a whole, in time of national emergency, assume jurisdiction over property and civil rights which would in normal times come within the exclusive jurisdiction of the provincial legislatures. The Court said that where Parliament enacts legislation declaring that a national emergency continues to exist, and that for the sake of an orderly transition from war to peace, it is necessary that certain regulations be continued in force, the Court will not find to the contrary unless the contrary is very clearly shown.

The *War Measures Acts* referred to in these cases are successors to the one mentioned as first adopted in 1915. The 1914 Act was consolidated with little change in the Revised Statutes of 1927,[23] and was again consolidated in the Revised Statues of 1952. This statute provides in s. 2 that:

> The issue of a proclamation by Her Majesty, or under the authority of the Governor in Council shall be conclusive evidence that war, invasion, or insurrection, real or apprehended, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists.

Section 3 gives the Governor in Council authority to do what he may deem necessary for "the security, defence, peace, order and welfare of Canada," including: censorship; arrest; detention; exclusion; and deportation; control of harbours and vessels; control of transportation; control of trading, production and manufacturing; and, appropriation, control, forfeiture, and disposition of property and the use thereof. Section 4 authorizes the provision of penalties for violation of orders and regulations made under the Act. Section 5 states that no one detained may be released on bail, or discharged, without the consent of the Minister of Justice. Section 6 states that the previous three sections of the Act will be in force only "during war, invasion, or insurrection, real or apprehended." Section 7 authorizes the provision of compensation for any loss resulting from the operation of the Act. Section 8 provides for the seizure and forfeiture of any vessels or goods used or moved contrary to rules and regulations under the Act. Section 9 states that the court concerned with the last two sections may make such rules or prescribe such procedure as it deems necessary.

This is the Act, or transitional variations of it, which Professor Marx estimates Canadians have lived under for about 40 per cent of the time since the outbreak of the First World War.[24] In addition to the extension of the jurisdiction of Parliament into subject matters which during peacetime are within the jurisdiction of the provinces, this legislation not only enables the Cabinet to control the daily and economic lives of the people through Orders in Council, but even permits the Cabinet to, in effect, amend legislation.[25]

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Pursuant to this legislation not only can the Cabinet assume complete direction of the economy, but the right as well to interfere extensively with the personal liberties of the people in the country. During World War I, although there was never a massive round-up of enemy aliens, thousands were interned. In 1917, following the Bolshevik Revolution, thousands more were interned, even though they could not be classified as enemy aliens because the Soviet Union was not at war with Canada. In preparation for the 1917 wartime election, the franchise was denied to those who had emigrated from the Central Powers, *i.e.*, the Prussian and the Austro-Hungarian empires, despite the fact that many of these were serving in the Canadian armed forces.[26] Early in World War II, in addition to strict censorship of the press, and regulations prohibiting speech which could "prejudice recruiting" or "be prejudicial to the safety of the State or prosecution of the War," a great many organizations were declared illegal, and membership of them was made an offence.[27] As well as some fascist organizations, the Communist Party and the Witnesses of Jehovah were included. As Professor Marx points out,[28] the Jehovah's Witnesses fared much worse in Canada than in the United States or Australia.

Perhaps the greatest impact of the drastic powers available to the government was on the Japanese-Canadians. Although Prime Minister Mackenzie King admitted in 1944 that no Japanese-Canadian was ever charged with espionage or disloyalty,[29] more than 20,000 persons of Japanese origin on the Canadian west coast, over three-quarters of whom had been born in Canada, had their property sequestered and sold (many, it is alleged, at "fire sale" prices), and the people dispersed throughout the prairie provinces and Ontario.[30] As if the forcible evacuation and dispersal was not enough, on December 15, 1945, some four months after Japan had surrendered, Orders in Council pursuant to the *National Emergency Transitional Powers Act* provided for orders of deportation not only for Japanese nationals, but even for naturalized and natural-born persons of the Japanese race who were over the age of sixteen, or even those under the age of sixteen, if their father was deported. It is true that the Orders in Council applied the deportation orders only to those who had "made a request for repatriation," but considering the circumstances of the evacuation, internment and dispersal, the "voluntariness" may be subject to some question.[31] Apparently only 3,964 of the 10,000 persons who were to be repatriated actually left, and apparently none against their own will.[32]

In 1945 as well, when the Russian cipher clerk, Igor Gouzenko, defected from the Soviet Embassy in Ottawa and revealed a spy network in Canada, the government proceeded under the *National Emergency Transitional Powers Act* which continued regulations in force under the *War Measures Act*. Under Order in Council P.C. 6444, passed on October 6, 1945, the Minister of Justice was empowered to detain "in such place and under such conditions as he may from time to time determine" anyone whom he suspected of being likely to communicate secret information to a foreign agent. Although eventually two judges of the Supreme Court of Canada were appointed to the Royal Commission to enquire into the detainees, many individuals were detained or interrogated without being advised as to any protection under the *Canada Evidence Act* against self-incrimination, without being permitted access to counsel, and even without being able to communicate with anyone.[33] In the end only about half of the detainees were convicted at the trials that followed.[34]

It is true that many of the actions described above have been strongly criticized since World War II, and even in some cases during the war. It is true, also, that the realization of what had happened was probably a very strong factor in influencing Mr. Diefenbaker to introduce legislation to enact the *Canadian Bill of Rights*, and the parliamentarians to support its passage. Nevertheless it should be remembered that the existence of the *Canadian Bill of Rights* in no way, of itself, prevents such action in the future. Even if s. 6(5) of the *War Measures Act* were not to provide, as it does, that any action taken pursuant to it is not in contravention of the *Canadian Bill of Rights*, any legislation could override the *Canadian Bill of Rights* by providing that it shall operate "notwithstanding the *Canadian Bill of Rights*."

3. The Canadian Bill of Rights in "Emergency" Situations

Almost every witness before the Special Committee on the *Bill of Rights* was critical of s. 6 of the *War Measures Act* as amended by s. 6 of the *Bill of Rights*. Two of the witnesses conceded that the amended version could be an improvement over the former s. 6,[35] but most either called for further study and changes,[36] or for the complete removal of s. 6 from the *Bill of Rights*.[37] Some called for a separate amendment to the *War Measures Act*.[38] Most witnesses felt that the greatest threats to civil liberties came during war or like emergency, and that under s. 6 Parliament's powers would be as wide as ever in this time of greatest threat. Most of the witnesses felt that a *War Measures Act* was necessary in time of emergency but that further study was necessary to see how it could be improved. There was a suggestion that the *War Measures Act* be amended to prevent deportation and exile, and that there be no detention for more than a specified period without review of the case by a superior court judge.[39] There was even a suggestion that an Emergency Appeal Court be set up, staffed with superior court

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judges from across Canada to hear appeals on detention, property seizures, and so on.[40]

In Parliament the Opposition criticized the inclusion of s. 6 in the *Bill of Rights*.[41] In the Special Committee the Opposition members moved an amendment to s. 6 which would have prevented the deportation of a Canadian citizen, the revocation of citizenship from a naturalized citizen, and detention for more than sixty days without determination of the cause.[42] However, the Chairman of the Committee ruled this proposed amendment out of order as being an amendment to the *War Measures Act* and not to the *Bill of Rights*, and he was sustained on appeal.[43] When the Bill was returned to the House for third reading the Opposition tried to move that the Bill be not read; but be sent back to committee for consideration of an amendment to s. 6. The intention was to delete s. 6(5) and add s. 6A with a list of rights which were not to be abrogated, even under the *War Measures Act, viz:*—1) no deprivation of citizenship; 2) no deportation of citizens; 3) no detention for more than sixty days without bringing the prisoner before a superior court judge; 4) all orders for detention to come before Parliament within fifteen days; 5) provision for revoking certain orders in council.[44] The motion was defeated.[45] The most that the Prime Minister would agree to was to set up a committee at the next session to consider the *War Measures Act*[46] No such committee was in fact set up.

The government position on s. 6, as put forth by the Minister of Justice, was that the section was designed to provide protection against a government relying on an emergency or a fake emergency to proclaim the *War Measures Act* in order to abrogate the freedoms listed in the *Bill of Rights*. This was why subs. (2) provided that a proclamation that war, invasion or insurrection, real or apprehended, exists, be laid before Parliament forthwith after its issue, or within fifteen days of the beginning of the next sitting of Parliament, if Parliament were not sitting at the time.[47] Mr. Fulton stated that he did not think that a member should be able to raise the issue of the proclamation at any time or repeatedly—it was sufficient for Parliament to raise the issue quickly at the time of the proclamation and this, he said, would prevent a government from merely pretending that an emergency existed, in order to by-pass the *Bill of Rights*.[48] He added that he could not accept the suggestion that provision be made for Parliament to sit in continuous session as this might not be possible if facilities were wiped out. The most that could be provided, he said, would be that Parliament be kept in nearly continuous session.[49]

Mr. Fulton explained that subs. (4) was designed so that Parliament could revoke a proclamation. But at the same time, any official acting in good faith under the proclamation would be protected. Furthermore, the subsection permits the government subsequently to re-proclaim the *War Measures Act* if the need should arise.[50] He added that it was obvious that if a government were defeated on the issue of the proclamation, and the emergency were not genuine, the government would have to resign.[51]

The provisions of s. 6 seem quite straightforward, and should pose no problems in interpretation. The one difficulty that might arise, and the one that is likely to bring about the most serious controversy, is whether in fact a proclamation of the *War Measures Act*, and the continuation of its existence is justified by the events. If Parliament does not revoke the proclamation can the courts, if circumstances require it, declare that the continuation is invalid? The cases seem to indicate that they could, but that this would only be done on the basis of very clear evidence that an emergency did not exist, or had passed.

In the *Fort Frances* case Viscount Haldane stated:[52]

> It may be that it has become clear that the crisis which arose is wholly at an end and that there is no justification for the continued exercise of an exceptional interference which becomes ultra vires when it is no longer called for. In such a case the law as laid down for distribution of powers in the ruling instrument would have to be invoked. But very clear evidence that the crisis had wholly passed away would be required to justify the judiciary, even when the question raised was one of ultra vires which it had to decide, in overruling the decision of the Government that exceptional measures were still requisite.

In the *Japanese-Canadians* case Lord Wright agreed with this and added two important points:[53]

> . . . [I]t is not pertinent to the judiciary to consider the widsdom or the propriety of the particular policy which is embodied in the emergency legislation. Determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers. Lastly it should be observed that the judiciary are not concerned when considering a question of ultra vires with the question whether the executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of the Dominion either directly or indirectly has made.

The Supreme Court of Canada, for its part, has approved these statements in the *Wartime Leasehold Regulations* case and has given some indication of the type of evidence that would be required for the courts

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to hold that emergency legislation is *ultra vires*. In that case Rand J. stated:[54]

> A conclusion of this sort is to be gathered from an appraisal of conditions throughout the country. Evidence of that is furnished to Parliament by the representatives in both the Houses: it is gathered by the agencies of the Dominion government charged with country-wide enquiry, which are at the same time receiving centres of complaints and communications from all districts. There is also the common knowledge of which the Court can take judicial notice.

In similar terms Kellock J. said:[55]

> If clear evidence had been adduced of the disappearance of any conditions justifying the continued operation of the federal legislation, it would, of course, be not only within the power but the duty of the court to declare the legislation invalid. . . .

Apparently to date no such "clear evidence" has been adduced, even when the *War Measures Act* was invoked on October 16, 1970, because the government believed there was an apprehended insurrection.[56]

4. The Apprehended Insurrection of October, 1970

The most recent resort to the emergency powers described above, and the only one since the enactment of the *Canadian Bill of Rights*, came on October 16, 1970, when the federal government invoked the *War Measures Act* on the ground that as of the day before an apprehended insurrection existed. The events[57] leading up to October 16, 1970, are very important if one is to be able to assess the validity of the government's invocation of the *War Measures Act* and its actions pursuant to regulations issued under this authority and under the *Public Order (Temporary Measures) Act*[58] which replaced these regulations. There is a great deal of literature on the subject, ranging from those who are strongly critical, whether in Quebec or outside,[59] to those who favoured the government action, like the Hon. Gérard Pelletier, one of the leading Quebec Ministers in the federal Cabinet,[60] to some which are more measured, with more detailed summaries of the events.[61] There are even books dealing with psychological studies of the terrorists in Quebec.[62] Therefore, some minimum details have to be given here, although the full narrative should be sought elsewhere.

It is difficult to know where to commence referring to the events leading up to October, 1970. Since the reasons given for the invocation concerned Le Front de Libération du Québec (the F.L.Q.), and a rising tide of violence for which the F.L.Q. claimed a great deal of the credit, then perhaps the starting point could be February 23, 1963, when a bomb was placed near the C.B.C. TV Antenna on Mount Royal, and another one near the private English language radio station CKGM. The real violence began on the night of March 8, 1963, when Molotov cocktails were thrown through the windows of three armouries in Montreal. On March 29, 1963, the Wolfe Monument in Quebec City was toppled by unknown people. By the spring of 1963 a number of bombs had been discovered unexploded, several had gone off, and at least two people were killed. By June the wave of terrorism seemed to have ended and some fifteen people had been arrested. On October 7, 1963, nine of these were sentenced to prison terms ranging from three years to twelve years, while the other six were either given suspended sentences, or put on probation, and in one case released for lack of proof.[63]

Following the arrests and trials of 1963, a new phase of terrorist activity occurred during the next five years which involved mostly armed robberies of banks and theft of military equipment, dynamite, and ammunition. During 1965 and 1966 bombs were again being placed, and two more victims were claimed. Then, after an interval during the centennial year, a new wave of bombing began. The objects changed from symbols of the federal government, like armouries, to symbols of English-Canadian dominance like Eaton's, Domtar, the Bank of Nova Scotia, Murray Hill Limousines, the Reform Club, the Montreal Stock Exchange, the Chateau Frontenac, and by 1969 even Loyola College, and McGill University.[64]

Early in 1970 there was a general election in the Province of Quebec which resulted in the defeat of the Union Nationale party by the Liberals under their newly-elected leader, Robert Bourassa. Although the Bourassa victory seemed to reassure Quebec, and even evoke from the *Globe and Mail* the enthusiastic announcement that: "The Province of Quebec is alive and well in Canada," it was followed by a new wave of bombings, amounting to some thirteen from May 24 to June 24, the last resulting in another death at the Ministry of Defence in Ottawa. Meanwhile a committee to coordinate strategy against the terrorists had been formed by the R.C.M.P., the Quebec Provincial Police, and the Montreal Police. In June, 1970, some success was achieved in that the Quebec Provincial Police raided a summer house at Prévost, some thirty-five miles north of Montreal, where they discovered arms, dynamite and ammunition, as well as circulars calling for "a revolution for Quebec workers," and a plan to kidnap the Consul General of the

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United States in Montreal.[65] Six persons found on the premises were captured. In the same month police arrested two more well-armed men who were proceeding towards the kidnapping of the Israeli Consul.

Then, on October 5, 1970, Canada was startled by the news that the British Trade Commissioner in Montreal, Mr. James Cross, had been abducted at 8:20 a.m. by four armed individuals. By noon a radio station was informed by an anonymous caller as to the location of the first communiqué to be issued by Mr. Cross' abductors. It claimed that he was in the hands of the "Liberation" cell of the F.L.Q. and it outlined certain conditions for his release. These included: (1) publishing the F.L.Q. manifesto in all newspapers and on French TV; (2) liberating certain named "political prisoners," and transporting them by plane to Cuba or Algeria; (3) paying a ransom of half a million dollars in gold ingots; (4) revealing the name of the informer responsible for recent arrests; and (5) ceasing all police activities in connection with the kidnapping. The next day two more communiqués were received threatening to "liquidate" the British diplomat unless the demands were complied with. A fourth communiqué on October 7 demanded that the manifesto be read on TV the same day. This was done on October 8. This was followed on October 9 by communiqués 5, 6 and 7, giving the authorities until 6 p.m. on October 10 to comply with the demands or Cross would be "executed." Half an hour before the deadline the Quebec Minister of Justice, Jerome Choquette, read a prepared statement on television in which he urged the abductors to release Mr. Cross in return for a concession offered by the federal government of safe conduct to a foreign country or "all possible clemency before our courts," but all other demands were rejected. Within half an hour after the statement was read another group of armed men kidnapped the Quebec Minister of Labour and Immigration, Pierre Laporte. The claim of success was made by a group purporting to call itself the "Chenier" cell of the F.L.Q. (The Chenier group immediately let it be known through a private radio station that they supported the demands of the "Liberation" cell.) It seemed to a startled country that the F.L.Q. could kidnap at will, even cabinet ministers!

From the beginning it was the clear intention of the federal government to give the lead in directing official responses to the F.L.Q. to the Quebec government. When the Minister for External Affairs, Mitchell Sharp, announced the news of the Cross kidnapping to the House of Commons, he assured the members that the federal government was in close contact with the appropriate provincial and municipal authorities, and referred to the cooperation of the three police forces in investigating the case.[66] The federal government was involved because Cross was a diplomat, and most of the F.L.Q. demands could only be met by it because it had jurisdiction over prisoners, postal service, and the broadcasting media. However, the federal government was very careful to emphasize that because of the provincial jurisdiction over "the administration of justice in the province" it was the Quebec government which carried primary responsibility for dealing with the crisis. Thus, the police investigations, and the negotiations with the F.L.Q. through the government's special negotiator, Mr. Robert Demers (a Montreal lawyer), were under the direct charge of the Attorney-General for Quebec, Jerome Choquette. It was he, also, who gave the reply to the F.L.Q. on October 10. The *Toronto Star* on October 12, 1970, indicated the reasons:[67]

> Why was a Quebec cabinet minister charged with the duty of giving Canada's answer to the diplomat's kidnappers?
>
> Officials said federal and provincial government strategists bargaining to save the diplomat's life had to consider, among other things, the political climate of Quebec and the apparent attitude of the province's people to the kidnapping.
>
> They concluded that the overwhelming majority of Quebecers were horrified.
>
> They believed, also, the sources said, that the people of Quebec at large would be sympathetic to any stated declaration that the province's government would seek to reform its institutions by democratic processes, and not under the threat of violence.
>
> But that message, because of Canada's delicate federal nature, could be delivered only by a Quebecer—and a member of the Quebec government.

The F.L.Q. manifesto, which was read over the airwaves, referred to the Liberal election victory of the previous April as indicating that "the British parliamentary system was finished," attacked by name some of the leading "capitalists" in Quebec, as well as the Mayor of Montreal, the Premier of the Province, and the Prime Minister of Canada. It urged the workers of Quebec:[68]

> Make your own revolution in your area, in your places of work. And if you do not make it yourselves, other usurpers, technocrats and others will replace the iron fist of the cigar smokers which we know now, and all will be the same again. Only you are able to build a free society.
>
> We must fight, not one by one, but together. We must fight until victory is ours with all the means at our disposal as did the patriots of 1837-38 (those whom your sacred Church ex-communicated to sell out to the British interests).

Source: Nikkei National Museum, 2018-16-4-1-1-10
www.nikkeimuseum.org

There was a positive response to the manifesto amongst some students, union officials, and intellectuals. There were organizational drives to stage demonstrations in favour of releasing the prisoners referred to in the manifesto. On October 14 the Montreal Executive Committee of the Quebec-based Confederation of National Trade Unions, chaired by the fiery labour leader Michel Chartrand, endorsed "without equivocation all the objectives of the F.L.Q. manifesto." It accused the provincial government of encouraging public panic and using the police to construct a police state. It stated that the action of the F.L.Q. was not a threat to Quebec workers, but was directed only at the exploiting classes.

In terms of numbers, perhaps the strongest support for the F.L.Q. came from students. On October 14, a mass meeting of a thousand at the University of Montreal was addressed by Chartrand and Robert Lemieux, a young Montreal lawyer who had defended many F.L.Q. accused in the past, and who was now acting as a negotiator on behalf of the two cells who had kidnapped Cross and Laporte. Lemieux urged the students to turn out of their classrooms and demonstrate on behalf of the F.L.Q., while Chartrand argued that the guns of the police would not be able to stop them because they and those who shared their views outnumbered the police. The following night some 1,000 students from the Faculty of Arts and Sciences at the University of Montreal, some 800 students at the University of Quebec at Montreal, and students at Montreal's largest CEGEP, voted to strike. That evening about 1,500 students, at a rally at the Paul Sauvé Arena, were addressed by Chartrand, Lemieux, and two of the self-styled "philosophers of the revolution" who had previously been convicted for F.L.Q. activities, Charles Gagnon and Pierre Vallières. These urged the students to come out in favour of the proposed strike. There were reports that Pierre Vallières called upon all Quebecers "to organize the fight for liberation in each district, in each plant, in each office, everywhere."[69] In addition, the Montreal Municipal Reform Party known as FRAP, which was running its candidates in opposition to those of Mayor Jean Drapeau in the forthcoming Montreal Municipal election, stated that it could not condemn those who resorted to violence against the established order.[70]

During this period, while thousands of students were rallying in support of the "political prisoners," while some radical union leaders were calling for support to the F.L.Q., while Mayor Drapeau's opponents in the municipal election condoned the violence, and while radicals like Lemieux, Gagnon and Vallières were urging workers and students to rise up and take power, Premier Bourassa was canvassing influential Quebecers outside his government about their views as to the alternatives open to the government. There is some considerable dispute as to what it was he asked for, and what it was that he received.

There is some indication that the leader of the Parti Québecois, René Levesque, persuaded Claude Ryan, the influential editor of *Le Devoir*, that the government might be stiffening in its attitude in negotiating with the kidnappers and that it might "be useful . . . to put some pressure on Bourassa."[71] That the contact was made, and that there was some response was acknowledged by Mr. Ryan in *Le Devoir* of October 30 in which he said, *inter alia*:

> On Wednesday, October 14, Mr. Bourassa phoned and told me there might be "a small step" in the direction of taking a firm stand. His remarks caused me some concern. On the same day at about 5 pm. I received a telephone call from Mr. René Levesque. The latter . . . told me that he feared a shift in Mr. Bourassa's attitude and asked me whether I would be prepared to join several other individuals in publishing a joint statement aimed at supporting the intention announced three days earlier by Mr. Bourassa, that is, to try to find a solution by negotiation . . . Because I wished to do everything possible to save Laporte's and Cross' lives, I accepted this invitation, I helped in preparing the final text of the "joint statement" and I was at the press conference (October 14, 9 p.m.) when this statement was made public. . . .

The "joint statement," signed by René Levesque, Claude Ryan, the presidents of the Quebec labour federations, the farmers' union, the Teachers' federation, the Professors' Alliance of Montreal, several Parti Québecois members of the National Assembly, and several university professors, included the following statements:[72]

> The destiny of two human lives, the reputation and collective honour of our society, the obvious danger of a political and social degradation that this society is presently facing, all this makes it clear to us that the responsibility for finding a solution and applying it quite rightly lies primarily with Quebec.
>
> We feel that certain attitudes outside Quebec . . . plus the rigid—almost military—atmosphere we see in Ottawa, runs the risk of reducing Quebec and its government to tragic ineffectualness. Superhuman effort [is needed] to agree to bargain and compromise. In this respect, we believe that Quebec and its government really hold the responsibility and the moral mandate, and are the real custodians of the facts and the climate of opinion which allow them to make knowledgeable decisions . . .
>
> This is why, forgetting the difference of opinion we have on a

Source: Nikkei National Museum, 2018-16-4-1-1-11
www.nikkeimuseum.org

> number of subjects . . . we wish to give our complete support to the intention announced Sunday evening by the Bourassa government, which means basically our strongest support for negotiating and exchange of the two hostages for the political prisoners. This must be accomplished despite and against all obstruction from outside Quebec, which necessarily implies the positive cooperation of the federal government.
>
> And we urgently invite all the citizens who share our point of view to make it known publicly as quickly as possible.

The same afternoon that René Levesque telephoned Claude Ryan to arrange for the meeting which led to the joint statement, and as the students were preparing for the mass rally at the Paul Sauvé Arena, the government of Quebec decided to call in the army. On the afternoon of October 14 Premier Bourassa informed the National Assembly that the government had issued a statement that afternoon asking for military support. He said that: "We could not carry on indefinitely asking [our police force] to ensure the protection of everyone involved under the present limitations, for this would be beyond their capabilities." He went on to state: "We have, therefore, asked for military support so that the police force may be able to continue protecting public buildings and the population." He asked for the cooperation of all members in all parties and continued:[73]

> Democratic rule in Quebec is being threatened at this time. This democratic rule for which tens of thousands of individuals have given their lives over a period of time within our province is now in danger, and our prime responsibility is to save it. It is with this in mind, in order to save these human lives and to save the regime for which millions of people have died that, in cooperation with all the members, we mean to assume our responsibilities. . . .

The same afternoon, and on the day following more than a thousand troops took up positions in protecting public figures and public property in Quebec City and Montreal, and others moved to do the same in Ottawa. By Order in Council of the Bourassa government all police and army personnel were placed under the command of the Director of the Quebec Provincial Police.

On the night of October 15, Premier Bourassa gave his government's "final viewpoint in its negotiations with the Front de Libération du Québec." He rejected the freeing of the twenty-three prisoners, although he agreed to recommend parole for five who had asked for parole. He assured the kidnappers of safe passage by airplane to "the chosen country" and rejected all other demands. Robert Lemieux, the negotiator on behalf of the F.L.Q. kidnappers, declared that the sixteen who had signed the "joint declaration" represented the "true" public in Quebec, accused the government of mocking the people of Quebec, and concluded: "The mandate has ended. I have nothing more to say."[74] He then joined Chartrand, Gagnon and Vallières at the rally at the Paul Sauvé Arena.

It would appear that the federal cabinet had met in the afternoon of October 15 and must have contemplated the use of the *War Measures Act* if there was no response by the F.L.Q. to Mr. Bourassa's appeal. At 3 a.m. on the morning of October 16 Prime Minister Trudeau received three letters from Quebec and Montreal, all urging the invocation of emergency measures.[75]

One, dated October 16, came from Premier Bourassa. He stated that after consulting with authorities responsible for the administration of justice his government was convinced "that the law, as it stands now, is inadequate to meet this situation satisfactorily." He made his request in the following terms:

> Under the circumstances, on behalf of the Government of Quebec, I request that emergency powers be provided as soon as possible so that more effective steps may be taken. I request particularly that such powers encompass the authority to apprehend and keep in custody individuals who, the Attorney General of Quebec has valid reasons to believe, are determined to overthrow the government through violence and illegal means. According to the information we have and which is available to you, we are facing a concerted effort to intimidate and overthrow the government and the democratic institutions of this province through planned and systematic illegal action, including insurrection. It is obvious that those participating in this concerted effort completely reject the principle of freedom under the rule of law.

He concluded that the Quebec government "is convinced that such powers are necessary to meet the present emergency."

The second letter came from Mayor Jean Drapeau and the Chairman of the Executive Committee, Lucien Saulnier. It was dated October 15 and included the following:

> The chief of the Montreal Police Service has informed us that the means available to him are proving inadequate and that the assistance of higher levels of government has become essential for the protection of society against the seditious plot and the apprehended insurrection in which the recent kidnappings were the first step.

Source: Nikkei National Museum, 2018-16-4-1-1-12
www.nikkeimuseum.org

The letter went on to "ask for every measure of assistance the federal government may deem useful and desirable in order to carry out the task of protecting society and the lives of citizens in this difficult period."

The Drapeau-Saulnier letter included a third letter, which came from the Director of Montreal Police, M. Saint-Pierre. His letter spoke of "an extremely dangerous subversive movement," with objectives of "overthrowing the legitimate state by means of sedition and eventually armed insurrection." He spoke of the kidnappings as leading "directly to the insurrection and the overthrow of the state." He urged that under the circumstances the police "should not be restricted to simply searching for the individuals who perpetrated the odious kidnapping." He spoke of the need for the help of higher government because of "all the ramifications of this movement and its seditious activities." He stated that "the slowness of procedures and restraints imposed by the legal methods and mechanisms now at our disposal will not allow us at this time to cope with the situation."

Within an hour, at 4 a.m. October 16, 1970, the *War Measures Act*, and regulations under it were approved, and a formal statement was made at 5:17 in the morning. It declared that "apprehended insurrection exists and has existed as and from the fifteenth day of October, one thousand nine hundred and seventy." It was based upon the following assertion:

> . . . there is in contemporary Canadian society an element or group known as Le Front de Libération du Québec who advocate and resort to the use of force and commission of criminal offences, including murder, threats of murder and kidnapping, as a means of or as an aid in accomplishing a governmental change within Canada and whose activities have given rise to a state of apprehended insurrection within the Province of Quebec.

Regulations pursuant to the *War Measures Act* were annexed and remained in force until replaced on December 2, 1970, by the *Public Order (Temporary Measures) Act*,[76] which in turn remained in force until its expiry date on April 30, 1971.

In invoking the *War Measures Act*, and proclaiming the Public Order Regulations under them, the federal government scrupulously avoided taking direction of the administration of the new powers. Subsequent demands from the opposition for some form of supervisory mechanism or review board was specifically rejected.[77] The administration of the new power remained in the hands of the Quebec Minister of Justice and was used by the police in Quebec under the control of the Director of the Quebec Provincial Police.

Although the *War Measures Act* does not require the government to submit its incovation or regulations under it for debate by Parliament, the government chose to do so rather than await the opposition calling for the debate under s. 6 of the *War Measures Act*. On October 18 the country was shocked to hear of the death of Pierre Laporte the evening before. On October 19 the House of Commons voted 190 to 16 in favour of the Government's decision to invoke the *War Measures Act*.[78] Even if the news of Pierre Laporte's death increased the majority, it is clear that most Members of Parliament were willing to approve emergency measures to meet what the government considered to be a state of apprehended insurrection.

In retrospect it is clear that the letters referred to above were important to the Government of Canada in invoking the *War Measures Act*. Both the Prime Minister and the Minister of Justice referred to them subsequently in justifying their action. On October 23, the Prime Minister said that:[79]

> The Government of the Province of Quebec and the authorities in the City of Montreal trusted the federal government to permit the use of exceptional measures because in their own words a state of apprehended insurrection existed . . .

On November 4 the federal Minister of Justice, John Turner, stated that:[80]

> Increased powers of apprehension and investigation are operating in Quebec because Quebec called on the federal government to equip it with these extra powers to deal with the F.L.Q.

It would seem also that the activities of the students, of the radicals who addressed them, and the joint statement of the "sixteen" on October 14, were used as reasons both by the Premier of Quebec and his Minister of Justice for the invocation of the emergency measures. On October 17, Premier Bourassa is reported to have told the press the following:[81]

> I decided to ask for that type of intervention because the risk of anarchy was assuming a new dimension. There were all sorts of demonstrations which seemed to be under way and I didn't want to take the risk of endangering the safety of all the population at a time when police forces were already tied down by the need to keep watch over people and buildings.

A month later the Quebec Minister of Justice, Jerome Choquette, was quoted as referring to the action of the "sixteen":[82]

Source: Nikkei National Museum, 2018-16-4-1-1-13
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> All these actions detracted from a common front against the terrorists. It weakened the resolve of society to stand firm. It might have encouraged the F.L.Q. by suggesting that society was not united against them. If there had been unity of purpose in opposing their violent actions, perhaps society would have come through this crisis in a more victorious fashion.

The newspaper of which Mr. Ryan was editor, *Le Devoir*, accused the Prime Minister of fabricating the story of a "conspiracy" in order to justify his invocation of the *War Measures Act*.[83] However, in the House of Commons the Prime Minister specifically denied this allegation,[84] as he had on the day before[85] and as he did again on at least one subsequent occasion.[86]

Perhaps the most complete summary of the reasons presented by the federal government were those given on October 16 to the Parliament of Canada by the Minister of Justice, John Turner. He referred to the letters from Bourassa, Drapeau, Saulnier and Saint-Pierre. He referred to the "series of bombings and the violence" which had plagued the province in the previous six or seven years, to the "increase in the thefts of dynamite" in the province, the kidnappings, and threatening communiqués and ultimatums, and in support of these "concrete facts" he referred as well to other elements of the situation:[87]

> (1) a type of erosion of the public will in the feeling amongst some sincere people that an exchange of prisoners for the victims of the kidnappings would somehow ease the situation.
> (2) the recent call for a public manifestation by people like Gagnon, Vallières and Chartrand established and escalated the whole coming together of an infiltration of F.L.Q. doctrine in certain areas of society in Quebec—in the unions, among university students, and in the media, and the growing feeling among the people of Quebec, particularly citizens of Montreal, that they are living under a reign of terror.
> (3) the Attorney-General of the province of Quebec and the Premier of the province of Quebec advised us that the law as presently constituted . . . was not equipped at the moment to meet the serious situation they were facing, and that they needed additional powers of arrest, of search and of detention.

It would seem then that the government argued, and the Members of Parliament accepted, that a state of apprehended insurrection existed because over a period of some seven years there had been a series of bombings resulting in several deaths and injuries, thefts of dynamite and ammunition, the kidnapping of two people, threatening communications, a public declaration by sixteen leading citizens out of a province of seven million urging the government to negotiate, a call for demonstrations by five radicals, a rally of several thousand people, most of whom were students, with probably some mixture of young radical workers, and a sense of fear that seemed to be growing in the populace.

These are the reasons; let us look at the laws.

The Public Order Regulations, 1970, issued under the *War Measures Act* on October 16, can be discussed best by grouping them in three categories: (1) new offences; (2) new powers of arrest, search and seizure, and (3) detention and bail.

The new offences were set out in ss. 3, 4, 5, 6 and 8. Section 3 provided:

> The group of persons or association known as Le Front de Libération du Québec and any successor group or successor association of the said Le Front de Libération du Québec, or any group of persons or association that advocates the use of force or the commission of crime as a means of or an aid in accomplishing governmental change within Canada is declared to be an unlawful association.

By s. 4 any person who was or professed to be a member or officer of the unlawful association, or who communicated statements on behalf of the assocation, or advocated or promoted "the unlawful acts, aims, principles or policies of the unlawful association," or contributed dues, solicited subscriptions or contributions for such association, or advocated, promoted or engaged in "the use of force or the commission of criminal offences as a means of accomplishing a governmental change within Canada" was guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Section 5 provided:

> A person who, knowing or having reasonable cause to believe that another person is guilty of an offence under these regulations, gives that other person any assistance with intent thereby to prevent, hinder or interfere with the apprehension, trial or punishment of that person for that offence is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

By s. 6, the owner, lessee, agent or superintendent of any building, room, premises or other place who knowingly permitted meetings of the unlawful association or committees or members thereof, or any

Source: Nikkei National Museum, 2018-16-4-1-1-14
www.nikkeimuseum.org

assemblage of persons who promoted "the acts, aims, principles or policies of the unlawful association" was guilty of an indictable offence and liable to a fine of not more than $5,000 or to imprisonment for a term not exceeding five years, or to both.

It will be noted that although s. 3 specifically declared the F.L.Q. to be an unlawful association, it was also wide enough to include any other group of persons or any other association which advocated the use of force or the commission of crime as a means of or an aid to accomplishing governmental change within Canada. Thus, although the *War Measures Act* was proclaimed to deal with the crisis in Quebec caused by the F.L.Q., the Public Order Regulations could have applied to any other group whether in Quebec or in other parts of Canada. In addition, the terms were wide enough to include advocacy and not just action. It is quite possible that s. 3 could have applied to a group of persons or an association in Ontario,[88] the maritime provinces, or the west coast of Canada, who would have advocated non-violent civil disobedience (which could be the commission of a crime), in order to promote governmental change. It should be noted that the type of governmental change referred to did not necessarily have to be violent. Presumably groups or associations which at that time might have been advocating non-payment of income taxes in order to apply pressure on the government of Canada to adopt a more strongly independent policy with respect to the war in Vietnam (which was proceeding at the time) could have been covered by ss. 3 and 4 of the Public Order Regulations. In fact, this never happened, but the potentiality was there.

Section 5 was sufficiently broad that it must have raised some questions in the minds of lawyers as to whether they could represent persons arrested under the Public Order Regulations. Presumably a lawyer has some "reasonable cause to believe that another person is guilty of an offence" under the Regulations, if such a person has been arrested and detained. Does not a lawyer give another person "assistance with intent thereby to prevent, hinder or interfere with the . . . punishment of that person"? Whether it was because of s. 5 of the Public Order Regulations, or out of fear, or out of indifference, there was some evidence in the first few days that in some cities in Quebec some lawyers hesitated to represent detainees under the Public Order Regulations.

By Section 8, in any prosecution for an offence under the Regulations, in the absence of proof to the contrary, evidence that any person attended any meeting of the unlawful association, or spoke publicly in advocacy for it, or communicated statements as a representative or professed representative of it, was to be deemed proof that he was a member of the unlawful association. There was some discussion at the time as to whether s. 8 had retrospective effect. Although it was in effect merely a reverse onus clause, nevertheless it was clear that the actions which could indicate membership in the unlawful association could have occurred before the *War Measures Act* was proclaimed. In addition, under s. 8(a), attendance by any person at "any meeting of the unlawful association," could have included a news reporter or simply a curious person. And it must be remembered, as discussed above, that by ss. 3 and 4 the unlawful association label was not confined to the F.L.Q.

The second group of provisions expanded police powers of arrest, search and seizure. By s. 9 a police officer was enabled to arrest without warrant any person who professed to be a member of the unlawful association, or even a person whom the police officer had "reason to suspect" of being a member, or any person whom he had "reason to suspect has committed, is committing or is about to commit an act described in paragraphs (b) to (g) of Section 4." By s. 10 a peace officer could enter and search without warrant any "premises, place, vehicle, vessel or aircraft" in which the officer had reason to suspect

> (a) anything is kept or used for the purpose of promoting the unlawful acts, aims, principles or policies of the unlawful association;
> (b) there is anything that may be evidence of an offence under these regulations;
> (c) any member of the unlawful association is present; or
> (d) any person is being detained by the unlawful association.

Section 11 provided that any property which a police officer had reason to suspect could be evidence of an offence under the Regulations could be seized without warrant and held for ninety days from the date of seizure or until final disposition of any proceedings in relation to the offence.

It will be noted that the powers of arrest were broader than those under the *Criminal Code*. Under *Criminal Code* s. 450 a peace officer may arrest without warrant on "reasonable and probable grounds," rather than just where he "has reason to suspect" an offence is being committed. Similarly, unlike the entry, search and seizure powers under s. 10 of the *Public Order Regulations*, under *Criminal Code* s. 443 a search warrant must be obtained from a Justice "who is satisfied by information upon oath . . . that there is reasonable ground to believe" that the search will reveal evidence that an offence is about to be or has been committed.

The third group of provisions in the *Public Order Regulations* concerned detention and bail. By s. 9(2) a person arrested had to be charged within a period of seven days after his arrest, unless the

Source: Nikkei National Museum, 2018-16-4-1-1-15
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Attorney-General, before the expiry of those seven days, issued an order that the accused be detained for a further twenty-one day period. It will be noted that the normal practice under *Criminal Code* s. 454 is that a person arrested is to be brought before a justice within twenty-four hours. Pursuant to s. 7(1) a person arrested was to be detained in custody without bail pending trial unless the Attorney-General consented to his release on bail. Subs. (2) of s. 7 provided that where a person was detained for the purpose of ensuring his attendance at the trial, and the trial had not commenced within ninety days from the time when he was first detained, the person having custody of the accused was required upon the expiration of such ninety days to apply to a judge of the superior court of criminal jurisdiction to fix a date for trial. Quite clearly these provisions were designed to give the police power to detain suspects for a considerable period of time partly to permit the police to keep in custody persons they suspected of engaging in terrorist activities, and partly, as had been requested by Police Chief St. Pierre, to permit police to carry out investigations in a more expeditious manner.

Professor Schmeiser summed up the "significant effect of the emergency legislation" as being "to take away the requirement that police officers act reasonably."[89]

During the debate on the invocation of the *War Measures Act* the government promised to consider replacing the Act with more limited emergency legislation. On November 2, 1970, the federal Minister of Justice, John Turner, introduced Bill C-181, known as the *Public Order (Temporary Measures) Act, 1970*.[90] The Bill was debated intermittently until December 1, 1970, when it was passed on third reading.[91] Royal assent was given on December 3 and the proclamation of the *War Measures Act* was thereby revoked by s. 13 of the *Public Order (Temporary Meauures) Act*.

This Act was somewhat more restrictive than the *Public Order Regulations*. Thus, s. 3 defined the unlawful association as the F.L.Q. and any successor group or association, or any group or association which advocated the use of force or the commission of crime as a means of or an aid in accomplishing "the same or substantially the same governmental change within Canada with respect to the Province of Quebec or its relationship to Canada as that advocated by the said Le Front de Libération du Québec." This definition of the type of governmental change by force, the advocacy or promotion of which was prohibited, was included in s. 4 of the *Public Order Act*. Sections 5 and 6 were left unchanged, except that with the more restrictive definition of the unlawful association, the operation of these sections was necessarily more limited. Section 8 was slightly modified in that it required attendance at a number of meetings of the unlawful association, rather than just one meeting, as being proof, in the absence of evidence to the contrary, that a person was a member of the unlawful association. Sections 9 and 10, dealing with arrest, entry, search and seizure, were left essentially the same.

The main changes in the *Public Order Act* from the *Public Order Regulations* were in the powers of detention. Thus, under the *Public Order Act* a person arrested had to be brought before a justice within three days, rather than seven, and the Attorney-General could extend the period of detention to a maximum of seven days, rather than twenty-one. A new subs 3 was added to s. 9 to provide that anyone who had been detained in custody under the *Public Order Regulations* was now to be dealt with under the new s. 9 of the *Public Order Act*. Section 7 of the *Public Order Act* retained the provisions in the Regulations regarding detention in custody without bail, but the time for such detention was to be limited to seven days, unless before the expiry of those seven days the Attorney-General filed a certificate stating that just cause existed for the detention of that person pending his trial.

Because the provisions under the *Public Order Act* were no longer exempted by s. 6 of the *War Measures Act* the new statute had to include the *non obstante* clause required by s. 2 of the *Canadian Bill of Rights*. This was accomplished by s. 12 (1) of the *Public Order Act*. However, subs (2) restricted the *non obstante* clause by providing that it did not override s. 2, paragraphs (a) to (g) of the *Canadian Bill of Rights* except those provisions dealing with arbitrary detention or imprisonment and denial of bail without just cause. This was necessary if the detention provisions in s. 7 of the *Public Order Act*, and the denial of bail provisions in s. 9, were to be operative.

Finally, s. 14 provided that any offence committed under ss. 4, 5 or 6 of the *Public Order Regulations* would be deemed an offence under the *Public Order Act*. And s. 15 provided that the Act would expire on April 30, 1971, unless continued by an earlier resolution of both Houses of Parliament. In the end it was not extended.

The proclamation of the *War Measures Act* on October 16, enabled the police to arrest about 350 people in some 1624 raids during the next four days.[92] In the end some 497 persons in all were arrested of whom, by February, 1971, 465 were released and 32 were still in detention.[93] Of all those arrested, only 62 were charged. Of these, less than one-third were convicted, and most of these were for *Criminal Code* offences connected with the kidnappings and the murder of Pierre Laporte. *Only two* convictions were obtained for offences under the *Public Order Regulations* and the *Public Order Act*.[94] By August, 1971, the Quebec Attorney-General stayed proceedings by *nolle prosequi* against 32 persons who still faced charges under the *Public Order Act*.[95]

Source: Nikkei National Museum, 2018-16-4-1-1-16
www.nikkeimuseum.org

The results of the police action were twofold. On the one hand, Cross was released on December 4 in exchange for safe conduct to Cuba for his four captors and two of their wives.[96] Then, on December 27, Paul and Jacques Rose, and Francis Simard were arrested and charged with the kidnapping and murder of Laporte.[97] On March 14, 1971, Paul Rose was convicted for the murder and was sentenced to life imprisonment, and on November 30, 1971, he received a concurrent sentence of life imprisonment on the kidnapping charge. Francis Simard was convicted on the murder charge on May 20, 1971, and also received a life sentence. Bernard Lortie, who was a member of the "Chenier" cell along with the Rose brothers and Simard, had been captured on November 6, 1970, and had implicated himself and the others at the inquest into Laporte's death. He received a sentence of twenty years imprisonment on the kidnapping charge on November 22, 1971. Jacques Rose was acquitted by a jury on the murder charge, on February 22, 1973, after a previous trial on the kidnapping charge had resulted in one deadlocked jury and an acquittal on a retrial.[98] Subsequently, in July, 1973, Paul Rose was convicted of being an accessory after the fact of the kidnapping in assisting his brother to avoid capture, and received an eight year prison sentence.[99]

As stated earlier, besides those directly implicated in the kidnappings, very few other convictions were achieved. Complaints were made about police brutality and mistreatment of prisoners, and on November 27, 1970, the Quebec Attorney-General announced that there would be an inquiry by a three-man committee.[100] Subsequently the Quebec Public Protector (Ombudsman), Louis Marceau, announced that he had investigated complaints about damage to property, unjust conditions of detention, personal injury, and damage to reputation. On July 6, 1971, he announced that 104 complaints were justified and compensation was paid.[101]

In retrospect, those who criticize the government's action will recall the shock to the country of the proclamation of the *War Measures Act*, plus the disruption of the lives, jobs and families of over 450 people who were either never charged or were acquitted. They will recall that an insurrection was apprehended, a *War Measures Act* was invoked, civil liberties were suspended, and a whole country was agitated, and in the end, two murderers and two accomplices were convicted, and four other kidnappers were permitted to go into exile. Those who support the government action will claim it was justified in that only two lives were lost,[102] in one case a murder for which the perpetrators were caught and sentenced. Also, they may point to the fact that for at least a few years the terrorism of the F.L.Q. was brought to an end.

But one fact remains to haunt anyone concerned with the operation of the *Canadian Bill of Rights*: it is the cabinet and not a court of law, which decides what constitutes "war, invasion, or insurrection, real or apprehended" sufficient to invoke the *War Measures Act*, which overrides the Bill of Rights.[103]

Notes

[1]R.S.C. 1952, c. 288, now R.S.C. 1970, c. W-2.

[2]H. Marx. "The Emergency Power and Civil Liberties in Canada," (1970) 16 *McGill L.J.* 39, 60.

[3]*L'Union St. Jacques de Montréal v. Bélisle* (1874), L.R. 6 P.C. 31; *Re the Regulation and Control of Aeronautics in Canada* [1932] A.C. 54.

[4]For a defence of this interpretation see F. E. Labrie, "Canadian Constitutional Interpretation and Legislative Review," (1950) 8 *U. of Tor. L.J.* 298, 304-16; for a suggestion that the Privy Council should reconsider its decisions see E. R. Richard, "Peace, Order and Good Government," (1940) 18 *Can. Bar Rev.* 243; for a critical discussion see Raphael Tuck, "Canada and the Judicial Committee of the Privy Council," (1941) 4 *U. of Tor. L.J.* 33; for the most thorough and serious condemnation see Bora Laskin, " 'Peace, Order and Good Government' Re-examined," (1947) 25 *Can. Bar Rev.* 1054.

[5]*In re the Board of Commerce Act, 1919, and the Combines and Fair Prices Act, 1919* [1922] 1 A.C. 191, 197*ff*.

[6][1925] A.C. 396, 412.

[7][1936] S.C.R. 398, 422-6.

[8][1937] A.C. 326, 353.

[9][1946] A.C. 193.

[10](1882), 7 App. Cas. 829.

[11]*Supra*, footnote 6, 412.

[12]*Supra*, footnote 9, 205.

[13]*Canadian Federation of Agriculture v. Attorney General for Quebec, Reference re Validity of s. 5(a) of the Dairy Industry Act (Margarine case)* [1950] 4 D.L.R. 689; *Canadian Pacific Railway Company v. Attorney General for British Columbia* [1950] A.C. 122.

[14]"*An Act to Confer Certain Powers upon the Governor in Council and to Amend the Immigration Act*," S.C. 1914, Second Session, c. 2.

[15](1914)4-5 Geo. V, c. 29 (U.K.)

[16]D.E. Smith, "Emergency Government in Canada," *Canadian Historical Review*, Vol. 4, Univ. of Toronto Press, 1969, 430 ff.; Ron Haggart and Aubrey Golden, *Rumours of War*, Toronto: New Press, 1971, 88 ff.

[17][1923] A.C. 695.

[18]*Ibid.*, 703-5.

[19][1947] A.C. 87.

[20]S.C. 1945, c. 25.

[21]*Ibid.*, 101. *Cf.* the Australian defence power under section 51(vi) of the Australian Constitution. See *Dawson v. Commonwealth* (1946) 73 C.L.R. 157, 176, *per* Latham C.J.: "The defence power does not cease instantaneously to be available as a source of legislative authority with the termination of actual hostilities . . . or even with the end of the war. . . ."

Source: Nikkei National Museum, 2018-16-4-1-1-17
www.nikkeimuseum.org

[23][1950] S.C.R. 124.
[24]R.S.C. 1927, c. 206.
[25]*Supra*., footnote 2, 40.
[26]*Re Gray* (1918) 57 S.C.R. 150.
[27]For some of the details see Smith, *supra*, footnote 16, and Haggart and Golden, *supra*, footnote 16.
[28]Marx, *supra*, footnote 2, 72-7.
[29]*Ibid*., 75-6.
[30]*Hansard*, 1944, 5915.
[31]Marx, *supra*, footnote 2, 83-88.
[32]*Ibid*., 86.
[33]F.E. La Violette, *The Canadian Japanese in World War Two*, Toronto: Canadian Institute of International Affairs, 1948, 272.
[34]*Rex v. Smith* [1947] O.R. 378 (Ont. C.A.); Rex v. Mazerall [1946] O.R. 762 (Ont. C.A.).
[35]For some details and some criticisms see (1946) *C.B.A. Proceedings* 141-56 and M.H. Fyfe, "Some Legal Aspects of the Report of the Royal Commission on Espionage," (1946) 24 *Can. Bar Rev.* 777.
[36]1960 *Committee Proceedings*, the Canadian Labour Congress, 194-5; Cohen, 372.
[37]*Ibid*., Scott, 38; Seventh Day Adventists, 72-3.
[38]*Ibid*., Wright, 51; The National Jewish Congress, 92; Bowker, 144; The Association for Civil Liberties, 172-3; The Canadian Labour Congress, 194-5; Mundell, 484-5.
[39]*Ibid*., Wright, 51; Mundell, 484-5; Cohen, 395; Lower, 320.
[40]*Ibid*, The Canadian Labour Congress, 194-5; Cohen, 395.
[41]*Ibid*., Cohen, 395.
[42]*Hansard*, 1960, Pearson, 5650-1; McCleave, 5753-5.
[43]1960 *Committee Proceedings*, 710-11.
[44]*Ibid*., 713.
[45]*Hansard*, 1960, 7543.
[46]*Ibid*., 7547-8.
[47]*Ibid*., 7545, 7550.
[48]1960 *Committee Proceedings*, 331.
[49]*Ibid*., 583-5.
[50]*Ibid*., 585-6.
[51]*Ibid*., 587-8.
[52]*Loc. cit.*
[53][1923] A.C. 695, 706.
[54][1947] A.C. 87, 101.
[55][1950] S.C.R. 124, 145-6.
[56]*Ibid*., 154.
[57]*Gagnon and Vallières v. The Queen* (1971) 14 C.R.N.S. 321.
[58]For a guide through the literature and some of the events I am indebted to one of my students, Mr. Harold Rolph, who has done two papers on the subject, one of them in my seminar.
[59]See *infra*, footnote 76.
[60]See, *e.g.*, Marcel Rioux, *La question du Québec*, Paris: Editions Seghers, 1971; Claude Ryan, ed., *La Québec qui se fait*, Montreal: Editions Hurtubise H.M.H., 1971; Denis E. Smith, *Bleeding Hearts—Bleeding Country, Canada and the Quebec Crisis*, Edmonton: Hurtig, 1971; Abraham Rotstein, ed., *Power Corrupted: The October Crisis and The Repression of Quebec*, Toronto: New Press, 1971; J.M. Peotte, *Québec occupé*, Montreal: Editions Partipris, 1971.
[61]Gérard Pelletier, *La crise d'octobre*, Montreal: Editions du Jour, 1971.
[62]Ronald Haggart and Aubrey Golden, *Rumours of War*, Toronto: New Press, 1971; John T. Saywell, *Quebec Seventy—A Documentary Narrative*, Toronto: Univ. of Toronto Press, 1971.
[63]Gustav Morf, *Terror in Quebec*, Toronto: Clarke, Irwin, 1970.
[64]For a summary of these early events see Morf, *supra*, footnote 62, 1-13; Pelletier, *supra*., footnote 60, 25-26.
[65]For a brief summary of these events see Pelletier, *supra*, footnote 60, 225-33. For greater details, including studies of the arrested terrorists, see Morf, *supra*, footnote 62.
[66]A communiqué was found on the premises which was to have been released upon his capture: Like the later demands following the Cross kidnapping, the communiqué asked for the release of "political" prisoners, broadcasting of FLQ communiqués, safe conduct for the kidnappers to Cuba, $500,000 in gold ingots, etc.
[67]*Hansard*, October 5, 1970, 8709.
[68]Quoted in Saywell, *supra*, footnote 61, 53.
[69]Haggart and Golden, *supra*, footnote 61, 281.
[70]*Le Devoir*, October 16, 1970; *Montreal Star*, October 16, 1970.
[71]*Montreal Star*, October 14, 1970.
[72]Haggart and Golden, *supra*, footnote 61, 28-9.
[73]Saywell, *supra*, footnote 61, 77. Among those listed were: Claude Ryan, publisher, *Le Devoir*; René Levesque, leader, Parti Québecois; Louis Laberge, president, Quebec Federation of Labour; Fernand Daoust, secretary-general, Quebec Federation of Labour; Marcel Pépin, president, Confederation of National Trade Unions; Jean-Marc Kérouck, secretary-general, Union of Catholic Farmers; Yvon Charbonneau, president, Quebec Teacher's Federation; Mathias Rioux, president, Montreal Teachers Alliance; Camille Laurin, parliamentary leader, Parti Québecois; Jacques Parizeau, economist, president of executive council of Parti Québecois; Alfred Rouleau, president of an insurance company.
[74]*Ibid*., 81.
[75]*Ibid*., 82.
[76]All these letters appear in *Hansard*, October 16, 1970, Appendix to debates, 245-6.
[77]Bill C-181—introduced *Hansard*, November 2, 1970, 771, adopted on division *Hansard*, December 2, 1970, 1635-6.
[78]*Hansard*, October 26, 1970, 546 ff.
[79]*Hansard*, October 19, 1970, 335-6.
[80]*Hansard*, October 23, 1970, 510.
[81]*Hansard*, November 4, 1970, 880.
[82]*Montreal Star*, October 17, 1970.
[83]*Le Devoir*, November 19, 1970.
[84]*Le Devoir*, October 28, 1970.

Source: Nikkei National Museum, 2018-16-4-1-1-18
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[84] *Hansard*, October 28, 1970, 657.
[85] *Hansard*, October 27, 1970, 591.
[86] *Hansard*, November 2, 1970, 775.
[87] *Hansard*, October 16, 1970, 212-13.
[88] In fact at least two people were arrested in Ontario under the Public Order Regulations, but subsequently were released. One was a United States army deserter, released after his lawyer sought *habeas corpus*, and the other was a freelance photographer from Montreal. *Globe and Mail*, October 20, 1970.
[89] D.A. Schmeiser, "Control of Apprehended Insurrection—Emergency Measures versus the Criminal Code," (1971) 4 *Man. L.J.* 359, 365.
[90] *Hansard*, November 2, 1970, 771.
[91] *Hansard*, December 1, 1970, 1635-6.
[92] *Globe and Mail*, October 21, 1970; *Hansard*, October 21, 1970, 421.
[93] *Hansard*, February 3, 1971, 3034.
[94] *Montreal Gazette*, August 21, 1971.
[95] *Loc. cit.*
[96] *Globe and Mail*, December 6, 1970.
[97] *Globe and Mail*, December 28, 1970.
[98] For a summation of these trials and convictions see *Montreal Gazette*, August 21, 1971; *Globe and Mail*, February 24, 1973.
[99] *Montreal Gazette*, July 25, 1973.
[100] *Toronto Star*, November 28, 1970.
[101] *Globe and Mail*, July 7, 1971.
[102] That of Pierre Laporte, and one young soldier who was shot accidentally while on guard duty: See *Hansard*, October 17, 1970, 248.
[103] *Gagnon and Vallières v. The Queen* (1971) 14 C.R.N.S. 321. H. Marx, "The Apprehended Insurrection of October 1970 and the Judicial Function" (1972) 7 *U.B.C.L.R.* 55. Also see the cases under Parts 2 and 3 and, for some arguments favouring judicial supervision, see N. Lyon, "Constitutional Validity of Sections 3 and 4 of the Public Order Regulations, 1970," (1972) 18 *McGill L.J.* 136.

Source: Nikkei National Museum, 2018-16-4-1-1-19
www.nikkeimuseum.org

WED MAY.20,1987

** Compensation offer called 'just and fair' **

BY RICHARD CLEROUX
The Globe and Mail
OTTAWA

Secretary of State David Crombie said yesterday that Japanese Canadians should jump at his latest compensation offer of a $12-million community fund producing revenue of about $1.5-million a year.

Mr. Crombie said in an interview his latest offer is "just and fair" and is double what former multiculturalism minister Otto Jelinek had offered as compensation for injustices suffered during the Second World War.

But the National Association of Japanese Canadians insists on a payment of $25,000 each for 14,000 Japanese Canadians alive of the 22,000 interned under the War Measures Act .

The association also wants a community fund of $50-million.

"Why that's over $400-million," Mr. Crombie said. "That's out of the question."

Mr. Crombie said that recognizing the NAJC as the sole representative of Japanese Canadians and allowing it to administer the fund is an improvement over Mr. Jelinek's position.

Mr. Jelinek, now Minister for Fitness and Amateur Sport, had wanted to lump the Japanese Canadians in with other ethnic groups who suffered during the war in Canada, such Italian, German, Ukrainian and other minorities. The $6-million fund Mr. Jelinek proposed would have been for the use of all ethnic minorities in Canada.

The Government is also prepared to make a "public acknowledgment" that injustices were committed against Japanese Canadians, Mr. Crombie said. And it is prepared to abolish the War Measures Act so that what happened to Japanese Canadians cannot happen again to them or any other ethnic minority in times of war.

Mr. Crombie said that if Japanese Canadians do not accept his three-point offer - the money, the acknowledgment and the repeal of the War Measures Act - he will proceed without their participation on the other two points and leave the money issue for later.

He said he is scheduled to meet the NAJC executive on June 1. He has met the executive five times since last September, when he took over the file.

Two previous Cabinet ministers, Mr. Jelinek and Jack Murta, tried and failed to find a settlement to the issue.

"I'll proceed on my own if I have to," Mr. Crombie said. "A lot of people have been waiting for this (the public acknowledgement) for a long time."

Source: Nikkei National Museum, 2018-16-4-1-1-20
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880710188 FRI MAR.11,1988 PAGE: A1
BYLINE: LINDA McQUAIG
CLASS: News
DATELINE: THE GLOBE AND MAIL WORDS: 501

** No evidence of FLQ plot, Jamieson's diary indicates **

BY LINDA McQUAIG
The Globe and Mail

The Trudeau cabinet had no evidence to support its contention that an insurrection was being planned in Quebec when it invoked the*War*Measures* *Act*in October of 1970, according to the diary of former Cabinet minister Donald Jamieson .

Sources who have seen the diary say it reveals that ministers attending a special cabinet meeting two days after the proclamation of the War Measures Act were shocked to discover that the RCMP had uncovered no evidence of an insurrection, either before or after the act was proclaimed.

An excerpt from the diary of Mr. Jamieson, who died in 1986, is to be published today in Saturday Night magazine. Editor John Fraser will hold a press conference today to reveal the diary's contents.

Mr. Jamieson was minister of transport in 1970 and his diary describes what went on at cabinet meetings throughout the October Crisis, when British trade commissioner James Cross and Quebec labor minister Pierre Laporte were kidnapped by the Quebec separatist organization Front de Liberation du Quebec .

It appears to provide support for critics, including the New Democratic Party , who have charged that the Government overreacted in proclaiming the act, under which normal civil liberties were suspended and hundreds arrested without charge.

The diary also reveals that John Turner , who was then justice minister and had legal responsibility for invoking the act, had serious doubts about doing so.

The sources say Mr. Jamieson also speculated in his diary that Mr. Trudeau's decision to invoke the act may have been less influenced by specific events and more motivated by a sense that the time had come to assert federal authority in Quebec.

Cabinet members apparently were alarmed by what appeared to be police inefficency at handling the situation.

Mr. Jamieson also detailed in his diary the role of Jean Marchand, minister of regional economic expansion, the sources say, citing in particular Mr. Marchand's assertion that the FLQ had infiltrated key government agencies and there was a serious threat of widespread terrorism in the province.

The diary apparently cites criticism of then premier Robert Bourassa made by both Mr. Marchand and Mr. Trudeau.

Mr. Jamieson's diary suggests that he found it difficult to assess what the prime minister's reaction to the crisis was, except that he initially wanted to take a very tough line after the kidnapping of Mr. Cross.

Under the War Measures Act, the RCMP and the Montreal and Quebec police forces arrested and detained about 465 people, including several prominent Quebec entertainers and journalists.

Of these, 403 were later released without being charged. Sixty-two were charged and 18 convicted.

At the time, Mr. Trudeau justified the measures on the grounds that there was an "apprehended insurrection" in Quebec, and that no other legislation gave police adequate powers to deal with the crisis.

Mr. Cross was eventually freed by police after almost two months of captivity, but Mr. Laporte was murdered by his captors the week after he was seized.

Source: Nikkei National Museum, 2018-16-4-1-1-21
www.nikkeimuseum.org

THE WHITE PAPER

Source: Nikkei National Museum, 2018-16-4-1-1-22
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THE WHITE PAPER

CHALLENGE AND COMMITMENT

A Defence Policy for Canada

National Defence / Défense nationale

New Emergencies Legislation

Canada is one of the very few developed nations without comprehensive emergencies legislation. The broad and sweeping powers of the *War Measures Act* are excessive in relation to national emergencies in peacetime. While the *War Measures Act* is certainly adequate for war or invasion, it incorporates few safeguards against abuse. Other statutes with emergency provisions provide little more than an incomplete patchwork of inadequately safeguarded emergency measures. In addition, existing emergencies legislation does not adequately recognize either the role or the legitimate interests of the Provinces in providing a national response to national emergencies.

The alternatives to comprehensive emergencies legislation are of doubtful value. The Crown prerogative and the common law doctrine of "necessity" provide, at best, a shaky and uncertain basis for effective action in an emergency. Reliance on ad hoc legislation enacted in the heat of a crisis could lead to less balanced and restrained measures than those based on legislation carefully considered by Parliament during normal times. Furthermore, such an ad hoc approach could delay the response if Parliament were not in session, and would be impossible if Parliament were dissolved when the emergency arose.

Therefore, to ensure that it will be in a position to provide adequately for the safety and security of the Canadian people, the Government intends to introduce comprehensive legislation to deal with the full range of possible national emergencies.

The new Emergencies Act will authorize the Government, in a national emergency, to take the necessary, special, temporary measures. The legislation will include adequate safeguards to protect fundamental rights and freedoms and to limit both the duration and the substance of exceptional measures to no more than is needed. It will also respect the interests of the Provinces, and provide for Parliamentary review when the legislation is invoked and at every stage while it is in effect. The existing *War Measures Act* will be repealed.

In the context of national security, the Emergencies Act will provide the legal authority for the Government to respond to an international crisis or war. The Act will enable the Government to implement preparatory and preventive measures, in concert with Canada's allies and in an orderly and non-provocative way. The Government will be able to begin civil mobilization to prepare the nation for war. Such a capability to demonstrate readiness and resolve is an important part of the strategy of deterrence.

Source: Nikkei National Museum, 2018-16-4-1-1-23
www.nikkeimuseum.org

MON DEC.01,1986

** FOR THE RECORD **
** Today in history **

The Public Order (Temporary Measures) Act was passed in the House of Commons 16 years ago today - in 1970. The new act replaced the*War* *Measures*Act*in effect at the time, which allowed the government to overrule civil rights to deal with Quebec's FLQ crisis. The new bill continued the outlawing of the FLQ, the group responsible for kidnapping British diplomat James Cross and for the abduction and murder of Quebec labor minister Pierre Laporte, and enabled police to arrest without warrant and hold suspects for as long as a week without laying charges.

MON JAN.05,1987

** FOR THE RECORD **
** Today in history **

The Supreme Court of Canada upheld the federal Government's right to delegate some of Parliament's authority to wartime controllers under the *War*Measures*Act,*43 years ago today. The unanimous opinion placed a stamp of approval on the system of wartime administration.

MON FEB.02,1987

** FOR THE RECORD... **
** Today in history **

The Canadian government proclaimed Western British Columbia a "protected area" 45 years ago today, and began removing Japanese-Canadians from an area within 160 kilometres of the Pacific coast. The government justified its action on the grounds that Japanese-Canadians threatened Canada's wartime security. Even citizens of Japanese ancestry whose families had lived in Canada for generations were treated as aliens, deprived of property and forced either to live in camps in the B.C. interior or to move east. Under the*War*Measures*Act,*some Japanese-Canadians were shipped to Japan.

Source: Nikkei National Museum, 2018-16-4-1-1-24
www.nikkeimuseum.org

THE BACKGROUND PAPER

Source: Nikkei National Museum, 2018-16-4-1-1-25
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THE BACKGROUND PAPER

SAFETY AND SECURITY IN EMERGENCIES

Brief Synopsis of Emergency Powers Legislation in Other Jurisdictions

Background Papers

THE UNITED STATES OF AMERICA

CONSTITUTIONAL FACTORS

In the U.S.A. constitutional authority to deal with emergencies is shared among Congress, the President and the States.

1. The U.S. constitution contains some provisions but does not deal exhaustively with the allocations of powers in emergency situations.

2. Article I confers upon Congress the power to declare war (Art. I. s.8. cl.11); use the armed forces to execute the laws of the Union, suppress insurrections and repel invasion (Art. I s.8. cl.15); suspend habeas corpus in cases of rebellion or invasion, where the public safety so requires (Art.1 s.9. cl.2); and make all laws "necessary and proper" to facilitate the execution of powers vested by the Constitution in the government of the United States (Art. I s.8. cl.18).

3. Article II vests in the President "the Executive power" (Art. II. s.1. cl.1); appoints him Commander-in-Chief of the Armed Forces (Art. II. s.2. cl.1) and charges him to "take care that the laws be faithfully executed" (Art. II s.3.). By his oath of office, the President is bound to "preserve, protect and defend the Constitution of the United States (Art. II s.1. cl.8).

4. These incomplete and overlapping constitutional provisions have been a long-standing source of tension and jurisdictional disputes between the President and Congress, mediated by the Supreme Court, which have sometimes focussed on the issue of emergency powers. The Courts have recognized that the President has a certain inherent constitutional authority to act independently of Congress by means of Executive Order. However, the limits of his implied or inherent authority are controversial and unsettled, and the legitimacy of certain Presidential Executive Orders in war-related and peacetime emergencies has been questioned. Congress has also enacted a very large number of emergency statutes which supplement whatever inherent powers the President may enjoy with

Source: Nikkei National Museum, 2018-16-4-1-1-26
www.nikkeimuseum.org

extensive statutory authority to take all kinds of emergency measures in virtually any type of crisis. The overall result today is that the President is vested with an enormous range of powers, both inherent and statutory, to respond to any kind of national emergency, as well as wide powers to intervene in some kinds of State-wide emergencies.

5. Within their territorial limits, the States are vested with primary, if not exclusive, authority to deal with State-wide emergencies, and may take such measures as lie within their jurisdictional competence. The States have jurisdiction over matters that include criminal law, law enforcement, and property and civil rights. Therefore, most peacetime crises, such as those arising from the breakdown of public order or natural disasters, will fall under their aegis. Every State Constitution confers executive power on the Governor, designates him Commander-in-Chief of the State military forces and charges him with the duty of faithful execution and enforcement of State laws. Most State Constitutions expressly authorize the Governor to call on the State militia to enforce the laws; suppress insurrection and repel invasions. In those that are silent, the Governor probably has an inherent power to declare martial law in order to defend the State Constitution somewhat analogous to the inherent Executive power of the President of the United States.

   In addition, all States have enacted standing emergency powers legislation to deal with emergencies arising from the breakdown of public order, natural catastrophes or other kinds of local crises which normally vest in the Governor the power to declare a State-wide emergency and invoke wide-ranging emergency powers.

6. It should be noted, however, that State jurisdiction over state-wide emergencies is neither as large nor as exclusive as might appear at first sight. This is because the pervasive nature of federal jurisdiction over interstate commerce, and the inherent Executive power of the President to take emergency measures to protect federal roperty, uphold federal laws and secure the proper recognition of constitutional rights, enable the federal government to intervene even in what are localised emergencies.

7. Both Federal and State emergency powers are limited by constitutional guarantees, notably those contained in the U.S. Bill of Rights.

EMERGENCIES: CONTINGENCIES COVERED

1. Federal

One of the remarkable features about federal emergency legislation in the U.S.A. is the extraordinary number, variety and complexity of permanent emergency statutes which confer upon the President a wide variety of extraordinary powers. A Special U.S. Senate Committee, set up in 1973, identified some 470 such statutes and felt that there still existed other obscure, obsolete but extant provisions they had not managed to find. This formidable array of statutory authority is in addition to the President's own inherent emergency powers which are not subject to direct Congressional control.

These permanent emergency statutes cover virtually every war-related or peacetime crisis. Broad enabling acts cover: (a) all aspects of national security; (b) economic crises whether owing to depression, inflation or strikes; (c) shortages of housing, food or other commodities; (d) natural catastrophes or other major disasters; and (e) public order emergencies where federal assistance is either sought by State authorities to deal with civil disorder or is sent by the Federal government to secure the enforcement of Federal laws and uphold constitutional rights.

The emergency statutes also share certain common features. First, they are activated by Presidential proclamation, which requires normally only his subjective assessment of the crisis. Until 1976, it was not even necessary for the President to specify in his proclamation which statutes he was activating. A single declaration of emergency would automatically place at his disposal the entire array of all 470 emergency statutes. As will be seen, this procedures has now been tightened as a result of the National Emergencies Act, but the vast range of emergency statutes still

Source: Nikkei National Museum, 2018-16-4-1-1-27
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remains at the President's disposal. Second, many emergency statutes are enabling Acts, couched in the broadest terms and capable of further elaboration, or even extension, by means of Presidential Executive Order. By way of example, the Trading with the Enemy Art 1917 (as amended) was used to close all U.S. banks in 1933, as part of President Roosevelt's "war" on the great Depression. The same Act was used in 1971 by President Nixon to impose special import tariffs in response to a balance of payments crisis. This example also illustrates another common feature of much of the accumulated store of emergency legislation. Most Acts began as temporary wartime measures (or, in the case of the economic measures, New Deal legislation) enacted without any expiration date. Some were never repealed and, with or without modification, became part of the permanent reserve.

2. States

Emergency powers legislation at the State level either codifies the authority granted to the Governor under the State Constitution or grants additional authority based on State jurisdiction over police powers. In either case the legislation will cover, expressly or by implication, peacetime emergencies arising from civil unrest or natural disasters and confer upon the Governor wide discretionary powers.

State legislation generally provides for civil defence, and usually this is organized in cooperation with the federal government. Under the Federal Civil Defense Act, the federal governement is empowered to develop, equip and man emergency operating centres or control units throughout the United States. These resources are co-ordinated by the Office of Civil Defense and the Federal Emergency Management Agency (F.E.M.A.), placed at the disposal of State and local authorities and, subject to federal regulations, may be used in emergencies caused by attack, natural disaster, or civil disorder. Comparable arrangements for co-ordinating efforts exist under the Disaster Relief Act.

EMERGENCY POWERS

Federal

The armoury of emergency powers at the federal level was summed up by former Supreme Court Justice Tom Clark in testimony to a Special Senate Committee thus: "The emergency power now existing in the Executive is incalculable and the exertion of it in situations not intended within the specific grounds (of powers) is massive". They stem from broad enabling emergency powers statutes, most of which are capable of considerable amplification by Executive Order as well as the ample, but ill-defined, inherent powers of the President.

In times of war, the inherent powers of the President as Commander-in-Chief, combined with broad grants of executive authority by means of general, enabling legislation, serve to confer on the President the power to regulate all aspects of life by means of Executive Order. In peacetime emergencies, the powers of the President are also very considerable. Relying in his inherent authority (or duty) to see that federal laws are faithfully executed, troops have been used to prevent riots (Washington, D.C. 1968); enforce U.S. Court orders and uphold constitutional rights (Alabama, 1959-63); and collect taxes (Whiskey Rebellion, 1794). Nevertheless, there are certian limits, as the Supreme Court demonstrated when it condemned President Truman's seizure of strike-bound steel mills in 1951. (1)

If the President lacks clear authority under his inherent Executive power, he almost certainly will find it in one of the 470 statutes conferring emergency powers, if need be by a somewhat oblique interpretation of those powers. For example, President Nixon was able to use troops to deliver the mail during the 1970 postal strike by invoking the emergency powers under the Administration of the Economy Act 1932, authorising one Executive department of government to requisition from any other federal agency, goods or services that it is in a position to supply.

State

As indicated earlier, State laws generally confer on the Governor the power to declare an emergency and thereafter to take such action as may be required to maintain public order and enforce state laws. They also provide for disaster relief and prevention by means of civil defence statutes. These Acts are all enabling

Source: Nikkei National Museum, 2018-16-4-1-1-28
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statutes and in a few States (e.g. Michigan, Florida, Georgia) they empower the Governor to promulgate regulations having the force of law on virtually any matter within state jurisdiction.

Safeguards

The perpetual dilemma in designing emergency powers legislation is how to achieve a satisfactory balance between granting to the Executive extraordinary powers wide enough to deal with any crisis, while retaining sufficient checks and inserting effective safeguards to ensure adequate accountability to the legislature and the responsible use of these powers.

Between 1973 and 1975, a Special Senate Committee on National Emergencies and Delegated Emergency Powers examined federal emergency legislation and identified a number of weaknesses in its basic framework relating to substantive limits and procedural safeguards. These included:

- the absence of any standard criteria for determining whether a national emergency existed and whether exceptional powers were really needed;
- the vague and ambiguous language of many Acts, which enabled them to be applied in situations for which they were not intended;
- the inadequacy of procedural safeguards governing the duration and termination of states of emergency - evidenced by the fact that emergencies declared by President Roosevelt in 1932 to deal with the Great Depression, and by President Truman in 1950 to deal with the Korean War, were still in effect; and
- the uncertain demarcation between the powers of Congress and the inherent emergency powers of the President to respond to national emergencies.

To deal with some of these deficiencies, Congress enacted the National Emergencies Act 1976. This is an "umbrella" type Act that confers no additional powers, but imposes certain uniform procedural checks and safeguards on the invocation and use by the President of statutory emergency powers.

PROCEDURAL CHECKS ON UNILATERAL ACTION BY THE EXECUTIVE

Federal

As a result of the National Emergencies Act:

- the declaration of emergency by the President must be published in the Federal Register together with a list of emergency statutes intended to be invoked. Unless this procedure is complied with, no statutory emergency authority will be activated.
- The state of emergency will terminate automatically at the end of one year, unless the President publishes in the Federal Register, ninety days before its expiry, a notice that the emergency is to continue in effect. The emergency may also be terminated by Presidential proclamation or the concurrent resolution of the Senate and House of Representatives.
- The President must send regular reports to Congress of all "significant" orders of the President or executive rules and regulations, as well as a bi-annual report on expenditures attributed to the emergency.
- Congress is required to meet within six months of the declaration of emergency, and thereafter at six month intervals, to consider adopting concurrent resolutions to terminate the state of emergency.

Unfortunately, the National Emergencies Act has a number of serious flaws which limit its effectiveness.

1. Its requirements can be circumvented altogether if the President chooses to rely on statutes that confer emergency powers but do not require any express declaration of emergency in order to activate them.
2. Where the Act does apply, there is no Congressional control on the range of statutory powers the President may invoke in any particular emergency. The statutes authorizing the President to take action to quell civil disorder in any State fall into this gap. The

Source: Nikkei National Museum, 2018-16-4-1-1-29
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President may not have to list the Acts, but he can, if he wishes, publish a list of all 470 emergency powers statutes in the Federal Register.

3. Since the requirement to publish declarations and orders is linked to the Federal Register Act, the President benefits from the general exemptions from publication recognized by the Act, including the discretion to suspend reports if there is an attack or threatened attack upon the United States. The requirement of publication may also be circumvented by renaming "Executive Orders", "National Security Directives" or simply "memoranda".

4. The obligation to report to Congress all "significant" orders also leaves the President wide discretion to determine the extent of his accountability to Congress. It appears that this weakness has already been shown in the inability of Congress to control executive actions based on a declaration of emergency under the Wars Powers Act during the closing months of Vietnam War.

5. Doubt has been cast on the constitutionality of the concurrent resolution procedure because Article I of the Constitution requires that such resolutions be submitted to the President for signature. (Art. I. s.7. cl.3)

State

It appears that there are few, if any, procedural checks on the use of emergency powers conferred by State legislation. The Constitutions of nineteen States declare that ordinary laws may be suspended only by the Legislature. This, in effect, limits the power of the Governor to declare martial law. Apart from this limitation, most States allow considerable latitude to the Governor to invoke and use emergency powers with few if any procedural checks by the legislature. As one commentator has observed, "in practice, the exercise of broad emergency powers is tempered primarily by executive self-restraint". (2)

SUBSTANTIVE LIMITS ON EXECUTIVE POWER

The major control on the scope of emergency powers is judicial review to determine (a) whether the acts were within the limits of the inherent or Statutory authority of the Executive, and (b) whether they violate the U.S. Bill of Rights.

Judicial Review of Emergency Measures

Judicial attitudes towards challenges to the validity of measures taken by the Executive during emergencies have varied over time and according to the nature of the crisis. However, certain constant features emerge from the jurisprudence.

1. The proclamation of a state of emergency at the Federal or State level is virtually non-justiciable.

2. Although the Courts have, on occasion indicated their willingness to inquire into the legal basis of the Executive's authority, there are few cases where actions avowedly based on such powers have been overturned.

3. In times of war, judicial deference is virtually absolute. It was by Executive Orders based on his implied authority as Commander-in-Chief that President Roosevelt was able to "relocate" Japanese Americans during World War II. The Supreme Court would go no further than initiate a restrained inquiry to determine whether there was a reasonable basis for, and a direct relation between, the measures taken and the emergency. (3)

4. In peacetime, the courts have occasionally demonstrated a more vigorous attitude, as illustrated by the Steel Seizure decision in 1952.

5. At the State level, the same tests apply but the actions of the Executive have been subject to tighter control and greater scrutiny.

6. The Courts have also asserted their authority to determine whetner the crisis has passed and the emergency power spent, but it is very reluctant

Source: Nikkei National Museum, 2018-16-4-1-1-30
www.nikkeimuseum.org

to go as far as to make such a determination itself.

U.S. Bill of Rights

Neither Congress nor the President may act in contravention of the Bill of Rights and it would appear, at least at first sight, that many emergency powers infringe such constitutional guarantees as freedom of speech, or the press, the right of assembly, protection against unreasonable search and seizure and due process, contained in the first ten amendments to the U.S. Constitution. However, while these unqualified provisions impose an outside limit on the content of emergency powers their scope and impact undergo some modification in times of crisis. As the Supreme Court declared in one case which reflects the prevailing judicial attitude:

> "When it comes to a decison by the Head of State upon a matter involving its life, the ordinary rights of the individual must yield to what he deems necessity of the moment". (4)

Furthermore the Constitution itself authorizes the suspension of habeas corpus in case of rebellion or invasion, where the public safety so requires. (Art. I s.9 cl.2).

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2. Comment, 64 Mich. L. Rev. 290, at page 296 (1965).
3. Korematsu v. U.S., 313 U.S. 214 (1944).
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Source: Nikkei National Museum, 2018-16-4-1-1-32
www.nikkeimuseum.org

UNITED KINGDOM

CONSTITUTIONAL FACTORS

The constitutional structure of the United Kingdom is distinctive in at least two respects.

1. It has no formal written constitution.

2. There is no entrenched Charter of Rights. However, the United Kingdom is a Signatory to both the International Convenant on Civil and Political Rights and the European Convention on Human Rights. It has also accepted the compulsory jurisdiction of the European Court of Justice.

EMERGENCIES: THE CONTINGENCIES DEFINED

War-related emergencies

There is no standing legislation currently in force. The Defence of the Realm Act 1914 was hastily enacted shortly after the outbreak of World War I and The Emergency Powers Defence Act 1939 on the eve of World War II, but both Acts were allowed to lapse after the end of hostilities and a transitional period for re-adjusting to peace. Both Acts followed a common model: they were essentially enabling Acts, empowering the government to control virtually every facet of the economy and society by means of Orders and Regulations.

Peacetime emergencies

The principal statute for dealing with peacetime emergencies is the Emergencies Powers Act 1920 (as amended in 1964), which has several noteworthy features.

1. Its scope is largely determined by the social effects of a crisis rather than its particular cause. It is applicable when "it appears... that there have occurred or are about to occur, events of such a nature as to be calculated, by interfering with the supply and light or with the means of locomotion, to deprive the community ... of the essentials of life ..." (s.1(1)).

2. While it seems clear that the Act is broad enough to cover serious disruptions in the supply of essential goods and services arising from any cause, on each of the twelve occasions it has been invoked since World War II, the cause has been an industrial dispute. It should be noted, however, that the Act cannot institute industrial conscription or prohibit strikes.

3. There is no continuing legislation specifically designed to deal with public order emergencies. The Emergency Powers Act authorizes regulations for "preserving the peace", but only where the civil unrest is the result and not the cause of the emergency. The ordinary criminal law is the principal tool for dealing with civil disorders. It is bolstered by certiain statutes such as the Public Order Act 1936 which confers broad, if ill-defined powers to control public assemblies and related matters. In addition, the Reserve Forces Act 1966 empowers the Secretary of State to call on reserve troops to assist the police in preserving public order.

4. Special legislation has long existed to deal with a threat to public order in Northern Ireland. In the 1970's, new legislation was enacted which conferred on the Executive drastic powers, perhaps unsurpassed during peace-time. The Prevention of Terrorism (Temporary Provisions) Act and the Northern Ireland (Emergency Provisions) Act proscribe the I.R.A. and other organizations; restrict, by means of exclusion orders, freedom of movement and association in England, as well as Northern Ireland; create new offences and confer wide powers of arrest, detention and internment for dealing with certain crimes related to terrorism and internal security, such as arson, kidnapping, hijacking and the use of explosives.

Source: Nikkei National Museum, 2018-16-4-1-1-33
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EMERGENCY POWERS

The Emergency Powers Act, like its wartime predecessors from which it evolved, is an enabling Act. When an emergency has been declared, the government has wide powers to make regulations for a variety of purposes, including:

- securing the essentials of life;
- preserving the peace; or
- "any other purpose essential to the public safety and life of the community". (s.2)

Pursuant to these powers, successive governments have drafted and revised comprehensive codes of Regulations to deal with various kinds of emergencies envisaged by the Act. These are brought out and "made" by the government every time an emergency is declared, and drawn upon as conditions warrant. The government, therefore, has considerable flexibility in its choice of emergency measures, including the use of troops for "urgent work of national importance", although there are both substantive limitations and procedural checks imposed by the Act.

The Prevention of Terrorism (Temporary Provisions) Act, which was revised and re-enacted in 1984, and the Northern Ireland (Emergency Provisions) Act 1978 are the major statutes designed to deal with the crisis in Northern Ireland. They confer a number of broad discretionary powers on the Executive and police and reduce judicial control over its exercise of those powers. Together, these Acts, and related legislation:

- authorize the police to arrest without warrant and detain for 72 hours (or up to 7 days if extended by the Secretary of State for Northern Ireland) anyone reasonably suspected of being involved in the preparation, instigation or commission of a scheduled (terrorist) offence;
- empower a member of the Armed Forces to arrest and detain for up to 4 hours anyone suspected of committing any offence;
- confer upon the security forces wide powers of search and seizure, without a warrant;
- establish special procedures for the trial (without jury) of scheduled offences and stringent controls over the granting of bail;
- allow for the internment without trial of persons suspected of terrorism;
- modify certain rules of evidence, by reversing the onus of proof in relation to offences of possession of arms and explosives and altering the common law test of voluntariness that normally determines the admissibility of confessions..

SAFEGUARDS

Procedural checks on unilateral action by the Executive

Under the Emergency Powers Act:

- The proclamation of emergency must be communicated "forthwith" to Parliament, which must be reconvened if it is not sitting;
- The emergency will expire at the end of one month unless extended by another proclamation. (s.1(2))
- All regulations made under the authority of the Emergency Powers Act must be laid before Parliament and will lapse after seven days unless maintained in force by a resolution of both houses. (s.2(2))

The emergency power available under the Northern Ireland (Emergency Provisions) Act 1978 (E.P.A.) and the Prevention of Terrorism Temporary Provisions Act 1984 (P.T.A.) were to lapse after a certain time (6 months for the E.P.A. and 12 months for the P.T.A.) unless they were continued in force by means of an Order by the Secretary of State for Northern Ireland and approved by Parliament.

Source: Nikkei National Museum, 2018-16-4-1-1-34
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The Order (and thus the special powers) would remain in force for a limited period but could be renewed.

- A draft of the Order must be laid before Parliament and approved by a resolution of both Houses. The Order will remain in force for 6 months (if needed under the E.P.A.) or 12 months (if needed under the P.T.A.).

- If the Secretary of State agrees that the Order is urgently required, the Order may be "made" first and then laid before Parliament for approval. "Urgent Orders" thus made remain in force for 40 days, after which time they will lapse unless approved by resolution of both Houses of Parliament.

The procedure guarantees that the emergency powers legislation for Northern Ireland will be reviewed and debated by the British Parliament at least twice a year. The emergency powers sought have been reviewed each time but the content of the Order sought has undergone certain changes. For example, the power to intern suspected terrorists without trial was allowed to lapse in 1980 and has not been sought since. A further temporal limit has been placed on the P.T.A. The whole Act will automatically expire at the end of five years.

Substantive Limits on Executive Powers

Emergency Powers

The Act itself imposes certain restrictions on its use. Under section 2:

- the Act cannot be used to impose compulsory military service or industrial conscription;

- the Regulations cannot make it an offence to take part in a strike or peacefully persuade others to do so; and

- no Regulation may alter the regular procedures applicable in criminal cases for offences under the Act, or authorize punishment without trial.

It is, however, unlikely that a proclamation of emergency under the Act could be successfully challenged in court, or that the Regulations made under its wide powers would be held ultra vires.

The Northern Ireland (Emergency Provisions) Act 1978 and the Prevention of Terrorism (Temporary Provisions) Act 1984 contain no comparable restrictions. As already noted, the United Kingdom is bound by the European Convention on Human Rights which, like the International Covenant on Civil and Political Rights, imposes certain obligations in International law. Violations of rights guaranteed by the European Convention are not subject to redress in English Courts, but can render the United Kingdom liable to complaints by individuals to the European Human Rights Commission and proceedings before the European Court of Human Rights. Proceedings have, in fact, been brought against the United Kingdom concerning the exercise of emergency powers in Northen Ireland. In one case before the European Court of Human Rights, it was held that certain measures taken by the United Kingdom exceeded its rights of derogation in times of emergency recognized by Article 15 of the Convention. Certain measures were held to have gone beyond those "strictly required by the exigencies of the situation". Others constituted violations of non-derogable rights. (1)

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UNITED KINGDOM

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www.nikkeimuseum.org

THE GLOBE + MAIL

WED JUN.10,1987

** An*Emergencies*Act***

I think it's only, I repeat, weak-kneed bleeding hearts who are afraid to take these measures.

Since that dramatic moment in October, 1970, when Pierre Trudeau scornfully invoked the*War*Measures*Act*to suppress the "apprehended insurrection" of the Front de Liberation du Quebec, Canada has become a bleeding hearts club.

An opinion poll conducted last year for the Mulroney Government revealed that 63 per cent of Canadians want use of the War Measures Act restricted to wartime and 58 per cent favor new legislation to limit its use. Only 56 per cent of Canadians support some Government powers to curb basic liberties in a national emergency, and in Quebec even that writ commands less than majority support.

If many Canadians look askance at the War Measures Act today, it is because this Draconian statute has been an invitation to notorious deception and repression by past leaders. If the Canadian Charter of Rights now exists as an imperfect restraint on its dictatorial potential, the statute still offers unacceptable overkill. Its very mention conjures up shameful acts: the internment of 21,000 Japanese Canadians during the Second World War, the arrest without charge of 437 Quebecers during the FLQ Crisis.

Applauded by most Canadians at the time, these authoritarian roundups turned out to be the persecution of innocents; they enhanced Canadian security not at all, but scarred many of the victims for life. Significantly, the National Association of Japanese Canadians has consistently demanded not only compensation for the internees but repeal of the War Measures Act.

Defence Minister Perrin Beatty , in his White Paper on Friday, vowed to "introduce comprehensive legislation to deal with the full range of possible national emergencies." He promised a new Emergencies Act that would "include adequate safeguards to protect fundamental rights and freedoms and to limit both the duration and the substance of exceptional measures to no more than is needed."

The White Paper promised that the new statute would "also respect the interests of the provinces, and provide for parliamentary review when the legislation is invoked and at every stage while it is in effect." The existing War Measures Act, adopted as a supposedly temporary measure in 1914, would be repealed.

Such assurances, while welcome, have a familiarity to them that may not warm the hearts, bleeding or otherwise, of civil libertarians. Mr. Trudeau himself had barely invoked the act in 1970 when then-justice minister John Turner talked of the need to replace it with a peacetime alternative. Former external affairs minister Mitchell Sharp expressed the same conviction a few years later.

Since the Tories have taken office, Prime Minister Brian Mulroney, former defence minister Robert Coates and former associate defence minister Harvie Andre have all talked of plans for a son-of-War-Measures. Mr. Andre even outlined to a Senate committee a statute that would distinguish among four levels of emergency - natural or man-made disasters; internal strife "of a significant nature;" an international crisis; and war itself.

But most of these Tory promises were made in early 1985, and no bill was subsequently presented. Perhaps Mr. Beatty, who launched the defence white paper that eluded his predecessors, will also introduce new emergency powers to which others have only paid lip service. Will he equip the civil power with a flyswatter as well as a sledgehammer to maintain law and order? At least he hasn't said, "Just watch me."

Source: Nikkei National Museum, 2018-16-4-1-1-37
www.nikkeimuseum.org

** Trudeau's outburst: another*War*Measures*Act***

LISE BISSONNETTE
QUEBEC

WHEN Pierre Elliott Trudeau used the newspapers he says he doesn't read to recite his personal "War*Measures*Act"*against the Meech Lake accord, Raymond Garneau, one of the few senior Liberals in Parliament who owes him nothing, observed that such a declaration a few years ago could have induced many more Quebeckers to vote Yes in the 1980 referendum on sovereignty-association.

Never, indeed, has the former prime minister unveiled so clearly how much he manipulated Quebec's public opinion seven years ago, when in the last days before the crucial vote he solemnly promised in a Montreal speech that he and his government would deliver "renewed federalism." Many have since accused him of lying, but he did not lie. He simply was careful never to explain what kind of change he was thinking of. His words were carved to lead confused and undecided voters to believe that he would somehow answer the province's traditional demands for more autonomy, which had culminated in the 1976 election of the Parti Quebecois.

How would Quebeckers who voted No to sovereignty-association because they took his word on "renewed federalism" have reacted if, on that now famous evening, he had told them that:

He did not and would never want to recognize Quebec as "a distinct society."

He did not and would not want the Quebec government to have a role in promoting Quebec's special character.

He wanted a Supreme Court dominated by the Canadian majority to have the one and only say over "the sacred rights of French Canadians."

He did not trust Quebec to be able to deal with the linguistic and cultural integration of its immigrants.

He did not and would not accept a role for Quebec in international meetings of the francophone world.

He considered that Quebec should be satisfied with its current level of participation in Canada's "constitutional evolution."

The "best people" interested in a political career should look to Ottawa and consider Quebec a "ghetto."

Would they have been reassured that Pierre Trudeau was about to deliver the hoped-for change? Would they have voted against sovereignty-association?

When the federalists in Quebec's National Assembly joined the PQ in a unanimous vote against the 1982 patriation of the Constitution, they did so out of a sense of betrayal. The 1982 accord ignored their definition of renewed federalism. They realized that Mr. Trudeau had cynically discarded them after using them during the referendum battle. It is only now, however, that the average Quebec voter will be fully able to understand that in 1980 the prime minister had only one idea in mind: to make Quebec "une province comme les autres," among a chain of unimportant provincial governments that would never have been able even in "a united front" to compel the federal government to move on anything for the next "thousand years."

Those in Quebec who still have doubts about the Meech Lake agreement will feel some relief. If adopted, the accord should at least spare us such a Third Reich-inspired view of what a grand constitution should be. It is unlikely, in any event, that Mr. Trudeau's views will have much influence in the province, where the political class, Liberal and Pequiste, has long been immune to his centralist obsession, and where the voters elected him for his style much more than for the vision he never cared to explain in such detail.

A sore loser, Mr. Trudeau has displayed so much anger and bitterness in his appeal that one is nevertheless moved, in the end, by this once powerful man's raging and sad look at his vanishing dreams.

There is something unreal, and thus pathetic, in his description of Quebec as he sees it, "a new generation of business executives, scientists, writers, film makers and artists of every description which has no use for the siege mentality in which the elites of bygone days used to cower."

Since the Meech Lake accord, not one individual in these groups has come forward to support his view of the deal. If the vibrant and dynamic young people he is talking about did share his ideas on Quebec and Canada, they would surely let it be known loudly. But they don't.

"Artists of every description" insisted on being heard by the parliamentary commission, and pleaded with Premier Robert Bourassa to insist on more provincial power, not less. "Business executives" kept silent; many are rather busy these days, milling around a provincial Government more to their liking than its Pequiste predecessor, and making the best of the opportunity.

Neither group is taking cover in a ghetto or "fearing and trembling" in its need for "crutches." Both simply see provincial power and strength as another instrument useful to their own enterprises, a leverage point among others. The "siege mentality" is indeed part of bygone days, and so is the time of contempt.

THU JUN.25,1987

** Emergencies law will protect rights **

** Ottawa poised to introduce bill replacing old*War*Measures*Act***

BY JEFF SALLOT
The Globe and Mail
OTTAWA

The Conservative Government will introduce a new*Emergencies*Act* tomorrow that will provide for special police and military powers in extraordinary circumstances ranging from natural disasters to war, federal sources say.

The long-promised legislation will replace the sweeping provisions of the 73-year-old War Measures Act , which was last invoked by the Liberal government during the October crisis of 1970.

In granting authorities special powers, the new act also will incorporate the civil liberties safeguards of the Charter of Rights and Freedoms, the sources say.

Four types of emergencies will be defined. They are:

. Public welfare emergencies, such as floods, drought, earthquakes, industrial accidents or nuclear-power-plant disasters. These emergencies might require mobilizing manpower; commandeering vehicles and equipment, medical supplies, food and clothing; and placing restrictions on the physical movements of individuals.

. Public order emergencies, such as major riots, prison revolts, or civil insurrections. These might require temporary detentions and restrictions of access to certain areas.

. International emergencies, such as a buildup of tensions and hostilities in anticipation of the outbreak of war. These emergencies might require rapid mobilization of reserve military units and the requisition of civilian resources and materiel.

Source: Nikkei National Museum, 2018-16-4-1-1-38
www.nikkeimuseum.org

. Wartime emergencies, arising from the need of the state to preserve itself from foreign aggression.

In each set of circumstances, the powers granted to authorities would be limited by legal safeguards for civil liberties, sources say.

There would also be time limits set on the duration for some types of declared emergencies, and requirements to limit the geographic area in which the special powers would be available to police and military authorities.

Such safeguards and limits are absent from the War Measures Act of 1914, which is so sweeping that it allows the Cabinet to suspend all civil liberties.

The War Measures Act was used during the October crisis by police in provinces as far away as British Columbia to harass political dissidents, while Quebec police detained more than 450 Quebeckers without charges during the investigation into the Front de Liberation du Quebec kidnapping of British trade official James Cross and murder of provincial labor minister Pierre Laporte.

Federal sources say the new bill is aimed at preventing a repeat of the excesses of 1970.

A major feature of the new statute will be a provision to compensate individuals whose civil rights are unreasonably violated during an emergency.

In 1970, the Liberals - including John Turner, then justice minister and now Opposition Leader - promised to replace the War Measures Act with something less draconian. Conservative Prime Minister Brian Mulroney made the same pledge during the 1984 election campaign.

Defence Minister Perrin Beatty, who is scheduled to table the bill tomorrow, and his officials have been consulting the provinces for several months on details of the Emergencies Act.

Provinces were concerned that the federal Government might invade their legal jurisdiction under the guise of an alleged national emergency, but the bill is expected to include restrictions on the declaration of emergencies.

A public welfare emergency, such as a flood, would come within the provision of the new law only if it was so severe that local and provincial civil authorities were unable to cope.

Mr. Beatty is also expected to table companion legislation designating Emergency Preparedness Canada as the main agency in the federal Government for all varieties of emergency planning.

This is already the case, in fact, but the legislation is expected to wipe out a much-criticized Cabinet order of 1981 dealing with peacetime crises.

That order alarmed civil libertarians and some political fringe groups because it directed the Solicitor-General's Department to make plans for civilian internment camps. A few Alberta separatists saw this as evidence that the government of former prime minister Pierre Trudeau intended to deal harshly with them.

The Government is tabling the new legislation before the summer recess of the House of Commons so that civil liberties groups and others can study it before parliamentary committee hearings begin, probably in the fall.

TUE JUN.30,1987

** In case of emergency **

If the*War*Measures*Act*did not exist, we would not invent it. Its authority is too broad, its licence too great, to remain on the books in a country that believes in individual rights and freedoms.

The federal government must have the powers it needs to act quickly and effectively in times of national emergency. But those powers should be tailored to the emergencies, rather than, as in the War Measures Act, providing a cannon where a flyswatter would do. The Emergencies Act introduced last week by Defence Minister Perrin Beatty would help to restore perspective.

The War Measures Act invites excess. Its very invocation by the cabinet "shall be conclusive evidence that war, invasion or insurrection, real or apprehended, exists." The cabinet may do anything it deems necessary or advisable for the peace, order and welfare of Canada, and the Canadian Bill of Rights has no application. It was under this act that thousands of Japanese Canadians were herded into internment camps in 1942, and hundreds of Quebeckers arrested without charge in 1970. The sole check on cabinet's authority is Parliament, which must approve or revoke the cabinet's order soon after its proclamation.

The Emergencies Act would replace that law with a graduated list of emergencies:

For floods, diseases, accidents and breakdowns in essential services, the cabinet could declare a "public welfare" emergency and, for example, order the evacuation of residents in the affected areas.

For "threats to the security of Canada," the cabinet could declare a "public order" emergency and prohibit public assembly or travel.

For acts of intimidation or violence affecting the "sovereignty, security or territorial integrity" of Canada or other nations, the cabinet could declare an "international" emergency, authorize searches and seizures and stop Canadians from travelling outside Canada.

In wartime, the cabinet could declare a "war" emergency and give any orders it considered "reasonably necessary or advisable."

There would be safeguards against abuse. Parliament could revoke the declaration. Parliament or its "review committee" could revoke a cabinet regulation made under the act. (We would feel more comfortable if an opposition MP were made chairman of the committee.) In some cases, Ottawa would need a provincial cabinet's approval before acting.

Most important, the law would be subject to the Bill of Rights and the Charter of Rights and Freedoms - under which civil liberties may be infringed only when demonstrably justified in a free, democratic society. Individuals could apply for compensation for losses or injury, but there would usually be no appeal from the decision of a government-appointed assessor.

A government intent on abuse could find enough loose wording here to suit its purpose. The definitions of "national" and "public welfare" emergencies are broad enough to cover a national postal strike. The definition of a "threat to the security of Canada" is the same as in the Canadian Security Intelligence Service Act: activities which support the threat or use of violence "against persons or property for the purpose of achieving a political objective within Canada or a foreign state." This might extend to people raising money for the African National Congress or causes in Latin America. Would a cabinet know when to hold its fire?

In general, however, Mr. Beatty's bill is a fair compromise between the need for a country's leaders to act quickly in times of emergency to protect the country, and the importance of checking abuses of authority. The true test of such a law comes with its first use. May it not come for decades.

FRI JUL.03,1987

** Out of War Measures **

BY JEFFREY SIMPSON

OTTAWA

It has been a long and unhappy wait, but a federal government has finally suggested a replacement for the*War*Measures*Act*, that legislative dinosaur from the First World War that has twice trampled civil liberties in Canada.

The replacement legislation, introduced by Defence Minister Perrin Beatty, got a trifle lost in the end-of-session scramble. But when parliamentarians return this fall, they'll find an impressive draft bill to chew over.

In retrospect, it's a pity Canada didn't possess such a bill when federal governments interned Japanese-Canadians during the Second World War and stomped on civil liberties during the ''apprehended insurrection" in Quebec in 1970. During the October Crisis of that year, Liberal Justice Minister John Turner lamented that he had to use so blunt an instrument as the War Measures Act. He recognized that something more precise was required. So did Prime Minister Pierre Trudeau, but nothing ever appeared.

Source: Nikkei National Museum, 2018-16-4-1-1-39
www.nikkeimuseum.org

Mr. Beatty's bill sets out four classes of emergencies, ranging from public welfare emergencies (such as natural disasters) to a state of war. The class likely to attract most debate, however, is the one called "public order emergency." It's the class that most probably fits what happened in 1970.

The declaration of a public order emergency, authorized by Parliament within seven days, would give the government sweeping powers. It could regulate or prohibit public assemblies, travel and the use of specified property. It could impose fines after summary convictions, assume control of public utilities and services, and direct the maintenance of "essential public services." Critics already believe these words could justify government intervention in a national postal strike or some other form of labor dispute, although the criticism stretches the bounds of the imagination.

There is sure to be legitimate debate about the scope of these powers and about the definition of public order emergencies as incidents that offer "threats to the security of Canada." Maybe the wording can be fine-tuned, but, regrettably, any government in a democratic society needs these sorts of powers in genuine emergencies.

The trick lies in circumscribing those powers, and this is where the new bill provides a vast improvement. For starters, the bill would not take precedence over the Charter of Rights and Freedoms and the Bill of Rights. Parliament would be consulted throughout, and the state of emergency would be limited in time and place. Those whose liberties - or property - were harmed would be given the right to compensation.

The only worry here is that a section of the bill provides a long list of regulations under which the cabinet could define the ambit of compensation. A mean-spirited government, or one intent on post facto justifications for its actions, could make compensation unnecessarily limited by restrictive regulations. Fortunately, a Federal Court judge would hear appeals from ministerial decisions, though he could not unilaterally increase the monetary compensation offered by the government. Even with the Federal Court appeal, the government has set itself up too much as judge and jury over compensation awards.

These are the kinds of issues a Commons committee should work on this fall. But the quibbles should not obscure the basic soundness of the government's approach.

After decades of delay and years of broken promises, a government has made a genuine effort to update the War Measures Act, trying to find the fine line between a society's right to be protected in times of emergencies and the individual's right to be protected from arbitrary governmental power. The government deserves a pat on the back.

TUE JUL.14,1987

** First World War Measures **

Re Jeffrey Simpson's column, Out Of War Measures (July 3):

A pity Mr. Simpson can't count. He says that the*War*Measures*Act*is an example of "dinosaur" legislation from the First World War. Twice, he claims, it has been used to trample civil liberties in Canada, those of Japanese Canadians during the Second World War and of Quebeckers in 1970. The question remains - why was this legislation enacted during the First World War if it was not used until the Second? The act has actually been used three times. Between 1914 and 1920, thousands of Ukrainian Canadians and some other East Europeans were interned while tens of thousands more were discriminated against, forced to register as "enemy aliens" and, in 1917, disenfranchised. The Canadian Government owes the Ukrainian-Canadian community the same kind of apology and compensation it is now planning to extend to the Japanese-Canadian community for the wrongs inflicted upon it.

Lubomyr Luciuk
Kingston, Ont.

Source: Nikkei National Museum, 2018-16-4-1-1-40
www.nikkeimuseum.org

THE WORKING PAPER

Source: Nikkei National Museum, 2018-16-4-1-1-41
www.nikkeimuseum.org

THE WORKING PAPER

Emergency Preparedness Canada | Protection civile Canada

BILL C-77: AN ACT TO PROVIDE FOR SAFETY AND SECURITY IN EMERGENCIES

Working Paper

C-77

Second Session, Thirty-third Parliament, 35-36 Elizabeth II, 1986-87

THE HOUSE OF COMMONS OF CANADA

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

First reading, June 26, 1987

THE MINISTER OF NATIONAL DEFENCE

C-77

Deuxième session, trente-troisième législature, 35-36 Elizabeth II, 1986-87

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-77

Loi visant à autoriser à titre temporaire des mesures extraordinaires de sécurité en situation de crise nationale et à modifier d'autres lois en conséquence

Première lecture le 26 juin 1987

LE MINISTRE DE LA DÉFENSE NATIONALE

22351

Canada

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Source: Nikkei National Museum, 2018-16-4-1-1-42
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The purpose of this paper is to review the policy, constitutional and legal basis for the Emergencies Act, Bill C-77. It is also intended as a stimulus and aid to discussion of the many complex and fundamental issues associated with the formulation of emergencies legislation. Those readers interested in a quick review of Bill C-77 may want to turn directly to Section VIII

Source: Nikkei National Museum, 2018-16-4-1-1-43
www.nikkeimuseum.org

I. INTRODUCTION

"SALUS POPULI SUPREMA EST LEX," "the safety of the people is the supreme law," is perhaps the most lasting and fundamental of the basic laws of state. It comes to us from the Roman tables of law. Since that time governments have recognized that they have a fundamental obligation to provide for the safety and security of their people in times of catastrophe.

The federal government recognizes this fundamental obligation and is committed to improving the national standard of emergency preparedness and developing the national capacity to provide for the safety and security of Canadians in emergencies, whether peacetime or war-related. This is done on the basis of partnership with the provinces, with mechanisms to provide for comprehensive joint planning and the formulation of co-ordinated arrangements for dealing with all aspects of emergencies falling under their respective jurisdictions.*

Through the regional offices of Emergency Preparedness Canada, joint activities have been undertaken with provincial officials to evaluate current resources, both legal and material, assess actual needs, demarcate and co-ordinate respective responsibilities and to develop mutual plans for dealing with emergencies of any kind and of any scale. The federal government has concluded Memoranda of Understanding with all but three of the provinces and territories to clarify respective responsibilities for emergency planning. A Joint Emergency Preparedness Program has been established with the provinces to enhance the national emergency response capability and to encourage co-operation between the federal government and the provinces. Disaster Financial Assistance arrangements have been established as a means of providing financial assistance to the provinces when the cost of dealing with a disaster would place an undue burden on the provincial economy.

In general, the provinces are well prepared to deal with the kinds of peacetime emergencies that have arisen fairly frequently in the past. At the federal level emergency planning is carried on by all federal government departments in their respective areas of responsibility and in accordance with government policy. In addition, certain Ministers have been assigned lead responsibility for co-ordinating emergency planning in broader areas.

In the course of continuing reviews of emergency preparedness policy and assessments of the means of various federal departments to deal with emergencies, a number of gaps in the legal instruments available became apparent, raising questions about the government's ability to provide for the safety and security of Canadians in national emergencies in the future.

Shortcomings of the existing framework of federal emergency powers have been a matter of concern for some time. The October crisis of 1970 led to widespread dissatisfaction with the **War Measures Act** as a means of dealing with peacetime public order crises. There is very little current standing emergencies legislation to deal with other peacetime emergencies. The adequacy of safeguards constraining the use of the **War Measures Act** were called into question when Canada acceded to the **International Covenant on Civil and Political Rights** in 1976. As a signatory to the Covenant and the Optional Protocol, Canada has undertaken to ensure that its legislation incorporates certain fundamental human rights. To fulfill its obligations under Article 4 of the Covenant would require amendments to the **War Measures Act**, a point reiterated in the report of the McDonald Commission.

The proclamation of the **Canadian Charter of Rights and Freedoms** in 1982 has raised the issue of whether the safeguards in existing emergencies legislation are compatible with the fundamental rights and freedoms now constitutionally guaranteed by the **Charter**.

The federal government has concluded that new legislation is required to enable it to carry out its responsibilities to provide for safety and security in emergencies, and two new Bills were introduced in Parliament on June 26, 1987: Bill C-76, the **Emergency Preparedness Act**, and Bill C-77, the **Emergencies Act**.

* Wherever provinces are referred to in this paper, it is intended that the reference include both provinces and territories.

Source: Nikkei National Museum, 2018-16-4-1-1-44
www.nikkeimuseum.org

II. CONTINGENCIES

Emergencies take many forms and arise from many causes. They may be man-made in origin or result from acts of God. They occur in peacetime and in war. The range of precipitating causes encompasses natural disasters, such as epidemics, earthquakes, fire, floods or drought; technological mishaps such as industrial spills, pollution or major accidents; civil disturbances arising from revolts, terrorism or riots; conventional war and, finally, the ultimate threat of nuclear war.

The common factors in these disparate events are the sudden threat they pose to the community, the widespread harm they can cause, and the need for prompt, often extraordinary measures to mitigate their effects and recover from them. In different ways and to varying degrees they may place in jeopardy the life and property of the individual, disrupt the peace, order and welfare of the community and, in the most extreme cases, threaten the continued existence of Canadian society itself.

For the purpose of the **Emergencies Act** a "national emergency" is defined in the preamble to the Act as follows:

> "And whereas the fulfilment of those obligations in Canada may be seriously threatened by a national emergency, that is to say, an urgent and critical situation of a temporary nature that imperils the well-being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution."

The range of possible contingencies which, on the basis of past experience, could give rise to a national emergency have been grouped into four broad categories, defined in the Act as follows:

1. **Public Welfare Emergency** means an emergency that is caused by a real or imminent

    1) fire, flood, drought, storm, earthquake or other natural phenomenon,

    2) disease in human beings, animals or plants,

    3) accident or pollution, or

    4) breakdown in the flow of essential goods, services or resources

and that results or may result in a danger to life or property, or social disruption, so serious as to a national emergency.

2. **Public Order Emergency** means an emergency arising from "threats to the security of Canada" as defined in Article 2 of the Canadian Security Intelligence Service Act (CSIS Act), and that is so serious as to be a national emergency.

3. **International Emergency** means an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that directly threatens the sovereignty, security or territorial integrity of Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

4. **War Emergency** means war or other armed conflict, real or imminent, involving Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

This list is reasonably comprehensive in terms of the general classes of emergencies. Economic emergencies have not been included because it is not considered appropriate to deal with economic emergencies by means of standing emergencies legislation. (For a discussion of economic emergencies, see page 26.)

The impact of an event rather than its particular cause is the prime factor determining whether it gives rise to a national emergency. A number of factors bearing on the likelihood of major emergencies deserve emphasis. First, the growing complexity, urbanization and industrialization of society, as well as the increased interdependence of its constituent parts, pose new hazards and magnify old. Industrialization brings with it new risks of

Source: Nikkei National Museum, 2018-16-4-1-1-45
www.nikkeimuseum.org

environmental pollution and toxic spills, the effects of which are exacerbated by urbanization. Urbanization generates its own special problems: it aggravates the effects of a breakdown in the supply of essential goods and services and this, in turn, may create new strains on public order. Increased interdependence means that a major breakdown of any single element can produce severe dislocations of the whole and could attain the proportions of a national emergency. All these factors, therefore, multiply the risks of breakdown and exacerbate the problems of dealing with them.

Urbanization is only one side of the problem. Another facet is peculiarly Canadian in nature, insofar as the geography of the country renders it more susceptible to certain kinds of disasters. Canada is an enormous landmass with many small communities located in relatively isolated and remote areas which are especially vulnerable to being cut off by natural catastrophes. Some of our larger cities are on, or close to, the border with the United States and consequently could be affected by emergencies occurring in that country. Both these factors make all the more vital the need for effective emergency planning and adequate emergency powers to minimize the risks and facilitate a swift, effective response whenever and wherever national catastrophes occur.

III. CONSTITUTIONAL CONSIDERATIONS

The constitutional responsibility for dealing with emergencies is divided between the federal government and the provinces. The **Constitution Act, 1867** does not delineate in specific terms the authority of each level of government over emergencies, but the basic division of constitutional responsibilities is well established and reasonably well defined.

1. National Emergencies

The federal government has primary and ultimate responsibility to provide for the safety and security of Canadians during national emergencies. Its constitutional jurisdiction over such national emergencies stems from the power of Parliament to legislate for the "Peace, Order and Good Government of Canada" and the emergency doctrine which has evolved from it.

That doctrine invests the Parliament of Canada, during times of national crisis, with temporary plenary jurisdiction to legislate on all matters, including those normally reserved exclusively to the provinces. It operates, as Mr. Justice Beetz of the Supreme Court of Canada stated in the **Anti-Inflation Reference**, as a "partial and temporary alteration of the division of powers between Parliament and the provincial legislatures" ([1976], 2 S.C.R.373 at p.461) which gives to the Parliament of Canada in times of national crisis, "concurrent and paramount jurisdiction over matters which would normally fall within exclusive provincial jurisdiction" (Id. at p.463). And, as he also observed, "the power of Parliament to make laws in a great crisis knows no limits other than those which are dictated by the nature of the crisis" (Id. at p.461).

The fact that in times of national emergency the Parliament of Canada is temporarily vested with plenary legislative powers does not ipso facto extinguish the constitutional powers and responsibilities of the provinces. The role of the provinces may be greatly diminished but provincial authority continues until and unless it conflicts with, or is superseded by, federal legislation enacted under the emergency doctrine. Thus, in times of war or peacetime emergencies of national dimensions, the

Source: Nikkei National Museum, 2018-16-4-1-1-46
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responsibility of a province to protect the safety, security, health, property and welfare of its population continues. But its role is essentially a supportive, subsidiary and complementary one, the ambit of which is ultimately determined by the degree of intervention by the federal Parliament.

Certain situations stand out as clear examples of national crises of sufficient gravity to authorize the use of the federal emergency power.

It has always been clear that war and war-related emergencies constitute national emergencies and justify the invocation of the emergency doctrine. In fact, before the **Anti-Inflation Reference**, virtually every case in which legislation based on the emergency power was upheld had involved an emergency occasioned by war or its aftermath. Although the Judicial Committee of the Privy Council indicated in a number of cases that the emergency doctrine was not restricted to war-related emergencies, it offered little concrete guidance as to what kinds of peacetime crises would suffice.

The **Anti-Inflation Reference** has now clarified the application of the emergency doctrine to peacetime emergency situations in several important respects. First, while the Supreme Court of Canada was divided on the final outcome of the case, it was unanimous that the emergency doctrine could be invoked to deal with a national crisis arising from "highly exceptional economic conditions prevailing in times of peace" ([1976], 2 S.C.R.373 at p.436, per Beetz, J.). Secondly, they all agreed that the emergency doctrine is open-ended in nature. Chief Justice Laskin observed in the **Anti-Inflation Reference**, at the end of his review of the pertinent jurisprudence:

> "It is my view that (an) approach of caution is demanded even today, both against a loose and unrestricted scope of the general power and against a fixity of its scope that would preclude resort to it by circumstances now unforeseen....This is not to say that clear situations are to be unsettled, but only that a Constitution designed to serve this country in years ahead ought to be regarded as a resilient instrument capable of adaptation to changing circumstances." (1976, 2 S.C.R. 373 at pp. 411-412)."

Beetz, J., who dissented in the result, made the same point equally clearly:

> "I am prepared to assume the validity of the following propositions:
>
> - the power of Parliament under the national emergency doctrine is not confined to war situations or to situations of transition from war to peace; an emergency of the nature contemplated by the doctrine may arise in peace time;
>
> - Parliament may validly exercise its national emergency powers before an emergency actually occurs: a state of apprehended emergency or crisis suffices to justify Parliament...taking preventive measures..." (Id. at p. 459)

No mention was made in the **Anti-Inflation Reference** of national crises arising from man-made or natural disasters and emergencies resulting from the breakdown of public order, but it seems clear from the general tenor of all the judgements that these and any other contingencies may warrant the use of the emergency doctrine. The essential point is that the situation should amount to a "national emergency" or "national crisis" and to determine this one must focus not on its specific cause but on its effects, whether apprehended, imminent or actual. And, as Ritchie, J. stated in the **Anti-Inflation Reference**,

> "such conditions exist where it can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces and thus presenting an emergency which can only be effectively dealt with by Parliament in the exercise of the powers conferred upon it by s.91 of the British North America Act "to make laws for the peace, order and good government of Canada." ([1976], 2 S.C.R.373 at p.436)

Source: Nikkei National Museum, 2018-16-4-1-1-47
www.nikkeimuseum.org

The definition of a "national emergency" in the preamble of the **Emergencies** Act has been based on this definition.

Whether there exists such an "urgent and critical situation" is determined by the Parliament of Canada, and while it is always possible to challenge Parliament's assessment of the gravity and scope of the crisis, the courts have been very reluctant to second-guess its judgement.

2. **Other Emergencies**

The constitutional responsibility for dealing with emergencies that do not attain national dimensions may rest either with the federal government or with the provinces or in some cases, with both.

The federal government has exclusive jurisdiction over most kinds of emergencies that occur in areas within the federal domain, such as Indian reserves and in national parks, as well as those which result from activities under exclusive federal regulation or control by virtue of section 91 of the **Constitution Act, 1867,** such as shipping, offshore fisheries, harbours or penitentiaries. It also has exclusive jurisdiction over the international aspects of all emergencies which cross national boundaries.

Peacetime emergencies that are local in nature and confined in their scope to the territorial limits of a province, fall under exclusive provincial jurisdiction, whether the emergency arises from a natural disaster, industrial accident or the local breakdown of public order. Provincial jurisdiction stems from section 92 of the **Constitution Act, 1867,** which vests in the provinces exclusive jurisdiction over property and civil rights and matters of a local and private nature in the province, the administration of justice in the province, and the power to enforce valid provincial legislation by the imposition of fines and penalties. Pursuant to their jurisdiction, every province has enacted general emergency powers legislation. Analogous responsibilities have been delegated to Yukon and Northwest Territories.

In between these two basic classes of limited peacetime emergencies there is a third in which neither level of government has complete or exclusive jurisdiction and where the limits of their respective responsibilities are unclear. If the cause of an emergency lies within the territory of a province and its ramifications, although extremely disruptive and dangerous to the surrounding population, do not extend beyond provincial boundaries, such an emergency is, in an immediate sense, local and provincial. However, if it arises from a train derailment, plane crash, inland oil spill, or nuclear radiation leak, to cite just a few activities subject to federal controls, a narrow federal dimension is added to the situation. Both levels of government are technically involved and may have certain claims to jurisdiction. The province affected would share responsibility for dealing with the emergency, but precisely where the line falls between provincial and federal responsibilities, in strict legal terms, is not always easy to determine.

The above account summarizes briefly the major features of the constitutional framework which determines the basic jurisdiction of each level of government over emergencies. However, the role of each level of government is not always defined solely by its constitutional competence over a particular type of contingency or its location. It is also determined by practical considerations, such as immediate needs and available resources to deal with the emergency at hand. Sometimes the resources of more than one level of government are required to overcome an emergency and to provide relief quickly and effectively or private resources available within the boundaries of the affected province may be inadequate.

For example, in the case of a serious forest fire the federal government may be called upon by the province affected to supply urgently needed equipment; or following a severe earthquake, flood or storm it may be necessary to bring in resources from outside the affected province. Conversely, in an emergency arising on an Indian reserve or in a national park, the federal government may request a province to handle the emergency on its behalf and reimburse the province for any costs involved. In such cases, while jurisdictional considerations may determine which level of government has the constitutional authority to play the leading role, the extent of its participation is, in practice, determined by needs and agreement. By and large, federal-provincial working relationships have been extremely good, and effective co-operation among the various levels of government in dealing with emergencies is not a serious problem.

Source: Nikkei National Museum, 2018-16-4-1-1-48
www.nikkeimuseum.org

Co-ordination of resources, joint planning, and close co-operation among governments are thus key factors in dealing effectively with emergency situations. But it is also important for each level of government to have adequate authority to discharge to the full its constitutional responsibilities and be ready and able to provide for safety and security in emergencies. The federal government has particular responsibilities in this regard because of the wide disparity of provincial resources and the expectations made of it. All the provinces have enacted standing general emergency powers legislation. All provincial Acts authorize the making of interprovincial and federal-provincial agreements for planning and for providing emergency services. The question which arises is whether the federal government is presently equipped to discharge its responsibilities in emergencies in a satisfactory manner.

IV. ASSESSING FEDERAL EMERGENCY POWERS: THE CRITERIA

The nature of emergencies, whether arising in peacetime or war, is that they demand broad, flexible powers to act, and to act swiftly. They must be immediately available and relatively unrestrained if they are to enable government to take the necessary measures to ensure the safety and security of Canadians in an emergency. At the same time, they should be temporary in nature and should be limited to the duration of the emergency itself.

The authorities needed to provide for safety and security are, by their nature, exceptional. They are exceptional because they delegate to the executive extraordinary authority to take immediate and often drastic action to overcome a crisis that may involve the expropriation of private property, restrictions on freedom and movement and other infringements of basic civil liberties. They are extraordinary because, under the emergency doctrine, they can result in the temporary suspension of the normal division of powers and the total pre-emption of provincial jurisdiction.

While emergency authorities must, to some extent, be broadly delineated to give the executive the means to deal with the crisis, they must not be unlimited or unconstrained. There must be adequate safeguards to prevent the misuse of emergency powers and to preserve, even in times of urgent crises, certain fundamental values of our society. Indeed, one of the measures of a democracy is how it girds itself to deal with an emergency, and whether it manages to achieve a successful balance between the extraordinary authority given temporarily to the government and the safeguards provided to allow the legislature to fulfill its role and to the citizen to protect his rights. In a federal state like Canada, these problems are compounded by the further need to ensure that the integrity of both levels of government is respected.

In sum, for the federal government to fulfill its responsibilities to provide for the safety and security of Canadians:

1) it must have adequate authority to deal effectively with emergencies as they arise;

Source: Nikkei National Museum, 2018-16-4-1-1-49
www.nikkeimuseum.org

2) resort to emergency authority must be accompanied by sufficient **accountability** of the Executive to Parliament;

3) federal action must recognize and be consistent with the **federal** nature of the country; and,

4) there must be adequate **safeguards** to protect the basic rights and freedoms of the citizen consistent with the requirements of the **Canadian Charter of Rights and Freedoms** and Canada's obligations under the **International Covenant on Civil and Political Rights.**

These, it is suggested, are the criteria by which the current legal framework concerning federal emergency powers should be assessed. While each of these factors will be considered separately here, they ought not to be viewed in isolation from each other. Ultimately, the adequacy of existing legislation must be judged on whether it achieves the proper balance between powers and safeguards.

V. THE PRESENT LEGAL FRAMEWORK: THE POWERS OF THE FEDERAL GOVERNMENT

The powers available to the federal government to provide for the safety and security of Canadians during emergencies under its jurisdiction are derived from two principal sources. The Executive possesses certain inherent legal powers to act under the Crown Prerogative or by virtue of the common law. However, its most important powers both in number and in substance, are statutory in origin, enacted pursuant to its constitutional authority examined above.

1. Non-Statutory Powers

The federal Executive possesses certain inherent powers to act in times of emergency without the authorization of Parliament, by virtue of the Crown Prerogative. The Crown Prerogative consists of that residue of absolute authority belonging to the Crown which has not been abrogated or superseded by legislation. Under the Canadian Constitution, some of those prerogative powers devolve upon the Crown in right of Canada and thus are exercisable by the federal Cabinet.

The Crown Prerogative can play a role in developing contingency plans to deal with emergencies. The Emergency Planning Order of 1981 (revoked in 1987) was made by means of prerogative powers. It also has a role in dealing with war-related emergencies, for the power to declare war or make peace, and to requisition with compensation any property needed for the defence of the realm, are all prerogative powers belonging to the Crown in right of Canada. However, it should be noted that since it cannot be used to raise money, Parliament's support is needed to sustain any action initiated under the Crown Prerogative. Furthermore, the exercise of prerogative powers must comply with the provisions of the **Canadian Charter of Rights and Freedoms** and is subject to judicial review.

As far as peacetime emergencies are concerned, the Crown Prerogative is of very limited scope and of even less certain strength as a source of legal authority. It is very doubtful whether the Executive could rely on the Crown Prerogative to deal with public order emergencies, with the possible questionable and very limited exception of the use of

Source: Nikkei National Museum, 2018-16-4-1-1-50
www.nikkeimuseum.org

martial law, and it probably would be of little value in emergencies arising from natural disasters or major accidents in any case. Moreover, even within their limited sphere, the precise ambit of prerogative powers is vague and ill-defined.

The doctrine of "state necessity" may also provide some legal basis for certain federal emergency measures. The doctrine of state necessity has been used by the courts to treat otherwise unconstitutional legislation as valid and effective when there are such emergency or necessitous circumstances that it is impossible to comply with the Constitution. These emergency circumstances have included insurrection, civil war and, most recently in the **Manitoba Language Reference** opinion of the Supreme Court of Canada, preservation of normative order and the Rule of Law where all of the legislation of Manitoba would otherwise have been invalid. However, any such legislative measure must be proportionate to the circumstances and be of a temporary character.

There is also the old common law doctrine of necessity which may excuse or justify acts of trespass committed in circumstances of urgent necessity arising from actions of imminent peril to life or property. This common law doctrine is distinct from the Crown's prerogative powers, since it is available to the Crown and subject alike. But like the Crown Prerogative, the scope of this doctrine of necessity is narrow, and the powers it confers are both vague and limited. Its typical application arises in the private law sphere and concerns emergencies created by fire and flood and the power to enter another's property, demolish burning buildings, cut down trees, destroy crops, erect barriers or take other measures without incurring liability, to save oneself or one's own property. This common law doctrine might constitute a possible, if limited, source of legal authority in peacetime emergencies caused by earthquakes, floods or other natural catastrophes, as well as man-made disasters. However, it is unlikely to play any role in dealing with public order emergencies, and is probably of only marginal usefulness in war-related emergencies.

Even within its accepted limits, the doctrine of necessity has certain inherent drawbacks as a reliable source of legal authority. For example, it is unclear whether it can be used to compel a person to vacate his or her property. Furthermore, a heavy burden of proof lies upon the party invoking the doctrine to justify actions.

If, during times of emergency, the Executive is compelled to act but exceeds its authority, Parliament may enact an Act of Indemnity validating retroactively what would otherwise have been unlawful. Acts of Indemnity are, in law, no more than an unusual exercise of Parliament's ordinary legislative authority. Since the proclamation of the **Canadian Charter of Rights and Freedoms**, Parliament's power to legalize retroactively "irregularities" by the Executive may no longer be as extensive as it once was.

2. Statutory Authorities

The **Constitution Act, 1867** provides several jurisdictional bases on which the federal government can rely to enact safety and security in emergencies legislation notably the defence power (s.91(7)), criminal law (s.91(27)) and, more generally, the emergency doctrine arising out of the "peace, order and good government" clause in section 91. Such legislation may take several forms. It can be general enabling legislation, directed at particular kinds of emergency situations, to be invoked by proclamation when needed. Only two such statutes presently exist, the **War Measures Act**, which deals with war-related emergencies and the most serious kinds of public order emergencies, and the **Energy Supplies Emergency Act, 1979**, which authorizes the imposition of emergency controls on the distribution of energy and energy products in case of foreign embargoes or other sudden disruptions of supplies. Safety and security in emergencies legislation may also be enacted ad hoc to deal with a particular crisis, an example of which was the **Anti-Inflation Act, 1975**. There are, in addition, a number of ordinary statutes such as the **Criminal Code** and the **National Defence Act** which include among their provisions isolated sections conferring special powers for use in emergency situations. Some of these authorities are relatively minor or peripheral; others may duplicate powers already available under standing emergency legislation. A list of the principal provisions can be found in Annex B.

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VI. SHORTCOMINGS OF CURRENT FEDERAL LEGISLATION

As indicated earlier, the adequacy of existing federal legislation depends on whether it satisfies certain specific criteria. The first criterion relates to the scope of emergency powers and whether they are broad enough to permit the government to meet its responsibilities and provide for the safety and security of Canadians during emergencies. The remaining criteria relate to the adequacy of the safeguards governing the exercise of emergency powers and concern the protection of the individual's fundamental rights, accountability of the Executive to Parliament, and respect for the federal structure of Canada.

Applying the criteria suggested above, the first issue to consider is whether the authorities now available to the federal government enable it to meet its responsibilities effectively and efficiently One method of assessing the federal government's existing powers is to compare the actions currently available to it with the range of emergency powers that are considered necessary for it to discharge adequately its responsibility to provide for the safety and security of Canadians from any of the five basic categories of emergencies outlined above.

1. Federal Powers to Deal with Emergencies

1) War

As already indicated, the federal government has primary responsibility to provide for the safety and security of Canadians when the life, sovereignty or integrity of Canada is threatened by acts of war or enemy invasion. It is in such dire emergencies that the government needs the broadest powers over all aspects of society and the greatest flexibility to act. Authorities available in war should therefore enable the Governor in Council to make Orders and Regulations extending to any matter considered necessary or desirable to further the national war effort, protect national security and counter the emergency.

It would appear that the federal government enjoys ample powers under existing legislation to deal with war-related emergencies. The **War Measures Act**, when proclaimed in force by the Governor in Council, authorizes the Governor in Council "to do and authorize such acts and things ...and make such orders and regulations as he may... deem necessary or advisable for the defence, peace, order and welfare of Canada." The emergency powers thus conferred on the Executive are extremely broad and, subject only to the **Canadian Charter of Rights and Freedoms**, enable it to bring under control by regulation virtually every aspect of economic, political and social life in every part of Canada. Not only are these powers ample as written, they have also withstood the test of two World Wars. There are, therefore, no obvious gaps in the federal government's armoury of legal powers. The **War Measures Act** confers ample authority to provide for the safety and security of Canadians during a war emergency.

Indeed, the main reservation about the scope of the **War Measures Act** is that its present reach may be too broad because it permits wartime powers to be invoked in certain peacetime crises. The **War Measures Act**, it will be noted, may be used not only in case of war, invasion or insurrection but also for "apprehended war" or "apprehended insurrection," which are really peacetime emergencies. There is a large body of opinion that the **War Measures Act** should be confined to war emergencies only, leaving peacetime crises, however severe, to be dealt with under peacetime emergency legislation.

The **War Measures Act** is not the only statute conferring exceptional powers to deal with war-related emergencies. The **National Defence Act** enables any part of the armed forces to be placed on active service in Canada or elsewhere, for the defence of Canada in an emergency. It also empowers the Minister of National Defence to enter, occupy, requisition, remove or destroy property of any kind (subject to compensation), including transportation or communications facilities, if an "emergency" is declared by the Governor in Council. An emergency is defined by the Act as "war, invasion, riot or insurrection, real or apprehended."

2) International Emergencies

It is questionable whether the notion of "apprehended war" that is currently found in the **War Measures Act** still has relevance in the nuclear age. Where once it meant, essentially, "imminent war," it now seems to have acquired a new connotation, namely, a

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state of heightened international tension accompanied by the rapid deterioration in relations among nations or blocs of nations. During such periods of uncertainty and strain, events may move either towards the restoration of normal relations or towards military conflict.

In such circumstances, Canada might wish, or may even be bound by treaty obligations, to adopt precautionary measures to enhance its standard of military readiness and civil emergency preparedness, without taking steps that are, or may be seen to be, provocative to a potential adversary:

- ordering the activation of one or more of the National Emergency Agencies;
- regulating and controlling one or more designated industries or services, including the use of its equipment, facilities, and inventory;
- appropriating, controlling or confiscating property or services;
- requiring the temporary assistance of a limited number of individuals employed in essential industries, services and professions;
- establishing controls over the external aspects of financial and economic operations;
- authorizing extraordinary expenditures for dealing with the emergency;
- enabling federal Ministers to discharge additional civil emergency responsibilities that may be assigned to them for implementation during periods of deteriorating international relations;
- directing that various elements of Canada's civil defence program be quickly brought into operational readiness where necessary;
- accepting legal and financial liability for costs, compensation, damage, or loss sustained by any party as a consequence of the implementation of emergency provisions applying to international situations;
- the regulating or prohibiting travel outside Canada by Canadian citizens or permanent residents;
- authorizing exceptional powers of entry, search and seizure to enforce and monitor defence contracts, to prevent hoarding of scarce commodities or black marketeering; and
- designating and securing protected places.

There is no general, continuing emergency legislation to authorize precautionary and preventive measures of a kind which might be required in an international emergency. The **War Measures Act** and the **National Defence Act**, presently cover emergencies arising from "apprehended" war or invasion. The invocation of the **War Measures Act** to deal with a crisis of the kind envisaged by an "international emergency" appears too drastic and might even be counter-productive. On the other hand, the powers conferred on the government under the **National Defence Act** are probably too limited. New intermediate legislation to deal with what would still be a peacetime emergency has become necessary. The Emergencies Act, Part III responds to this need.

3) Public Welfare Emergencies

The role of the federal government in providing for public welfare during natural disasters, industrial accidents, epidemics and environmental disasters, will, in jurisdictional terms, usually be secondary to that of the province where the emergency occurs. However, as has already been noted, this is not always the case. Where the scale of the disaster is such that it affects more than one province, or where it occurs on territory within the federal domain, the federal government will have primary if not exclusive responsibility to provide for public safety. If the disaster is confined within the boundaries of a single province, the federal government may still have important jurisdictional responsibilities where the emergency arises from a serious mishap involving nuclear

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energy, the railways or other activities under federal regulation or control. Even in circumstances where its role is, in a jurisdictional sense, shared, the federal government should still have available to it the authority to discharge its strict constitutional obligations and the means to provide support in the form of human resources, material or money to act where a province has insufficient resources to overcome the emergency and requests federal assistance.

To meet its responsibilities in this area the federal government could require authorities such as the following:

- ordering evacuation and controlling movement from and within designated areas;
- requisitioning essential equipment and supplies;
- directing the use of real or personal property;
- directing qualified individuals to render urgently needed services;
- regulating the distribution and availability of essential goods, services and resources;
- making emergency disbursements;
- establishing emergency shelters, hostels and hospitals;
- assessing damage to facilities and establishing such priorities as may be required for their repair, replacement or reactivation; and
- in consultation and co-operation with the province or provinces involved, ordering the activation of one or more of the National Emergency Agencies.

At present, there is no general, continuing emergency legislation on the federal statute books to deal with a public welfare emergency which constitutes a national emergency. Various ordinary statutes may contain provisions which, taken together, might legally entitle the government to implement some of the emergency measures deemed necessary. These include the **National Defence Act**, the **Defence Production Act**, the **Aeronautics Act**, the **Transportation of Dangerous Goods Act**, the **Expropriation Act**, the **Environmental Contaminants Act**, and the **Clean Air Act**. Isolated provisions, useful in this kind of emergency, might also be found in other statutes. The **Energy Supplies Emergency Act, 1979** might also be relevant if the powers sought to regulate the sale of essential goods included petroleum products. In sum this is an area where there appears to be important gaps in federal authorities.

4) Public Order Emergencies

In this category are several varied kinds of contingencies, ranging from civil unrest to apprehended insurrection. The common thread that ties them together is that public order emergencies arise from the deliberate actions of individuals or groups that place in jeopardy the life, liberty, safety security or property of the citizen, the rule of law, or constitutional government. And when such disturbances are so serious in nature or so widespread in scope as to threaten the security of Canada as a nation, the federal government has a constitutional as well as a social responsibility to intervene to restore conditions of safety and security.

The kinds of measures that may be needed in such emergencies include:

- imposing and enforcing curfew restrictions;
- prescribing the time, form, and manner of public assembly;
- designating and securing protected places;
- controlling and limiting access to and movement within designated zones or areas;
- assuming direct control and providing for the restoration of public utilities and services; and

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- directing qualified individuals to render urgently needed services.

If the public order emergency falls within the scope of the **War Measures Act**, all the extraordinary powers deemed necessary would be available because that Act is so wide. However, the dividing line between a serious public order emergency that threatens the security of Canada and an apprehended insurrection can be a fine one, and it seems clear as a result of the events of October 1970 that the **War Measures Act** will not again be invoked during peacetime unless there is ample evidence of an urgent threat of a serious insurrection akin to a coup d'état. For this reason and those indicated earlier, there are sound arguments for restricting the **War Measures Act** to war-related emergencies.

Under Part XI of the **National Defence Act** a province may call on the armed forces where a riot or disturbance is "beyond the powers of the civil authorities to suppress, prevent or deal with" (s.233). In less urgent crises, a province may simply request, rather than requisition, military assistance to the civil authority (s.34). Troops called in aid of the civil authorities possess the powers of peace officers (s.239) and are recognized as such by the **Criminal Code**. However, it is doubtful whether the federal government has any similar power under present standing peacetime legislation. The relevant provisions of Part XI do not include the federal government and this raises the question of whether it could call on the military to quell any local disturbance having the potential of creating national repercussions where a province either neglects or declines to do so. The federal government may enjoy the same rights to protect its property as any individual under Sections 38 to 42 of the **Criminal Code**. However, the exact scope of the federal government's strict legal powers in such circumstances is unclear.

Less serious emergencies arising from the breakdown of public order may now be dealt with under various **Criminal Code** provisions dealing with treason (s.46) - which includes "using force or violence for the purpose of overthrowing the government of Canada or a province" (s.46(2))(a)); sabotage (s.52) - which prohibits doing an act "for a purpose prejudicial to the safety, security or defence of Canada"; inciting a mutiny (s.53); sedition (s.60) riot and unlawful assembly (ss.64, 65); piracy (s.76) and hijacking (s.76.1). In addition, the Governor in Council may by proclamation prohibit assemblies for unlawful drilling, military exercises or training in the use of arms (s.71). These and other provisions are amplified by the sections dealing with conspiracy (s.423), aiding and abetting (s.21), counselling another to commit an offence (s.22), accessories after the fact (s.23) and attempt (s.24), and are supplemented or reinforced by other legislation, including the **Official Secrets Act**.

The **Criminal Code** also vests the police with broad powers of arrest, search and seizure. A peace officer may arrest without a warrant any person whom he or she believes, on reasonable and probable grounds, has committed, or is about to commit, an indictable offence (s.450). It is an indictable offence to obstruct the police in the execution of their duties (s.118). Persons arrested under the **Criminal Code** may not be detained for more than 24 hours without being charged, apart from very limited exceptions (s.454). The police have extensive powers of search and seizure provided they first obtain a warrant (ss.445-447). The **Criminal Code** (s.178.1) authorizes wire-tapping, if a warrant has been obtained.

The new **Canadian Security Intelligence Service Act** has increased the federal government's powers to detect and forestall threats to the security of Canada. The Act set up the Canadian Security Intelligence Service (CSIS), a federal agency vested with special powers to gather intelligence and investigate activities which, on reasonable grounds, may be suspected of constituting threats to the security of Canada. Threats to the security of Canada are defined by the Act to encompass espionage or sabotage, foreign influenced activities detrimental to Canada's interests, political terrorism and subversion. Another part of the same Act expands the powers of the federal government to enforce the existing law by allowing the Attorney-General of Canada to assume control over all prosecutions for security-related offences. Previously, the principal authority to conduct proceedings for security-related offences under the **Criminal Code** was vested in the Attorney-General of the province in which the alleged offence was committed.

The CSIS, through its special powers to gather intelligence and investigate conduct posing a

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threat to the security of Canada, may help to prevent or contain unlawful activities having the potential, if left unchecked, to develop into full-scale national emergencies. However, it should be emphasized that the **Canadian Security Intelligence Service Act** creates no new offences to deal with threats to the security of Canada. The role and powers of the CSIS are limited to gathering and analyzing information, surveillance and investigation. It has no mandate and no special powers to deal with a national emergency arising from activities threatening the security of Canada, should one occur. The new powers conferred on the Attorney-General of Canada only enhance his or her authority to enforce the existing law governing security-related offences.

It has been suggested that the existing law is quite adequate to deal with public order emergencies, even those falling within the jurisdiction of the federal government. It is certainly true that the relevant provisions of the **Criminal Code** and related statutes confer wide powers and that some of them are vague and could be "stretched" in a crisis. But it is doubtful whether they could be legitimately stretched far enough, particularly since the enactment of the **Canadian Charter of Rights and Freedoms.** Even if they could, it is questionable whether the public interest would be better served by what is really the dubious overreaching of ill-defined provisions instead of confining such provisions within their intended limits and enacting new legislation conferring additional emergency powers made subject to adequate safeguards, both procedural and substantive.

The argument that the existing criminal law powers are sufficient to deal with any public order emergency is a controversial one. The McDonald Commission recognized that the **Criminal Code** might be inadequate to deal with a national crisis posing grave threats to public order. It then went on to consider whether new, continuing emergency legislation should be enacted, conferring special powers on the government to deal with public order emergencies falling short of "war, invasion or insurrection" and concluded that a case had not been made "from the point of view of national security" (Second Report, Vol. II, p.921). In its view, if exceptional powers were temporarily needed, authority should be sought from Parliament by means of an **ad hoc** special legislation.

This was done in December 1970 with the enactment of the **Public Order (Temporary Measures) Act** but only to replace wider powers already invoked under the **War Measures Act.** The present capacity of the government to react immediately to an urgent crisis threatening the security of Canada arising from the breakdown of public order would be far more limited if the **War Measures Act** were no longer available for peacetime use and the Parliament of Canada were not in session, and particularly if it were dissolved and hence not available to be recalled.

5) Economic Emergencies

The **Anti-Inflation Reference** established that accelerating inflation could constitute a national emergency within the meaning of the "Peace, Order and good Government" clause of Section 91 of the **Constitution Act, 1867.** Other economic conditions, whether international or domestic in origin, may give rise to similarly acute crises and require emergency measures. These include a major breakdown in the functioning of essential domestic industries, markets or services; a crisis of confidence in the banking system; an international assault on the value of the Canadian currency; and a sudden shortage of essential imported commodities resulting from foreign embargo or the breakdown of orderly world trade.

Although economic emergencies are best approached by special **ad hoc** measures, introduced at the time of the emergency, some discussion of permanent standing legislation for economic emergencies is included for information purposes.

The kinds of emergency powers that might be needed by the federal government to deal with economic emergencies of this magnitude could include one or more of the following:

- ordering and enforcing the imposition of emergency taxes, financial moratoria, and other related fiscal measures;
- imposing and enforcing wage and price controls;
- directing and controlling the operation of banking and related financial services;

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- imposing and enforcing exchange controls;
- controlling the production, distribution, sale, and use of any designated commodity, good, or product;
- ordering the restoration and operation of essential services, utilities, or industries;
- controlling imports or exports of designated products;
- compelling the assistance of the private sector in implementing these measures.

There is only one continuing, peacetime emergency statute that deals with economic emergencies, and then only of a particular kind. The **Energy Supplies Emergency Act, 1979** is designed to ensure, by rationing or otherwise, the availability of energy in the event of serious disruptions in supply arising from foreign embargoes or other causes. Within its restricted scope, it confers upon the Executive some of the exceptional powers suggested above, including control over the distribution and sale, export and import of energy supplies.

Other general statutes contain provisions that might be useful in dealing with certain aspects of economic emergencies. These include the **Export and Import Permits Act** which can be used to regulate international trade, and the **Gold Export Act** which could be used to protect the Canadian dollar. Legislation such as the **Bank of Canada Act**, the **Bretton Woods Agreements Act** and the **Financial Administration Act** may also assist the government in handling grave economic crises.

Nevertheless, it did prove necessary in 1975 to enact ad hoc emergency legislation to impose wage and price controls to deal with an emergency arising from accelerating inflation. This suggests that the government's existing legislation is not broad enough to cover all the contingencies which could give rise to an economic emergency. However, the 1975 example also illustrates that such situations usually develop over a period of time, rather than occurring suddenly. In addition, while the range of situations which could give rise to an economic emergency is quite wide, the type of exceptional measures that would be required to respond to the specific situation which required them would be relatively narrow and focussed. And having the power to take such measures precipitously could undermine international confidence in the stability of Canada's economic and financial policies. Thus it would seem preferable to deal with economic emergencies by means of carefully drawn special legislation, tailored to fit the particular case at the time.

6) Summary of Existing Powers

It seems evident from this brief description of existing federal Acts dealing with emergencies that there are large gaps in the legislative framework. The remaining vestiges of the Crown Prerogative and the common law doctrine of necessity might offer an immediate source of authority to act, although far too weak and too limited in the case of peacetime emergencies to provide any real alternative to standing legislation. Parliament undoubtedly possesses jurisdiction under the emergency doctrine to fill those gaps in times of crisis by ad hoc special legislation, but this can take time and, in an emergency, time is of the essence. Moreover, hastily enacted ad hoc legislation has its own drawbacks, including the possibility of over-reaction.

Furthermore, gaps in the legislative framework may not be the only reason for considering new, comprehensive emergency legislation. In some areas, even if the emergency legislation is adequate in scope, the particular Act may be deficient in terms of its procedural safeguards.

2. Parliamentary Accountability

Continuing emergency legislation, by its very nature, invests the Executive with exceptional powers authorizing the temporary infringement of civil liberties and other rights for the higher purpose of overcoming a severe national crisis. It is however, of the utmost importance to the democratic process that the delegation of such powers and the manner in which they are exercised be subject to adequate Parliamentary scrutiny and continuing surveillance. Ensuring sufficient parliamentary accountability may become problematical if Parliament is not sitting, and

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particularly if it is dissolved, and hence not available for recall.

Ensuring that there is sufficient accountability by the Executive to Parliament in the use of emergency powers is also important for another reason. Under the **Canadian Charter of Rights and Freedoms**, the validity of any emergency measure that impinges upon the guaranteed rights and freedoms in the **Charter** may turn on whether the limitation of such rights is "reasonable" and can be "demonstrably justified in a free and democratic society." It is suggested that the courts would be more reluctant to hold that temporary restraints on civil liberties, imposed under a continuing emergency statute, were unjustified if they had not only been deemed necessary by the Executive but had also been approved after due deliberation by the full House of the elected representatives of the people and by the Senate.

As already noted, there are at present only two continuing emergency statutes: the **War Measures Act** and the **Energy Supplies Emergency Act, 1979.** Both provide for some measure of accountability to Parliament for the exercise of emergency powers.

1) **The War Measures Act**

The **War Measures Act** comes into force upon proclamation by the Governor in Council. The Act requires that the proclamation bringing it into operation be laid before both Houses of Parliament for debate and possible revocation "forthwith," if Parliament is sitting or, if it is not sitting, within 15 days after it has been reassembled. However, the **War Measures Act** does not stipulate any time limit within which Parliament must be recalled if it is not in session when the proclamation is made. Nor is there any requirement that the Government divulge to Parliament its reasons for invoking the **War Measures Act** so as to ensure an informed debate on the proclamation.

A notable feature of the **War Measures Act** is the extremely broad power it confers on the Executive to govern by regulation. Once the Act has been invoked, the government has plenary authority to make such orders and regulations as are deemed necessary or desirable for the security, defence, peace, order and welfare of Canada. At present, these regulations are neither tabled nor subject to any Parliamentary control at the time they are made, and such scrutiny as may be brought to bear by the Standing Joint Committee on Statutory Instruments occurs only after they have come into force and cannot affect their legal validity or curtail their operation.

Once invoked, the **War Measures Act** remains in force until it is revoked, either by proclamation of the Governor in Council or by resolution of Parliament. There is, thus, no fixed time limit on the validity of the proclamation and the extraordinary powers it confers. In sum, the process for invoking emergency powers under the **War Measures Act** requires of the Executive only a very limited degree of accountability to Parliament, and once invoked the Act provides Parliament with only very limited means of surveillance over how the emergency powers are used by the Executive.

Even allowing for the fact that the War **Measures Act** is designed to deal with the gravest forms of national emergency and that in such crises the Executive needs the utmost flexibility and freedom of action, the existing degree of accountability to Parliament has been widely criticized as inadequate. The Task Force on Canadian Unity, The Canadian Bar Association Committee on the Constitution and, most recently, the McDonald Commission were all critical of the lack of Parliamentary supervision over the use of the **War Measures Act.**

2) **Emergency Supplies Emergency Act, 1979**

The provisions for accountability to Parliament under this Act are better in some respects than those in the **War Measures Act.** This may be attributed, in part, to the fact that as a peacetime emergency statute designed to deal with certain economic crises, there is less justification for compromising the ordinary democratic process. As a newer Act, it also reflects the improved standards now demanded for Parliamentary accountability. Nevertheless, as will be seen, it is still flawed.

Accountability to Parliament is initially ensured by requiring the declaration of an emergency to be laid before Parliament within seven days. To continue to remain in effect, the declaration must be approved by both Houses, after debate, and within a

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prescribed period. The procedural machinery in the Act is more comprehensive and sophisticated than in the **War Measures Act**. It deals expressly with the situation where a declaration of emergency is made when Parliament is not sitting and stipulates what the McDonald Commission has recommended for the **War Measures Act**, namely, that Parliament be recalled within seven days. However, there is no requirement in the Act for informing Parliament, or a committee of Parliament, of the full reasons for declaring a national emergency.

The Act limits the duration of a state of emergency, and measures taken pursuant to it, to a maximum period of twelve months. After that period, a new Order is required to extend the emergency and prevent any exceptional powers from lapsing, and this is once more subject to the approval of Parliament and is liable to expire at the end of twelve months.

The Act confers upon the Executive broad powers to act by regulation and, like the **War Measures Act**, none of these regulations requires the approval of Parliament to take effect or continue in force. However, regulations establishing an emergency program for the control and allocation of petroleum products, or any scheme to impose rationing, must be tabled in Parliament. The Act thus creates for the implementation of far-reaching emergency measures a sort of half-way house of parliamentary accountability. Parliament has a right to be kept informed but it has no immediate power to control the emergency measures taken.

3. Protection of the Federal Nature of the Country

In a federal state where jurisdiction is divided between two orders of government, each vested with its own areas of jurisdiction and exclusive responsibilities, the cardinal principle must be that neither shall infringe upon the rights of the other and each shall respect the boundaries of its own jurisdiction. In Canada, reconciling these principles with the exigencies of emergencies raises at least two perennial issues. The first arises from an intrinsic conflict between the nature of federalism and the demands of a national crisis. As has often been observed, federalism is characterized by the division of powers. The problem, therefore, is how to ensure, in times of national emergency, when power is concentrated in the federal level of government, that it is exercised in a manner consistent with the democratic traditions underlying Canadian federalism.

The second issue is that it is frequently not easy to determine, on strict legal grounds, which level of government is responsible for handling an emergency, to what extent, and subject to what limits. Emergencies do not always respect territorial boundaries or unfold according to constitutional principles. Even if they did, it would still be difficult in some cases to determine the responsibilities of each level of government. In some areas, jurisdiction overlaps and in others, powers are incomplete. The second problem, then, is how best to achieve the close degree of federal-provincial co-operation necessary to delineate jurisdiction, integrate responsibilities and co-ordinate efforts to provide for the safety and security of Canadians. Each of these issues will be dealt with in turn.

In times of national crisis, as has already been noted, the Parliament of Canada has plenary legislative jurisdiction over all matters, including those which in normal times are within the exclusive jurisdiction of the provinces. It is also clear that Parliament, and Parliament alone, has authority to determine when such a national emergency exists. The provinces have no legal right to participate in that decision, although efforts are made by the federal government to ensure they are consulted. This is not done only to respect principles of federalism: the effective deployment of the country's resources during a national crisis requires the co-ordination of efforts by all levels of government, and thus demands consultation.

The absence of any legal requirement to consult with the provinces before a national emergency is declared, and the present lack of any formal mechanisms for doing so, have been the subject of some comment by several groups which have examined the issue in the broader context of constitutional reform. These groups, which include the Task Force on Canadian Unity, the Canadian Bar Association Committee on the Constitution and, most recently, a Report of a Standing Committee of the Senate (The Goldenberg Report), reached at least one common conclusion: namely, that the Senate could be the forum for such consultation provided it was first reformed to make it more representative of

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provincial interests. However, reform of the Senate is a much larger issue, and one which has yet to be resolved. In the meantime, the problem remains of finding a forum and a process in which both levels of government may have a voice in a decision which temporarily suspends the powers of one of them.

The second issue relates, not to suspension of jurisdiction, but to the sharing of responsibilities. In an ideal federal structure the lines between the federal and provincial areas of exclusive jurisdiction over emergencies would be clearly drawn. Provincial emergency powers legislation, if not completely uniform, would complement federal legislation and together mesh completely federal and provincial responsibilities. The system would permit the development of infrastructures appropriate to meet emergencies within their respective spheres of jurisdiction. There would be formal mechanisms to ensure continuing consultation at all levels of planning and execution, to provide for mutual aid, and to facilitate the mounting of a co-operative effort to deal with emergencies of a national scale.

Such is not the system that exists in Canada, at least so far as emergencies are concerned. The provinces and the federal government have their own areas of exclusive jurisdiction but, as has been seen, the lines between some of their respective fields of competence are blurred. All the provinces have standing emergency powers legislation but there is little degree of uniformity among provincial Acts. There is a wide disparity of resources among the various provinces and their susceptibility to catastrophes is not evenly shared. Some areas of Canada are regularly prone to natural catastrophes such as floods or forest fires, while the danger of similar incidents occurring elsewhere is far less. The effects of such disasters are also not likely to be uniform, again because the distribution of population, the means of communication and climatic variations all play a role in determining the severity of an emergency in a particular location. Finally, regardless of its exact constitutional responsibilities, the demands made on the federal government greatly enhance the role it is called upon to play in dealing with emergencies, national or otherwise.

All the above factors emphasize the importance of establishing effective means to ensure consultation and co-operation between the two orders of government in planning for emergencies, in developing emergency measures, and in defining their respective responsibilities in those areas where the boundaries of jurisdiction overlap. It also emphasizes the importance of concluding federal-provincial agreements to ensure that equipment and other resources needed by one order of government in times of emergency will be made available to another order of government.

The importance of close federal-provincial co-operation is illustrated by the emergency arising from the train derailment in Mississauga, Ontario, in 1979, when cars carrying dangerous chemicals overturned. Some chemicals exploded and the threat of chlorine poisoning made it necessary to evacuate 250,000 people living in this densely populated city close to Toronto. While the emergency was purely local and provincial in scope, its cause involved the interprovincial carriage of goods by rail, an activity subject to federal regulation; and so both levels of government had certain constitutional responsibilities. A federal inquiry was set up in the aftermath of the emergency to examine, among other things, "how best investigative and corrective operations in response to an accident involving dangerous goods can be co-ordinated between various agencies, governmental and private, bearing in mind the existing constitutional and jurisdictional framework." As the Commissioner, the Honourable Justice Samuel Grange, observed: "there are enormous constitutional problems involved in the public response, and most of them can be resolved only by agreements between governments" (Report of the Mississauga Railway Accident Inquiry, p.151).

Other mechanisms exist for promoting federal-provincial co-operation in dealing with emergencies, particularly in the field of emergency planning. A number of federal-provincial agreements of varying degrees of formality divide responsibilities for handling emergencies between both orders of government in areas where the boundaries of jurisdiction are not clear-cut.

On the federal side, a number of initiatives have been taken in recent years in the field of joint emergency planning. Some of these, including the Joint Emergency Preparedness Program, have been noted in the Introduction to this paper. Nevertheless, there is still some way to go to achieve the desired level of national emergency preparedness and the co-ordination of responsibilities for ensuring the safety and security of Canadians in national emergencies.

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4. Protecting the Basic Rights and Freedoms of the Individual

Perhaps the most difficult issue in emergency legislation is how to achieve a workable and satisfactory balance between the extraordinary authority granted temporarily to the government in time of crisis and the safeguards needed to protect the citizen's basic rights. The law must ensure, on the one hand, that the Executive has sufficient freedom of action to protect public safety and national security, and on the other hand, that the individual is adequately protected against unwarranted intrusions upon basic civil rights. Adequate safeguards presuppose not only clear limitations on the scope of emergency powers, but also an effective means of redress in case of abuse and a right to reasonable compensation for damage suffered. Certain legal safeguards currently exist and are found in the emergency legislation itself, the ordinary law, and the constitutional guarantees in the **Canadian Charter of Rights and Freedoms.**

1) Safeguards of Emergencies Legislation

The War Measures Act is sometimes criticized as being too wide in scope and too weak in safeguards. One of its most controversial features is that it removes completely all the safeguards the citizen may have had under the **Canadian Bill of Rights, 1960.** Section 6(5) of the **War Measures Act** expressly provides that "any act done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the **Canadian Bill of Rights.**" This, in effect, meant that any or all basic rights and freedoms, such as freedom of speech, assembly, religion and non-discrimination, or legal rights such as the presumption of innocence, **habeas corpus**, the right to counsel and the protection against self-incrimination, could be suspended or overridden by regulations made under the **War Measures Act.** Furthermore, the Executive is empowered by Section 3(2) of the Act to set up special courts to try offences under the **War Measures Act.** Section 7 of the Act does provide a procedure for fixing compensation for property requisitioned by the government for emergency purposes, but the **War Measures Act** confers no right to compensation. The assessment procedure operates only if compensation is to be payable and, as the Act makes clear, that is a decision to be made by the Executive.

The issue of safeguards was examined recently by the McDonald Commission, which concluded: "We are not convinced that the fundamental freedoms expressed in the **Canadian Bill of Rights** should be completely excluded after a proclamation under the **War Measures Act**" (Second Report, Vol II, p.923). Certain rights, it said, are "fundamental to our system of justice and public administration in peace and war" and ought never to be overridden (Id).

The issue of fundamental rights has now been overtaken by the new **Canadian Charter of Rights and Freedoms** which does formally govern the **War Measures Act**, and all other legislation, federal or provincial, and it entrenches certain basic rights subject, as will be seen, to some qualifications and possible exclusions. The specific recommendations of the McDonald Commission are examined below in a section evaluating the protection now afforded by the constitutional guarantees in the new **Canadian Charter of Rights and Freedoms.**

Within its own restricted sphere, the **Energy Supplies Emergency Act, 1979** is also inadequate, for while the opportunities for infringement of basic rights and liberties may be limited and it does not exclude the **Canadian Bill of Rights**, there is still room for the lawful but arbitrary requisition of property without any statutory right to compensation and no statutory means of relief for damage or injury resulting from the exercise of emergency powers. While both the **War Measures Act** and the **Energy Supplies Emergency Act, 1979** confer extensive emergency powers on the government, they provide few, if any, explicit safeguards for the basic civil rights of the citizen. They provide no statutory recourse against officials who exceed their powers. They grant no right to compensation to individuals who suffer harm as a result of emergency measures lawfully taken under the legislation. Such relief as exists must be found either in the ordinary law or in the **Canadian Charter of Rights and Freedoms.**

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2) The Ordinary Law

An aggrieved individual possesses certain means of redress under the ordinary law if his or her rights have been infringed. The principles of administrative law may offer certain avenues of relief against the unauthorized exercise of powers. If he or she has suffered personal injury or damage to property, or other loss, there may be certain remedies in tort, including trespass to person or property, negligence and, possibly, abuse of power. If provisions in the **Criminal Code** are used to deal with a public order emergency and result in an individual's being wrongfully arrested or detained, or his or her person or premises unlawfully searched and his or her property illegally seized, that individual may also have other actions in tort, including wrongful arrest and perhaps, malicious prosecution. If the invasion of rights amounts to a violation of the **Criminal Code**, the individual may, in addition, be able to launch a private prosecution against the individuals concerned.

However, no legal relief is possible unless there is a legal wrong, and the ordinary law is unlikely to be of much assistance where the authority to act is derived not from the ordinary law but from emergency legislation conferring exceptional powers. In such cases there may be no actionable wrongs, only the legal suspension, reduction or extinction of a person's rights. And if, perchance, an official exceeds his or her delegated authority, the Act may confer on the official and on the government, statutory immunity. It is clear, therefore, that what is needed are not further avenues of legal relief under the ordinary law, but controls on the suspension or abrogation of basic rights in times of crisis under emergency powers legislation and an effective means of redress. This, in substance, is what has now been achieved under the **Canadian Charter of Rights and Freedoms**, the third and most potent source of legal safeguards protecting the individual's basic rights.

3) The Canadian Charter of Rights and Freedoms

The **Canadian Charter of Rights and Freedoms** guarantees to the individual certain basic liberties, notably the "fundamental freedoms" in Section 2, which include freedom of conscience, expression, peaceful assembly and association, and the "legal rights" in Sections 7 to 14 which guarantee the right to life, liberty and security of the person; protection against unreasonable search or seizure and arbitrary detention; **habeas corpus**; the right to counsel; the presumption of innocence; the protection against self-incrimination, retroactive penal legislation, double jeopardy; and the right not to be subjected to cruel or unusual treatment or punishment. The right to equal treatment, or non-discrimination, is also guaranteed by Section 15 of the **Charter**. Any person whose rights have been infringed or denied is entitled to sue for relief under section 24 of the **Charter** and obtain such remedies as the Court considers appropriate and just in the circumstances. However, although these rights and freedoms are entrenched in the Constitution and apply to all legislation including the **War Measures Act**, they are not totally immune from derogation during periods of emergency.

The **Canadian Charter of Rights and Freedoms** makes no special provision for national emergencies (other than a technical provision allowing the House of Commons or a provincial Legislature to extend its life beyond five years in times of real or apprehended war, invasion or insurrection) but it does enable the government to suspend or curtail many of the guaranteed rights and freedoms in one of two ways. First, under Section 33 of the **Charter**, any of the "fundamental freedoms" and "legal rights" may be overridden for periods of up to five years by legislation which expressly provides that it is to operate notwithstanding the provisions in Section 2 and Sections 7 to 15 of the **Charter**. Secondly, the rights and freedoms guaranteed by the **Charter** are not absolute. They are all subject to "such reasonable limits, prescribed by law, as can be demonstrably justified in a free and democratic society" (Section 1). This means that a person whose guaranteed rights and freedoms have been infringed by emergency legislation may always challenge the constitutional validity of the measure and the onus will be on the government to show that such limits or restrictions were both "reasonable" and "demonstrably justified." It does not mean, however, that the government will not be able to discharge that onus, although the more serious the derogation the more convincing the evidence for its justification will have to be. Furthermore, the fact of having to justify any derogation may act as a salutary caution on the government's actions. The adoption of the **Charter** has considerably strengthened the civil rights of the individual. Whether the safeguards it offers are sufficient in scope and strength to protect the basic rights of the individuals during times of extreme crisis is an issue addressed later.

Source: Nikkei National Museum, 2018-16-4-1-1-62
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VII. THE NEED FOR REFORM

1. The Need for New Standing Legislation

It seems evident that, to meet all its responsibilities in the increasingly complex world of the 1980s, the federal government needs the means to respond quickly and effectively to a wide range of emergencies. The question thus becomes whether the federal government has the powers it needs to meet any foreseeable contingency. The above examination of the existing legal framework clearly suggests that the federal government's current powers, whether inherent or statutory, are not adequate to meet the needs of national emergencies.

The Crown Prerogative and the ordinary common law do not provide a clear, firm and sufficient legal basis for taking emergency measures. Whatever role the Crown Prerogative once had in war-related emergencies has largely been superseded by legislation. Its use in peacetime emergencies was always more doubtful, both in substance and in scope. The common law doctrine of necessity may offer some limited basis for justifying certain extraordinary measures in peacetime emergencies but it does not confer any special authority or immunity on the government. In addition to its inherent limitations in scope, the doctrine has certain procedural disadvantages. In sum, the non-statutory powers of the government to act in time of emergency are, in most cases, marginal, vestigial and uncertain.

As is also apparent, there are large gaps in the current arsenal of statutory powers available to the federal government. The two principal continuing emergency statutes, the **War Measures Act** and the **Energy Supplies Emergency Act, 1979** cover only certain types of contingencies. Many peacetime emergencies fall outside their scope, and are not adequately covered by the isolated provisions scattered among various other federal statutes and regulations conferring powers which might be useful in such emergencies. New legislation is therefore needed to enable the federal government to discharge its responsibilities to protect public safety and security during emergencies arising from natural disasters, certain major industrial accidents, serious energy crises, and public order emergencies which do not amount to "apprehended insurrection."

The issue thus becomes whether such legislation should be ad hoc, enacted to meet the needs of the moment, or whether new, general standing emergency legislation should be enacted. It has sometimes been argued, particularly with regard to public order emergencies, that it is preferable to rely on the ordinary law, supplemented by ad hoc emergency powers legislation, when necessary, rather than enact standing legislation for use in emergencies. The reservations about standing legislation rest on the fear that, if emergency powers are readily available they may well be too readily used. The advantage of requiring ad hoc, it is said, is that the granting of exceptional powers to the government could be done only by Parliament and according to the normal parliamentary process.

On the other hand, waiting for the crisis to erupt and asking Parliament to grant ad hoc emergency powers, carries with it certain pitfalls and disadvantages. Urgent legislation, enacted in haste, is not always sound legislation because it entails, very often, the sacrifice of some of the fundamental benefits of the normal democratic process. A Bill which may have been drafted in a hurry may not be subjected to full debate or proper examination. The result may be effective legislation, poorly designed for the task at hand, with the possibility of important safeguards overlooked. Unforeseen ramifications may be perpetuated if the legislation has no expiry date. Finally, if Parliament is dissolved, the delay in obtaining the necessary authorities for dealing with the emergency could result in damage that might have been avoidable.

Enacting standing emergency powers legislation in normal conditions offers certain clear advantages. Time can be devoted to the careful drafting of the Bill and any regulations. There will be an opportunity for full consultation with the provinces to ensure the clarification of responsibilities, the meshing of respective jurisdictions and the co-ordination of efforts. Parliament will have time to examine the legislation and consider whether it represents a proper balance between powers and safeguards.

If new legislation is needed to improve the federal government's capacity to deal with emergencies it would be preferable to have on hand general, continuing emergency legislation with adequate powers coupled with sufficient safeguards, ready to be invoked

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immediately the need arises, than to rely on the hasty enactment of ad hoc legislation.

2. Achieving a Proper Balance Between Powers and Safeguards

Safeguards and powers are the two key components of emergency legislation that must always be kept in balance. In principle, greater powers require greater safeguards but, in practice, the equation is not always that simple. The appropriate balance is fundamentally influenced by the type of crisis. For example, in times of war, when the survival of the country is at stake, the government's powers must increase at the expense of safeguards to a degree that would be unacceptable in peacetime national emergencies. Safeguards, as the term is used here, comprise three distinct elements: safeguards to ensure the accountability of the Executive to Parliament; safeguards to preserve the federal character of the country; safeguards to guarantee the fundamental rights of the individual. How to achieve the desired balance between powers and safeguards in emergency powers legislation raises several key issues.

1) Wartime and Peacetime Emergencies: the Future of the War Measures Act

The **War Measures Act** is an anomalous statute. Enacted in 1914 after the outbreak of World War I, it conferred upon the Executive the power to govern all aspects of society by means of orders and regulations for the purpose of waging war. The Act was modelled on a similar English Act, the **Defence of the Realm Act, 1914**, which was also a wartime measure, but there were at least two significant differences. First, the **War Measures Act** extended not only to war, invasion or insurrection, which are war emergencies, but also to apprehended insurrection which, as indicated earlier, is a peacetime emergency. Secondly, while the English **Defence of the Realm Act** was repealed at the end of World War I, the **War Measures Act** has remained in force until the present day.

Whether such limited safeguards were appropriate even in wartime is open to question, but they were clearly inappropriate to peacetime emergencies within the scope of the Act. This was not of much practical consequence until October 1970, when the **War Measures Act** was used for the first time to deal with a peacetime emergency. It soon became apparent that the full panoply of extraordinary emergency powers under that Act were not required to deal with a peacetime emergency arising from the breakdown of public order, and that the safeguards were plainly inadequate. A new special Act, the **Public Order (Temporary Measures) Act**, was therefore enacted and a notable feature of that Act was that it expressly incorporated a number of the safeguards in the **Canadian Bill of Rights**. **The Public Order (Temporary Measures) Act, 1970** expired on April 30, 1971.

Since 1970, there has been considerable debate about the proper role of the **War Measures Act** in peacetime emergencies. The consensus of opinion appears to be that it should have no role at all and that the **War Measures Act** should be restricted to wartime emergencies. If so, what kind of emergency legislation, if any, should be enacted to take over the peacetime functions of the **War Measures Act**? Whether the existing safeguards would be adequate if the **War Measures Act** were confined to wartime emergencies raises another issue which is considered below.

2) Safeguarding the Democratic Process: Checks and Balances on Executive Authority

During times of crisis, when extraordinary powers may be concentrated in the Executive, the ordinary democratic process may have to be truncated. However, certain controls ought never be sacrificed to the exigencies of the moment. If the emergency powers come from Parliament, the representatives of the people have a right to be satisfied that the powers are invoked for a purpose for which they were intended, that the powers are in fact needed and do not go beyond what is needed, that they are exercised in a legitimate manner, and that they are available for only so long as they are absolutely needed. In certain exceptional cases, the effective application of emergency powers may require that Parliamentary consideration be **in camera** and the results made public subsequently.

Taken as a whole, these are the conditions necessary to ensure that, even in times of crisis, the Executive remains accountable to Parliament. When existing standing emergency statutes are measured against these criteria they reveal certain shortcomings.

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The McDonald Commission, echoing the concerns expressed by other bodies, has made important recommendations for change that would tighten Parliamentary control over the use of the **War Measures Act**, and which, if adopted, would go some way to meeting the criteria outlined above. The Commission recommended, first, that if the government invokes the **War Measures Act** when Parliament is not sitting, the Act should require Parliament to be recalled within seven days. This would ensure that Parliament was always seized with the matter within the shortest possible delay in order to consider whether or not to revoke the proclamation by a resolution of both Houses. The McDonald Commission also recommended that the government be required to divulge to Parliament, or to an all-party Committee, **in camera** if necessary, its reasons for invoking the **War Measures Act**. This would ensure an informed debate on the proclamation. Thirdly, the Commission recommended that a proclamation invoking the **War Measures Act** be valid for a maximum period of twelve months and that any extension would require the approval of Parliament. Finally, it recommended that all orders and regulations made under the **War Measures Act** be approved by Parliament in order to take effect. Draft regulations could be tabled for the approval of Parliament, which would enable them to be brought into force immediately the Act was invoked. Additional regulations made after the proclamation of the Act would have to be submitted to Parliament "forthwith" and would expire at the end of thirty days unless approved.

If the **War Measures Act** is modified to deal only with war emergencies, the overall approach to safeguards taken by the McDonald Commission would probably be suitable. If, however, the **War Measures Act** is to retain its peacetime role, further safeguards would be needed on the principle that there is a fundamental distinction between the minimum level of safeguards acceptable in war as opposed to peacetime emergencies.

Continuing emergency legislation dealing with peacetime crises should, in principle, follow the general pattern of the **Energy Supplies Emergency Act, 1979**, reinforced by adopting the recommendations of the McDonald Commission that all regulations be subject to Parliamentary scrutiny. The procedure for obtaining Parliament's confirmation of the initial order declaring the state of emergency is a fundamental consideration in safeguarding the democratic process.

There are three basic possibilities. The declaration could be made subject to revocation by a negative resolution of both Houses of Parliament, as in the case of the **War Measures Act**. It could follow the **Energy Supplies Act, 1979** and require, instead, positive confirmation from Parliament within a reasonable time to continue in force. Thirdly, the invocation of emergency powers might require a resolution of Parliament to bring them into force, rather than a proclamation by the Executive.

3) Safeguarding the Federal Nature of Canada: Federal-Provincial Considerations

There are two distinct sides to the question of what kinds of safeguards ought to be incorporated in any new federal emergencies legislation to reflect and preserve the federal character of the country. As noted earlier, during urgent national crises the authority of the provinces may be temporarily eclipsed by the emergency doctrine. There are other kinds of emergencies that do not fall under the complete or exclusive jurisdiction of either level of government and require some accommodation to work out respective roles and responsibilities. To be consistent with the federal character of the country, federal emergency powers legislation ought to ensure, on one hand, that national emergencies do not irreparably harm the federal character of Canada and, on the other, that the strictures of federalism do not seriously impede the efficient handling of any emergency.

It has been suggested that in the interests of federalism, as well as the efficient mobilization of the nation's resources, the provinces should have a role in the process leading to the declaration of a national emergency. Although the federal government has always endeavoured to consult with the provinces before declaring a national emergency, several reform bodies have expressed the view that the provinces ought to have a stronger voice and a more formal role. There is less consensus on what that role should be and precisely how it should be formalized. Most proposals have linked the role of the provinces in the declaration of a national emergency to reform of the Senate, but even if the Senate is the most appropriate forum, a constitutional

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change of this kind cannot take place under the aegis of new emergency powers legislation. However, new legislation dealing with peacetime emergencies could enshrine the principle that federal-provincial consultations shall take place, to the extent that circumstances permit, before any declaration of emergency is made and prior to the formulation of the federal response. This would provide an opportunity for negotiations and compromise consistent with the spirit of federalism.

To complement their role in the process leading to the declaration of a national emergency, the provinces ought to be prepared to play a significant part in handling the crisis after the national emergency has been proclaimed. That the federal Parliament has the constitutional authority to deal with every aspect of a national crisis is clearly established. Nevertheless, there are advantages from the point of view of respecting the federal framework of the country, as well as sound pragmatic reasons, to enlist the active support and collaboration of the provinces. This is one of the principal goals of the Joint Emergency Preparedness Program. It is also part of the mandate of all federal Ministers under the proposed **Emergency Preparedness Act**. The better the mechanisms for co-ordinating plans, defining responsibilities and sharing resources, the more likely it is that both federalism and the country will emerge from a national crisis intact.

This is equally true for those emergencies that do not fall under the jurisdiction of a single order of government because, though local and provincial in scope, they arise from an activity under federal regulation. In such cases, the objective should be to work out a satisfactory division of responsibilities. The mechanisms for doing so are already in place. As mentioned earlier, joint working groups have been established between Emergency Preparedness Canada and its provincial equivalents.

4) Safeguarding Civil Rights: the Protection Afforded by the Canadian Charter of Rights and Freedoms

Emergencies generally, and national emergencies in particular, demand effective and timely countermeasures of a type that often involve the temporary restriction, or even suspension, of some of the basic rights of individuals. Emergencies legislation that enables government to have recourse to these kinds of countermeasures must endeavour to achieve a delicate balance. Such legislation must temporarily grant expanded powers to government for the sake of preserving life, property, or the rule of law in situations where these are threatened, yet it must also limit, to the minimum necessary, restrictions on individual rights and freedoms, the protection of which is fundamental to our constitutional order.

With the adoption of the **Canadian Charter of Rights and Freedoms** it might be thought that the issue of human rights considerations in emergencies legislation in Canada has been resolved. All federal and provincial emergencies Acts, including the **War Measures Act**, are subject to the guarantees afforded by the **Charter**. They will also apply, unless specific exemption is sought, to all future emergencies legislation, at both the federal and provincial level.

At the same time, it must be recognized that the **Charter** contemplates situations in which Parliament or a provincial legislature, as the case may be, may find it necessary to declare "that (an) Act or a provision therefore shall operate notwithstanding a provision included in Section 2 or Sections 7 to 15 of this Charter." A legislature may, in other words, direct that the guarantees of fundamental freedoms, legal and equality rights found in those sections will not apply to a particular statute or to a portion of it. Moreover, as has already been indicated, the guaranteed rights entrenched in the **Charter** are, under Section 1, all subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

It may well be that Parliament and the provincial legislatures will choose not to enact legislation overriding the guaranteed rights and freedoms in the **Charter**, and that the courts will develop satisfactory limits on the power to derogate from such rights under the proviso to Section 1. But there may still be sound reasons for not allowing the limits of the permissible derogations from entrenched rights to remain open-ended.

In the first place, there seems to be a consensus between present and previous governments, shared by the report of the McDonald Commission, that certain fundamental rights should be inviolable

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even in times of national emergency. Some of those rights, identified by the Commission, have now been embodied in the **Canadian Charter of Rights and Freedoms** and thus are constitutionally entrenched, if not immune from derogation. They include the right to instruct counsel without delay (which corresponds to Section 10(b) of the **Charter**), the presumption of innocence (guaranteed by Section 11(d) of the **Charter**), the principle of non-retroactivity of penal legislation (recognized by Section 11(g)) and the rights to the assistance of an interpreter (equivalent to Section 14 of the **Charter**). Other rights which, in the view of the McDonald Commission, should be inviolable, such as the right of a Canadian citizen not to be deprived of citizenship, are not in the **Charter**. If a list of fundamental rights which ought to prevail undiminished even in emergencies could be agreed upon, there would be advantages to the citizen and to the state in identifying them in advance and inserting them in any standing emergency powers legislation.

Another reason for insulating certain fundamental rights from any form of derogation is that Canada is a signatory to the **International Covenant on Civil and Political Rights, 1966**. As such, Canada is obliged to ensure that its legislation conforms to Article 4 of the **Covenant**, which identifies certain rights that must be respected even in times of national emergency. That Article provides that "in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" a state may take measures derogating from its normal obligations but certain safeguards on civil and political rights must be maintained intact at all times.

Some of these find their parallel in provisions in the Canadian **Charter**. There can be no discrimination solely on the grounds of race, colour, sex, language, religion or social origin (compare Section 15 of the of the Canadian **Charter**). Emergency powers may not derogate from the right not to be arbitrarily deprived of life or subjected to cruel, inhuman or degrading treatment or punishment (compare Sections 7, 9 and 12 of the **Charter**), the right not to be subjected to slavery (compare Section 7), imprisoned for failing to fulfill contractual obligation, or subjected to retroactive penal laws (compare Section 11(g)), and the freedoms of thought, conscience and religion (compare Section 2 of the **Charter**). Since Canada is also a signatory to the **Optional Protocol** to the **International Covenant**, a citizen may lodge a complaint to the United Nations Committee on Human Rights if Article 4 is not respected by the Canadian government.

The United Nations Human Rights Committee has already drawn attention to the fact that the **War Measures Act** does not embody the human rights guarantees called for by the **Covenant**, most notably those set out in Article 4 dealing with national emergencies. The Committee has asked Canada to give legislative effect to its own expressed intention of living up to these international obligations.

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VIII. THE EMERGENCIES ACT (BILL C-77)

The previous two chapters reviewed the shortcomings of the current legal regime for dealing with national emergencies, and discussed a number of features that would be appropriate for inclusion in new legislation.

The shortcomings of the existing statutory regime may be summarized as follows:

The **War Measures Act** is generally conceded to be too broad and sweeping for peacetime public safety or public order emergencies. While it provides adequate powers for war or invasion, it includes few safeguards against abuse. Less provocative legislation for dealing with a deepening international crisis is not available.

Other Statutes such as the **National Defence Act**, the **Criminal Code**, and several other Acts contain some provisions that could be applied to emergencies. In most cases these provisions are unnecessary for a minor emergency and likely to be inadequate for a major one. Some would possibly be subject to challenge under the **Charter**. If invoked in combination, they would give rise to considerable confusion. Finally, few are adequately safeguarded.

The Crown Prerogative and the common law doctrine of "necessity" could possibly be used as the legal basis for taking emergency measures. However, the legal foundations of this approach are shaky and uncertain.

The government could resort to the enactment of "ad hoc" legislation during an emergency, basing its legislation on the "peace, order and good government" clause of the **Constitution Act**. However, the "ad hoc" approach could result in hasty and poorly drafted legislation if prepared in the heat of an urgent crisis. The process could be insufficiently rapid if Parliament were not in session, and would be impossible if Parliament were dissolved when the emergency arose.

Emergencies legislation is an attribute of statehood. Canada is unique among industrially developed nations in not having comprehensive emergency legislation on the books. As well, all of our provinces and territories have legislation in place to deal with their responsibilities for emergencies.

The additional features that would be desirable in new legislation include adequate procedural safeguards against its misuse; appropriate opportunities for Parliament to be involved in its invocation and to oversee its use; appropriate recognition of the legitimate interests, concerns, and constitutional authorities of the provinces and territories; sufficient safeguards against inappropriate infringement of fundamental human liberties and civil rights; limitation of exceptional powers to what is necessary to deal with a national emergency; and provision to compensate individuals for any unfair damage or injury caused to them as a result of misapplication of the powers granted by the legislature.

The **Emergencies Act** meets the shortcomings of the existing regime and incorporates the desirable features noted above. It will enable the federal government to discharge its constitutional responsibility to provide for the safety and security of Canadians during "national" emergencies which are defined in the Preamble - a responsibility which stems from the "peace, order and good government" clause of the Constitution and from the so-called "emergency doctrine" which has been elaborated by both British and Canadian courts over the years.

The Act will provide the government with an appropriately safeguarded statute to deal with a full range of possible emergencies, not only enabling it to act quickly to minimize injury and suffering, but also ensuring that exceptional powers granted are no greater than those necessary to cope with the situation.

The Act clarifies for the people of Canada the four kinds of emergency situations which would justify reasonable limitations on Charter rights in accordance with Section 1 of the **Charter**. (Sec. 1 states that **The Canadian Charter of Rights and Freedoms** guarantees the rights and freedoms as set out in it are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.")

The Act will enable the government to discharge its responsibility for public order emergencies that become national emergencies, without

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having to resort to the "bludgeon" of the **War Measures Act**, as it did in October 1970.

The Act will enable the government to react to a major international emergency by instituting appropriate preventive and preparatory measures in concert with our allies, without having to take the provocative step of invoking the **War Measures Act**.

The Act consolidates in one Act, a code of safeguards and procedures to protect fundamental rights and freedoms during emergencies.

The Act removes the need to deal with emergencies by hastily introducing the flawed "ad hoc" legislation after an emergency has occurred.

The Act will help the federal govermment, in co-operation and consultation with the provinces, to improve the national standard of emergency preparedness by stimulating emergency planning and preparedness.

1. Safeguards of the Emergencies Act

Perhaps even more important than the temporary exceptional measures for which the **Emergencies Act** provides are the safeguards it makes explicit.

The Act is subject to both the **Canadian Charter of Rights and Freedoms** and the **Canadian Bill of Rights**. In addition, it fulfills Canada's obligations under the **International Covenant on Civil and Political Rights**, to the effect that certain fundamental rights be inviolate even in the most severe emergencies. These rights include:

- the right to life,
- freedom from torture and/or inhuman punishment and slavery,
- freedom from the retroactive application of sanctions,
- the rights to the freedom of thought, conscience and religion.

Other safeguards and procedures of the draft **Emergencies Act** provide for Parliamentary oversight of the use of emergency powers, and ensure that the Executive is accountable to Parliament for its use of such powers. The Act requires Parliament to be called into session within seven days after invocation of the Act, and be given:

- a concise explanation of the reasons for invocation;
- an opportunity for debate;
- an indication of the special measures anticipated; and
- an opportunity to revoke the declaration of an emergency and the special orders and regulations, made pursuant thereto.

The safeguards place a number of constraints on the use of special emergency powers by the executive. These include:

- a time limit on the application of the Act, once it is invoked;
- a requirement to return to Parliament, with full justification, for a continuation or amendment of the Act's application
- a requirement to consult the provinces before declaring an emergency and in some cases, permit invocation of the Act only following an indication from the Province in which the direct effects of the emergency occur that it is incapable of coping with the emergency;
- provisions which ensure that special temporary measures are no more than those dictated by the situation;
- a section which provides for redress and compensation procedures for any abuse of the special powers.

2. Details of the Emergencies Act

The **Emergencies Act** is a comprehensive multi-part Act which provides the federal government

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with the means to fulfill its constitutional responsibilities for national emergencies, including public welfare emergencies, public order emergencies, serious international crises and war emergencies. The Act also provides for parliamentary review of the use of emergencies legislation and mechanisms to ensure that the government be kept accountable for its use of emergency powers.

The Act sets out, in four separate parts, the authorities, procedures and safeguards applicable to each of four categories of emergencies. The intent is that each part may be invoked separately. More than one Part may be invoked at the same time to deal with very severe emergencies arising from several contingencies, but compounded national emergencies of this sort would be doubly unlikely. Other parts of the Act deal with compensation, Parliamentary supervision, and consequential amendments.

The Act is divided into seven parts as follows:

- Preamble
- Part I: Public Welfare Emergencies
- Part II: Public Order Emergencies
- Part III: International Emergencies
- Part IV: War Emergencies
- Part V: Compensation
- Part VI: Parliamentary Supervision
- Part VII: Consequential and Related Amendments

The Preamble to the **Emergencies Act** forms a preliminary statement of the reasons which makes its enactment desirable. It is an integral part of the statute and constitutes a legitimate aid to construction and explanation of the "purport and object" of the Act, including the general objective of protecting the fundamental rights and freedoms guaranteed by the **Charter**, the **Canadian Bill of Rights** and the **International Covenant on Civil and Political Rights.**

The **Emergencies Act** applies only to "national emergencies" which are defined in the Preamble as follows. A national emergency is:

> "an urgent and critical situation of a temporary nature that imperils the well being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution."

This definition of a national emergency makes it abundantly clear that the **Emergencies Act** is not to be invoked frivolously during "routine" or localized emergencies but applies only to an emergency which affects the well being of Canada as a whole or exceed the capacity or authority of the provinces to deal with it. The definition has been based on the judgements of Laskin C.J.C. and Ritchie J. in the **Anti-Inflation Reference** and has the advantage of being generally acceptable to the Supreme Court and to the provinces.

Parts I to IV are parallel parts dealing with each of the four types of national emergencies which could be declared pursuant to the Act. Each part contains provisions governing the declaration of the type of the emergency in question (the proclamation); requiring the contents of the declaration to be tabled in Parliament; prescribing the day on which the declaration becomes effective; prescribing the time limit imposed on the declaration; setting out a list of powers that may be acquired by order and regulation pursuant to the declaration; permitting the designation of the geographical area in which the declaration applies (Parts I and II only); provisions clarifying control of police forces under provincial direction or control (Parts I and II only); provisions governing the revocation of the declaration by Parliament or the Governor in Council; provisions governing the continuation or amendment of the declaration by the Governor in Council; provisions relating to the expiration of the Act; as well as provisions clarifying the role of the province or provinces affected in the declaration process.

Part I of the draft Act deals with public welfare emergencies. It is designed to enable the

Source: Nikkei National Museum, 2018-16-4-1-1-70
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federal government to marshall a national response to deal effectively with a public welfare emergency that is so serious as to be national emergency and is beyond the capacity of one or several provinces to cope. Provisions of the Act will ensure a quick and efficient response to a provincial or territorial request for the federal declaration of an emergency; will bring the combined resources of the nation to bear on the management of the emergency and provision of relief; and will permit an equitable sharing of the burden of responding to, and recovering from, the emergency.

All provincial governments have enacted standing emergencies legislation to deal with public welfare emergencies and have developed sufficient competence, resources and experience to enable them to cope with most public welfare emergencies either with or without the assistance of contiguous provinces or the federal government, using current standing authorities.

In a "national emergency" the combined resources of the entire nation may have to be brought to bear to deal with the emergency. A vast, co-ordinated and timely response of the sort required could only be mounted by the federal government, since only it can requisition and move private resources across provincial boundaries in an emergency.

In the interests of federalism, as well as the efficient mobilization of the nation's resources, it is recognized that the provinces should have a role in the process leading to the declaration of a public welfare emergency. Although the federal government would normally consult with the provinces before declaring a national emergency, several studies of constitutional reform have expressed the view that the provinces ought to have a stronger voice and a more formal role. The **Emergencies Act** therefore includes appropriate procedures in respect of provincial consultation.

"Consultation" in this context is to be interpreted in its fullest dictionary sense of not only exchanging information but also seeking the advice and taking into consideration the interests and views of the provincial governments which may be affected. Furthermore, to ensure clarity and accountability, the onus of consultation will vary depending upon the circumstances of the emergency and operational requirements. The limitation of "reasonableness," where it is applied, is designed to permit the commencing and conducting of necessary operations and controls in a timely fashion. It is the intention of the federal government to work with provincial governments through Emergency Preparedness Canada to develop detailed plans and procedures to facilitate effective consultation when the need to consider invocation of the Act arises; this aspect is covered in the companion **Emergency Preparedness Act**.

The **Emergencies Act** stipulates that Part I may not be invoked unless the province in which the emergency principally occurs indicates that it cannot cope without federal authorities and assistance. In large emergencies affecting several provinces, all those affected must be consulted before invocation. In addition, it states that provincial jurisdiction over the police forces, including the RCMP, over which the province normally has jurisdiction, will not be altered. Thus it will not be possible for the federal government to use the legislation to intervene unilaterally in provincial or territorial emergencies which are within the capacities or authorities of the provinces and territories to respond to using their own resources (along with such federal assistance as might be provided without recourse to exceptional powers).

Part I does not provide any special powers that could be used to end or settle a labour dispute. The Act would permit the authorities to direct people to provide essential services which they are competent to provide, when "a breakdown in the flow of essential goods, services or resources" results in a "danger to life or property, in social disruption, so serious as to be a national emergency." This direction would, however, only be temporary and could be applied only to the extent needed to deal with the emergency. It would not extend to the termination of a strike nor to the imposition of the terms of settlement of a dispute between an employer and the employee organization, nor to the modalities for reaching a settlement. In short, Part I could not be used to interfere with employer-employee relations.

Part II of the **Emergencies Act** is designed to deal with public order emergencies including situations resulting from lawlessness, terrorism or insurrection. The common thread tying them together is that public order emergencies arise from the deliberate actions of individuals or groups that constitute

Source: Nikkei National Museum, 2018-16-4-1-1-71
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"threats to the security of Canada." When such disturbances are so serious in nature or so widespread in scope as to become national emergencies, the federal government has a constitutional responsibility to intervene to restore conditions of safety and security. The formal definition of a public order emergency makes use of the notion of "threats to the security of Canada" as defined by the Canadian Security Intelligence Service legislation. This latter definition was given very close scrutiny by Parliament during its consideration of the CSIS Act. For ease of reference, it is reproduced below:

> "threats to the security of Canada" means
>
> (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
>
> (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and
>
> (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,
>
> but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

Part II is intended to replace the "apprehended insurrection" reference of the **War Measures Act**. Unlike the **War Measures Act**, however, Part II confers no new powers relating to search, seizure, arrest or detention. The provisions of the **Criminal Code** are considered to be entirely adequate to deal with those aspects of the restoration and maintenance of public order, even under unusual and exceptional circumstances.

Less serious emergencies arising from the breakdown of public order would continue to be dealt with under the **Criminal Code** or Part XI of the **National Defence Act** (which covers aid to the Civil Power and will not be amended, except to delete the requirement for the provinces to pay for such aid.)

For public order emergencies, as with public welfare emergencies, the **Emergencies Act** may not be invoked unless the situation constitutes a national emergency. If the emergency is confined to a single province, that province must indicate its incapacity or lack of authority to deal with the emergency before the Act can be invoked. If the effects of a public order emergency extend to more than one province or if the security of the nation as a whole is threatened, the federal government will be able to act under the Act's public order provisions provided that the requirements for consulting affected provinces are met.

Part III of the **Emergencies Act** deals with international emergencies and is intended to provide special temporary powers to enable the government to respond at an early stage in a serious international crisis, without resorting to the provocative and draconian powers needed for a war emergency. A declaration under this section may not be made until all provinces have been consulted to the extent that in the opinion of the Governor-in-Council it is appropriate and practicable to do so.

Part III enables the government to undertake and implement, in concert with our allies, civil military, economic and diplomatic preparatory and preventive measures and responses aimed at dampening the crisis and at the same time to bring the nation to a preliminary state of readiness for war; to begin the process of civil mobilization; to prepare for the protection of the civil population and thereby to create a deterrent to possible acts of aggression which are contrary to Canada's interests or the interests of our allies.

Part IV of the Act deals with war emergencies and provides powers identical to those in the War

Source: Nikkei National Museum, 2018-16-4-1-1-72
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Measures Act, except that they apply only to real or imminent war or invasion. Provinces must be fully consulted prior to the declaration of a war emergency "to the extent that, in the opinion of the Governor-in-Council it is appropriate and practicable to do so" (S.51).

Part IV should not, however be mistakenly viewed as the **War Measures Act** in another guise. The following table graphically illustrates the differences:

Emergencies Act, Part IV	War Measures Act
Application: "war or other armed conflict, real or imminent."	"war, invasion or insurrection, real or apprehended."
Invocation must be justified and can be contested.	declaration is "conclusive evidence."
Orders and regulations subject to Parliamentary review.	no provision.
Parliament can initiate re-consideration and revocation.	no provision.
Canadian Bill of Rights applies.	does not apply.
Time limited (360 days) - extension requires Parliamentary approval.	no time limit.
Compensation for loss or injury as a result of application of the Act is provided for.	no provision.
Provinces must be consulted, and their views reported to Parliament.	no provision.

Part V relates to compensation and describes the various remedies and routes the individual may pursue for compensation in the event of injury or damages resulting from the use of special powers in a national emergency. This part will reassure the many Canadians who regret that such remedies were not available to Japanese-Canadians whose property was confiscated and who were interned during the Second World War.

Part VI relates to Parliamentary supervision and sets out provisions governing the procedures, roles and supervisory powers of parliament in the making, amendment, revocation or continuation of the declaration of an emergency, and the use of orders and regulations pursuant to the Act. The details are summarized in the earlier section of this chapter dealing with Safeguards.

Part VII includes a list of consequential and related amendments to other federal statutes (see Annex A) which apply to national emergencies and are intended to ensure that emergency powers exercised in other statutes are subject to the same safeguards and procedures to which the **Emergencies Act** is subject.

Source: Nikkei National Museum, 2018-16-4-1-1-73
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ANNEX A

NATIONAL DEFENCE ACT R.S.C. 1970, C.N.-4
Consequential and Related Amendments
Explanatory Notes

Clause 71 Sections 218-220 of the **National Defence Act** are to be repealed.

S.218 deals with "Emergency Powers in relation to property" and empowered the Governor in Council (GinC in an emergency by order or regulation to empower the Minister of National Defence to "take control of property considered necessary for defence purposes" - to assume the operation and management of such property" including "all persons employed in connection with such property."

S.219 of the **National Defence Act** empowers "the officer in command of any unit" subject to regulations made by the GinC to "requisition, remove, destroy, desolate or lay waste" any designated property.

These subjects are now covered in S.6(c), S.28(b) and Part V of the Emergencies Act - and subject to all the safeguards and provisions of the Emergencies Act.

S.220 provides for compensation from the Consolidated Revenue Fund (C.R.F.) to persons who have lost such property.

Clause 72 The fourth paragraph of the form in section 237 is to be repealed. The fourth paragraph deals with an undertaking by the province to pay "all expenses and costs" incurred for the calling out of the Canadian Forces. This amendment together with the amendment proposed in clauses 73 and 74 would remove the requirement that a province pay the costs incurred by the Canadian Forces in providing "aid to the civil power" at the request of the province.

Clause 73 Subsection 238(2) of the **National Defence Act** is to be repealed. It deals with "an unconditionally undertaking" by the Attorney General of a province to pay all expenses and costs incurred for the calling out the Canadian Forces in "Aid to the Civil Power."

Clause 74 See also note to clause 72. Sections 241 and 242 of the National Defence Act are repealed. S.241 provided that "all expenses and costs incurred" for calling out the Canadian Forces in aid to the civil power shall be paid by the province.

S.242 provided for funds to be advanced from CRF until the province repaid the costs.

New S.242 provides that the monies required to pay for the calling out of the Canadian Forces in aid to the civil power shall be advanced out of the CRF on authority of the GinC.

Clause 75 S.260 of the **National Defence Act** is repealed. It is consequential on the repeal of S.218. S.260 creates an offence for non-cooperation re S.218.

Clause 10 of the **Emergency Preparedness Act** amends S.4 of the National Defence Act to transfer responsibility for civil defence from the Minister of National Defence to the Minister Responsible for Emergency Preparedness.

Sections of the **National Defence Act** which relate to emergencies but which will not change are:

Part XI deals with aid to the civil power and permits the Attorney General of a province to requisition the armed forces in aid to the civil power.

Section 34 under which a province may request assistance from the armed forces in times of "national disaster."

ENERGY SUPPLIES EMERGENCY ACT
Consequential and Related Amendments
Explanatory Notes

The purpose of the consequential and related amendments in Part VII of the **Emergencies Act** is to ensure that federal statutes which contain provisions which could be applied to national emergencies are subject to the same safeguards and procedures (regarding fundamental rights and freedoms; provincial consultation; parliamentary surveillance and compensation) as apply to the **Emergencies Act**.

Source: Nikkei National Museum, 2018-16-4-1-1-74
www.nikkeimuseum.org

The main consequential and related amendments to the **Energy Supplies Emergency Act** are as follows:

The Preamble of the **Emergencies Act** does not apply to the **Energy Supplies Emergency Act**.

Clause 62 Subsection 9(7) of the ESE Act is repealed. This section exempted members of the Allocation Board for liability.

New sections which are the equivalent of S.45(1) and (2) in the **Emergencies Act** (relating to liability of Ministers servants or agents of the Crown) are added to the ESE Act in S.9.

Former subsections 11(2) to 11(11) of the ESE Act are repealed and replaced by new S.11(2) which is the equivalent to S.5(1), 16(1), 27(1), 37(1) of the **Emergencies Act**. An order issued under the ESE Act is thus treated as the equivalent of a proclamation declaring an emergency under the **Emergencies Act** (hence it must be tabled within seven sitting days). New S.11(3) of the ESE Act is the equivalent of former S.11(11) of the ESE Act. Former Sections 11(2) to 11(11) of the ESE Act dealt with conditions of parliamentary surveillance but did not meet the higher standards regarding Parliamentary surveillance of the **Emergencies Act**.

Former subsection 12(6) of the ESE Act is repealed. It dealt with approving or amending a mandatory allocation program. Amendments are now covered under ESE Act S.38 which is the equivalent of S.58 of the **Emergencies Act**.

S.13(1) of the ESE Act is amended to add the phrase "by order" to relate it to S.11 which equates an order with a declaration of a national emergency under the ESE Act. S.13(1) would be subject to new ESE Act S.35 and S.36.

Former S.19(2) of ESE Act is repealed and replaced by new S.35 and S.36. Former S.19(2) dealt with parliamentary scrutiny of orders to institute a fuel rationing program.

Former S.22 of the ESE Act (which dealt with a special tribunal to hear complaints) is repealed and replaced by the equivalent of the compensation provisions of the **Emergencies Act** S.45-54.

The only difference is that "loss, injury or damage" is replaced by "deprivation of property" (S.22 line 5).

New S.22.1 of the ESE Act is the equivalent of S.47 of the **Emergencies Act**.

New S.22.2 of the ESE Act is the equivalent of S.48 of the **Emergencies Act**.

New S.22.3 - 22.8 of the ESE Act are the equivalent of S.49-S.54 of the **Emergencies Act**.

Former sections 34(4) and 34(5) of the ESE Act are repealed. They dealt with tabling a notice of motion - a further element of Parliamentary surveillance provisions. They are replaced by new S.35-36.

New sections 35-38 of the ESE Act are added to the ESE Act.

New S.35 of the ESE Act is the equivalent of the provincial consultation clauses in the **Emergencies Act**. (the word "appropriate" has been excluded to insure that there is greater obligation on behalf of the federal government to consult with the provinces).

New S.36 of the ESE Act is the equivalent of S.56 of the **Emergencies Act**.

New S.37 of the ESE Act is the equivalent of S.57 of the **Emergencies Act**.

New S.38 of the EST Act is the equivalent of S.58 of the **Emergencies Act** (deals with continuations or amendments of orders).

Radio Act

Clause 76: The amendment to the **Radio Act** is consequential on the proposed **Emergencies Act**. S.6(1)(d) of the **Radio Act** permits the Governor in Council to issue orders censoring radio messages in time of war, real or apprehended or rebellion.

Source: Nikkei National Museum, 2018-16-4-1-1-75
www.nikkeimuseum.org

ANNEX B

Current Federal Statutory Provisions

This Annex presents a partial list of the exceptional powers conferred on Ministers or on the Governor in Council by ordinary Acts. Some of these Acts were well known, while others were brought to light in the course of computer searches of the Revised Statutes of Canada and the Consolidated Regulations. For these searches, the Quic-Law system was employed, using such terms as "emergency," "disaster," "war," and "urgency."

More than 150 separate provisions in current federal statutes were screened for inclusion in this list. Of these, only a few proved to grant exceptional powers of any importance. Over 500 "emergency" provisions were found in the Consolidated Regulations, and of these fewer still were deemed to confer authorities of great potential importance in serious emergencies of any kind. On the other hand, given the inadequacies of keyword searches, there may well be additional "emergency-type" powers to be found in ordinary statutes. Failing a case-by-case review of federal statutes to determine the potential breadth of the powers conferred directly or indirectly, it is not possible to comment with assurance on the limits of executive action during emergencies of different kinds.

As a result of a review of the Acts identified by the keyword search of the statutes, the following 13 were judged to confer significant emergency powers.

1. **War Measures Act**, R.S.C. 1970, c.W-2 - which confers on the Governor in Council extremely broad powers in the event of "war, invasion or insurrection, real or apprehended."

2. **National Defence Act**, R.S.C. 1970, c.N-4 - which enables (i) the Governor in Council to require the armed forces to render assistance in times of "national disaster;" (ii) a provincial attorney-general to requisition the armed forces "in aid of the civil power;" (iii) the Minister of National Defence or a commanding officer to requisition or take control of property of any kind during a "emergency" declared by the Governor in Council.

3. **Energy Supplies Emergency Act**, 1979, S.C. 1978-79 c. 17 - which enables the Governor in Council to impose gasoline rationing or take other steps to conserve supplies and ensure adequate distribution in a national emergency caused by shortages or market disturbances affecting the national security, welfare and economic stability of Canada.

4. **Broadcasting Act**, R.S.C. 1970, c.B-11 - which enables the Governor in Council to order the broadcasting of programs deemed to be of "urgent importance" (s.18).

5. **Canada Elections Act**, R.S.C. 1970, c.14 (1st Supp.) - which allows the Chief Electoral Officer to (i) extend voting laws if voting has to be suspended because of "accident, riot or other emergency" (s.14); or (ii) postpone elections if by reason of flood, fire or other disaster,it is impracticable to carry (them) out" (s.6).

6. **Clean Air Act**, S.C. 1970-71-72, c.47 - which enables the Governor in Council to put into effect a national emission standards to meet a "national emergency" created by "extremely hazardous air contaminants" without waiting the normal 60 days after publication (s.13).

7. **Criminal Code**, R.S.C. 1970, c.C.-34 - which permits normal procedures for obtaining authorization to wiretap to be abbreviated in cases of "urgency" (s.178.15).

8. **Expropriation Act**, R.S.C. 1970, c.16 (1st Supp.) - which empowers the Governor in Council to reduce or eliminate the normal procedures if possession by the Crown is "urgently required" (s.17(2)).

9. **Navigable Waters Protection Act**, R.S.C. 1970, c.N-19 - which empowers the Minister to remove or destroy vessels which obstruct or render navigation more dangerous (s.14).

10. **Official Secrets Act**, R.S.C. 1970, c.O-3 - which permits in cases of "great emergency" an RCMP Superintendent to issue a search warrant (s.11).

Source: Nikkei National Museum, 2018-16-4-1-1-76
www.nikkeimuseum.org

11. **Radio Act**, R.S.C.1970, c.R-1 - which empowers the Governor in Council to make regulations for the censorship and control of radio signals and messages in case of "actual or apprehended war, rebellion, riot or other emergency" (s.60).

12. **Transportation of Dangerous Goods Act**, S.C. 1980-81, c.36 - which empowers authorized persons, in the event of an accident, to take "all reasonable measures consistent with public safety;" grants access to any property, in order to prevent or mitigate harm to life, property or the environment from spills; and protects such persons from civil or criminal liability (s.17).

13. **Canada Post Corporation Act**, S.C. 1980-81, c.54 - empowers the Corporation, with the approval of the Minister, to make "such arrangements for transmitting mail in emergencies as, in its opinion, are necessary in the interests of the public" (s.36).

Source: Nikkei National Museum, 2018-16-4-1-1-77
www.nikkeimuseum.org

FIRST READING

Source: Nikkei National Museum, 2018-16-4-1-1-78
www.nikkeimuseum.org

FIRST READING

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OFFICIAL REPORT
(HANSARD)

Friday, June 26, 1987

Speaker: The Honourable John A. Fraser, P.C., Q.C.

EMERGENCIES ACT

MEASURE TO ENACT

Hon. Perrin Beatty (Minister of National Defence) moved for leave to introduce Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

The Acting Speaker (Mr. Paproski): Shall the Hon. Minister have leave to introduce the Bill?

Some Hon. Members: Agreed.

Motion agreed to, Bill read the first time and ordered to be printed.

Source: Nikkei National Museum, 2018-16-4-1-1-79
www.nikkeimuseum.org

THE PUBLICITY PACKAGE

Source: Nikkei National Museum, 2018-16-4-1-1-80
www.nikkeimuseum.org

FACT SHEET

Emergency Preparedness Canada / Protection civile Canada

THE PUBLICITY PACKAGE

HIGHLIGHTS OF THE EMERGENCIES ACT

"Whereas the safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity of the state are fundamental obligations of government."

On June 26, 1987 the Government of Canada introduced in Parliament new fully safeguarded and comprehensive federal emergencies legislation to replace the War Measures Act. The new **Emergencies Act** will enable the federal government to fulfill its constitutional responsibility to provide for the safety and security of Canadians during national emergencies. The Act will be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights and is consistent with the 1967 United Nations International Covenant on Civil and Political Rights. It has been drafted in consultation with the provinces and contains appropriate safeguards for provincial interests. It also provides for Parliament to review and, if necessary, revoke emergency powers introduced under the Act. In addition it contains procedures to ensure that individuals who suffer loss or injury as a result of the application of the Act will be fairly compensated.

The **Emergencies Act** is a multi-part statute which includes fully safeguarded and appropriately limited exceptional powers to deal with four types of national emergency. It ensures that the exceptional powers granted by Parliament will be no more than what is needed for the specific emergency at hand. The four types of emergency are:

- Public Welfare Emergencies: including severe natural disasters or major accidents affecting public welfare, which are beyond the capacity or authority of a province to handle.
- Public Order Emergencies: which constitute "threats to the security of Canada," are so serious as to be national emergencies and are beyond the capacity or authority of a province to handle.
- International Emergencies: which arise from acts of intimidation or coercion or the use of serious force or violence that threatens the sovereignty, security or territorial integrity of Canada or any of our allies.
- War Emergencies: which include real or imminent armed conflict against Canada or its allies.

By limiting the **Emergencies Act** to four carefully circumscribed types of national emergency situations, Canadians will have assurances that the Act could not be used in a frivolous manner to deal with localized or relatively minor emergency situations.

The **Emergencies Act** will enable the Government to discharge its responsibility for public order emergencies that become national emergencies, without having to resort to the pretext of the "apprehended insurrection" provision of the War Measures Act, as it did in October 1970.

It will enable the Government to respond to a major international crisis by gradually adopting appropriate preventive and preparative measures, in concert with our allies, without having to take the provocative step of invoking the War Measures Act.

It will eliminate the need to deal with national emergencies by hurriedly introducing possibly excessive or flawed "ad hoc" legislation during the heated and confused situation which usually develops after a major emergency has occurred.

It will help to stimulate, in co-operation and consultation with the provinces, an enhanced national standard of emergency preparedness.

Other safeguards of the **Emergencies Act** guarantee Parliament's right to review and it necessary revoke emergency powers, and ensure that the Government is accountable to Parliament for its use of such powers. The Act requires Parliament to be summoned within seven days after the declaration of an emergency, at which time it is to be given:

- a concise explanation of the reasons for the declaration of an emergency
- an opportunity for debate on a motion to confirm the declaration

Canada

Source: Nikkei National Museum, 2018-16-4-1-1-81
www.nikkeimuseum.org

- an indication of the special measures anticipated to deal with the emergency

- an opportunity to revoke the declaration of an emergency and the special orders and regulations, made pursuant to the declaration

The safeguards place a number of constraints on the government's use of special temporary powers. These include:

- a provision that, in the case of a public welfare or a public order emergency where the effects of the emergency are confined to a single province, the federal government may declare an emergency only after the province concerned has indicated that its capacity to cope has been exceeded

- a time limit and a geographical limitation on the application of the powers, and the emergency measures authorized by such powers

- a requirement to return to Parliament, with full justification, for Parliamentary approval of a continuation or amendment of the Act's application

- a requirement to consult the provinces before declaring an emergency.

Protection of Fundamental Rights and Freedoms

The **Emergencies Act** offers full protection for the fundamental rights and freedoms of Canadians during national emergencies.

The **Emergencies Act** will be subject to the Canadian Charter of Rights and Freedoms. In accordance with Section 1 of the Charter, any limitations to fundamental rights and freedoms which are found to be necessary in a national emergency will have to meet the test of being "reasonable" and "demonstrably justifiable in a free and democratic society."

Unlike the **War Measures Act**, the **Emergencies Act** will not be exempted from the application of the Canadian Bill of Rights. Provisions of the Bill of Rights will continue to be an effective protection for certain rights not duplicated by the Charter. These include protection of the right to the enjoyment of property and provisions which provide for a fair hearing for the determination of rights and obligations.

The **Emergencies Act** also requires that its use must have regard to the United Nations' 1967 International Covenant of Civil and Political Rights (to which Canada acceded in 1976). As a result the following basic rights and freedoms are held inviolate even in times of national emergency

- the right to life

- freedom from torture, inhuman punishment and slavery

- freedom from the retroactive application of sanctions

- the right to recognition as a person before the law

- the right to the freedom of thought, conscience and religion.

National Emergencies

The **Emergencies Act** applies only to national emergencies. A "national emergency" is defined in the Preamble to the Act as:

> "an urgent and critical situation of a temporary nature that imperils the well being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution."

This definition is based on language used in recent judgments of the Supreme Court of Canada. The definition ensures that application of the Act will be confined only to those very serious emergencies which under the "emergency doctrine" are considered to fall within the responsibility of the federal government.

The **Emergency Preparedness Act**, a companion Bill introduced at the same time as the **Emergencies Act**, will when passed provide a statutory basis for the planning and preparedness programs which are necessary for effectively dealing with emergencies of all kinds.

Source: Nikkei National Museum, 2018-16-4-1-1-82
www.nikkeimuseum.org

GREATER CIVIL RIGHTS SAFEGUARDS IN WAR MEASURES ACT REPLACEMENT

For the last 17 years, Canadians and politicians of all parties have been urging abolition of the *War Measures Act* and its replacement by less draconian legislation.

On June 26, 1987, the Honourable Perrin Beatty, Minister Responsible for Emergency Preparedness, tabled Bill C-77, the *Emergencies Act* to do just that. He was acting on an election promise.

Some have mistakenly claimed that Part IV of the *Emergencies Act* (s.38) is virtually identical to the *War Measures Act*. They say that since the *Canadian Charter of Rights and Freedoms* now applies to the *War Measures Act*, there is really no difference at all -- except that there could be a greater temptation to use the *Emergencies Act* because it gives the illusion of being better safeguarded than the *War Measures Act*.

This is not true, as can be seen from the following comparison of the two Acts.

Differences

Emergencies Act, Part IV	*War Measures Act*
. Application: "war or other armed conflict, real or imminent."	"war, invasion or insurrection, real or apprehended."
. Invocation must be justified "on reasonable grounds" and can be contested.	declaration is "conclusive evidence."
. Orders and regulations subject to parliamentary review.	no provision
. Parliament can revoke the invocation of the Act.	no provision
. Canadian Bill of Rights applies.	does not apply
. Time limited (360 days) - any extension requires parliamentary approval.	no time limit
. Compensation for loss or injury as a result of application of the Act is provided for.	no provision
. Provinces must be consulted, and their views reported to Parliament.	no provision

Amendments Suggested

To date, 10 witnesses have appeared before the House of Commons legislative committee on Bill C-77. No witness has opposed the Bill outright, or objected to the principle of peacetime emergency powers or the basic structure of the Bill. A number of useful suggestions have been made as to how to improve the language of the Act and its mechanics.

The government has already proposed to the legislative committee several amendments to the Act. Further amendments are being considered to accommodate concerns raised by organizations which have included the Canadian Civil Liberties Association, the Canadian Bar Association and the National Association of Japanese Canadians. Any points that can improve Bill C-77 without impeding its fundamental purpose will be considered. What is required is an *Emergencies Act* that will enable the government to respond quickly and effectively to a national emergency while ensuring that the fundamental rights of individual Canadians are not compromised.

March 14, 1988

Source: Nikkei National Museum, 2018-16-4-1-1-83
www.nikkeimuseum.org

THE GLOBE AND MAIL

TUE OCT.06,1987

***Emergencies*Act*criticized as threat to rights **

BY GRAHAM FRASER
The Globe and Mail
OTTAWA

The Canadian Government is giving itself excessive new powers in the proposed*Emergencies*Act*, Alan Borovoy , general counsel for the Canadian Civil Liberties Association , said yesterday.

"The powers are too broad, the triggering circumstances are too vague, and the safeguards are too weak," Mr. Borovoy said in an interview.

Mr. Borovoy and Kenneth Swan, vice-president of the association, met Defence Minister Perrin Beatty yesterday to give him a brief on the bill.

In June, when he tabled the legislation intended to replace the War Measures Act, Mr. Beatty argued that the abuse of civil liberties that was committed during the 1970 crisis in Quebec will not be possible under the new legislation.

Bill C-77 sets out four kinds of emergencies: public welfare emergencies, which include natural disasters or accidents beyond the capacity of a province to handle; public order emergencies that threaten Canada's security; international emergencies, which include acts of intimidation and violence that threaten Canada or its allies; and war emergencies.

Mr. Beatty said the legislation will be subject to the Charter of Rights and Freedoms, and fulfills Canada's obligations under the International Covenant on Civil and Political Rights.

Mr. Borovoy said that "one of the central weaknesses of the Bill is the failure to include a definition for the word 'emergency' itself."

The CCLA says a further problem involves the overly vague definitions of "threats to the security of Canada" contained in the Canadian Security and Intelligence Service Act.

The definition "is arguably broad enough to have included the fund-raising activities of Canadian citizens for the State of Israel after the Yom Kippur War," Mr. Borovoy said.

"How far, for example, could the Government rely on the impact of that which 'imperils the well-being of Canada,' 'danger to property', 'social disruption', and 'breakdown in the flow of essential goods and services' to end certain inconvenient strikes?" he wondered.

"While there may be some circumstances in which some strikes have to be terminated in the public interest, we believe it is preferable that such action be taken in the context of well-balanced labor legislation or by specific statutes. . . ."

The CCLA brief points out that during a public order emergency, the Government would acquire power to regulate or prohibit public assemblies.

"This is a particularly dangerous power," Mr. Borovoy said. "In so many ways, the right of peaceable assembly serves as a prerequisite to the existence of other freedoms."

Mr. Beatty has said that if provisions forbidding the right to public assembly were invoked, people could go to court and invoke the Charter, and the Government would have to justify the suspension.

Source: Nikkei National Museum, 2018-16-4-1-1-84
www.nikkeimuseum.org

SECOND READING AND DEBATES

Source: Nikkei National Museum, 2018-16-4-1-1-85
www.nikkeimuseum.org

GOVERNMENT ORDERS

[*English*]

EMERGENCIES ACT

MEASURE TO ENACT

Hon. Perrin Beatty (Minister of National Defence) moved that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be read the second time and referred to a legislative committee.

He said: Mr. Speaker, for each of us there is a handful of public events that take place in our lifetime which leave an impression on us for the rest of our lives. The end of the Second World War, the death of President Kennedy or the footsteps of the first man on the moon are all examples of that.

However, for Canadians in October, 1970, there was another event which took place that I think all of us who were alive during that period will never forget. It happened in response to a crisis in the Province of Quebec. The Government invoked the War Measures Act in a time of peace and suspended the civil liberties of Canadians from one coast of this country to the other. I was a student at that time at the University of Western Ontario. I remember very well the address that was given in a national broadcast by Prime Minister Trudeau who commenced his remarks by saying:

> I am speaking to you at a moment of grave crisis, when violent and fanatical men are attempting to destroy the unity and freedom of Canada.

Mr. Trudeau then continued by explaining the Government's decision to invoke the War Measures Act, and he outlined some of the circumstances which led to the Government taking such an action. He explained as well that he was taking such measures, which he recognized were exceptionally extreme and would have a profound effect on civil liberties across the country, because it was essential he do so. In Mr. Trudeau's words:

> The War Measures Act gives sweeping powers to the Government. It also suspends the operation of the Canadian Bill of Rights. I can assure you that the Government is most reluctant to seek such powers, and did so only when it became crystal clear that the situation could not be controlled unless some extraordinary assistance was made available on an urgent basis.

Mr. Trudeau continued:

> These are strong powers and I find them as distasteful as I am sure you do. They are necessary, however, to permit the police to deal with persons who advocate or promote the violent overthrow of our democratic system. In short, I assure you that the Government recognizes its grave responsibilities in interfering in certain cases with civil liberties, and that it remains answerable to the people of Canada for its actions.

The Prime Minister of the day, Mr. Trudeau, concluded:

> It is my firm intention to discuss then with the leaders of the Opposition parties the desirability of introducing legislation of a less comprehensive nature.
>
> In this respect I earnestly solicit from the leaders and from all Hon. Members constructive suggestions for the amendment of the regulations. Such suggestions will be given careful consideration for possible inclusion in any new statute.

The justice Minister of that day is today the Right Hon. Leader of the Opposition (Mr. Turner). He will, of course, remember very well the circumstances which led to the decision to invoke the War Measures Act for the first and only time in a period of peace in Canada. He will remember as well, as will many Members of this House, the commitments made by all three political Parties to see legislation brought in, during a period of calm, to protect the civil liberties of Canadians better, while at the same time ensuring that the Government has the powers necessary to protect the needs and the safety of Canadians in cases of grave crisis.

What we are doing today is to act on that commitment made some 17 years ago. The time surely has come now where we in this House must keep faith with the people of Canada.

On June 26, I tabled in this House two Bills, Bill C-76 and Bill C-77, and announced that the federal Government was repealing the War Measures Act, withdrawing the emergency planning order of 1981 and introducing new federal emergencies legislation to replace them. The Bill I am presenting today complements Bill C-76, the Emergency Preparedness Act, which was given second reading on November 2 and referred to a legislative committee. Although the Bills are in a sense complementary, they are being considered separately.

Bill C-77, the Emergencies Act, will replace the old War Measures Act. It includes safeguarded and appropriately limited powers to deal with four types of national emergencies. It ensures that the exceptional powers granted by Parliament will be no more than are needed for the specific emergency at hand. It will ensure a graduated response, not an overwhelming one. In addition, the Emergencies Act will provide for compensation in the event of personal loss, injury or damage.

The Bill's preamble defines a national emergency as:

> —an urgent and critical situation of a temporary nature that imperils the well-being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution.

• (1120)

With passage of the Emergencies Act the Government will be able to act quickly during national emergencies to limit suffering through the use of means that, while extraordinary, will be limited to what is strictly required. The Emergencies Act will clearly constitute a vast improvement over the legislation which it replaces. It will provide a unified and coherent set of measures to respond to emergencies while incorporating maximum safeguards of fundamental rights and freedoms.

The Act will provide for parliamentary review of the use of emergency powers. It will require the executive to answer to Parliament for the use of its powers. The period during which the Act may apply will be limited and the nature of the emergency measures will be restricted to what is appropriate in the circumstances. In addition, the Government will have to return to Parliament for any continuation, amendment, renewal, or declaration of emergency.

Under the Act the provinces are to be consulted before the federal Government can declare a national emergency. In the event of a peacetime public welfare or public order emergency primarily affecting a single province, the province experiencing the direct effects of the emergency will have a veto over the Act's invocation. Under Parts III and IV, which cover areas of federal jurisdiction, there will still be consultation to the extent that it is appropriate and practical to do so.

The Act was designed so that each part may be invoked separately. In extreme situations, however, two or more parts of the Act may be invoked simultaneously.

Part IV of the Act is concerned with a war emergency. This part grants to the executive powers similar to those of the War Measures Act. However, they can be invoked only in time of war or of other real or imminent armed conflict and are subject to similar safeguards as are other parts of the Act. There is no reference to "insurrection" or "apprehended insurrection" in Part IV.

[*Translation*]

Some critics have tried to combine the old and the new laws in an attempt to make people believe that Part IV of the Emergencies Act is practically identical to the War Measures Act. They have also stated that there is not really any difference between the two legislative texts since the Charter applies to the War Measures Act. They go as far as to say that temptation to resort to the Emergencies Act will be stronger because, they claim, this legislation creates the impression that it offers more guarantees than the War Measures Act and that it will be easier to invoke it.

Such statements are completely unfounded.

Part IV of the Emergencies Act concerns "a war or other armed conflict, real or imminent". The War Measures Act applies to war, invasion or real or apprehended insurrection.

According to the new Bill, the declaration of an emergency must be justified and may be challenged. Under the present legislation, the declaration of a state of emergency is based on "conclusive evidence that war, invasion or insurrection, real or apprehended, exists".

In the proposed legislation, all orders and regulations will be subject to scrutiny by Parliament, which may decide to

Source: Nikkei National Museum, 2018-16-4-1-1-86
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reconsider and revoke a declaration of a war emergency. No such provision exists at the present time.

The Emergencies Act will be subject to the Canadian Charter of Rights and Freedoms. The War Measures Act is not. The new legislation provides for expiration at the end of 360 days. The present legislation contains no such time limitation.

Provisions for compensating persons having suffered damage or injury as a result of the application of the Emergencies Act will be included in this legislation. The present legislation does not include such provisions. Finally, before the new legislation takes effect, the provinces will be consulted and their views reported to Parliament, which is also an innovative step.

When the Government invoked the War Measures Act in October 1970, it did so reluctantly, believing it had no other choice. This situation led Prime Minister Trudeau to say in the House on October 16, 1970 that "the absence of both adequate time to take other steps or alternative legislative authority dictated the use of the War Measures Act".

[English]

The War Measures Act is too broad and too sweeping. It makes no provision for dealing either moderately with peacetime disasters or for a measured and prudent response to international tension. For 17 years Canadians and politicians of all Parties have been advocating abolition of the War Measures Act saying that it was outmoded, dangerous, and too blunt an instrument for anything short of war.

The present Right Hon. Leader of the Opposition, as Minister of Justice during the October Crisis, stated in the House on November 4, 1970:

> The government recognized and, from the beginning, expressed the opinion that the War Measures Act was "too blunt an instrument" —We recognized the need for a more definite but flexible statutory instrument—

Similarly on April 28 of this year the Member for Thunder Bay—Nipigon (Mr. Epp) moved that the Government should consider the advisability of repealing the War Measures Act which, to quote him, "authorizes unlimited and arbitrary exercise of power by the Government of Canada during periods of war or apprehended insurrection without providing any review mechanism for such actions nor any basis for redress of the victims of unjust actions" and then went on to say that he thought there were many Canadians who would support Parliament expressing itself in this particular long-standing piece of legislation. He said that he thought that this Draconian Measure, the War Measures Act, should be removed from the books, that what we needed were review mechanisms to ensure protection of individual rights and freedoms.

[Translation]

The same day, in response to motions by the New Democratic Party to abolish the War Measures Act, the Hon. Member for Saint-Denis (Mr. Prud'homme), in recalling the last time the Act was invoked, exclaimed: "I regret only one thing and that is that we do not have more time to discuss a page in Canada's history which is certainly not one of the most glorious in the history of human rights in Quebec and Canada".

The Hon. Member went on to say: "Many of us who were young parliamentarians at the time were agonizing about this issue . . . There was a tough debate in the New Democratic Party at that time as to what to do. I agree many New Democrats voted against the Act, but they had a tough debate. I remember it only too well. My price for voting for the War Measures Act was that I be included as one of the speakers . . . I will say in English and in French that I will always regret having voted for the War Measures Act. I felt it was my duty as a Canadian with the kind of information that we had that I had to do so. I had no other choice", admitted the Hon. Member for Saint-Denis with admirable frankness.

[English]

One effort to examine the problem of legislation to deal with emergencies came from the Task Force on Canadian Unity. It recommended that the Government had the right to seek parliamentary approval within a specified time for any extraordinary powers. It also recommended that the Government state the reasons for its action and the duration of the emergency powers in its proclamation. The task force further recommended that provincial powers and individual rights be safeguarded to various degrees depending on whether the nation was at war or at peace.

I have read the recommendations of the Pépin-Robarts task force carefully and I can assure Members of the House that Bill C-77 adequately meets them. The legislation for second reading which I am proposing today will provide the necessary flexibility to respond to national crises without invoking the War Measures Act. It applies only to national emergencies and distinguishes between four types.

In broad terms they are these: First, situations affecting public welfare and caused by an accident such as a massive chemical spill or by natural disasters such as earthquakes, floods or tornadoes that are of such magnitude as to exceed the capacity of the affected province to respond and to require special powers for an effective federal response; second, public order disturbances that threaten the security of Canada and which are so serious as to be national emergencies; third, international emergencies requiring Canada to take special preparatory measures in concert with our allies; fourth, and finally, war itself.

• (1130)

Passage of this legislation will enable the federal Government to fulfil its constitutional responsibility to provide for the safety and security of Canadians during national emergencies. The Emergencies Act will enable the Government to discharge its responsibility for public order emergencies that become national emergencies, without having to resort to the War Measures Act, an archaic and dangerous piece of legislation completely out of tune with democratic Canadian life.

The Emergencies Act will be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. It will be consistent with the 1967 United Nations International Covenant on Civil and Political Rights.

The proposed legislation includes fully safeguarded and appropriately limited exceptional powers to deal with four types of national emergency. It ensures that the exceptional powers granted by Parliament will be no more than what is needed for a specific emergency. It provides for Parliament to review and, if necessary, revoke emergency powers introduced under the Act.

In addition, it contains provisions to ensure that individuals who suffer loss or injury as a result of application of the Act will be fairly compensated. It has been drafted in consultation with the provinces and contains appropriate recognition of provincial interests.

Several provinces have written to say that they are in general agreement with the Emergencies Act. Several have written expressing their approval and the view that the new legislation will bring Canada into line with other modern states which have had similar legislation for years.

The Minister Responsible for Alberta Public Safety Services, who recently experienced firsthand what can happen out of the blue to a community, had some suggestion for changes to the Act but went on to say:

> Nevertheless, one must feel that it is the most important legislation introduced on this activity in recent years and your Government's efforts are to be strongly commended in this regard. We also feel strongly that every effort must be made to ensure the best legislation possible and therefore hope that you will give every consideration to the suggestions we have made.

After the tabling, the Premier of Saskatchewan wrote me:

> I am encouraged by this initiative. The proposed pieces of legislation will more accurately reflect the way in which the federal and provincial Governments actually carry out their roles and responsibilities in this area . . . I wish you a successful and speedy passage of the legislation you have tabled, and I look forward to the continued co-operation of our respective governments in the area of emergency preparedness.

The previous New Brunswick Minister of Municipal Affairs said he was gratified to learn that I had tabled the Emergencies Bill and companion Emergencies Preparedness Bill. He said:

> The Bills address a long-standing need to contemporize emergency legislation in Canada and New Brunswick supports this new legislation without reservation.

The Minister responsible for the Manitoba Emergency Measures Organization wrote to me. My friend, the Hon. Member for Brant (Mr. Blackburn), will be particularly interested in his view. He said:

> The Bills are indeed timely and a significant improvement over the existing Act. In particular, the protection of civil liberties is a critical component of your proposed new statute. I welcome the continuing opportunity, as provided in the new Acts, for consultation on matters of national emergency preparedness and response policy. You may be assured of our co-operation and support in this vital area.

He went on to say that:

> —certainly some of the existing programs established by Emergency Preparedness Canada are tangible evidence of federal-provincial co-operation and it is my hope that these will be enhanced by the new legislation.

If there were as close collaboration in all areas of government as there is in emergency preparedness, there would be few stresses and strains in our federal system.

When I tabled Bill C-77 on June 26, I deliberately did so before the summer recess to give Members of the House and Canadians at large adequate time to review its contents and to make suggestions if there were areas where they felt it could be improved. It is because I believe that the legislation has important implications for national security and because the civil liberties of Canadians should be considered in a period of calm that I felt that sufficient time should elapse before the Bill was moved at second reading.

I also indicated that I would listen seriously to suggestions for improvements to ensure that at the end of the day the best possible legislation would be passed.

After the initial tabling, I received many letters from private citizens and politicians congratulating me on finally moving to do away with the War Measures Act. A few people, among them some federal politicians, expressed concerns. In some instances these criticisms were reasonable and constructive. In others the negative comment stemmed perhaps from a superficial reading and misunderstanding of the legislation.

As I indicated earlier, some felt that Part IV of the Emergencies Act is virtually identical to the War Measures Act. They say that since the Canadian Charter of Rights and Freedoms now applies to the War Measures Act, there is really no difference at all, except that there could be a greater temptation to use the Emergencies Act because it gives the illusion of being better safeguarded than the War Measures Act and could be more easily invoked. My earlier comments demonstrated that this is simply not true, and a careful reading will confirm this.

Others have said that the McDonald Commission did not think that the Government needed any additional emergency powers in peace time. I can assure Members of the House that Bill C-77 incorporates virtually all of the relevant recommendations of the 1979 McDonald Commission. From the outset we have been concerned that these recommendations should be respected as far as possible. There is one notable exception. The McDonald Commission did not recommend repealing the War Measures Act and replacing it with new emergencies legislation. Unlike members of the McDonald Commission, we believe, as all Parties in the House have stated in the past, that the War Measures Act is so inadequate and poses such a severe threat to the fundamental rights and freedoms of Canadians that we do not wish to live with this monster any longer.

As I have said, I have read through the recommendations relating to the emergencies legislation of the McDonald Commission and I note with pleasure that the vast majority of those recommendations have been incorporated in Bill C-77 in

Source: Nikkei National Museum, 2018-16-4-1-1-87
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one form or other, particularly in regard to procedures for parliamentary oversight of emergency powers.

Part I of the Emergencies Act deals with public welfare emergencies and is designed to enable the federal Government to mobilize the resources of the nation in response to a public welfare emergency that is so serious as to be a national emergency. Provisions of the act enable the federal Government to organize the response to a provincial or territorial request for assistance. The act will ensure that the burden of responding to and recovering from such a national emergency is shared by the nation as a whole.

All provincial governments have enacted standing emergencies legislation to deal with public welfare emergencies. By and large, they have developed sufficient competence, resources and experience to cope with most public welfare emergencies either with or without the assistance of contiguous provinces or of the federal Government. However, in a national emergency the combined resources of the entire nation may have to be mobilized to deal with the emergency. A vast, co-ordinated and timely response of the sort which could be required could only be provided using the federal emergency power.

While provincial governments have the authority, through their various emergency acts, to requisition resources within the province for emergency use within the province, they do not, and constitutionally cannot have the authority to requisition resources in the province for use outside the province. Only the federal Government can do this.

In the interest of federalism, as well as the efficient mobilization of the nation's resources, we recognize that the provinces should have a role in the process leading to the declaration of a public welfare emergency. The Emergencies Act embodies this principle.

Although the federal Government would always consult with the provinces before declaring a national emergency, the recent trend toward improved federal-provincial consultation as well as several studies of constitutional reform, all lead to the conclusion that the provinces ought to have a stronger voice and a more formal role in the process leading to the declaration of an emergency. Part I of the Emergencies Act therefore includes appropriate procedures regarding provincial consultation.

It is the intention of the federal Government to work continuously with provincial governments through Emergency Preparedness Canada to develop detailed plans and procedures to facilitate effective consultation if the need to consider invocation of the act arose.

The Emergencies Act stipulates that Part I may not be invoked unless the province in which the direct effects of the emergency principally occur indicates that it cannot cope without federal authorities and assistance. In large emergencies affecting several provinces, all provinces affected must be consulted before a declaration can be made under the act. In addition, the act states that provincial jurisdiction over the police forces, including the RCMP—over which the province normally has jurisdiction—will not be altered.

With these safeguards, then, it will not be possible for the federal Government to use the legislation to intervene unilaterally in provincial or territorial emergencies that are within the capacities or authorities of the provinces or territories to cope with.

Some people have expressed doubts about the provision of Bill C-77 dealing with public welfare emergencies having serious implications for the right to strike. It is a point that certainly should be clarified. However, I would remind the House that I have stated publicly on previous occasions, that this act is not intended to be used to settle a legitimate dispute between an employer and employees.

• (1140)

I have already said that if there is uncertainty in the language of the Bill in this regard, it will be dealt with in committee to ensure that the original intent is respected. Indeed, we have seen very recently an instance where Parliament has been prepared to introduce special legislation which is well tuned to the specific exigencies of the circumstance, and that is the appropriate way to deal with it. If the federal Government believes it is necessary to intervene in the case of a strike, we will make it abundantly clear that this legislation is not intended to and could not be used to interfere in that way.

I personally have little difficulty with this point. I believe that the constraints of the definition of a national emergency in the preamble, when added to the further constraints of the definition of a public welfare emergency in Clause 3, effectively ensure that this Bill could never be used to terminate a strike and impose the settlement of a legitimate dispute between an employer and employees.

Likewise, it has been said that probably the most contentious clause in this Bill is the one that deals with public order emergencies. This is the type of situation which gave rise to the use of the War Measures Act in 1970. This clause takes its definition of threat from the Canadian Security and Intelligence Service Act. This fact alone should make us very cautious because of the difficulties already encountered with CSIS in determining what is subversion and what is legitimate dissent. That was one view of the legislation.

I would remind Members of this House that the definition of "threats to the security of Canada" received exhaustive scrutiny by Parliament in 1983 during deliberations on the CSIS Act. The language in this definition has, therefore, already received Parliament's blessing.

I would also remind the House that the definitions at the head of each of the four major parts of this Bill, including the definition of "threats to the security of Canada" do not stand alone. They must be read in conjuction with the definition of a national emergency in the preamble of the Bill and in conjuction with other restricting provisions. In other words, before the Government can declare a public order emergency under Part II, the emergency situation must correspond to the definition of a national emergency as stated in the preamble.

I am told that this double test, as it is called, will be used by the courts to assess the Government's compliance with the deliberate constraints and safeguards that have been built into the definitions of this Bill. For greater clarity, let me read again the definition of a a national emergency which appears in the preamble of the Bill. Since it seems to have been overlooked by some people, it bears repetition. A "national emergency" is defined as follows:

> —an urgent and critical situation of a temporary nature that imperils the well-being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution.

I am sure all Members of this House will appreciate that the standard established in this definition is very stringent, indeed. Before the Government can declare an national emergency under this act, the emergency in question must affect the whole of Canada or be so great as to exceed the capacity of the provinces to cope with the emergency. When this definition is read against the definition of "threats to the security of Canada" in Clause 14, and in conjunction with provisions that the emergency must necessitate the taking of special temporary measures for dealing with it, and that the special measures must be reasonable, it is apparent that the benign and benevolent activities such as ministerial contacts with the African National Congress, would never amount to a national emergency, as someone suggested, requiring invocation of the Emergencies Act.

To the challenge that a public order emergency also gives Cabinet the right to prohibit public assembly, and that a Canadian could have difficulty in availing himself or herself of the right to protest peacefully the declaration of emergency powers, I would reply that there are absolutely no restrictions on the freedom of expression, thought, conscience or religion under this part of Bill C-77. Unlike the War Measures Act, Part II of Bill C-77 confers no new powers relating to search, seizure, arrest or detention. The provisions of the Criminal Code in these areas are considered adequate to ensure law and order. Restricting public assembly would be authorized only to protect lives and property during a serious national emergency.

Let me dwell on this for a moment because I think it is a very important point which the House should recognize. One of the grave threats to civil liberties that is contained in the War Measures Act, as it stands today, was shown very markedly in the regulations under the War Measures Act when it was invoked in October 1970. We found civil liberties across the country suspended in order to deal with the situation which was relatively isolated in terms of its implication. Even though the FLQ problems that existed were taking place in the Province of Quebec, people as far away as Vancouver, British Columbia, or Guelph in Wellington County in my area, found their civil liberties were suspended as well. This is a much more finely tuned piece of legislation.

In the Province of Quebec people found that there suddenly was a retroactive crime being created. This will not be possible under Bill C-77. This section of the Bill gives no new powers of arrest. We will not have under the powers of this Bill in Part II, the knock on the door in the middle of the night because of a crime being created retroactively. We will not have the situation that someone who once attended a meeting of an organization would have the burden of proof shifted onto him to prove he is not a member of that organization. How could any of us be expected to prove we do not belong to an organization? It may be easily possible to prove we do belong to some organization such as a church, political party or any other organization, but how can we prove conclusively that we do not belong to an organization if attendance at a meeting is deemed to be adequate proof that we do.

That is the problem today with the War Measures Act. That is how civil liberties were affected in October of 1970. That is the sort of abuse we are determined to correct. It is essential that we have legislation in a period of time that better protects civil liberties.

As for the notion that a legitimate protest against the emergency declaration could be suppressed and no one would find out, or that the Government could censor the media or simply forbid travel to the troubled area, and that it would be difficult for anyone to find out if the declaration of an emergency was justified if no one was allowed in or out of the area, I reply that there is no mention at all of censorship in this part of the Bill. In fact, censorship would be possible only during a war emergency under Part IV. Restrictions on travel would be limited to the area of the emergency and only reasonable restrictions on travel would be permitted, that is, restrictions which would prevent further loss of life by creating an evacuation zone, for instance.

Some have concerns about the clause dealing with international emergencies. They suggest that the definition of an international emergency is extremely broad and that the Bill speaks of a threat to any country in which the political, economic or security interests of Canada, or any of its allies, are involved. As in the case of the definitions in each of the other parts, this definition should be looked at within the context of the definition of a national emergency as stated in the preamble. There is no way that an incident such as an attack on the *Stark*, for example, would amount to a national emergency in Canada.

I would suggest that Members of this House read carefully through the definition of an national emergency in the preamble and to read it opposite the definition of an "international emergency" in Clause 25. It is clear that an international emergency must first be so serious as to constitute a national emergency in Canada before the Government can declare the emergency. In my view, only a global crisis of major proportions could ever meet the high double test established here.

I welcome the opportunity to deal with this issue in committee, and if wording can be found that will clarify the definition of "international emergency" without destroying our ability to

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act in appropriate cases, I would certainly consider incorporating it in the Bill.

I should like to address any concerns about the provisions in the Bill authorizing extraordinary powers of search and seizure during an international emergency. In light of representations I have received from civil liberties groups since the tabling of this legislation at the beginning of last summer, I would be prepared to look carefully at the wording of this power and the possibility of clarifying its intent. I should explain that its purpose is, for example, to enforce and monitor defence contracts, to prevent hoarding and overcharging for scarce commodities and to prevent black marketing in an international emergency. However, we shall certainly be looking very closely at this section and I would welcome input from Members of Parliament in that regard.

Some criticism has been leveled at Part IV of Bill C-77, that it is difficult to see any difference between this part and the current War Measures Act. Let me remind the House that there are indeed great differences, and permit me to summarize what I said earlier on this point in French.

The Emergencies Act, Part IV, is applicable to "war or other armed conflict, real or imminent", whereas the War Measures Act is applicable to "war, invasion or insurrection, real or apprehended".

Invocation of the Emergencies Act must be justified and can be contested, whereas a declaration of the War Measures Act is conclusive evidence of the existence of an emergency which cuts off all recourse to the courts.

• (1150)

Orders and regulations made under the Emergencies Act are subject to parliamentary review whereas under the War Measures Act there is no such provision.

Under the Emergencies Act, Parliament can initiate a motion to revoke a declaration. Under the War Measures Act there is no such provision.

The Canadian Bill of Rights applies to the Emergencies Act. It does not apply to the War Measures Act.

The Emergencies Act cannot be in effect for more than 360 days and any extension requires parliamentary approval. There is no time limit at all under the War Measures Act.

As a past Co-Chairman of the Standing Joint Committee on Regulations and Other Statutory Instruments, I have joined with others in this House and in the Senate in pressing to have Governments include parliamentary scrutiny and control over delegated legislation. This Bill gives Parliament a virtually unprecedented degree of control over the use of the powers contained in it. One can only wish that there had been such parliamentary power when the War Measures Act was invoked in October of 1970.

We have bent over backwards in drafting this legislation to ensure the preservation of civil rights and liberties. By limiting the Emergencies Act to four carefully circumscribed categories of national emergency, Canadians will have assurances that the Act will not be used in a frivolous matter to deal with localized or relatively minor emergencies.

The Emergencies Act will enable the Government of Canada to respond to a major international crisis by gradually adopting appropriate preventive and preparatory measures, in concert with our allies, without having to take the provocative step of invoking the War Measures Act. It will eliminate the need to deal with national emergencies by hurriedly introducing excessive or flawed *ad hoc* legislation during the heated and confused situation that usually develops after a major emergency has occurred. It will help to stimulate, in cooperation and consultation with the provinces, an enhanced national standard of emergency preparedness. Passage of this Bill will ensure an appropriate response to emergencies while assuring that the fundamental rights of Canadians are fully protected in emergencies.

If this Act had been in place in World War II, Canadian citizens could not have been so cavalierly interned and their property confiscated. Likewise, in 1970, Part II of this legislation would have been used instead of the War Measures Act, and the abuses we saw under that Act would not have been possible—Quebecers would not have been arbitrarily arrested and detained simply because they were associated with a particular group.

I think it is important to re-emphasize that, unlike the War Measures Act, Part II of Bill C-77, confers no new powers relating to search, seizure, arrest or detention. The provisions of the Criminal Code in these areas are considered to be entirely adequate to deal with the instigators of public disorder, even under unusual and exceptional circumstances.

As I have said before, the need for this kind of legislation has been long recognized by all parties in Parliament. It is important that we have the mechanisms in place to deal with national disasters. But it is equally important that we are able to respond effectively to the more day-to-day occurrences. By putting in place adequate emergencies legislation, the federal Government will not only be in a better position to respond to the needs of Canadians in an increasingly complex environment, but Canada will be brought into line with other modern democratic states which have had comparable legislation for years.

This legislative package consisting of Bill C-77 and Bill C-76 fulfils the Government's election commitments in the field of emergency preparedness and does so with proper regard for the civil rights of individuals and for the federal nature of Canada.

To paraphrase the Hon. Member for Saint-Denis (Mr. Prud'homme), speaking in the House last April, if Members have suggestions to make . . . I would be delighted to hear them, because we could have legislation which is better, more in line with the spirit of the Charter of Rights and Freedoms and more compatible with what we want to defend.

Revision of the emergencies legislation was part of this Government's election platform in 1984. In February of 1985, at a press conference, the Prime Minister (Mr. Mulroney) publicly committed the Government to an early review of the War Measures Act, when in answer to a journalist's question about when his Government was going to do away with the Act he said, "I don't think you are going to be able to ask me the question much longer. It is under review and we hope to have something for you at an early moment. We hope to bring something forward that will be more appropriate than what we have had in the past". We have kept our promise. I hope that we can move quickly through second reading of Bill C-77 with a view toward starting detailed review in a legislative committee as soon as possible.

Consideration of this legislation provides Parliament with its first opportunity for a full review and debate of emergency preparedness matters. It also provides an opportunity for the general public to become informed of and engaged in the issues involved.

Finally, passage of this Bill will provide effective machinery to deal with unforeseen and potentially disastrous events while fully safeguarding the rights of Canadians.

I am fully in accord with my friend, the Hon. Member for Brant, who said in the House:

> We should deliberate in an air of calm and reason . . . We have time to consider what we are setting in place for future generations. There is no war. There is no apprehended insurrection, no violence, no upheaval. Now is the time to give it straightforward, serious, cautious and deliberate consideration.

I am heartened that my hon. friend should say this. I agree with him entirely that, in his words, "now is the time for the parliamentary process to shine". I also totally agree that we will need testimony from both expert witnesses and ordinary Canadians to get this legislation right, for I know full well that it is an issue that touches the very lives and liberties of every Canadian. I urge the House to send the Bill to committee with the least possible delay so that the committee can get on with its work of inviting the public to be heard. I am confident that all Members of the House recognize the importance of this legislation. I believe that together we can work out, in a non-partisan way, the best legislation possible.

Some Hon. Members: Hear, hear!

Mr. Speaker: I think there is some understanding in the House that perhaps the Hon. Minister of State could be heard.

* * *

BUSINESS OF THE HOUSE

DISPOSITION OF PRIVATE MEMBERS' BUSINESS

Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)):) Mr. Speaker, there have been discussions among the Parties. The Hon. Member for Annapolis Valley—Hants (Mr. Nowlan) is unable to be here this evening to proceed with consideration of his Private Member's Bill at 5 p.m. Therefore, the Parties have agreed to cancel this evening's Private Members' Business and Government Orders will continue until 6 p.m. at which time the normal adjournment proceedings would commence.

I would also advise that Parties have agreed that the Hon. Member's item will be dropped to the bottom of the list of the order of precedence on the Order Paper.

Mr. Speaker: Hon. Members have heard the terms of the suggestion by the Minster of State. Is it agreed?

Some Hon. Members: Agreed.

* * *

EMERGENCIES ACT

MEASURE TO ENACT

The House resumed consideration of the motion of Mr. Beatty that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be read the second time and referred to a legislative committee.

Mr. Len Hopkins (Renfrew—Nipissing—Pembroke): Mr. Speaker, I am glad that the Minister of National Defence (Mr. Beatty) started off this debate today with a lengthy explanation of the Bill as he sees it and as he intends it.

This Bill before the House today is not to be taken lightly. Such measures are of extreme importance to any nation. This Bill deals with the basic theories and practices of the democratic process itself and fundamental rights and responsibilities of the people of the country.

Bill C-77 before us today, called the "Emergencies Act", replaces the War Measures Act, while Bill C-76, which is entitled the "Emergency Preparedness Act", is to replace the emergency measures organization which did not have a clear basis in legislation. That piece of legislation is important particularly to provincial and municipal governments because there seemingly was a lack of direction for the municipalities. They were sometimes confused and frustrated with that legislation.

Bill C-77 is a major piece of legislation. Let us make no bones about that. At a glance it makes one realize that it too is a very strong measure, taking nothing away from the War Measures Act. I will be looking at the court system for compensation later on in my speech, as I think that is an inadequate part of this legislation.

• (1200)

We must remember that the War Measures Act was initially passed by the Conservative Government of Sir Robert Borden. It was passed through this Parliament with limited

Source: Nikkei National Museum, 2018-16-4-1-1-89
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debate and no dissent on August 21, 1914, only 15 days after the outbreak of the First World War. We must remember that Parliaments of the day had witnessed a long period of peace in the world. From 1815 to 1914, there were 99 years of virtual world peace, except for a few minor fracas such as the Crimean War from 1853 to 1856, the Boer War from 1899 to 1902, and the Russo-Japanese War from 1904 to 1905.

Therefore, we must remember when we are considering this legislation that Canadian parliamentarians had relatively little or no experience with such emergency measures legislation. Canada itself had virtually none, because it had never been a major player in international controversies.

I wish to refer back approximately 127 years to the 1860s and a statement by Abraham Lincoln. Under emergency powers, the political rationale underlying resort to emergency powers was summed up by him in the following manner:

> Every man thinks he has a right to live and every government thinks it has a right to live. Every man when driven to the wall by a murderous assailant will override all laws to protect himself and this is called the great right of self-defence.
>
> So every government when driven to the wall by a rebellion will trample down a constitution before it will allow itself to be destroyed. This may not be constitutional law but it is a fact.

This underlying rationale of self-defence, resting on the concept of necessity, is often expressed in the maxim of "the safety of the people is the highest law".

Emergencies, which may require extraordinary powers to overcome them, are of many types. A United Nations study of 36 constitutions in the early 1960s lists a wide range of threats to the well-being of the polity which those constitutions recognized as permitting the taking of emergency measures. That list includes international conflict, war, invasion, defence or security of the state or part thereof; civil war, rebellion, insurrection, subversion, or the harmful activities of counter-revolutionary elements; disturbance of the peace, public order or safety; danger to the constitutional authorities; natural or public calamity or disaster; danger to the economic life of the country or parts thereof; and the maintenance of essential supplies and services for the community.

On this basis, in terms of the United Kingdom, leaving aside armed conflict between states, one might identify as potential candidates for the use of emergency powers, at least in some circumstances, certainly, the activities of domestic nationalist terrorist groups, particularly of Republican and Loyalist paramilitaries.

In starting off this debate today we must remember when we go back 127 years that the feeling about such legislation was quite different than it is today. I would also submit that when the War Measures Act went through this Parliament, in August of 1914, the thinking in Canada was quite different than it is today when it comes to the subject of civil liberties and law and order.

The Minister has stated that this Bill must be looked at in the calm of the present state of peace in this country and in the world. That is very important. We must remember that the War Measures Act was passed when this country—in fact the world—was in a state of war. There was not time to do some serious thinking about such measures.

The War Measures Act was modelled after the English Defence of the Realm Act which was passed by the British Parliament on August 8, 1914, a few days before the War Measures Act became law in Canada. This would again indicate that the Government of the day, or the Parliament of Canada, lacked experience in those things, because it was basing this legislation on an Act of the British Parliament that had been passed only one week before the War Measures Act itself.

The one big difference between the two Acts was that the British Act was intended to operate only for the duration of the war; the Canadian Act was drafted in such a manner that it remained on the statute books to be invoked when deemed necessary to the executive, meaning the Cabinet.

The War Measures Act as passed in 1914 granted the Governor in Council extremely broad powers to pass regulations in time of war, invasion, or insurrection, real or apprehended. The simple issuance of a proclamation by the Cabinet represented conclusive evidence that war, invasion, or insurrection, real or apprehended, did in fact exist.

Once the proclamation was issued, the Cabinet was allowed to make orders and regulations deemed necessary or advisable for the security, defence, peace, and welfare of Canada.

Section 6 of the 1914 War Measures Act specifically included censorship of all means of communication, arrest and detention, control of harbours, territorial waters, and vessels, transportation of any type, trading, production, and manufacture, and appropriation and control of property. Besides all of this, the termination of the emergency situations in which the War Measures Act was to be proclaimed was also to be by executive or Cabinet proclamation.

This famous Act of 1914 amended the Royal Northwest Mounted Police Act by authorizing an increase in the size of the force. At the same time it amended the Immigration Act by preventing those who left Canada to help the enemy from landing, remaining in Canada except with the Minister's consent. It also gave retroactive statutory sanction to all measures that had been taken from August 4 until the Bill became law, including the declaration of war itself on August 4, 1914. All this took place in the crisis atmosphere of this Parliament in August of 1914. Is it not sensible and realistic to believe that another crisis in this Parliament could produce similar legislation?

Let us not forget that as we stand here debating this new legislation today—if I may use a pun—in the serenity of this Parliament, that it is incumbent upon us to produce sound legislation with a view to protecting, as far as possible, the rights and privileges of every Canadian, after we have taken into consideration the responsibilities of every citizen in times of crisis, and indeed the responsibility of the Government.

Let us look at some sections of the Emergencies Act before us today. Under Part IV of the War Emergency Part of Bill C-77, Clause 38 has an elastic clause. It states:

> 38. (1) While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as, in the opinion of the Governor in Council, are reasonably necessary or advisable for dealing with the emergency.

This gives the Government very broad powers indeed.

Let us look at the orders and regulations under Part III of the Bill dealing with an international emergency. Under orders and regulations Clause 28 states:

> 28. (1) While a declaration of an international emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as, in the opinion of the Governor in Council, are reasonably necessary for dealing with the emergency:
>
> (a) the control or regulation of any specified industry or service, including the use of equipment, facilities and inventory;

• (1210)

This is practically confiscating the services at hand. Subclause (b) reads:

> the appropriation, control, forfeiture, use and disposition of property or services;

The right to property is abrogated in this clause.

The next subclause is a very good comparison with the War Measures Act itself. Subclause (c) reads:

> the authorization of the entry and search of any dwelling-house, premises, conveyance or place, and the search of any person found therein, for any thing that may be evidence of a contravention or suspected contravention of any order or regulation made pursuant to this section, and the seizure and detention of any such thing;

Subclause (d) reads:

> the authorization and conduct of inquiries in relation to the administration or enforcement of orders or regulations made pursuant to this section, including the conferral of powers under the *Inquiries Act* on any person authorized to conduct such an inquiry;

There is no difference here from the War Measures Act which this Act really replaces. Subclause (e) reads:

> the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide;

Their services are seconded. Subclause (f) reads:

> the designation and securing of protected places;

That is common sense. Subclause (g) reads:

> the regulation or prohibition of travel outside Canada by Canadian citizens or permanent residents as defined in the *Immigration Act, 1976* and of admission into Canada by other persons;

Subclause (h) reads:

> the removal from Canada of persons, other than Canadian citizens or permanent residents as defined in the *Immigration Act, 1976*;

Subclause (i) reads:

> the control or regulation of the international aspects of specified financial activities within Canada;

In the present trade discussions a lot is being discussed about the United States having the right to invest in the Canadian financial and commercial communities. What will be the relationship between that situation, if it ever comes about, and the fact that during wartime or during a crisis international aspects of specified financial activities within Canada will be regulated by the Government of Canada in a stronger manner?

Subclause (j) reads:

> the authorization of expenditures for dealing with an international emergency in excess of any limit set by an Act of Parliament and the setting of a limit on such expenditures;

Here we have the Government setting expenditures and setting compensation costs for Canadian citizens that will come up later.

If one does not abide by all these provisions in Bill C-77, replacing the War Measures Act, here is the penalty:

> the imposition, on summary conviction or indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment for contravention of any order or regulation made under this section.

Section 4 of the War Measures Act also provides for a penalty which shall not exceed $5,000 or inprisonment for five years or both. It is exactly the same pattern.

The War Measures Act was amended in 1960 by the Canadian Bill of Rights. The 1960 amendment provided that anything done under the War Measures Act was to be deemed not to be an infringement, abrogation, or abridgment of any right or freedom recognized in the Canadian Bill of Rights.

This really means that the Diefenbaker Government passed its Bill of Rights in 1960, got a lot of publicity for having passed it, and then immediately thereafter said that the Bill of Rights did not apply to the War Measures Act. Through those years, right up until the Charter of Rights and Freedoms was finally passed in Parliament in 1982, there were no controls on the War Measures Act. While the Diefenbaker Government took a lot of credit for bringing in the Bill of Rights, it did not apply it to the War Measures Act. It also provided for the laying of a War Measures Act proclamation before Parliament after its issue and for the consideration of its abrogation by both the Senate and House of Commons.

Bill C-77 respecting the Emergencies Act has incorporated the practice of laying proclamations before Parliament within seven days of a declaration. That amendment also took place with the War Measures Act itself.

The essence of the War Measures Act is its perception as a last resort piece of legislation, to be used only in limited circumstances, and this limitation should be placed on any emergency legislation. As a consequence, the War Measures Act has been invoked only three times since its adoption in 1914—during and after World War I, during and after World War II, and during and after the October 1970 crisis.

One must not be led to believe that any one package of emergencies legislation is the be-all and end-all in the handling of a crisis. This is why it is very important that this piece of legislation be sent to a legislative committee. I gather from the

Source: Nikkei National Museum, 2018-16-4-1-1-90
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speech delivered by the Minister this morning that he is probably in the mood to look at some constructive amendments to the Bill at that stage. I think this is a piece of legislation that must be looked at seriously and very constructively by all political Parties in the House.

The new emergencies legislation can be resorted to in many different situation, both in peacetime and otherwise. It can be invoked where there has been a natural disaster and where there has been a breakdown in the flow of essential goods, services, or resources—for example, a strike. The Minister mentioned that this morning by way of clarification. It is probably one section at which we will be looking for an amendment to include that clarification in the legislation.

It can also be invoked where there have been serious threats from within the country to the security of Canada. That is an important point that I do not think anyone can disagree with. Also it can be invoked in cases of real or apprehended acts of violence from another country toward Canada, or even in cases of apprehended acts of violence from another country toward an ally of Canada, and, finally, after a proclamation of a state of war itself.

I think it should be said at this point that legislation of this nature is not easy to come by. When we look at the War Measures Act and at World War I and World War II, we must be cognizant of the fact that those were very crucial years, not only for the people who passed the legislation but for those who administered it. As well, it was a very crucial period for every citizen of Canada and for every citizen of the free world.

For this reason we must appreciate the fact that, even though the War Measures Act was inadequate in some ways, it was the vehicle that brought the free world through two world wars and afterwards was dispensed with and life went on.

In each of the above cases the new emergencies legislation would authorize Cabinet to suspend certain civil liberties. The legislation will allow for the regulation or outright prohibition of travel within Canada and of public assembly. It will authorize the appropriation of property including public utilities and services and the rendering of essential service. These are particularly strong measures.

It would also allow for search and seizure without warrant, as I have mentioned; the removal of any non-Canadians from Canada; and the regulation of international financial activities in Canada. If, as some assert, the War Measures Act is overkill, then clearly the new emergencies legislation has a quality of that in many sections of it as well.

The procedures for citizens to receive compensation for losses under the War Measures Act and the new Emergencies Act is an interesting comparison. Section 7 of the War Measures Act of 1914 reads as follows:

> Whenever any property or the use thereof has been appropriated by Her Majesty under this Act, or any order in council, order or regulation made thereunder, and compensation is to be made therefor and has not been agreed upon, the claim shall be referred by the Minister of Justice to the Exchequer Court of Canada, or to a superior or county court of the province within which the claim arises, or to a judge of any such court.

• (1220)

The regulations in Clause 22.1 of Bill C-77, the Emergencies Act, on page 32, give the Governor in Council the right to prescribe the form and manner of making applications for compensation. I want to repeat that. The clause gives the Governor in Council the right to prescribe the form and manner of making applications for compensation. If one has been wronged, the Government decides whether or not he or she has a right to apply for compensation.

The clause gives the Cabinet the right to do the following. The Governor in Council may make regulations prescribing the form and manner of making applications for compensation under Section 22, the information and evidence to be submitted in connection therewith and the procedure to be followed in the consideration of applications for compensation. The Government is deciding to be its own court and master.

Second, the Governor in Council may make regulations prescribing the period within which applications for compensation must be made and prescribing the criteria to be used in determining the eligibility of any person for compensation. The Government is setting up its own court of law here.

The Governor in Council may also make regulations prescribing the methods and criteria to be used in assessing any deprivation of property for which compensation may be paid.

The legislation goes on to say in subclause (e) that the Cabinet has the right to prescribe the maximum amount of compensation that may be paid to any person either generally or with respect to any particular deprivation of property. If one has lost a great deal of property or has been wronged to a great extent financially, there is a limit to what one can get and the rest is simply lost.

The Cabinet also has the right to prescribe the terms and conditions for the payment of compensation. The Cabinet provides for the payment of compensation in lump sum or in periodic payments. The way claimants are to be paid is also laid on. That is not quite the way the business world works today. One does not draw up one's own conditions of payment.

The Government will provide for payments of compensation on a term basis, establishing priorities among persons applying for compensation on the basis of classes of persons or classes of deprivation of property or otherwise. When talking about classes of persons and who will qualify and who will not, one gets into a very dicey area. This becomes a very crucial piece of legislation. It has some very damaging effects on the individual who is trying to recoup losses.

Part I, the Public Welfare Emergency Part, deals with fire, flood, drought, storm, earthquake or other natural phenomenon, disease in human beings, animals or plants, accident or pollution, the breakdown in the flow of essential goods, services or resources that results or may result in a danger to life or property or social disruption so serious as to be a national emergency. The declaration of emergency shall be laid before the House of Parliament within seven sitting days after the declaration is issued. The declaration of a public welfare emergency expires at the end of 90 days unless the declaration is previously revoked or continued in accordance with the Bill itself, but the Public Welfare Emergency part under Orders and Regulations lists a number of items in Clause 6, some of which have already been mentioned.

I think that the requisition, use or disposition of property in paragraph (c) affects property once again. The clause deals with the regulation of the distribution and availability of essential goods, services and resources and the authorization and making of emergency payments, the establishment of emergency shelters and hospitals, the assessment of damage to any works or undertakings and the repair, replacement or restoration thereof. It deals with a number of constructive things but still many things are to be seconded from people and industry for the purpose of dealing with an emergency.

Parliament may revoke a declaration of public welfare emergency in accordance with Clause 56 or Clause 57 of the Bill. There is a procedure for this outlined in the legislation. Clause 10(2) is important to the extension of such declarations under the public welfare section because it outlines further conditions for how these things can be handled.

Provincial jurisdiction and federal-provincial relations are given paramount consideration in the Bill. In cases of emergency, the Government may have to act before consulting a province and there is provision to do that. One wonders if in serious cases it will always be possible to consult the provinces ahead of time and get their feelings on these things, because some serious decision will have to be made in a hurry. That is what the legislation is there to do.

The Public Order Emergency Part of this legislation is a very key part of this Bill. A public order emergency means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency. A public emergency order expires at the end of 60 days and it too can be revoked before that time or it can be continued thereafter. A motion for confirmation of the public order emergency must be laid before Parliament and if Parliament happens to be prorogued, it will have to be recalled.

What does a public order emergency declaration contain? That is set out in Clause 15 on page 8 and is a very crucial part of the legislation. Clause 15 contains a list of items and reads as follows:

> (1) When the Governor in Council is of the opinion that a public order emergency exists in Canada and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 23, may, by proclamation, so declare.
>
> (2) A declaration of a public order emergency shall specify
>
> (a) concisely the state of affairs constituting the emergency;
>
> (b) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and
>
> (c) if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.

The proclamation may be continued—

• (1230)

The Acting Speaker (Mrs. Champagne): Order, please. At this time I must interrupt the Hon. Member.

It being 12.30 o'clock, pursuant to order made Wednesday, November 4, 1987, the house will revert to presenting reports from committees for the purpose of enabling the Chairman of the Standing Committee on Finance and Economic Affairs to present the committee's report on tax reform.

GOVERNMENT ORDERS

[*English*]

EMERGENCIES ACT

MEASURE TO ENACT

The House resumed consideration of the motion of Mr. Beatty that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be read the second time and referred to a legislative committee.

Mr. Len Hopkins (Renfrew—Nipissing—Pembroke): Madam Speaker, under the Public Order Emergency Part, which is Part II of Bill C-77, there are some very strong measures introduced to be put into practice. It is important that we are not conned into thinking that Part II, Public Order Emergency, is a light piece of legislation. It is very strong in its statements. It certainly infringes on civil liberties to a great extent. If we go on to the International Emergency Part, we find that the declaration outlines the state of affairs. It is very strong. Part III, Clause 25, reads:

> "international emergency" means an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that directly threatens the sovereignty, security or territorial integrity of Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

While we have an alliance to which we belong, the legislative committee will have to look very carefully at this clause under "International Emergency" which can drag Canada into a conflict as a result of another country's activities or problems.

You will know that when the War Measures Act was invoked in 1970, Madam Speaker, it expressly overrode the Bill of Rights. Furthermore, we had no Charter at that time. We now have a Charter. Let me point out that if the Diefenbaker Government in 1960 had not specifically stated that the Bill of Rights did not override the War Measures Act we would have had those measures controlling the War Measures Act in 1970. It is, therefore, understandable that my Leader

Source: Nikkei National Museum, 2018-16-4-1-1-91
www.nikkeimuseum.org

lamented having to use the Act, precisely because there was no check on the exercise of its powers. That situation no longer exists today and it will not exist under this legislation.

I want to quote a statement which the Leader of the Opposition (Mr. Turner) made in the House on October 16, 1970. During the debate on the war measures legislation at that time he said:

> The rule of law is the essential condition not only for the existence of the state but for the existence of individual liberty within the state. Freedom is the precondition of liberty, and restraint is the beginning of freedom. The rule of law is the source and condition of that restraint, and through it the freedom and the liberty of the individual in society are maintained.
>
> Insurrection and violence are not only a total denial of the constituted authority of the state but are a denial of the liberty of the individual himself who depends upon the controlled organization of the state. This type of violence defies not only the total integrity of society as a people but the individual integrity of every person in that society.

An important part of this legislation is that Part II, Public Order Emergency, if strictly enforced, gives a cruel Government, a huge Government or a Government emotionally motivated rather than rationally motivated, maybe trying to get political points by a show of force, the basis for that Government to act. This particular section of the Bill is one that we will have to look at very carefully while scrutinizing the legislation in a legislative committee.

I want to say to the Minister of National Defence (Mr. Beatty)—and this is no reflection on him as a person in any way whatever, but from comments I have been getting, the populous would feel a little more relieved if the administration of Bill C-77 when it becomes legislation were under a Minister of the Government other than the Minister of National Defence. As I say, there is nothing personal read into that, but just an uneasiness that some people feel.

The fairness that must be built into this legislation is extremely important. While the War Measures Act was important to the free world during the crises of World War I and World War II, let us keep in mind those people we recently remembered at the cenotaphs across the country who fought and died by the tens of thousands to leave behind a Canada on which the rest of us could build. It is extremely important today that we remember them and the Canada which they wanted for the future.

We must consider what must be done in this Bill to accommodate the civil liberties, the property rights and the freedom of Canadians, whether it be during wartime or peacetime, so that under the part dealing with compensation those people be given the right to get compensation on an equal basis before the courts of Canada.

One writer discussing this Bill has stated:

> Those whose liberties—or property—were harmed would be given the right to compensation.
>
> The only worry here is that a section of the Bill provides a long list of regulations under which the Cabinet could define the ambit of compensation. A mean-spirited Government, or one intent on *post facto* justifications for its actions, could make compensation unnecessarily limited by restrictive regulations. Fortunately, a Federal Court judge would hear appeals from ministerial decisions, though he could not unilaterally increase the monetary compensation offered by the Government. Even with the Federal Court appeal, the Government has set itself up too much as judge and jury over compensation awards.

• (1240)

That was written by Jeffrey Simpson in *The Globe and Mail*. These are important things to consider at this time.

We should also be thinking very seriously of how we will maintain a fair balance between what is needed in times of war as emergency legislation and what is needed in peacetime. We certainly do not want this law to be put into full force during times of peace. I refer to Clause 1, as an example, which relates to property. That should only be implemented under very extreme conditions.

No legislation of this type is perfect and this Bill certainly is not. Part II bothers me a great deal: Clause 1 contains some very strong regulations and orders. Let us get this Bill into a legislative committee where it can be studied clause by clause and where the long-term results of it can be considered.

Another important point is that people must be allowed to appeal to the Federal Court, at which level assessors assess the terms of compensation for citizens who have been wronged. Citizens should have the right to appeal to the Supreme Court of Canada as they do from any other court in Canada. Even the War Measures Act contains the right to begin at the county court level and continue through to the Supreme Court. This Bill should offer no less. If it does, it will appear to be stronger in some sections than the War Measures Act itself.

Mr. Derek Blackburn (Brant): Madam Speaker, this is the second time I have had the pleasure of standing up at second reading of Bill C-77 to present arguments and a speech. By way of clarification, on the afternoon of November 2 Bill C-76 went through the House like a white tornado and Bill C-77 immediately followed. At that time I was the only one in the House prepared to speak on Bill C-77. No one from the Liberal Party was available and the Minister, who obviously did not think the Bill would come forward on November 2, was out of town on government business I believe. Therefore, with all-Party agreement we have introduced the Bill all over again. I am, therefore, today presenting largely the same speech I presented on November 2, which speech I did not have a chance to complete at that time.

I, along with the Liberal spokesperson, was surprised when I learned that the Minister of National Defence (Mr. Beatty) would be introducing this Bill. My criticism is not in any way personal. It does not in any way reflect on the integrity, honour, or intelligence of our Minister of National Defence It is only that I believe, as I am sure my Party does, that a Bill of this importance and magnitude dealing to a great extent with civil liberties should come under the control of the Minister of Justice (Mr. Hnatyshyn). The implementation of it should be under the Solicitor General (Mr. Kelleher). In other words, it should be primarily a civilian matter, although not exclusively. The Government has put the defence Minister up front with all other Ministers being secondary to him.

I would like to thank the Minister who, in his remarks this morning, responded to some of the remarks I made on November 2 in the abortive introduction of this Bill at second reading. He said that he is willing to consider amendments which would somehow protect the right to strike, on a national basis in particular, but also on a provincial basis. He is also willing to consider amendments which would sharpen the very vague definition of an international emergency in this Bill. Upon reading the Bill one wonders to what extent Canada would be involved in international problems of another country in addition to those of Canada. The Minister also mentioned that he would be prepared to reconsider curbing the limits of search and seizure.

These are important concessions on the Minister's part. However, I wish to state at the outset that there are many other parts of Bill C-77, the so-called Emergencies Act which replaces the War Measures Act, which we think are flawed and deserve a lot of intensive scrutiny at the committee level. The Minister said this morning that he believes as well that this Bill should be given very intensive and critical scrutiny at committee stage.

I hope that all Parties will offer their general views on Bill C-77 at second reading and that we will be in no hurry at committee stage but will be free to listen at all reasonable length to listen to the very best authorities in the country, as well as ordinary Canadians who were entrapped by the War Measures Act in October, 1970, and all other interested persons and organizations, in order that when we finish with Bill C-77 this House will have passed an Act of which we can all be proud and that we will have no reasonable fear can be misinterpreted or misapplied.

Let me say at the outset that New Democrats are determined that the War Measures Act should never be used again. That is why we are pleased that the Minister has brought forward a proposal to replace the War Measures Act. It has been a long time coming and I congratulate him for finally bringing this debate to the floor of the House of Commons.

His Bill is not perfect by any stretch of the imagination, as far as we in the New Democratic Party are concerned. I will use this opportunity to explain in detail my very deep concerns relating to Bill C-77.

First, I want to say that I hope the parliamentary process, particularly in committee, will be allowed to work. We have heard many nice words from the Government about the spirit of parliamentary reform. In truth, we have made some progress in this Parliament, thanks to the work of the committee led by the former Member for St. John's East, the present Lieutenant Governor of Newfoundland.

Now it is time for the parliamentary process to shine. We will need many hearings and a great deal of testimony from both expert witnesses and ordinary Canadians, as I mentioned a few moments ago. This is an issue which touches the very lives and liberties of every Canadian. It involves an issue that cuts to the very heart of the Canadian consciousness. Is there anyone in this House who was not in some way touched by the events of October, 1970?

I recall, Madam Speaker, that I entered a by-election campaign only a few months after the October crisis. There was still a lot of very deep concern in my part of the country in the spring of 1971 with regard to the invocation of the dreaded War Measures Act by the Trudeau government.

Who could not be affected by the profoundly un-Canadian sight of Canadian troops in the streets to suppress the domestic troubles of their fellow citizens? That is why I am concerned with the paramountcy of the Minister of National Defence as opposed to the Minister of Justice and the Solicitor General. Certainly not all, but most conceivable uses for this Act, when passed, would be of a civilian nature. Heaven help us if we ever go to war again. It would very possibly be the last war mankind would ever fight. Although I hope it never happens, we may at some time in the future have to deal with civilian unrest in the country during which our laws and the order of government would be severely tested. I still maintain that the Criminal Code, the police forces, the courts, the Crown prosecutors, defence lawyers, Minister of Justice and the Solicitor General should all be primarily involved in Clauses 1

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GOVERNMENT ORDERS

[*English*]

EMERGENCIES ACT

MEASURE TO ENACT

The House resumed from Monday, November 16, consideration of the motion of Mr. Beatty that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be read the second time and referred to a legislative committee.

Mr. David Orlikow (Winnipeg North): Mr. Speaker, the War Measures Act, which was passed by the Canadian Parliament in 1914, has become Canada's all-purpose emergency legislation. Using this Act, it was possible to intern thousands of Canadians during World War I and to outlaw organizations such as the Communist Party and Jehovah's Witnesses. The War Measures Act made it possible for the internment of thousands of Japanese during World War II and the displacement of some 20,000 Japanese from their homes and properties which were subsequently sold. It was possible, using the provisions of this Act, to forcibly detain hundreds of Canadians during the FLQ kidnappings of October 1970. It was also possible at that time to use the legislation to authorize police raids on students and peace activists in Manitoba and Ontario.

Once the Act had been invoked and the powers given, Governments were very slow to remove them. The Act invoked in 1914 was in force until January 1920. The War Measures Act was invoked during World War II and was in force until 1951. Following the invocation of the Act in 1970, it was kept in force until April of 1971.

It has obviously been very easy for a Government of Canada to invoke a crisis atmosphere. In 1970, it was done very quickly and easily and, in the minds of many people, often for the wrong reasons. It was not because the Government feared an insurrection or an apprehended insurrection, but that it wanted to choke off legitimate democratic dissent in Quebec. It tried to permanently stop the growth of the independence movement in that province and, as some people said, to put Quebec in its place.

We know, Mr. Speaker, that it did not stop the growth of the independence movement. In fact, I would maintain, and many people would agree with me, that it was the incarceration of more than 200 people, none of whom were terrorists or revolutionists, but obviously nationalists, which led, to a large extent, to the rapid growth of the Parti Québécois and to its winning of an election using democratic means. Those were political aims and were not security matters at all.

Of course, I as indicated in my earlier remarks, it is very difficult to deal fairly, objectively and cooly with an issue when there is what the public perceives to be a very dangerous situation. It is very difficult for a government or parliament to deal with that. I know because when I, and most of my colleagues who were Members of Parliament at the time, voted against the War Measures Act, our constituents thought we were doing wrong. Nearly all the provincial Governments supported the then Government. We were alone. But later, the then Leader of the Official Opposition, the Progressive Conservative Party, the Right Hon. Robert Stanfield, praised our Party. He did not do that when we voted against the measure, he did it much later.

• (1120)

It is obvious to me and to others that the position we took was to a large extent vindicated and proven correct by subsequent events. I say that because, despite the claims made by the then Minister in the Liberal Government, Mr. Marchand, that there were thousands of members in the FLQ organization, the fact is that there were only a handful of people and there was no danger or threat of a revolution. It was the present Leader of the Official Opposition (Mr. Turner), the then Minister of Justice, who promised that the reasons the Government imposed the War Measures Act would be explained at a suitable time. That suitable time never came. We still have never had from him or from the former Solicitor General any explanation as to why the War Measures Act was imposed at the time.

As I have already indicated, even the political aim of smashing the separatist movement failed. In fact, the action was counter-productive because it was responsible to a large extent for the election of a PQ Government in 1976. It is perhaps easy to be right with hindsight but, in this case, members of the New Democratic Party were right at the time. Some of us paid for it politically.

Having had that experience, I would want the successor legislation which we are discussing at the present time to be far better than what we had. In this way the kind of misuse of the Act and the way in which people have been mistreated, for example, the Japanese, the Jehovah's Witnesses and the people in Quebec who were mistreated and lost their democratic rights, would not happen again. We are not satisfied that the Bill we are discussing today will accomplish those aims or see that the excesses which were permitted on using the War Measures Act will not be used again.

Let me point out some of the difficulties we see with the present Bill. The public welfare emergency which is dealt with in Clauses 3 and 6 of the Bill directly affect the provision of goods and services in Canada during an emergency. As such, it is seen as legislation which can be used to end legitimate labour stoppages. The Canadian Civil Liberties Association stated in its submission to the Minister of National Defence (Mr. Beatty) on October 5 of this year the following:

> Despite the economic disruptions which may be inflicted by strikes in the post office, the railways, or even the auto industry, we would be loath to see them become ready targets for emergency powers.
>
> While there may be some circumstances in which some strikes have to be terminated in the public interest, we believe it is preferable that such action be taken in the context of well-balanced labour legislation or by specific statutes narrowly addressed to specific circumstances.

I point out to Hon. Members that that is precisely what we have done with regard to the Post Office and the railways and what we might very well do in respect of the current airline dispute at Air Canada. We do not need that type of provision in this Bill.

Public order emergency is defined in Clause 14 of the Bill as "threats to the security of Canada" based on the Canadian Security Intelligence Service Act. How can we be sure that the distinction between subversion and dissent will be respected? CSIS is having great difficulty in doing so.

As I pointed out earlier, we have as an example of that the surveillance performed by the RCMP and CSIS of poor Nick Turnette in Winnipeg. Many things can be said of him, but he has certainly never said or done anything no one who knows anything about Winnipeg or Nick Turnette would suggest it for a moment—that could be classified as subversive. It would be ludicrous and laughable if it were not so sad to see how the activities of CSIS are being misused.

International emergency is defined as a threat to any country in which the political, economic or security interests of Canada or any of its allies are involved. That is contained in Clause 25 of the Bill. It is far too broad a power. Who would want to threaten someone with sanctions for simply carrying out normal business practices that could be construed as against the interests of Canada or its allies? The Canadian Civil Liberties Association points out that there are few places in the world in which Canada or its allies do not have political, economic or security interests.

War emergencies in this Bill are virtually unchanged from the provisions of the War Measures Act. Is this really good enough for a country which has seen such rapid development in human rights legislation and organization over the past 20 years?

In conclusion, I want to say that the Minister was quite critical of the excesses of the War Measures Act in his remarks, and quite properly so. A body which acted against the War Measures Act in 1970 is the Canadian Civil Liberties Association. If the Minister is sincere about wanting to remove the excesses of the War Measures Act he should listen carefully to the association. It certainly does not support the Bill as he has drafted it.

In its submission to the Minister the association has asked time and time again for more precise drafting and specific definitions of the powers being granted to the Government under the provisions of this Bill. In the end, it makes 23 recommendations to improve the Bill. The recommendations are as basic as wanting a simple definition of the word

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"emergency" so that the law can only be invoked when there is imminent and serious peril to the lives and health of many people. It also asks for an independent adjudicator appointed by the Canadian Labour Relations Board to award compensation for those ordered to perform duties in connection with the use of emergency powers. It also asks that the Government accept the duty to provide compensation for those injured by the exercise of emergency powers. Surely, if the experience with the Japanese Canadians is to mean anything, then there must be a clear-cut responsibility to negotiate compensation—not just the power to do so but the duty to do so. After all, the Japanese have been waiting 45 years, and they still have not received compensation for the injustices perpetrated upon them.

Finally, the association makes a request to limit the Government's power to prohibit and regulate assemblies during public order emergencies. As the association states, the right of assembly is fundamental to a democratic society, and perhaps it is the key right to achieve the goals of democracy. In the words of the association:

> In so many ways, the right of peaceable assembly serves as a prerequisite to the existence of other freedoms. It represents one of the most potent ways that citizens can challenge excesses of government power. Indeed, one of our concerns is that this power might be used to prevent legitimate critics from effectively calling into question the very declaration of a public order emergency.

In the end, democracy must hold sway, if our form of government is to mean anything at all. If a government limits or even threatens to limit the power of assembly we have the very real possibility that force will be substituted for democratic principles. I remind Hon. Members that that is precisely what the Government of South Africa does in order to maintain the power of the white minority over the huge black majority in that country. We do not wish that situation to even be possibly used in Canada.

• (1130)

We ask, do we not have confidence in our democratic ways? In this legislation can we not say that the democratic rights of Canadians come first and limitations on them must always be tightly drafted to cover specific situations in order that the climate of repression and fear, which has too often been used by Governments in the past, will be replaced by confidence in our people and in their inherent democratic sense?

For the reasons that I have outlined, we will not vote for this Bill, certainly not in the form in which it is drafted at the present time.

Mr. Blackburn (Brant): I listened with interest to the Hon. Member's speech on Bill C-77. Would the Hon. Member care to comment or expand upon an issue that I raised yesterday in my speech when I questioned whether this type of legislation should come in under the auspices of the Minister of National Defence (Mr. Beatty) rather than the Minister of Justice (Mr. Hnatyshyn).

My feeling then was that this legislation would be used mainly in peacetime; it would deal with disorder and disruption within the country when we were not at war. War is certainly the most unusual and most unlikely type of situation in which this legislation would be used. In stating that, I do not in any way cast negative aspersions on the integrity, honesty, or ability of the Minister of National Defence. I meant it more in an academic manner.

I wish to ask the Hon. Member for Winnipeg North (Mr. Orlikow) if he agrees that legislation like this should be in the civilian domain as opposed to the military.

Mr. Orlikow: I certainly agree with the Hon. Member for Brant (Mr. Blackburn). I can only speculate and guess as to why it was the Minister of National Defence who brought in this Bill. I suppose the reason is that once the Bill is imposed it is the Armed Forces that carry out its provisions.

I certainly agree with the Hon. Member for Brant, both in principle and in fact, that this is a matter which deals with the whole question of justice, controls, and a reduction of the democratic rights of the people that are involved in the use of this Act. Therefore, I believe that this Bill should have been brought in and a decision to implement it should be made by the Cabinet on the recommendation of the Minister of Justice (Mr. Hnatyshyn) rather than the Minister of National Defence.

My view has nothing to do with how I feel about the present Minister of National Defence, the Minister of Justice, the Solicitor General (Mr. Kelleher), or any other Minister. It is pretty obvious to me that this Bill should have been dealt with as a matter of our whole system of justice and how it affects the democratic rights and freedoms of the people of Canada.

Mr. Hopkins: I wish to ask the Hon. Member for Winnipeg North (Mr. Orlikow) if he believes that the clauses dealing with international conflict and war are strong enough or too strong, and if he agrees that strong measures are needed for direction under those particular circumstances?

The second question I wish to pose deals with the compensation part of the Bill where, under Part V, a Federal Court judge becomes the assessor to assess cases when complaints come requiring compensation for citizens of Canada. First, they decide whether the citizen has a case in point, and whether he or she deserves compensation. They have the authority to make that decision under this Bill. After the case is heard, and if the citizen is not satisfied with the decision, the only manner in which the case can be appealed is back to the Federal Court where the decision came from in the first place. The Federal Court assessor or judge will then make a recommendation to the Government.

The one thing that the assessor cannot do is increase the amount of money as far as the Government is concerned, because it has already put a ceiling on what it will pay by way of compensation. Clause 50(3) states in part:

> (3) The decision of the Assessor on any appeal under this Part is final and conclusive and is not subject to appeal to or review by any court, except in accordance with Section 28 of the *Federal Court Act*.

That latter part simply means that there is no appeal as long as the court follows the due process of law and the rules of natural justice. If the court does not base its decision on a mistake of fact or law, or interpretation thereof, in essence what it means is there shall be no appeal.

Does the Hon. Member feel that in this particular clause the Government is in fact setting up its own legal system to manage this Bill? Indeed, is it being its own decision maker in the end? It is the one that will decide whether or not a Canadian citizen deserves compensation.

It is interesting to note that under the War Measures Act a Canadian citizen had the right to take a case to a county or district court and from there they could automatically go to the Supreme Court of Canada. We know that that is a long route, but a citizen did have that option. Is it fair that a Canadian citizen should stop at the Federal Court of Canada and not have access to the due process of law throughout the legal system of Canada from the bottom up to the Supreme Court of Canada?

Mr. Orlikow: I am not a lawyer, and obviously I am not an expert. I am hesitant to give answers to the somewhat technical questions asked by my hon. friend. However, let me state that I am very doubtful that I would wish to support any legislation which states that there can be no appeal from a decision made by any judge. I certainly have reservations about that question.

In respect to the question on involvement in international matters, I wish to put on the record the view of the Canadian Civil Liberties Association in one of its recommendations for changes in this Bill. It states:

> A re-definition of international and war emergencies so as to avoid situations made possible by the current Bill in which emergency powers could be invoked in Canada in response to innumerable and various circumstances elsewhere in the world that only remotely, if at all, affect Canadian interests.

In their brief they use an illustration that Canada has some business and commercial involvement with companies in Indonesia. They say that if there were some kind of emergency or revolution in Indonesia our involvement there, which would be very tenuous, might be used under the provisions of this law to invoke the Emergencies Act in Canada.

• (1140)

I do not feel I could give a more specific answer than that. It points out my feelings and the feelings of the Canadian Civil Liberties Association and the Canadian Bar Association, that before the Bill is passed a great deal of very careful consideration must be given to it clause by clause.

[Translation]

Mr. Charles-Eugène Marin (Gaspé): Madam Speaker, the second reading of the Emergencies Bill has helped to put some

distance between us and the memories of the War Measures Act that still come back to haunt us.

When the Emergencies Bill and the Emergency Preparedness Bill were tabled on June 26 this year, the Minister of National Defence (Mr. Beatty) laid bare the fundamental defects of the present legislation.

"Experience has shown", he said, "that the War Measures Act does not provide for the desired moderate response to national emergencies in peace time. History's painful lesson has been that the Act gives the Government sweeping powers without any guarantees for the fundamental rights of Canadians".

The time has come, not to rewrite history but to prevent a tragic repetition. By adopting this new legislation, we will also bring Canada's laws in line with this country's international reputation. The Summit meeting of heads of state and heads of government from Francophone countries held recently in Quebec City demonstrated the prestige Canada enjoys among both rich and poor nations. Canada owes its reputation to the hospitality, the readiness to share and the respect for the differences of others that is customary among Canadians.

In this context, the War Measures Act is shockingly out of place. It is surprising, to say the least, that Canada is practically the only democratic country—unlike its provinces and territories—that does not have appropriate legislation to deal with emergencies.

The Emergencies Act will correct this anomaly so that the Government will be able to respond to national emergencies through the use of means that, while extraordinary, will be limited to what is strictly required. The Government will be in a position to deal with four main types of national emergencies: public welfare emergencies, public order emergencies, international emergencies and war emergencies.

The Emergencies Act will provide for parliamentary review of the use of emergency powers and their revocation. It will oblige the Government to return to Parliament for any renewal or amendment of a declaration of emergency and to answer to Parliament for the use of these powers. The legislation will limit where and when emergency powers are used and will make it possible to respond appropriately to each type of emergency. Finally, it will enable the Government to act quickly, thus limiting physical injury or material damage.

The *Emergency Preparedness Act* will also reflect the federal Government's desire to be able to respond more appropriately to the needs of Canadians in a state of emergency. It is in this perspective that the legislation will define the role, responsibilities and mandate of Emergency Preparedness Canada.

Furthermore, with the tabling of this Bill, the 1981 *Emergency Planning Order* has been repealed. The Order was criticized because of its wording, which was very open to misinterpretation, and its legal basis. In fact, it was based on a royal prerogative, not a statute, and has now been replaced by

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a Cabinet directive until orders arising from the new legislation can be drafted.

There are times when the subject matter of certain Bills is so important that unanimity should prevail over partisan concerns.

The legislation we are considering on second reading today fits this category.

Madam Speaker, the abolition of the War Measures Act and replacing it with new legislation means the end of a nightmare for those of us who are from Québec and comes in response to a requests made by Members of all Parties represented here, requests that still echo between the walls of this House.

Madam Speaker, as a Quebecer and a Canadian, I am proud that I and, with me, all Members of this House are being asked to turn a stormy page in our history and write another, more peaceful chapter.

The Acting Speaker (Mrs. Champagne): Questions or comments. Resuming debate. The Hon. Member for Cowichan—Malahat—The Islands (Mr. Manly).

[*English*]

Mr. Jim Manly (Cowichan—Malahat—The Islands): Madam Speaker, I welcome the opportunity to make a few remarks on Bill C-77 respecting the Emergencies Act. We should begin by recognizing that all Members of the House and most members of Canadian society would agree on certain basic principles. I think it is helpful if we begin from a recognition of those principles.

If we take the most minimal definition of government, we would agree that it exists to provide for the good order and security of our society. We would agree that a government must have adequate power to protect society from threats to good order and security. We would also agree that in granting such adequate power to government Parliament must build in adequate protection for the rights and liberties of groups and individuals.

There is a recognition that emergency powers themselves can create a threat to the good order of society if those emergency powers are abused. Indeed, the Canadian Civil Liberties Association suggests that the abuse of the War Measures Act in 1970 was a contributing factor to the subsequent abuse of human rights by the RCMP. It quoted the testimony which RCMP Sergeant Robert Potvin gave to the McDonald Commission. When referring to the War Measures Act, he said:

> And so, in our minds, while the Act had been revoked, the situation had not changed, and that to some extent many of the same measures that had been used at that time seemed to us to be still necessary. And so there was a kind of attitude, if you will, that prevailed among those of us that were doing the work.

It is absolutely essential that adequate power for government to protect against threats to society must be balanced by adequate protection for groups and individuals so that these powers are not abused.

We all know the saying of Lord Acton: "Power tends to corrupt; absolute power corrupts absolutely". It is a fact that in a time of crisis a panic atmosphere often develops which allows the Government and the authorities to take action which would not be allowed in a time of more sober reflection.

• (1150)

This measure gives the Government much wider latitude to deal with situations than Canadian people would wish, in a time of reflection. Individual rights would be ignored or trampled upon. Right now we are in a time of comparative calm when we should be able to look at Bill C-77, the Emergencies Act, in a spirit of reason, looking at both sides of the question.

In general, while maintaining the balance between the requirements of the state and the need to protect the rights of individuals, Members of the Opposition might be expected to champion the rights and liberties of individuals and to oppose strongly the increase of government bills at the expense of those rights. Conversely, government Members might be expected to insist on broad enough government powers to deal with any conceivable emergency. These are the traditional roles that the Government and the Opposition have tended to play in Parliament when dealing with this kind of emergency legislation. Perhaps this might be a very good time to have this kind of a debate. We are not that far away from an election when it is very likely that we will be changing which side of the House we sit on. It is a good time for us to be thinking about the arguments of the other side.

New Democrats, as we contemplate the possibility of being in Government, will want to ensure that government will have adequate authority to deal with emergencies even as we continue to be concerned about the need to protect individual rights and liberties. I am sure that government Members will want to be thinking of the time not too far distant when they will be sitting in opposition. They will not want the Government to have undue powers. I urge government Members to have that medium term point of view—not a long term point of view but a medium viewpoint, instead of an exceedingly short term one.

We can look at the way in which the old War Measures Act has been abused. I think all Members here recognize that fact, and feel it is long overdue for the scrap heap of history. When we look at the old War Measures Act we see a couple of very shameful incidents in Canadian history, perhaps the foremost of which is the deportation from British Columbia and the internment of the Japanese during World War II. This is something that cannot be considered by intelligent Canadians without a sense of shame.

I said that we should be conducting this debate this morning in an atmosphere of a spirit of reason. At the same time we have to bring a certain degree of commitment and emotion to this debate. When we look at the way we treated the rights of Japanese citizens in Canada during the Second World War we cannot feel anything but shame. These people were forcibly evicted from their homes, their homes were seized, their businesses and properties were expropriated, they faced restrictions on travel and their families were separated. Ken Adachi in his book *The Enemy That Never Was* points out that no Japanese was ever convicted of espionage and yet we treated the Japanese as being enemies of Canada solely on the basis of race, a most shameful example of the way in which we trampled upon the rights and liberties of Canadians. The native born nisei and the naturalized issei, that is the Japanese who had been born in Japan and had come over here and taken up Canadian citizenship, were treated worse than the issei aliens, that is the Japanese who had come over here and had never taken out Canadian citizenship, because the issei who had never been naturalized were under the protection of the International Red Cross and the Spanish embassy. We treated our own citizens more shamefully than the aliens who were still citizens of Japan, a country with whom we were at war at the time. That was a shameful incident in Canadian history.

We could look at the false emergency of 1970 when the War Measures Act was proclaimed, and yet the reasons for the proclamation of that War Measures Act have never been justified. We have heard many times what the then Minister of Justice who is today the Right Hon. Leader of the Opposition (Mr. Turner) said, that it was his hope that someday the full details of the intelligence upon which the Government acted can be made public because until that day comes the people of Canada will not be able to appreciate fully the course of action which has been taken by the Government.

Certainly the Members of our Party, the majority of whom voted against the imposition of the War Measures Act at that time, would very much like to have the details of that shameful situation made public. From everything that can be determined right now there was absolutely no justification for that Draconian law being applied at that time. Four hundred and ninety-seven people were interned, in most cases for no other crime than the crime of believing in Quebec nationalism, having exercised their democratic right to speak and organize in favour of Quebec nationalism. Fewer than 20 of that 497 were convicted, mostly on minor charges to which they pled guilty. Indeed, René Lévesque pointed out that we cannot help thinking and saying that this degradation of Quebec was intended quite deliberately. He says that "the half Government", referring to the Bourassa Government, "we had until now has been swept away by the first hard blow". He added that:

> the Québécois are witnessing an operation aimed solely at 'disorganizing and dislocating, or at least trying to compromise and demoralize as much as possible, most of the groups and organizations that give a democratic expression to the Québécois' most legitimate aspirations and collective needs".

That is the way in which René Lévesque saw the imposition of the War Measures Act at that time when he was working for what he considered to be the best future of Quebec, a person who the present Prime Minister (Mr. Mulroney) spoke of as being perhaps the greatest democrat that Canada has ever seen. Perhaps that is the typical hyperbole of the Prime Minister but certainly René Lévesque had a great commitment to democracy. Yet he saw the imposition of the War Measures Act as a deliberate attempt to trample the rights of the Québécois into the ground.

It is this completely unjustified use of power under the War Measures Act that we objected to at the time. Finally the then Leader of the Opposition, Robert Stanfield, admitted that he had been wrong in supporting the War Measures Act when it was imposed in 1970. It is well past the time when it should be disposed of. It should no longer be in the statute books of Canada. If for no other reason, I welcome the introduction of Bill C-77 for the statement in one of its clauses that the War Measures Act is hereby repealed.

We have, however, a lot of problems with Bill C-77 itself. As the Canadian Civil Liberties Association points out, it in turn gives very sweeping powers to the Government in times of emergency. It defines four different kinds of emergency. It talks about public welfare emergencies, times of civil disorder, international emergencies and war emergencies.

Clause 38 gives the Government complete *carte blanche* in terms of war emergencies. Let me read Clause 38:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as, in the opinion of the Governor in Council, are reasonably necessary or advisable for dealing with the emergency.

The preamble says this Act has to be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. We can ask whether Clause 38 does not give the Government such complete power that the Charter would have very little effect. Indeed, it is questionable whether this does not give the Government the kind of power which would have allowed it to treat the Japanese in the shameful way in which they were treated in World War II had this been the law of the land at that time.

• (1200)

The Civil Liberties Association points out that the powers that are granted to the Government under this legislation tend to be too broad and too sweeping for the crises with which they are supposed to deal. In turn, the emergencies are too vaguely defined. The Civil Liberties Association suggests that there should be a much tighter requirement for the Government to justify its need for this kind of legislation, to point out to the Canadian people, Parliament, and the courts why the existing legislation is not adequate to deal with individual crises as they arise. Instead, it is only necessary that the Government declare that such an emergency exists in the opinion of the Governor in Council.

One of the provisions of this Act which may be forward-looking is the provision for compensation, Clause 46. Unfortunately, when we look at Clause 46 we see:

> (3) Any sum recovered by the Crown pursuant to an action under subsection (2) shall be applied

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(a) first, to payment of the costs actually incurred in the action and in levying execution, and

(b) second, to reimbursement of the Crown for the compensation paid to the person whose rights were subrogated, and the balance, if any, shall be paid to that person.

We are talking about a great new right of compensation for individuals who suffer from the imposition of this Act, yet when it comes to them receiving any financial compensation they are last in line. The Government looks after the recovery of funds for itself first.

In Part VII, Consequential and Related Provisions, there are some amendments to the Energy Supplies Emergency Act, 1979. The Energy Supplies Emergency Act gives the Government powers to deal with our energy supplies in the event of an emergency. I hope I will learn in committee how that Energy Supplies Emergency Act will be affected by the Mulroney-Reagan trade deal which says that in the event of any kind of energy shortage the United States will have access to Canadian energy supplies in the same proportion as they have in the past. How will that impact upon the Canadian Government's power to control energy supplies in the event of a national emergency? I suggest that that power is being very seriously compromised.

The Canadian Civil Liberties Association has made a number of very positive suggestions that should be considered very seriously by the committee. Perhaps the most basic is that the Government should create and circulate a working paper for Members of Parliament and the public. The paper should link the kind of anticipated emergencies that provoked this Bill with the kinds of powers with which the Government seeks to address those emergencies. In other words, the Government should be much more specific.

All sides of the House have agreed that we want to move away from the Draconian legislation that we had under the old War Measures Act. We are looking for a new regime, a new provision that will give the Government sufficient power to act in the event of emergencies. We are all agreed on that, but we must find some way to ensure that the rights and liberties of groups and individual Canadians are protected. We are very concerned that Bill C-77 does not do that.

The Canadian Civil Liberties Association calls upon the Government to produce a working paper so that we can see specifically what the Government is trying to do and how it is trying to do it. Then we can study Bill C-77 in committee in an effort to produce legislation which will do that which Members on all sides of the House want to have done.

Unfortunately, the Bill in its present form does not give the protection for the individual rights and liberties which we feel are essential for Canada to remain a strong democracy. On that basis we are not able to support this Bill. If the Government insists on pushing it through, we look forward to having changes made in committee which will make it more acceptable to the Canadian people.

[*Translation*]

Mr. Ferland: Madam Speaker, I have a question for my colleague. He said the law was very strict. Of course, he referred to the problems experienced by the Japanese during World War II, and I should think that all Hon. Members deplore such incidents. However clause 37 provides that the act remains effective for only one year; in other words, from the moment the war measures are implemented the legislation has to be brought back before Parliament after 365 days, unless it has been repealed before. I should like to know how my colleague feels about clause 37 of the legislation in particular, and about clause 36 as well.

[*English*]

Mr. Manly: Madam Speaker, obviously the limitation of one year is helpful, but Clause 41 provides that the Act can be continued for a further period of 360 days and that it can be repeatedly continued. Therefore, the limitation of 360 days means that there will be a review at the end of one year and that it may then be continued. I do not believe that that will in any way safeguard the rights of people who are being impacted upon. As we all know, in 1970 the War Measures Act did not need to be in effect for a whole year in order to affect very seriously the rights of the people of Quebec.

[*Translation*]

Mr. Ferland: Madam Speaker, my colleague is referring to clause 41, so I should like to quote it for the record:

At anytime before a declaration of a war emergency would otherwise expire, the Governor in Council, after such consultation as is required—may, by proclamation—

With respect to consultation, the Lieutenant Governor of each province must be consulted. So this has to be a guarantee provided under the provisions of clause 41, and I would urge my colleague to read them over again.

[*English*]

Mr. Manly: Madam Speaker, we certainly welcome all the additional guarantees in terms of consultations, having to come before Parliament, and so on. However, the fact remains that Clause 38 gives the Government *carte blanche* to make such orders and regulations which, in the opinion of the Governor in Council, are reasonably necessary or advisable for dealing with the emergency. It has those powers for a period of 360 days, which is a very long period in which to take a great many actions. There can then be reviews.

• (1210)

If we look at the kind of climate which existed in Canada towards Japan during the Second World War, and the kind of cumulative racism which was directed towards Canadians of Japanese ancestry, even with the provision requiring a yearly review it would have meant that it probably would have passed the House of Commons.

Indeed, even in 1946, after the war was over, a very respected Conservative Member for whom I have a lot of respect, Howard Green, was still making some very negative comments about the Japanese, saying they should not be allowed to return to British Columbia, and so on. Therefore, the kind of hysteria and panic which builds up in a situation of crisis seems to validate Governments taking this kind of sweeping action against the rights of individuals. What we are saying in this time of comparative calm, is that we should build into this Act the kind of protection that will not be swept away in a time of panic.

Mr. Hopkins: Madam Speaker, I want to ask the Hon. Member a question about civil liberties, which becomes paramount in a Bill such as this. Perhaps I should ask him if he thinks it is really possible for any government to bring in a Bill of this nature that does not in some way affect civil liberties? I think that is the greatest challenge any political party could possibly have under the circumstances.

The Hon. Member stated that Bill C-77 should be worded in such a way that it did not affect civil liberties. May I ask the Hon. Member what amendments he would look to in order to prevent this from happening?

Secondly, with regard to the review committee process, what if we had 30 Members of the Senate signing a request that the declaration be tabled, or the continuation of a declaration be tabled in the House and be debated; or there could be a request from 15 Members of Parliament for a similar debate, a signed statement and the review committee would go through this. Does the Hon. Member think that, given a massive majority Government, for example, it is possible for that committee to really make an impact? It sounds good—we are going back to the parliamentary process, but does the Hon. Member see a weakness? Could the review committee really make an impact at a time when that committee is obviously going to have a massive majority of Members from the Government benches? Does that not really indicate that regardless of this Bill or any other Bill, the final essence of the administration of the Bill, its fairness, is going to rest with the attitude of the government of the day?

Mr. Manly: Madam Speaker, I thank the Hon. Member for the series of very important questions. First, with regard to whether it is possible for the Government to bring in any kind of legislation dealing with national emergencies which does not affect civil liberties, I will say, no, I think civil liberties will always be affected. However, I would draw attention to a statement made by the Canadian Civil Liberties Association. It said the idea is to make the invocation of emergency powers as politically vulnerable an exercise as we can make it. In other words, the Government should have to be very wary about exercising the powers it would have under any such legislation. That means that we have to build in safeguards.

The kind of amendments I would be looking for would follow the sort of suggestions made in the summary of recommendations of the Canadian Civil Liberties Association. I hope the committee will look at those very seriously and consider them point by point, and in turn that the Government will consider these amendments so that we can provide the maximum protection.

I do not think it is possible to have law that does not in some way impact upon civil liberties, and if I said it was, I really did not intend to do so.

With regard to the review process, I think the Hon. Member has it twisted. I think 15 Members of the Senate and 30 Members of the House of Commons are able to institute the review process rather than the other way around. Certainly, when a government has a large majority, I think it is very difficult sometimes to expect that there will be sufficient people in the Government to stand up and speak out against abuses. However, I still think it is important to have that kind of review process. Even if no corrective action is taken, the very fact that there is a public review process is a helpful stage. Not all governments have large majorities. I would expect that after the next election we will not have a Government with quite such a large majority. In fact, we might even have a minority Government that will be much more sensitive to the rights of individuals.

• (1220)

[*Translation*]

Mr. Marc Ferland (Portneuf): Madam Speaker, it is amazing to see just how anxious NDP members are to take office in Canada. But they would have to improve their position in Quebec where, according to a poll taken last weekend, they had only 8 per cent of popular support.

Having said that, Madam Speaker, I suggest that Part IV of Bill C-77 is somewhat confusing. We often get the impression that members of the opposition do not quite understand what this Bill is all about. Part IV of the Emergencies Act concerns "a war or other armed conflict, real or imminent". Part IV of the War Measures Act applied only to war, invasion or real or apprehended insurrection.

According to Part IV of Bill C-77, the declaration of an emergency must be justified and may be challenged. It is important to emphasize that point. Under the present legislation, the declaration of a state of emergency is based on "conclusive evidence that war, invasion or insurrection, real or apprehended, existed". In the proposed legislation, all orders and regulations would be subject to scrutiny by Parliament. No such provision exists at the present time.

Under Part IV of Bill C-77, Parliament might decide to reconsider or revoke a declaration of a war emergency. Such is not the case under the War Measures Act.

Part IV of Bill C-77 will be subject to the Canadian Charter of Rights and Freedoms. The War Measures Act is not.

Part IV of Bill C-77 provides for expiration at the end of 360 days. Continuation of a declaration requires the approval of Parliament. The current legislation provides for no expiry date. In Bill C-77, there are provisions for compensating persons having suffered damage or injury as a result of the

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application of the Emergencies Act. The present legislation does not include such provisions.

Finally, before the new legislation takes effect, the provinces shall be consulted and their views reported to Parliament. This is a new provision.

In my opinion, Madam Speaker, Bill C-77 which has been introduced in this House by the Minister of National Defence reflects and meets the expectations of Canadians.

Some may ask why the Minister of Defence is sponsoring this Bill rather than the Minister of Justice. I believe that it is time that Canadians realize, first, what role our army plays in peace time, and second, that emergency measures in Canada come under the jurisdiction of the Minister of Nstional Defence. It is therefore important for the Minister of National Defence to be able to table such Bills and to defend them in this House.

A number of questions have been raised by many Canadians and by Members of the Opposition. I should point out that this does not surprise me on the part of the Opposition as they are often a bit confused. In fact, why is the Government introducing this Bill? The main purpose of the Government is to abrogate the War Measures Act and to replace it by a modern piece of legislation, better adjusted to the reality of the 1990's and the year 2000. Have no fear, Members of the Opposition, we shall still be in power in the year 2000.

How does the Emergencies Act differ from the War Measures Act? The Emergencies Act, which applies to all sorts of emergencies, provides for mechanisms and guarantees which are absent from the War Measures Act. In addition, it provides for compensation in the case of losses, damages and corporal or material injury and preserves the legitimate interests of the provinces. Of course, this Parliament is not used to a Government which consults the provinces and takes their aspirations into account. We now have one and I must say that the provinces are very happy about it. And this will certainly continue for a long time.

The other questions people are asking are: Which guarantees are offered by the Emergencies Act? What are the procedures to follow? How will the legislation protect fundamental rights and freedoms in an emergency? First, the Act is subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. It is also in compliance with the 1967 International Covenant on Civil and Political Rights of the United Nations in relation with the inviolable nature of certain fundamental rights, even during national emergencies. What would be considered an emergency and what are these rights? These rights include the right to life, the right to be protected from torture, inhuman punishment and slavery, the right to protection from the retroactive application of sanctions and the right to freedom of thought, conscience and religion. In fact, other guarantees give Parliament the right to examine the use of emergency powers. Thus, the Government will have to give Parliament a concise explanation of the reasons why it has invoked the Emergencies Act, the opportunity to debate the issue and details of the special measures it is considering to deal with the situation.

Other guarantees which do not exist in the War Measures Act restrict the use of special emergency powers by the Government. These major restrictions have to do with a time limit, a geographical restriction to resort to emergency powers, the obligation to secure parliamentary authority to cancel the declaration of a crisis situation, the obligation to consult the provinces before implementing the act, and in the case of an emergency situation in only one province, the obligation to wait for the province to make a formal application before declaring a state of emergency. What a change from what we witnessed in the past!

In fact other Canadians are wondering why the Government now introduces this legislation. Indeed, we are honouring an election promise. Members of the Opposition are always taken aback when they see the Government living up to its election promises. I must say that right now most of our promises have been honoured, and it will not be long before we fulfill all our 1984 promises.

Recent catastrophic incidents in other countries—I have in mind the tragic accidents at Bhopal and Chernobyl, tornadoes in central Ontario, earthquakes in Mexico, and increasing international terrorism—are example of events which have made Canadians fully aware of the ever present and growing threat of a major crisis.

The October 1970 crisis underscored the gap between ordinary legal mechanisms provided under such legislation as the Criminal Code and the National Defence Act on one hand, and the extraordinary powers available under the War Measures Act on the other hand. Those who were in Quebec during the 1970s will remember the situation in which Québecers were living at the time.

What is actually missing from our federal legislation in order to address an emergency? The laws of this country that deal with emergencies and grant special powers have many flaws. First, the War Measures Act is commonly viewed as being too vague and too drastic for public welfare emergencies and public order emergencies in times of peace. The few other provisions in other federal laws that can be used in emergencies have many loopholes. They are little more than a piecemeal mixture with little safeguards. The passing of emergency bills that might be put together in the hustle and bustle of an emergency could give rise to hasty actions frought with passions or excesses. Moreover, their passing would be delayed if the Government was not sitting and would become impossible if Parliament happened to have been dissolved at the time of an emergency.

The question often arises as to why the legislation is divided into four parts. Well, each definition is designed to limit the scope of each part of the Act to a specific, carefully delineated type of emergency. The powers available in each part are scaled to the type of emergency covered by each. In the majority of cases, one part only would be invoked, but under exceptional circumstances it would be possible to simultaneously invoke several parts of the Act.

We are asked by Canadians what types of situations the Bill will cover. We say that the Emergencies Act will only apply to national crises. The emergencies that could give rise to a national crisis have been divided into four groups: public welfare emergencies, public order emergencies, international emergencies and war emergencies.

What is a public welfare emergency? A public welfare emergency results from a natural disaster or accident so serious as to be a national emergency. The provisions dealing with emergencies are designed to allow the federal Government to mobilize the resources of the nation as a whole in order to meet a very serious disaster. All provincial and territorial governments have enacted emergency legislation to meet public welfare emergencies within their jurisdictions. Provinces and territories have acquired sufficient ability, resources and experience to meet most public welfare emergencies, by themselves or with the help of the Canadian Government, provinces or neighbouring territories. However, in a national emergency, the vast mobilization and coordination operation which might become necessary could only be organized by the federal Government.

When the direct effects of an emergency are felt mainly in a single province, the Emergencies Act provides that a public welfare emergency can be declared only if the province indicates that the emergency exceeds its own capacity or authority to deal with it. In serious emergencies which affect several provinces, all the provinces involved have to be consulted before the Act is invoked. In addition, the Act provides that the control or direction of a province over any police force over which it normally has control or direction, including the RCMP, will not be affected.

Canadians can therefore be assured that the Act will not be used lightly to deal with minor or localized emergencies.

What is a public order emergency and why does the Act apply to such emergencies? These are other questions asked by Canadians.

The Emergencies Act defines a public order emergency as an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency. The threats to the security of Canada are defined in the Canadian Security Intelligence Service Act and concern mostly spying, sabotage, subversion, terrorism and attempts to overthrow the established Government. Legitimate dissidence is explicitly excluded.

The purpose of Part II of the Bill is to establish measures of limited application providing fully satisfactory guarantees to face such threats when they constitute a national emergency and when ordinary provisions prove inadequate. If the effects of the emergency are limited to a single province, this province must indicate that it is unable to deal with the emergency by itself before the emergency can be declared under the terms of

Part II of the Act. In all cases, the Government will be obliged to consult the provinces affected by the emergency before invoking Part II of the Bill. The provisions of the Criminal Code will continue to be used to deal with emergencies of a less serious nature caused by instigators of public disorder.

People are wondering what the purpose is of Part III and why it is essential to the Bill. Part III of the Emergencies Bill deals with international emergencies. It gives the Government fully safeguarded and appropriately limited exceptional powers to act quickly in case of a serious international emergency, without having to resort to the draconian and controversial powers it is given under the War Measures Act. Before proclaiming a state of emergency under this part of the Bill, the Governor in Council must consult all the provinces to the extent that, in his opinion, it is appropriate and practicable to do so.

Part III enables the Government to take and implement, in co-operation with our allies, preventive and preparatory measures of a civil, military, economic and diplomatic nature to deal with the emergency and reduce tension. At the same time, it enables the Government, if necessary, to put the country in a state of preliminary preparedness for war, to start the process of mobilizing civilians and to take steps for emergency preparedness. Consequently, it acts as a deterrent against acts of aggression that are contrary to the interests of Canada or those of our allies.

What does Part IV say? Part IV of the Emergencies Bill deals with war emergencies and provides additional, fully safeguarded and appropriately limited powers to deal with such emergencies, powers that would not be provided under Part III. Part IV would apply only to a real or imminent conflict involving Canada or its allies.

So what is the purpose, Madam Speaker, of the War Measures Act and what are its shortcomings? The War Measures Act was passed by Parliament on August 21, 1914. Not many Members in the House today were present or even born at the time this Act was passed.

When World War I broke out, the Act was passed without dissent after only one-half hour of debate. It contains very few guarantees for protection of provincial interests, parliamentary review or civil rights. In any case, it will not be said that Bill C-77 was passed in half an hour. We will take the time to consider this Bill, and we want to make sure all Members of this House fully understand its implications.

The War Measures Act was quite similar to the *Defence of the Realm Act* which the United Kingdom passed on August 8, 1914. I am not sure, but there must have been similarities. This legislation was adopted quite hastily. Very extensive powers were thereby granted to the Governor in Council who could proclaim the existence of a state of emergency, then enact such orders or regulations which were deemed necessary or advisable for the security, defence, peace, order, and welfare of Canada. Under the Act, a state of emergency might be

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decreed by proclamation and, until it is revoked, this proclamation is conclusive evidence that a state of war, invasion or real or apprehended insurrection exists.

Such a definition does not make it possible for Parliament or the courts to question the assessment made by the Government of an emergency or the need to use the legislation. The British legislation expired a little after World War I while the Canadian legislation has never been revoked. If the Progressive Conservative Party had been in power for longer periods since 1914, it might have had an opportunity to revoke this legislation. But as you can see, Madam Speaker, we are not missing any opportunity; while we are here, we are bringing in major changes.

Mr. Blackburn (Brant): I doubt that!

Mr. Ferland: My honorable friend would have liked to be on the Government's side, but he has chosen to sit in the opposition.

It is generally felt that it is incumbent on the provinces to act to cope with peace time emergencies. In this case, how could one justify the provisions of the Emergencies Act dealing with public welfare emergencies? It may be that a peace time crisis could exceed the capacity or authority of a province to deal with it. In this case, the province or provinces involved could decide to seek the federal Government's assistance.

If a public order emergency occurred, it might be necessary to pool all the resources of the nation to cope with a crisis. Such a major operation could only be undertaken by the federal Government, because it alone has the power to requisition resources and move them from one province to another to meet an emergency situation. The provisions of the Act will make it possible for the federal Government to respond quickly to a province seeking an emergency declaration, pool the resources of the nation to meet the crisis, send help and divide in a fair way the burden of an intervention or the means to remedy the situation.

Where the direct impact of a public welfare emergency is mainly limited to a province, the Government could only declare that a public welfare emergency exists if requested to do so by the province directly involved.

In the case of serious emergencies affecting more than one province, each of the provinces involved shall be consulted before an emergency can be declared to exist.

There are rumors at large, mention is made of civilian internment camps. As you know, there are rumormongers everywhere. I have still a minute left, Madam speaker, so I will conclude on this. This Government has no plans for setting up civilian internment camps. The enactment of the Emergencies Act and the Canada civil protection legislation have nothing to do with that. People should not try to suggest that Bill C-77 will open the door to the establishment of camps for detaining Canadians behind barbed wire. No, this is not in the Bill. Bill C-77 is a bill that was thought out thoroughly and prepared in agreement with the provinces, after numerous consultations. It is a modern piece of legislation that meets the aspirations of Canadians of year 2000.

• (1230)

[English]

Mr. Blackburn (Brant): I have a couple of questions I would like to put to my hon. friend and fellow member of the Standing Committee on National Defence. One has to do with a very old legal tenet in British and Canadian law, that is, the right to sue for redress. In this case I am speaking of civil law.

Apparently this Bill would prevent that recourse to the courts. Instead, compensation would come from the Minister, a politician, and not from the courts. If a citizen is not satisfied with the amount of compensation, he or she could not appeal to the courts but only to an assessor who is named by Order in Council, in other words, by that Minister.

I do not wish to put my hon. friend at a disadvantage. I do not know if he has a legal background. I do not have a legal background. But it seems to me that this is contrary to the basic legal right that all Canadians should have, that is, the right to take a grievance, in this case a civil grievance, before the court and have the court, which is outside of the political domain, outside of partisanship, decide on the merit of the case before it, and not go to someone—and I will not call him a flunky—who has been appointed by the Minister to act as an assessor. Would my hon. friend comment on that?

[Translation]

Mr. Ferland: Madam Speaker, of course, just like my colleague who sits on the Standing Committee on National Defence, I have no legal qualifications and I am not a lawyer myself.

For the first time however, the measure now before us, Bill C-77, and it is the first emergencies legislation in Canada recognizing that if Canada or the Government unfairly hurts its citizens by its actions, the latter can hope for compensation.

Unfortunately, Madam Speaker, I lack the legal competence to answer his questions, but I am sure that the committee, when the Bill is referred to it he and I will call upon legal experts who can reassure both of us.

Mr. Parry: Madam Speaker, the Hon. Member for Portneuf (Mr. Ferland) knows full well that Bill C-77 creates a new category in Canadian jurisprudence, international emergencies. Clearly then the Government has an idea of the king of crises that would be declared international emergencies.

For this reason, I would like to ask the Hon. Member whether he could give us some examples of the kind of crisis that will be declared under Bill C-77 as being an international emergency.

Mr. Ferland: Madam Speaker, I must say that I am not a jurist and that semantic exercises are always possible, but when we are speaking about an international emergency, we are all aware of the problems caused by sabotage, bombs, and so on. We only have to watch the evening news on television to realize that international terrorism has become a major problem. I believe that this legislation could eventually allow Canada to come to an agreement with a number of other contries on common measures to fight this international problem. This could therefore considered an international emergency and Canada could join with other countries to try to deal with this scourge.

• (1240)

[English]

Mr. Hopkins: Madam Speaker, I want to ask my hon. friend a question about the Bill of Rights. He mentioned at the beginning of his speech that the Bill of Rights did not apply to the War Measures Act. He will understand that when the Bill of Rights was passed in 1960 the Diefenbaker Government got a lot of publicity for bringing it forward and passing it. However, that Government made another declaration that the Bill of Rights would not apply to the War Measures Act.

In retrospect, does the Hon. Member feel that the Diefenbaker Government of the day should have let the Bill of Rights take precedence over the War Measures Act, so that some of the things he has been talking about would not have happened?

Also, the Hon. Member will know that the Premier of the Province of Quebec and the Mayor of Montreal requested in writing in 1970 that emergency measures be brought in. Does he feel that the Government of the day did the right thing by acceding to that request, or does he think that that Government should have ignored it? I think this question is very important, because we have heard many comments about the bringing in of the War Measures Act in 1970. However, it must be clearly understood that it was specifically requested by the Premier of Quebec and the Mayor of Montreal.

Did the Government of the day do the right thing or the wrong thing? That is what I am asking my hon. friend.

[Translation]

Mr. Ferland: Madam Speaker, naturally, we cannot expect anything but a loaded question from our Liberal friends.

We should perhaps reflect on the situation which existed in Quebec in 1970. Naturally, there had been a request by the Mayor of Montreal and the Quebec Government for the Canadian Government to take action. Did this necessarily mean that the Canadian Government had to invoke the War Measures Act? The Hon. Member is perhaps in a better position to answer because he was in the House then as a member of the Government which was in favour of imposing the War Measures Act in Quebec in 1970.

I believe that the Government could have used other measures and other methods than those provided by the War Measures Act. The Canadian Government used a cannon rather than a fly swatter to kill a mosquito. In my opinion, the Government used an act which was too strong and provided much too extensive powers to deal with the situation.

I then lived in Quebec City, not too far from the Quebec Parliament, and I must say that all Quebecers were surprised one fine morning to find armed soldiers at all the doors and around all Government buildings. There was something of a panic. We must also remember that the physicians were on strike in Quebec at the time. Things were really going well in 1970 in Quebec!

What we have to remember, Madam Speaker, is that if Bill C-77 had existed in 1970, Quebecers would never have suffered what a number of them did suffer. I believe that the Canadian Parliament invoked a much too strict and too strong legislation to deal with the situation at the time. I believe that at the time, the police had the resources to conduct investigations and keep the situation under control. They may have needed additional manpower, but there was certainly no reason to ask the army to act as though Quebec were at war with Canada or one of the provinces. I think the War Measures Act, as it was applied in Quebec, went far beyond what the situation warranted.

I may add that, at the time, I was a private citizen and did not have access to certain information. However, on the basis of what I read in the newspapers and what I was able to find out, I believe that the people who were here in the House at the time and who on the basis of the information they had were capable of voting in favour of proclaiming the War Measures Act in Quebec—I believe those people should have been far more critical and should be realized that this legislation went far beyond what the situation warranted.

The Acting Speaker (Mrs. Champagne): The period provided for questions and comments has now expired. Resuming debate. The Hon. Member for Glengarry—Prescott—Russell (Mr. Boudria).

[English]

Mr. Althouse: Madam Speaker, I have a question for the Hon. Member.

The Acting Speaker (Mrs. Champagne): The time for questions and comments has now expired. The Hon. Member for Glengarry—Prescott—Russell (Mr. Boudria) on debate.

[Translation]

Mr. Don Boudria (Glengarry—Prescott—Russell): Madam Speaker, I welcome this opportunity today to take part in the debate on Bill C-77. I listened very carefully to the speeches we have heard in this Chamber, as you have, Madam Speaker, and one thing is pretty clear, and that is that certain Members of other political parties insist that the decision by the Government in 1970 to proclaim the War Measures Act was unwarranted.

[English]

As a matter of fact, the Hon. Member for Renfrew—Nipissing—Pembroke (Mr. Hopkins) asked a specific and

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important question of a member of the Conservative Party, the Hon. Member for Portneuf (Mr. Ferland). He asked whether in fact in 1970 the Government of Canada did the right thing, or whether the Government of Canada at that time should have refused the request made by the Attorney General of a province and a mayor of the largest city in the land. Of course, he did not get an answer to that question. The only answer, albeit inadequate, was that perhaps there was a need for a few more policemen or something like that and that the measures used were far too great—

• (1250)

Mr. Della Noce: Excessive.

Mr. Boudria: Excessive is the word. I thank the Member opposite. The Member has reminded me for a very good reason. He wants to let Canadians believe that the measures were excessive to the requests made. Let me remind you, Madam Speaker, of the request made at that time. I read from the letter.

> Under the circumstances, on behalf of the Government of Quebec, I request that emergency powers be provided as soon as possible so that more effective steps may be taken. I request particularly that such powers encompass the authority to apprehend and keep in custody individuals who, the Attorney General of Quebec has valid reasons to believe, are determined to overthrow the Government through violence and illegal means. According to the information we have and which is available to you, we are facing a concerted effort to intimidate and overthrow the Government and the democratic institutions of this province through planned and systematic illegal action, including insurrection. It is obvious that those participating in this concerted effort completely reject the principle of freedom under the rule of law.

That is the truth, and that was the request made by the Government of Quebec at that time. The request was not to send in six more policemen to patrol some place. Far from it. You have listened very attentively, Madam Speaker, to the statement I have just read from the Attorney General of the Province of Quebec at that time. For Members to stand in this House, either the Conservative Member who has just spoken—incidentally his Party supported the imposition of the War Measures Act at that time—or New Democratic Party Members, pretending that nothing happened, saying that someone in this House in 1970 cooked up this whole thing is just a little less than total honesty.

I read further from a letter sent by the Mayor of Montreal at the time. He said:

> The chief of the Montreal Police has informed us that the means available to him are proving inadequate and that the assistance of higher levels of Government has become essential for the protection of society against the seditious plot and the apprehended insurrection in which the recent kidnappings were the first step.

It is obvious the request made at that time was, indeed, very serious. I am not saying that the War Measures Act was not a blunt instrument. I will agree that it is too blunt an instrument, but you have to remember what was asked for was asked by a duly elected Government of a province in this country and the mayor of the largest city in Canada. Given those two facts, and given the instrument available at the time, it is a little less than honest for some people to claim, in hindsight, some 16 or 17 years later that the wrong thing was done.

Members of Parliament at the time stated, and have stated since, that we needed a new Bill because the War Measures Act was too blunt an instrument. I want to congratulate my colleagues in the Liberal Party for their foresight and objectivity in the way they have dealt with this topic.

When the Liberal Government in the past attempted to reform this law, the only thing we heard was partisan rhetoric from the Conservative Party, which Party refused to let this kind of legislation proceed, claiming that it was a diabolical plot on the part of the evil people in Government who wanted a new War Measures Act so they could use it again at every whim, or some nonsense like that. The present Party in Official Opposition is far more reasonable. We understand there is a need to modify the law. I think Members of this House on the opposition benches should be credited for that. It is my duty to bring it to your intention, Madam Speaker, as I know you would want me to do.

The Bill Before us is a very serious piece of legislation. It should not be taken lightly by the Government or any Member of this House. The Bill with which we are dealing can have, could have and would have an impact on the fundamental freedoms of the citizens of Canada if and when it was used, and hopefully it never will be. Notwithstanding, one needs to be prepared and one needs to have legislation to ensure that our country can be protected while at the same time adhering to a delicate balance so that the rights of Canadians are not trampled upon unnecessarily.

In 1970, like most Members of this House, I was not a parliamentarian. A few Members here have had the honour and privilege of serving here for a number of years, but most of us were doing other things. I was on staff in Parliament here travelling around the corridors of this building seeing people in military gear, battle dress as a matter of fact, carrying guns. Those were indeed very sad things to see. Hopefully we will never again see a day in Canada that would necessitate any kind of similar action.

No one wants this new Bill to be used. It is like buying life insurance. One does not buy life insurance with the intention of reaping the benefits, because obviously that does not happen. The present War Measures Act is a piece of legislation that has been in existence for a long time and is in serious need of amendment. We know, for instance, it was initiated by the then Conservative Prime Minister, Sir Robert Borden. It was passed through Parliament in very little time because our country was at war, or just on the brink of War World War I. Since then the legislation has been used only twice. The second time was during the Second World War and finally during the October crisis of 1970.

[*Translation*]

Madam Speaker, we in the Liberal Party have no intention of drawing out the debate in this House as a matter of course. What we want is a thorough discussion in the committee that will be responsible for considering the Bill. Subsequently, there are certain proposals, certain concerns and grievances we will want to bring before the House, and we hope that the Government will then make the requisite changes to improve the Bill.

Madam Speaker, I see it is almost lunch time. I will continue my comments later today.

The Acting Speaker (Mrs. Champagne): Order. It being one o'clock, I do now leave the Chair until two o'clock this afternoon.

At 1 p.m. the House took recess.

Source: Nikkei National Museum, 2018-16-4-1-1-99
www.nikkeimuseum.org

GOVERNMENT ORDERS

[*English*]

EMERGENCIES ACT

MEASURE TO ENACT

The House resumed from Tuesday, November 17, consideration of the motion of Mr. Beatty that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be read the second time and referred to a legislative committee.

Mr. Hopkins: Madam Speaker, I have a question.

The Acting Speaker (Mrs. Champagne): The Hon. Member for Spadina (Mr. Heap) had finished his intervention when the House rose last night. There would normally be a period for questions and comments. As Hon. Members will be aware, we cannot proceed with that right now. I am in a very difficult situation in that I do not like to say that a Member is or is not in the House. However, we are in the position that we cannot proceed with questions and comments.

Mr. Hopkins: I rise on a point of order, Madam Speaker. It is normal that after Members deliver a speech they are in the House for questioning. The Hon. Member for Brant (Mr. Blackburn) started off this debate by saying that he was the only one in the House to debate while I was on my feet when he was recognized.

Mr. Blackburn (Brant): Haven't you got over that yet?

The Acting Speaker (Mrs. Champagne): Order. I believe the Hon. Member will agree with me that we have gone over this point of order on a previous day with regard to who was in the House and ready to debate this Bill. The Hon. Member for Spadina is not in the House to answer questions or hear comments on his speech. I believe that we should proceed with this debate.

Mr. Hopkins: I rise on a question of privilege, Madam Speaker.

The Acting Speaker (Mrs. Champagne): The Hon. Member for Renfrew—Nipissing—Pembroke (Mr. Hopkins) on a question of privilege.

Mr. Hopkins: I simply want to put on the record, Madam Speaker, that it is a question of privilege that Members of this House are able to question other Members. The fact that the Hon. Member is not here inhibits debate in this House because he did make statements that should be answered. If they are not answered here, we will have to find other means of having them answered.

Mr. Friesen: Madam Speaker, I rise on the same point of order. I raised the same grievance several weeks ago after the Member for Kamloops—Shuswap (Mr. Riis) spoke. He spoke one evening and the period for questions and comments did not conclude that evening. I rose the next day to ask him questions but he had left the House. I rose on a question of privilege because I could not harass the Member from Kamloops. I thought that was terribly unfair and unjust. Nevertheless, I lost the question of privilege because there is plenty of precedent to establish that the Member does not have to be here. It is too bad that the Member for Spadina (Mr. Heap) is not here, but that is the way it is.

The Acting Speaker (Mrs. Champagne): I believe that this point of order has been discussed thoroughly. We can all agree that the Hon. Member is not in his seat to answer questions. I believe that in the interests of the House we should go on with debate on the Bill before us at this time.

• (1600)

Mr. Les Benjamin (Regina West): Mr. Speaker, it is with some pleasure and sadness that I rise to speak on this Bill. Before beginning my remarks let me say that I read the speech made by the Hon. Member for Brant (Mr. Blackburn), and I thought it was good.

In the 120-year history of this country, Parliaments and governments have taken actions that we have later regretted. We must ensure that any legislation to replace the War Measures Act will not allow any government of any political stripe to repeat the errors of omission or commission that were committed before. There must be safeguards in the law to prevent a government or, for that matter, a Parliament from taking actions in a moment of panic or hysteria that we will all regret later.

We must ensure that there are safeguards in the Bill to prevent a repeat of what happened to Japanese Canadians, who are still awaiting redress and an apology, or of what was done during the Winnipeg general strike in 1919, when there was a hue and cry to get rid of what was called the foreign element in this country.

There must be safeguards in the law so that our police and security forces will not be able to carry on as they did between 1920 and 1950, following people who were not attempting a violent overthrow of the Government, but trying, through dissent and debate, to bring about a fundamental change in this nation and the purpose of our society.

We must have a law that will not allow the kind of discrimination that took place against Chinese immigrants, who are the only people on whom we levied a head tax. I still believe that tax can and should be refunded, because the records are still within the Department of Immigration. We owe the Chinese Canadians that money and an apology.

During the so-called October crisis of 1970, over 400 people were arrested, none of whom were ever charged and convicted. I believe those people deserve some kind of redress and apology. I believe it is proper for a government or a parliament to provide redress to correct a historical error because, not only does it correct a mistake that was committed many years before, it shows a sign of national maturity and allows the nation as a whole to display an element of conscience.

We must keep these events in mind as we debate this Bill, when we hear evidence in the committee and decide upon amendments before passing the legislation in its final form.

I believe this legislation should go to the appropriate standing committee rather than a legislative committee, unless the House is prepared to provide the authority for the legislative committee to travel. Otherwise, we will only hear form those who can afford to come to Ottawa. We should hear from others throughout the country who, either themselves, or their parents or grandparents, have been affected by the implementation of the War Measures Act or other discriminatory and uncivilized measures of a parliament or government.

I was a Member of Parliament in 1970 when every Member of the House went through a great deal of agony during the so-called October crisis. One of my very few regrets, which I will carry with me all my days, is that I missed the vote on the War Measures Act. I would have voted against the implementation of that Act if I had been here. My leader, the Hon. T. C. Douglas, was to speak at an NDP nominating convention in southern Manitoba on the day of the vote. Naturally, I thought it was more important for my leader to be here. Therefore, I took his place to speak to that nominating convention in southern Manitoba and missed the vote. There were two unfortunate consequences on that day. First, I missed the vote, and second, that overflow crowd in the hall in southern Manitoba came to hear Tommy Douglas but got me instead.

During that October crisis some of the over 400 Quebecers who were never charged or convicted spent from 24 hours to 96 hours in jail before being released. One humourous incident during those bitter days took place when one of those put in jail had the same name as a person on the RCMP list. That person turned out to be a Liberal organizer who ended up in jail in Hull. Many said at the time that he was more deserving of jail than an FLQ member.

The lengths to which the government went during that moment of hysteria and panic, generated primarily by the premier of one province, is illustrated by the fact that an 18-year old soldier carrying a loaded automatic rifle was assigned to follow my leader. It did not seem very suitable for a soldier to be following a clergyman, even to the washroom and to his home; my leader never did collect the bill for room and board.

The implementation of that Act not only put the civil liberties of people in Quebec into jeopardy but the rights of people from coast to coast. Everyone was subject to arbitrary

Source: Nikkei National Museum, 2018-16-4-1-1-100
www.nikkeimuseum.org

arrest, search without warrant, and being jailed without communication with anyone.

When we consider the lengths to which Parliament went in that moment of hysteria, surely it is incumbent upon this Parliament to ensure that there are safeguards in any legislation that replaces the War Measures Act.

• (1610)

The War Measures Act came into being in this country at a time when one can hardly say there was a great degree of tolerance, understanding and compassion among the population and our rulers of that day. We now have a great improvement in the attitudes of the the public and of the Government.

There is one section of the Bill to which I take particular exception, that is the section entitled "Public Welfare Emergency". Should there be another national railway or postal strike, or a strike by the airlines, grain handlers or the St. Lawrence Seaway, the Government will not have to bring in back-to-work legislation and let Parliament decide each case on its own merits. It has only to invoke that clause of the Bill, which means that a fundamental right to strike or, for that matter, the fundamental right of an employer to lock out, is denied in advance and for all time. And this applies to anything the Government considers to be an essential public service.

Those kinds of circumstances must be decided individually as and when they occur. The Bill allows Government to bypass Parliament in such cases for 90 days and it must confirm it by motion within seven days. Thirty Members of Parliament can sign a motion for revocation. If it is passed, it can then be revoked, but many days, weeks or months will have gone by and great harm can be done to many people directly affected.

Part I of the Bill, Public Welfare Emergency, covers a breakdown in the flow of essential goods and services or resources as a result of a strike or lockout. I submit that that must deleted from the Bill and should not be covered in any way, shape or form in this legislation. I recommend to the committee that Clause 3(d) of the Bill should be deleted.

Public welfare emergencies should be in the Bill and I think the rest of Part I is legitimate. Clause 3(a)(b) and (c) provides that public welfare emergency means fire, flood, drought, storm, earthquake or other natural phenomenon, an epidemic of disease among human beings, animals or plants, or some horrendous accident or pollution, such as Chernobyl, for example. It seems to me it is legitimate for a province and the national Government to have the powers to declare an emergency within a matter of hours and act upon it. Therefore, I have no particular objection to that definition of public welfare emergency.

However, I would hope that the committee would take a good strong look at it in the sense of is it really needed in this Bill? Probably the same thing could be accomplished by a strengthening of legislation on emergency measures both by the national Parliament and by the provinces and territories so that the ability to act quickly and call upon all sectors of the community to assist is there in place at all times.

It does not matter whether the Government leaves the part of the Bill in place regarding natural disasters or strengthens the emergency measures legislation, the fact is that we as a country are still not equipped to deal with an emergency, anyway. I hope the debate on this legislation and the discussion in committee will help to persuade the national Government and the provincial Governments to further enhance and strengthen the resources they have to deal with in emergencies of this kind. That includes, I submit, additional training for our Armed Forces so that they not only know how to handle guns, tanks, planes and ships, but will know how to put a city back together, be it to fix the sewer and water systems or establish a hospital. They should be prepared to deal with the electrical power distribution system, the direction of traffic and looking after refugees, the homeless. We, would always have that kind of training, resources and equipment to help in case of some disaster in our own country, and what makes it so worthwhile is that should we be called upon to assist in the event of another earthquake in Nicaragua, or Mexico, Yugoslavia or anywhere else in the world, we could send people there who had the equipment and know how to be of even better help than they are at the moment.

It is not enough just to have a law that allows a national Government to declare an emergency of a public welfare nature. Unless we have facilities and resources in which to carry out the requirements of the law and the regulations that will come thereafter, all we are doing is making symbolic gestures. This will cost a lot of money, but it seems to me it would be money well spent. That part of the Bill which the Government can invoke in the event of a national strike of something that is considered an essential public service should be deleted.

There is also the heading of "Public Order Emergency"; I think not only of the Winnipeg general strike of 1919 but of the Estevan strike and the Regina riot. People who were peacefully dissenting were victimized by a government which I can only say over-reacted in a paranoid fashion. If there is one thing we must guard against in this legislation it is that kind of paranoia; looking under the bed all the time for a Commie, a Bolshevik or whatever is uppermost in the minds of those who happen to be governing at the moment.

• (1620)

There are some measures in the Bill which I like. I have spent my time on the items in it that I do not like. I hope that the committee and the Government will address them and correct them as I have outlined.

[Translation]

Mr. Prud'homme: Madam Speaker, I am not sure I will take an active part in the debate this afternoon, but I would like to make a few comments. As a Member who experienced those tragic events that affected our lives as Canadians, Quebecers and residents of Montreal, I read and especially listened very carefully to yesterday afternoon's proceedings. Yesterday and the day before, I had the privilege of attending festivities in honour of a visit to Canada by the Armenian *Katholikos* from Soviet Armenia, who received an enthusiastic welcome in Montreal. He was suppose to visit Parliament, but unfortunately, he was not well enough to come to Ottawa. So I was in Montreal, and this is just by way of explaining to my constituents why I was not in Ottawa. I attended the festivities, Monday night and last night until three o'clock this morning, but in my office I could not help watching what was going on in the House of Commons, and I heard a few speeches which quite frankly astonished me.

Mr. Blackburn (Brant): Glued to your television set!

Mr. Prud'homme: Yes indeed, but you may have something else to say when I finish.

I was particularly interested in some speeches by Hon. Members of the New Democratic Party, and especially some of their statements in French.

Madam Speaker, it is always easy to judge history with today's hindsight. After the fact we can do no wrong, we are perfect, we can make sweeping moral judgments and we are always right. This is more or less what our NDP friends wanted to do with a message that was obviously directed to the people of Quebec—that is why I will make my statement in French. What they said was more or less, That the New Democratic Party knew what it was all about in 1970. And this despite the fact that 88 percent of Canadians—it's true — were asking the Government to do something, and despite the impact these events had on me personally—anyone who is interested can read my speech—and the impact on our Quebec caucus. It also had an impact on our national caucus. We were divided on what should be done, and in the light of the information we had—that is the important point: Did we have all the information? That is another chapter I hope we will be able to write someday. However, in the light of the information we had at the time, we thought it was our duty, unfortunately, to vote in favour of a measure we found abhorrent. I found it abhorrent to have to vote in favour of the War Measures Act. I more or less said so in my speech at the time. And I think that trying to woo Quebecers by saying that a certain political party had virtue on its side from the word go is stretching the truth somewhat. It is a tarted-up version of the facts, because I have a clear memory of those important events. In fact, they say I still have an excellent memory for the important things in life. I remember that the party that today is trying to woo Quebecers was divided as well and that four Members of the New Democratic Party, and that is what Hon. Members forgot to tell us yesterday, four Members, including one as illustrious as the Members in the House today, and I am referring to Dr. Saltsman. Everybody always liked Dr. Saltsman. He was tall, distinguished, and a great parliamentarian.

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[Translation]

Mr. Prud'homme: Madam Speaker, I am not sure I will take an active part in the debate this afternoon, but I would like to make a few comments. As a Member who experienced those

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www.nikkeimuseum.org

tragic events that affected our lives as Canadians, Quebecers and residents of Montreal, I read and especially listened very carefully to yesterday afternoon's proceedings. Yesterday and the day before, I had the privilege of attending festivities in honour of a visit to Canada by the Armenian *Katholikos* from Soviet Armenia, who received an enthusiastic welcome in Montreal. He was suppose to visit Parliament, but unfortunately, he was not well enough to come to Ottawa. So I was in Montreal, and this is just by way of explaining to my constituents why I was not in Ottawa. I attended the festivities, Monday night and last night until three o'clock this morning, but in my office I could not help watching what was going on in the House of Commons, and I heard a few speeches which quite frankly astonished me.

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Yet, he voted against it. Who does not remember—with your indulgence, Madam Speaker, I shall conclude by giving these four names—who does not remember the great parliamentarian, Mr. Winch? This member of the New Democratic Party and former member of the CCF also voted for the War Measures Act. He probably found this as repugnant as I did, but he still voted for the War Measures Act. I also recall that Barry Mather, a distinguished Member from Western Canada, also voted for it. I also recall one of our colleagues, who is now a member of a National Asembly, I believe, Frank Howard—

[English]

I do not know if Frank is still a Member in the provincial House in British Columbia or not.

[Translation]

Mr. Howard still sits in a legislature, but he now sits in the provincial legislature of British Columbia. He also voted for the War Measures Act. Even when you want to score political points and attract votes, you should still have to tell all the facts. I am not saying that my colleagues lied, but they would have done better to give the whole picture instead of giving us only part of it by suggesting as they did yesterday to Quebec, and it is to this that I object, that all NDP members opposed the War Measures Act when the fact is that they were very much divided. They remained divided up to the end since four of them voted for the War Measures Act, which was a repugnant gesture for which we shall one day have to offer reparation and excuses to those who were stupidly arrested by the police. All this will be said during the third reading debate, but I still wanted to state the facts, and I thank you for your patience, Madam Speaker.

The Acting Speaker (Mrs. Champagne): I simply wish to point out to the Hon. Member for Saint-Denis (Mr. Prud'homme) that I certainly did not want to show any sign of impatience. I simply wanted, in the spirit of parliamentary reform, to remind the Hon. Member that the period for questions and comments is normally restricted to short exchanges to allow everyone to take part and to make the debate and exchanges as animated as possible. I am certain that the Hon. Member will want to get back to this issue during his own intervention. This is why I indicated that he should speed up his comments.

Mr. Prud'homme: Madam Speaker, as an experienced parliamentarian, I immediately accept your suggestion. Instead of going on, I shall ask the previous speaker whether he remembers—

[English]

Mr. Blackburn (Brant): You have had eight minutes out of ten. Sit down and let him answer.

Mr. Benjamin: Order, order.

The Acting Speaker (Mrs. Champagne): The time will of course be added to the Hon. Member's response.

Mr. Benjamin: I thought bootlegging was illegal, Madam Speaker.

Mr. Hopkins: You should have been here yesterday.

Mr. Benjamin: My hon. friend makes a bootlegger look like an honest man. If he wants to get up to give a diatribe against the NDP and what we did in 1970, then let him get up and make a 20-minute speech at second reading and not use up my time.

Mr. Prud'homme: It is not your time. I rise on a point of order, Madam Speaker.

Mr. Benjamin: There he goes again, Madam Speaker. He can get up right after me and make a 20-minute speech if he wants.

[Translation]

Mr. Prud'homme: On a point of order, Madam Speaker.

The Acting Speaker (Mrs. Champagne): The Hon. Member for Saint-Denis (Mr. Prud'homme) on a point of order.

Mr. Prud'homme: Madam Speaker—

[English]

Mr. Benjamin: What is he up for now? He has had his turn on questions and comments.

The Acting Speaker (Mrs. Champagne): The Hon. Member has risen on a point of order.

Mr. Benjamin: Another bootleg.

• (1630)

The Acting Speaker (Mrs. Champagne): I will listen and rule afterwards.

Mr. Prud'homme: I assure you, Madam Speaker, that it is a point of order.

Madam Speaker, you know my respect for the Chair and the rules. I was not taking time away from the Hon. Member since he had finished his speech. According to the new rules, I am using the second part. Therefore, I was not bootlegging. I know that it was said in good spirits and was meant well, so I will not pursue the matter.

The Acting Speaker (Mrs. Champagne): The Hon. Member for Regina West.

Mr. Benjamin: The hon. gentleman sitting beside my colleague rose a little while ago and complained that the Hon. Member who had just finished his speech was not present for questions and comments. Then this hon. gentleman rose and proceeded to direct comments, and I presume that they were comments to me. The Hon. Member did not need to use up the whole 10 minutes. He can make his own 20-minute speech.

I wish to respond to the remarks of my hon. friend who stated that the NDP always posed as the great moralists who are always right. Like everyone else, I hate people who say, "I told you so". I cannot stand them. Therefore, I will not say it. It is not something that we are saying now in hindsight; we are not curling behind the glass. This is not hindsight, it is what we stated in October, 1970. Of course our caucus was divided. I believe there were two members of the Conservative caucus who also voted against the War Measures Act. We all knew that there were many members of the Liberal caucus who were very unhappy with the invocation of the War Measures Act. We tried to encourage them to have more courage of their convictions.

In any event, all I can say on that matter is that we felt then deeply, and just as easily we could have been wrong as we turned out to be right. I am not denying that. You have a position, you take it, and you take your chances. History will judge.

To the everlasting credit of a former Hon. Member of this place, whom I considered to be one of the finest human beings to ever grace this Chamber, one of God's gentlemen and a real humanitarian, the former Leader of the Conservative Party, Robert Stanfield, who, even though he was unhappy about the desires of the overwhelming majority of his caucus, acceded to their wishes. But within a year or two of no longer being a Member of this place he had the grace and the humanity to say that of all the things that occurred during his tenure as Leader of the Official Opposition, he wished that he had done as Tommy Douglas did in October, 1970, and I will leave it at that, Madam Speaker.

Mr. Simon de Jong (Regina East): Madam Speaker, I too wish to participate in this very important debate. Unfortunately, this debate has not received much press, public attention, or very much attention in the House. We have debated it for a while, but it certainly does not seem to be on top of people's agendas. Yet it is extremely important legislation, because surely in some ways how we are judged as a country is reflected by it.

First, I wish to congratulate the Government for bringing in a piece of legislation that will replace the War Measures Act. The War Measures Act was introduced at the beginning of World War I. It was found to be quite unacceptable to most Canadians, yet the ability and the opportunity to change or amend it never came forward. Despite former Prime Minister Trudeau having stated publicly on several occasions that the War Measures Act had to be replaced, that it was wrong for such tremendous powers to be placed in the hands of any Government, he failed in his long tenure as a Prime Minister to indeed bring forth the needed changes.

I do wish to commend the Government for taking this important step and fulfilling an important promise that it had made.

Source: Nikkei National Museum, 2018-16-4-1-1-102
www.nikkeimuseum.org

With a piece of legislation that gives tremendous emergency powers to a Government, great care must be taken with the type of powers that a Government is given over its citizens in times of emergencies. First, we must be concerned that the term "emergency" itself is properly defined; that the legislation has a very clear definition of what is meant by an emergency. We must be concerned that the powers that the Government takes upon itself and therefore takes away from its citizens are not abusive and will not be abused.

When we give this type of power to a Government, the nation and our civilization stands on the edge of falling into the abyss of a dictatorship with the very emergency powers that are called upon to attempt to protect us. There must be great consideration given that in the name of defending democracy we do not destroy it; that in the process of defending civil liberties and the rule of law we do not destroy them. That is why legislators are called upon to exercise great wisdom and care in drafting legislation that is needed in times of emergencies.

I underline the word "needed" because certainly there will be instances when emergency powers are needed by Government. We know that living in this day and age, not only will natural phenomena occur, for instance, tremendous storms, dust or drought, and various other natural disasters, but with modern technology there are man-made disasters.

There was the pesticide chemical plant in India and the melt-down in the nuclear plant in the Ukraine. Given modern technology and its power, a disaster can occur that would endanger the lives and well-being of thousands of citizens. In fact, when we talked about nuclear energy as the melt-down started in the Ukraine, we know that the radiation emitted from that plant was endangering the well-being of the globe. Because of modern technology, we do face those crises that endanger our global village.

In those circumstances, it is necessary for Governments to be able to act decisively and with speed; to be able to move and direct people and bring forth manpower without proper appropriation from Parliament and, at times perhaps, without care for due process because the well-being of the community at large, whether it is a village, a city, a province, a nation or the globe, is at risk.

I wish to warn again that, in drafting the type of legislation that gives that emergency power, great care and wisdom must be exercised. As various of my colleagues have pointed out, we have found the legislation brought in by the Minister of National Defence (Mr. Beatty), Bill C-77, to be wanting. We have major concerns, for example, that the reference that once the Government assumes any emergency powers, those powers shall be referred to Parliament within a certain period of time and passed by Parliament. This also means that it must be passed by the Senate. Is the Government serious in giving this extra power to the Senate, an unelected body? I urge the Government to rethink this provision and to consider seriously amendments in committee.

• (1640)

Four basic classes of emergency are described in the Bill. Each one is more severe than the previous one. The first one is an emergency based on public welfare—natural disasters, the outbreak of contagious diseases, man-made disasters, et cetera. The Government will be given the power to order persons. In other words, part of the possible interpretation of the emergencies power under public welfare is that an interruption in the flow of central services can be considered an emergency. This can be interpreted as giving the Government the power to break a legal strike or to use the legislation against strike-breakers.

I was encouraged to hear the Minister of National Defence (Mr. Beatty) state that that was not the intention of the Government. He indicated that the Government would seriously consider amendments to this section to ensure that the Act would not be used against a legal strike. I take the Minister at his word and I hope, when the legislation comes back from committee, that this section will be properly corrected.

The second level of emergency is public order. This would be similar to what was used in the October crisis of 1970. The Government would assume emergency powers at the appearance of an outbreak of civil unrest or civil disorder.

We also have some problems with this section. In part, the "threat to the security of Canada" definition comes from the Act which created CSIS. In terms of the record of CSIS, we know that it has some difficulty from time to time being able to differentiate between legitimate and illegitimate protests. We are also concerned that the public order emergency provision might be used against legitimate protests or legitimate opposition to government.

Another concern is that the Act, taking the section from CSIS, would allow action on the part of the Government in a situation where there might be economic or political unrest in some area of the globe that it deems to be of vital interest not only to Canada but to a major ally of Canada. In such a situation the Government could use its emergency powers under the section dealing with public order emergencies to impose the Emergencies Act.

We could interpret that in such a way that indeed it would open the door to the Government imposing the Act at any time. I remember debating this point when the previous Liberal Government established CSIS. We in this Party—and I believe it was the case with members of the Conservative Party at that time—found this section wanting. We are facing a major global challenge with the outbreak of hostilities between Iran and Iraq. These potential hostilities certainly threaten the economic well-being of the United States, a major ally of Canada. In that event would the Government, under this section, impose these emergency powers? It does not seem to make much sense.

Another area of concern that we find unacceptable is that persons affiliated with a group which advocates the use of violence in another country could conceivably have their basic liberties and freedoms removed under this Act. As some of my colleagues have pointed out, the Secretary of State for External Affairs (Mr. Clark) and the Prime Minister (Mr. Mulroney) have met with representatives of the African National Congress. The National African Congress certainly advocates the use of violence to overthrow the racist regime in South Africa. We could think in terms of the President of the United States who addressed us and attempted to justify his support of the Contras. Certainly the Contras are involved in the use of violence to overthrow a legitimate regime, a legitimate Government. Perhaps, had this Act been in power, the President of the United States might have been arrested when he came to Canada.

Of course the President of the United States will not be arrested and our Prime Minister will not be censured for meeting with members of the ANC. It is ridiculous to assume that they would be. However, the point we are trying to make is that the Act would allow for that interpretation. We are asking the Government to tighten the interpretation so that major powers would not be used in an illegitimate way.

We have other concerns. The greatest level of power will be given to the Government under the section dealing with war emergencies. In essence, Cabinet will have *carte blanche* to do anything it wants to do. It is no different from the War Measures Act.

These are some of the concerns of my Party. I am happy to hear that the Minister of National Defence has expressed interest in our concerns and has sounded as though he would accept some of our amendments.

I hope the Minister would also give serious consideration to the area of compensating people who might have lost property, their civic liberties, or income during an imposition of the Emergencies Act. We are concerned that in this area where expropriation can occur it will be up to Cabinet to set the limits of compensation. It will be up to Cabinet to determine arbitrarily whether there will be any compensation whatsoever. As well, there will be no appeals to the courts, just an appeal to a person appointed by Cabinet as an assessor.

I think history has taught us that this is wrong in terms of the Japanese Canadians who were wrongfully treated under the War Measures Act at the outbreak of World War II. They lost property and economic opportunity. Under the War Measures Act they did not have legal opportunity to obtain compensation for this wrongful act. I think everyone in the country now recognizes that it was a wrongful act. Let us make certain that these wrongful acts will not happen in the future. Let us make certain, if they are applied in a wrongful way, that those people will have a chance of getting compensation for the wrongs committed to them.

• (1650)

When one thinks of the history of Canada one thinks of the Japanese Canadians and the October crisis of 1970 which should surely have taught us all some lessons. It is so easy in the name of national emergency to trample on the individual freedoms and rights of people. It is my belief that a country that cherishes its democratic tradition, freedoms and individual civil liberties would take great care to ensure that in the defence of those freedoms and liberties it does not destroy the freedoms and liberties of its citizens and others. That is why again I repeat that a great amount of wisdom is needed. In times of national emergencies there is a tremendous groundswell of public opinion by the majority wanting quick, decisive action. It is a wise government and wise legislators who are able to say no, that the preservation of individual rights and freedoms must be fully considered.

We heard earlier today from the Hon. Member for Saint-Denis (Mr. Prud'homme) stating that during the October crisis 80 per cent of the population wanted action. That must have been very difficult for legislators in this House to deal with. After all we are political animals. We do read our mail, and when 80 per cent of our constituents tell us to put this violence that was occurring in Quebec down and to put it down fast by giving consent to the War Measures Act, it was very difficult to stand up for one's own feelings and one's own sense of what is right.

Mr. Benjamin: In the face of hysteria.

Mr. de Jong: As my hon. colleague from Regina West (Mr. Benjamin) has stated, in the face of hysteria.

In addressing Bill C-77 today I wish to pay tribute to Members of this House. I understand that there were members of the Conservative Party who had misgivings. I understand that the Leader of the Opposition at that time had grave misgivings and there were numerous government Members who had grave misgivings about the measure. A large number of my colleagues from the New Democratic Party were able, in the face of that hysteria, to stand up and do a very non-political thing in expressing opposition to the measures being taken. I hope all of us as legislators in the future, if ever situations like that occur again, will have the courage to exercise our wisdom.

I urge the Government to consider amendments to the proposed legislation so that when this legislation is passed by the House it will have the support of all Members.

Mr. Prud'homme: Madam Speaker, I have listened with a great deal of attention to my esteemed colleague who has just spoken. It is always very difficult to talk about a subject that dates back so far. I agree with the Hon. Member that it took a lot of courage to vote against the measure. I agree that when hysteria hits the fan it is always difficult to make a decision. But I have to remind him that what was happening was happening in the Province of Quebec so the people in Quebec were right in the middle of the turmoil. This turmoil did not

Source: Nikkei National Museum, 2018-16-4-1-1-103
www.nikkeimuseum.org

happen overnight. I am pleased to be still here today because it was an unbelievable debate, I admit that, and it was a terrible decision to take.

I have not looked at the speech I made in 1970 since then but I think I could repeat it today. I was not part of student life at that time. I was a leader in a way at many universities. I had in mind Kent University. My colleague is well aware of that. Kent University had a youth rebellion, a rightful one. I was a protector of American deserters and draft dodgers. It is written in many books in the United States what I did then, so I have no lesson to learn from anybody for having taken a tough decision then.

I do not know if the Hon. Members know the Van Doos in Quebec, but that regiment was given the task. I was afraid that if a student from my province had jumped on the military in Quebec, someone could have been shot. I repeat again that the agony I personally and others went through was terrible. I had a choice to make, being an elected person. My duty was to stop something that may take place, never knowing if the event would take place. If one does nothing and something happens one is forever sorry for not having acted. That was the agony many Members had to go through then. We will never know in our conscience if we were right. In our conscience some of us, as repugnant as it was, voted for the War Measures Act because we thought we were stopping something from taking place.

I just want to tell Hon. Members something before I sit down. Someone from my own family attended the meeting of the youth at l'aréna Paul Sauvé. They were being warmed up to go out in the streets. My relative called and said that they were about to go out in the streets. She was convinced that terrible events would take place. So I voted for the measure.

The Member was very kind in saying that it was repugnant for some, but I noticed that all people from Quebec then voted for the measure.

Mr. de Jong: Could I have one minute before we recognize it being 5 o'clock, Madam Speaker?

The Acting Speaker (Mrs. Champagne): The Hon. Member for Regina East.

Mr. de Jong: I thank my colleague, the Hon. Member for Saint-Denis, for his comments. I understand the internal turmoil and difficulty that he faced and which many faced at that time. I also remember the October crisis in 1970. I was in Vancouver working with a youth agency. We had a mayor called Tom Campbell who wanted to impose the War Measures Act against the Georgia Strait, against the organization I was working for called Kool-Aid as well as against a number of other people. Had people of the ilks of Tom Campbell had the power of the War Measures Act within their hands they would have thrown into jail hundreds of young people who were involved in legitimate, democratic organizations. That showed me how power in the wrong hands could have done

tremendous harm to the democracy, the freedom and the rights of ordinary Canadians. • (1710)

Mr. Prud'homme: The Hon. Member is right.

Mr. de Jong: Living in the late 1960s and early 1970s was a period of tremendous social upheaval and unrest. I predict in this day and age that there will continue to be periods of tremendous unrest. We are living in tremendous social, economic, cultural and psychological changes. Pieces of society do not fit in as nicely as they did before. The social glue that has held communities, families, and societies together is dissolving in many ways. I am afraid that it will be an easy cop-out to use the Draconian powers of a War Measures Act to impose order while what is needed is the freedom and wisdom to allow for organic changes and searches for solutions to the problems which society faces today.

• (1700)

The constant fear I have is that as we are thrown into tumultuous changes in our lifetime the forces which fear progress, the future, and change, will use these powers to impose a political order that will be unacceptable and, of course, anti-democratic. They will do it all, of course, in the name of preserving democracy. That, unfortunately, is the greatest fear I have for this legislation.

The Acting Speaker (Mrs. Champagne): Is the House ready for the question?

Some Hon. Members: Question.

The Acting Speaker (Mrs. Champagne): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Some Hon. Members: No.

The Acting Speaker (Mrs. Champagne): All those in favour of the motion will please say yea.

Some Hon. Members: Yea.

The Acting Speaker (Mrs. Champagne): All those opposed will please say no.

Some Hon. Members: No.

The Acting Speaker (Mrs. Champagne): In my opinion the yeas have it.

And more than five Members having risen:

The Acting Speaker (Mrs. Champagne): Call in the Members.

The House divided on the motion (Mr. Beatty) which was agreed to on the following division:

(*Division No. 292*)

YEAS

Members

Attewell
Bethel
Binns
Blackburn (Jonquière)
Blais
Blenkarn
Blouin
Bourgault
Brewin
Caldwell
Cardiff
Champagne (Champlain)
Clinch
Collins
Comeau
Cook
Cousins
Crombie (St. John's West)
Crosbie
Darling
Daubney
Dorin
Duplessis
Fennell
Ferland
Fontaine
Forrestall
Fraleigh
Frisina
Gagnon
Gormley
Graham
Gray (Bonaventure—Îles-de-la-Madeleine)
Grod
Gustafson
Halliday
Hamilton
Hardey
Harvey
Hicks
Hnatyshyn
Horner
Howie
Jacques
James
Jardine
Jepson
Kelleher
Kempling
Leblanc
Lewis
Lopez
MacDonald (Kingston and the Islands)
MacDougall (Timiskaming)
Malone
Mayer
Mazankowski
McCain
McCrossan
McCusker
McInnes
McKnight
Mieaker
Mitges
Moore
Nicholson (Niagara Falls)
Nickerson
Oberle
Ouellet
Peterson
Plourde
Porter
Reid
St. Germain
St-Julien
Schellenberger (Wetaskiwin)
Scott (Victoria—Haliburton)
Scott (Hamilton—Wentworth)
Stewart
Shields
Siddon
Sparrow
Stackhouse
Stewart
Sufeh
Taylor
Thacker
Tupper
Turner (Ottawa—Carleton)
Van De Walle
Vankoughnet
Warner
Weiner
Wilson (Swift Current—Maple Creek)
Wise—95

NAYS

Members

Althouse
Angus
Benjamin
Berger
Blackburn (Brant)
Boudria
Cassidy
Copps
de Jong
Dewar
Finestone
Foster
Fulton
Gray (Windsor West)
Guilbault (Saint-Jacques)
Hnap
Henderson
Hopkins
Kaplan
Keeper
Kilfoss
Malépart
Manly
McDonald (Broadview—Greenwood)
Murphy
Orlikow
Parry
Penner
Pépin
Prud'homme
Robichaud
Robinson
Rodriguez
Rompkey
Skelly
Young—36

[*Translation*]

The Acting Speaker (Mrs. Champagne): I declare the motion carried.

Motion agreed to, Bill read the second time and referred to a legislative committee.

Source: Nikkei National Museum, 2018-16-4-1-1-104
www.nikkeimuseum.org

THE GLOBE AND MAIL

TUE NOV.17,1987

***War*Measures*Act*a monster, Beatty says **

Canadian Press

OTTAWA

New laws to replace the*War*Measures*Act*will rein in the Government's sweeping powers to suspend civil rights in emergencies, Defence Minister Perrin Beatty said yesterday.

Mr. Beatty, leading off debate on the proposed emergency act, said the 1914 War Measures Act is ''an archaic and dangerous piece of legislation'' that is rigid and does not contain enough protections for civil rights.

''We do not wish to live with this monster any longer,'' he told the House of Commons.

The most vivid example of the War Measures Act's Draconian powers was seen during the 1970 October Crisis, when the Front de Liberation du Quebec kidnapped a British diplomat and murdered Pierre Laporte, Quebec's labor minister.

In Quebec, 450 people were arrested and held without charge, but police used the act to harass political activists as far away as British Columbia. That action sparked years of national soul-searching about how Canada should deal with threats to civil order.

One thing that emerged - and was emphasized during the McDonald royal commission's probe of the RCMP security service - was that the War Measures Act is too harsh for anything but the gravest emergencies.

Instead of allowing such sweeping measures to be invoked by the federal government in almost any kind of crisis, the new act would set out four kinds of emergencies: public welfare emergncies, including severe natural disasters; public order emergencies threatening Canadian security; international emergencies, including acts of intimidation and violence; and war emergencies, including real or imminent armed conflict against Canada or its allies.

Mr. Beatty said the new legislation will give Parliament far greater powers to rein in a government that wants to impose emergency measures.

The whole bill is subject to the provisions of the Charter of Rights. It also gives the provinces greater say over trouble in their territory and strengthens their jurisdiction over police forces, Mr. Beatty said.

Mr. Beatty said Ottawa's emergency powers will be invoked only when there exists an ''urgent, critical situation that is temporary, which imperils Canada or exceeds the capacity of a province and only Parliament can deal with it.''

But opposition spokesmen attacked several provisions in the bill and urged the Government to take all the time necessary to improve the legislation.

Liberal defence critic Leonard Hopkins said the proposed legislation ''has a quality of overkill in many sections,'' and will need careful study to ensure that civil rights are protected.

New Democratic Party defence spokesman Derek Blackburn said the new bill has been a long time in coming and ''isn't perfect by any stretch of the imagination.''

He called on the Government to seek a broad range of expert testimony during committee hearings on the bill.

Source: Nikkei National Museum, 2018-16-4-1-1-105
www.nikkeimuseum.org

COMMITTEE HEARINGS

Source: Nikkei National Museum, 2018-16-4-1-1-106
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COMMITTEE HEARINGS

HOUSE OF COMMONS

Issue No. 1

Tuesday, December 15, 1987 –
Tuesday, February 23, 1988

Chairman: Allan McKinnon

Minutes of Proceedings and Evidence of the Legislative Committee on

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

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RESPECTING:

Order of Reference

APPEARING:

The Honourable Perrin Beatty, P.C., M.P., Minister of National Defence

WITNESS:

(See back cover)

Second Session of the Thirty-third Parliament, 1986-87-88

ORDERS OF REFERENCE

Extract from the Votes and Proceedings of the House of Commons of Wednesday, November 18, 1987:

"The House resumed debate on the motion of Mr. Beatty, seconded by Mr. Lewis,—That Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be now read a second time and referred to a Legislative Committee.

After further debate, the question being put on the motion, it was agreed to on the following division:—

Accordingly, the Bill was read the second time and referred to a Legislative Committee."

Extract from the Votes and Proceedings of the House of Commons of Thursday, November 19, 1987:

Mr. Fennell, from the Striking Committee, presented the Forty-second Report of the Committee, which is as follows:

Your Committee recommends that the Legislative Committee of this House to study the following Bill be composed of the Members listed bellow:

—Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof;

Members

Blackburn	Hopkins
Blais-Grenier	Ferland
Duplessis	McKinnon—7
Hicks	

Pursuant to Standing Order 93(1), the Report was deemed adopted.

ATTEST

ROBERT MARLEAU
Clerk of the House of Commons

MINUTES OF PROCEEDINGS

TUESDAY, DECEMBER 15, 1987
(1)

[*Text*]

The Legislative Committee on Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, met at 9:35 o'clock a.m. this day, in Room 307 West Block, the Chairman, Allan McKinnon, presiding.

Members of the Committee present: Patrick Crofton, Michael Forrestall, Len Hopkins and W.R. (Bud) Jardine.

Other Member present: Douglas Frith.

Allan McKinnon announced his appointment as Chairman of the Committee, pursuant to Standing Order 93(2).

The Order of Reference dated Wesnesday, November 18, 1987 being read as follows:

ORDERED,—That Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be now read a second time and referred to a legislative committee.

On motion of Bud Jardine, it was agreed,—That the Committee print 750 copies of its Minutes of Proceedings and Evidence as established by the Board of Internal Economy and, if required, more copies at its expense.

On motion of Len Hopkins, it was agreed,—That the Chairman be authorized to hold meetings in order to receive evidence and authorize its printing when a quorum is not present, provided that three (3) members are present including the Chairman and, in the absence of the Chairman, the person designated to be Chairman of the Committee.

On motion of Parick Crofton, it was agreed,—That the Sub-committee on Agenda and Procedure be composed of five (5) members, namely, Len Hopkins from the Liberal Party, Derek Blackburn from the New Democratic Party and two Government Members to be appointed later, and in the absence of the Chairman, the person designated to be Chairman of the Committee.

On motion of Len Hopkins, it was agreed,—That during the questioning of the witnesses, each member be allotted fifteen (15) minutes in the first round and thereafter five (5) minutes each in the second round.

At 9:44 o'clock a.m., the Committee adjourned to the call of the Chair.

TUESDAY, FEBRUARY 23, 1988
(2)

The Legislative Committee on Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies

Source: Nikkei National Museum, 2018-16-4-1-1-107
www.nikkeimuseum.org

and to amend other Acts in consequence thereof, met at 3:35 o'clock a.m. this day, in Room 371 West Block, the Chairman, Allan McKinnon, presiding.

Members of the Committee present: Derek Blackburn, Patrick Crofton, Marc Ferland and Michael Forrestall.

Appearing: The Honourable Perrin Beatty, P.C., M.P., Minister of National Defence.

In attendance: *From the Library of Parliament*: Philip Rosen and Helen Morrison, Research Officers.

Witness: *From Emergency Preparedness Canada*: Bill Snarr, Executive Director.

The Committee resumed consideration of its Order of Reference, dated Wednesday, November 18, 1987, concerning Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof (*see Minutes of Proceedings and Evidence, Tuesday, December 15, 1987, Issue No. 1*).

The Chairman presented the FIRST REPORT of the Sub-Committee on Agenda and Procedure, which is as follows:

Your Sub-committee met on Thursday, February 11, 1988, to plan its future business with respect to Bill C-77 and has agreed to make the following recommendations:

1. That the Honourable Perrin Beatty, P.C. M.P. Minister of National Defence, be invited to appear before the committee during the week of February 22, 1988.

2. That the Chairman immediately call a Press Conference or issue a Press Release to notify the public as to commencement of public hearings on Bill C-77 in order to give an opportunity to those who may be interested in making a written submission to the Committee.

3. That the Committee schedule meetings on Tuesdays and Thursdays to expedite its work of hearing witnesses and Clause by Clause consideration of the Bill.

4. That the Clerk of Committee, communicate immediately with the following to set up a schedule of meetings according to the availability of prospective witnesses:

a) INDIVIDUALS

Senator Eugene Forsey, Constitutional Expert;

Maxwell Cohen, Constitutional Expert;

Jérôme Choquette, former Minister of Justice Government of Quebec, 1970; and

Professor Yoram Hamizrachi Editor, *Terrorism International, Basic Data and Trends*, Winnipeg, (Manitoba).

b) ORGANIZATIONS

Canadian Bar Association Ottawa, (Ontario);

Canadian Civil Liberties Association Toronto, (Ontario);

Ligne de Droit et Liberté Montréal, (Québec);

Canadian Labour Congress Ottawa, (Ontario); and

Canadian Red Cross Ottawa, (Ontario).

c) MEDIA

Parliamentary Press Council.

d) PROVINCIAL AND TERRITORIAL GOVERNMENTS

i) Ministers and officials who are responsible for Emergency Preparedness within their respective jurisdictions;

ii) Officials from the Attorney General's office Government of Ontario;

iii) Officials from the Attorney General's office Government of Quebec; and

iv) Officials from the Attorney General's office Government of British Columbia and one of the Atlantic Provinces.

e) POLICE FORCES

The Royal Canadian Mounted Police;

The Metropolitan Toronto Police Force Toronto, (Ontario);

Police de la communauté urbaine de Montréal; (The Metropolitan Montreal Police Force).

On motion of Patrick Crofton, seconded by Derek Blackburn, the FIRST REPORT of the Sub-committee on Agenda and Procedure was concurred in.

It was agreed,—That Clause 1 be allowed to stand.

The Chairman called Clause 2.

The Minister made a statement.

The Minister and the witness answered questions.

At 5:20 o'clock p.m., the Committee adjourned to the call of the Chair.

Santosh Sirpaul
Clerk of the Committee

EVIDENCE

[*Recorded by Electronic Apparatus*]

[*Texte*]

Tuesday, December 15, 1987

• 0934

The Chairman: I call the meeting to order. It is my duty to first of all establish my own credentials. I will read the letter from the Speaker.

Dear Allan:

Pursuant to Standing Order 93(2), this is to confirm your appointment as Chairman of the Legislative Committee on Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

Yours sincerely,

John A. Fraser, M.P.

• 0935

I would first like to mention for the record that this is the Legislative Committee on Bill C-77. We hope to have our business over in a very few minutes and go back to another committee, which will be sitting here with many of the same people.

I will now ask the clerk to read the order of reference.

The Clerk of the Committee: It reads as follows:

ORDERED,—That Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be now read a second time and referred to a legislative committee.

The Chairman: Thank you. I need a motion about the printing, that the committee print 750 copies of its *Minutes of Proceedings and Evidence* as established by the Board of Internal Economy and, if required, make extra copies at its own expense. Could I have such a motion?

Mr. Jardine: I so move.

Mr. Hopkins: Is that normal, Mr. Chairman, to make additional copies that come out—

The Chairman: It comes out of a budget, the size of which I will point out in a few minutes.

Motion agreed to.

The Chairman: The second motion has to do with receiving and printing of evidence when a quorum is not present. A quorum is normally four. I am in your hands, but I would suggest three would be sufficient for the taking of evidence. If so, I would ask that a motion be

[*Text*]

passed that the chairman be authorized to hold meetings in order to receive evidence and authorize its printing when a quorum is not present, provided that three members are present including the chairman and, in the absence of the chairman, the person designated to be chairman of the committee.

Mr. Hopkins: You are going to have people coming from some distances on this bill, Mr. Chairman, so I would so move. I think three is respectable.

Motion agreed to.

The Chairman: With respect to the fourth motion, I would like to establish a Subcommittee on Agenda and Procedure and I would like the motion to be that the Subcommittee on Agenda and Procedure be composed of five members, including the chairman, and in the absence of the chairman the person designated to be chairman of the committee.

I would suggest that the five would be a Liberal—and it would appear Mr. Hopkins would be a suitable candidate for that—the NDP, Mr. Blackburn, and I will take advice from the Conservatives on the committee as to who should be their two members on that subcommittee. However, could I have a motion that the committee be composed of five members including the chairman and, in the absence of the chairman, the person designated to be chairman of the committee?

Mr. Crofton: I so move.

Motion agreed to.

The Chairman: I come now to the allocation of time for the questioning of witnesses. I would like a motion that during the questioning of the witnesses each member be allotted 10 minutes for the first round and thereafter five minutes in succeeding rounds.

Mr. Hopkins: Does your lead-off speaker get any additional time?

The Chairman: If it is the wish of the committee, I would be willing to change it. I would like to have some starting rule, if that is agreeable. Do you wish to try an amendment?

Mr. Hopkins: In view of the proportionate numbers on the committee, perhaps we could have an additional five minutes or something on the lead-off round, because when you get around to everybody you are going to have a lot of time going to government members. Therefore I think it is only fair that the lead-off people for our party have some additional time. I throw that out for discussion.

The Chairman: Is there any other opinion on this? Then perhaps we can have the following motion:

During the questioning of the witnesses, each member be allotted 15 minutes for the first round and thereafter five minutes.

Motion agreed to.

Source: Nikkei National Museum, 2018-16-4-1-1-108
www.nikkeimuseum.org

The Chairman: I will let you know when I wish to meet with the Subcommittee on Agenda and Procedure. I have already received a list of witnesses from the NDP, and some time in the next week or so I would like to have a preliminary list from the Liberals and from whomever the Conservatives decide should be their two members on the steering committee.

• 0940

Mr. Crofton: Speaking in my capacity as the chairman of the Standing Committee on National Defence, I would be grateful if the subcommittee could meet at any early date to try to establish the work schedule, because as the Standing Committee on National Defence we are proposing to embark on a very ambitious schedule of public hearings looking into the submarine acquisition program and I can see that, as we are almost identical committees, there is going to be great difficulty, particularly to schedule witnesses we want to hear. We have to give proper lead time. It is very important that the two committees sort out the proposed agenda at an early date.

The Chairman: I do not think it is quite that simple, because it is my understanding that Bill C-76 is supposed to be disposed of before we start considering Bill C-77. Quite frankly, from what I saw the other day I do not know when on earth Bill C-76 is going to finish. Perhaps someone else does. Mr. Howie is chairing that and unless it is going to. . . None of us really knows when Parliament is going to be recalled after this week; none of us knows how long Bill C-76 is going to last. So I do not think we can get too positive about when we are going to have Bill C-77.

That is all the business I have, and I now declare the meeting adjourned to the call of the Chair.

Tuesday, February 23, 1988

• 1534

The Chairman: I would like to call the meeting to order. We have about three items on the agenda before the Minister will be able to speak to us, and I presume you have received the first report of the steering committee. Does everybody have a copy of that? We should have a motion to accept it.

Mr. Crofton: So moved.

The Chairman: Second?

M. Ferland: Oui, très bien.

The Chairman: Is there any debate?

Mr. Blackburn (Brant): At the end of the steering committee meeting, I asked whether or not this was a complete list, and you seemed to indicate that it was not, that there might be others who might wish to apply to the committee to be heard. Is my understanding correct? If other groups of individuals wish to appear before the committee, if they contact either you, as chairman, or the secretary, would they be allowed to be heard?

• 1535

The Chairman: I would think the normal way to operate would be that they could certainly do that, but whether or not it would be acceptable or not would then depend on the committee.

Mr. Blackburn (Brant): This is our first meeting really, our first public meeting. I would not want us to create the impression that we are preventing or pre-empting any other witnesses from attending who may wish to appear before the committee at a later date, as the publicity from these meetings gets into the general media.

The Chairman: I am sure the committee would be quite willing to consider any additional names.

Mr. Ferland: It was understood that if any individuals wanted to submit briefs to our committee, we would determine, after reading these documents, whether they contain new elements which would help our committee to make some progress in its consideration of Bill C-77. Indeed, we cannot prevent anybody from asking to appear before this committee, but before inviting them, we want to know what they have to tell us. That is what I had understood, but correct me if I'm wrong.

Mr. Blackburn (Brant): Just very briefly, I do not think that is normal procedure. We do not read a written brief first, and then decide whether or not we want to have them appear before us. There are other ways of determining at the steering committee meeting whether or not there is time, or whether or not it is convenient for these witnesses to appear, but we do not normally read a brief and then decide whether or not we want to hear them to ask them questions. I have never heard of that before.

The Chairman: I do not want to get into too many plates of fancy as to what might happen in the future. I think it would be acceptable to a committee that if a member of the committee decides there is someone who has not been invited or not indicated a willingness to come and it would be of material benefit to the committee to hear that witness, the member can put the case and we will consider it at that time. Would that not be satisfactory?

Mr. Blackburn (Brant): Yes, just as long as we understand that the list we have here today is not the compete list. This is not the end of it. It is possible that others may be heard.

The Chairman: With the agreement of the committee.

Mr. Blackburn (Brant): Yes.

The Chairman: Thank you very much for coming today, Mr. Minister, and before we have one more, I would ask a motion to adopt the first report of the subcommittee.

Mr. Ferland: I so move.

Motion agreed to.

The Chairman: Clause 1 is a short title, and I would recommend it be stood for the time being.

Clause 1 allowed to stand.

The Chairman: We will go to clause 2 so that the Minister can present his brief. Is that agreeable? Mr. Minister, the floor is yours.

Hon. Perrin Beatty (Minister of National Defence): Thank you very much, Mr. Chairman. Could I first of all express my sincere appreciation to the committee for the opportunity to appear before you today.

Bill C-77 was introduced in the House toward the end of June. We chose that time to ensure that the bill might be given wide circulation among interested Canadians. We wanted to give an opportunity to the various orders of government in our country, and as well to individual Canadians outside of government, to study the bill before it was debated in Parliament. We have used the intervening period to consult broadly, and I am very pleased with the helpful and the constructive response that has been generated.

The bill was brought forward for second reading debate last November, and was passed at second reading just before the Christmas recess. In my speech moving the bill's adoption at second reading, I reviewed the reasons why the government had introduced this bill and its companion, Bill C-76. At that time I explained the thinking behind the structure of Bill C-77 and its general approach.

I propose to direct my remarks today to some of the important issues, which were either raised in the debate in the House or brought out in our consultations with Canadians. Now before going into these matters, however, I would like to provide you for the record copies of the correspondence from provincial Ministers on the topic of this legislation, which I quoted from in my speech during the second reading debate.

• 1540

At this time I would also like to table letters that I received subsequently from the Minister responsible for the *Bureau de la protection civile du Québec* and from the Solicitor General of Ontario.

Permit me to draw your particular attention to the paper that accompanied the letter from the Minister responsible for Alberta Public Safety Services and to the letter from the Minister responsible for *La protection civile du Québec*. Both of these set out a number of specific comments and suggestions bearing on the act. My officials have given copies to the clerk and I am sure you will give these views of provincial governments your full consideration.

I appreciate the constructive approach taken at second reading by my colleagues on both sides of the House. The main concern of us all is to equip the federal government with the instruments needed to provide for the safety and security of Canadians in time of serious crisis and, at the same time, to properly circumscribe and constrain these instruments to no more than what is absolutely necessary and to keep any infringement of fundamental rights and freedoms to the absolute minimum.

Let me take a moment to recall some of the statements made on these points during the second reading debate. Mr. Hopkins advised well when he said:

> . . . this Bill should not be taken lightly. Such measures are of extreme importance to any nation. This Bill deals with the basic theories and practices of the democratic processes itself and the fundamental rights and responsibilities of the country.

At a later point he noted, and with reason, that "legislation of this nature is not easy to come by".

Our colleague, Mr. Blackburn, pointed out:

> We in this country have a tremendous responsibility that, in the struggle against obvious legal subversion, we do not in fact subvert the democratic processes along the way. That is a very delicate and difficult balance.

I could not agree more. Mr. Manly stated most succinctly the challenge we face when he said:

> We would agree that a government must have adequate power to protect society from threats to good order and security. We would also agree that in granting such adequate power to government Parliament must build in adequate protection for the rights and liberties of groups and individuals.

He went on to add:

> It is absolutely essential that adequate power for government to protect against threats to society must be balanced by adequate protection for groups and individuals so that these powers are not abused.

Mr. Chairman, your committee is now embarked upon the task of striking that delicate balance, and I am here to provide any assistance that I or my officials can provide. I am particularly grateful for the thoughtful and constructive consideration of this bill given by the Canadian Civil Liberties Association. I understand the

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emergency powers is necessarily a judgment call, or more accurately a series of judgment calls. It depends not only on an assessment of the current facts of the situation, but even more on judgments about the direction events are in danger of moving and about how quickly the situation could deteriorate. Judgments have to be made, not just about what has happened or is happening, but also about what might happen.

In addition, to decide about invoking exceptional measures, judgments have to be made about what the government is capable of doing without exceptional powers, and on whether these capabilities are likely to be effective and sufficient.

Thus, the decision to declare an emergency is an exercise of political judgment and the Parliament of Canada is obviously an appropriate forum for questioning that judgment. The bill imposes elaborate safeguards to ensure that Parliament is fully and promptly informed by the government of its reasons for declaring an emergency and of any special temporary measures it intends to take. Parliament is given an opportunity to revoke a declaration of emergency or any orders and regulations made under it. The government is required to obtain the consent of Parliament if it wishes to extend or renew a declaration of emergency beyond its statutory expiry date. These provisions serve to ensure that the government will be fully accountable, through Parliament, to the people of Canada for its actions in an emergency.

Because Canada is a federal state, the principle of political checks is extended in the Act to include the provinces. Before the Government of Canada can issue a declaration of emergency, the Act requires that the government of any province directly affected by the declaration must be consulted about the declaration and about the emergency measures the Government of Canada proposes to take. The results of this consultation must be included in the government's submission to Parliament.

Thus, under the bill, the grounds for declaring an emergency will be subject to comprehensive parliamentary scrutiny. The CCLA has raised the very important question of whether this is enough. Whether, should there be any doubt or uncertainty about the government's justification for declaring an emergency, the decisions should be subjected to independent review outside the arena of politics. The natural place to seek such further objective review and confirmation would be in the judicial system.

In the past the courts have been very reluctant to second-guess the government's judgment about whether an emergency exists even under statutes, where the power of judicial review was broader than it is under this bill in its present form.

The judgments in the anti-inflation case make this clear. The courts have tended to regard such issues as political questions and have shown a certain discomfort in dealing with them even years after the emergency has ended.

Under Bill C-77, the courts have an important role in controlling the actions of the executive in times of emergency. The Emergencies Act is subject to the Canadian Charter of Rights and Freedoms and all temporary orders or regulations made by the government to deal with an emergency must conform to its provisions.

Any contested infringement of an individual's rights and freedoms resulting from the exercise of emergency powers will be upheld by the courts only if the federal government can show that it is reasonable, is prescribed by law and is demonstrably justified in a free and democratic society. In making this assessment a court would have to weigh the seriousness of the infringement on civil liberties against the gravity of the emergency. Thus, indirectly, they would be testing the basis of the original declaration of an emergency as advocated by the CCLA.

As important as this Charter protection undoubtedly is, I am persuaded that it might not be enough. I find the suggestion rather compelling that a step of such far-reaching implications as the declaration of a national emergency should be required to be based on a more objective foundation than the opinion of the Governor in Council.

• 1550

I am therefore proposing amendments to the clauses of the bill which, in their current form, condition the power to declare an emergency on whether, in the opinion of the Governor in Council, a national emergency exists, and which condition the power to take exceptional measures on whether in the opinion of the Governor in Council such measures are reasonably necessary for dealing with the emergency. The change I have in mind would require that on reasonable grounds, the Governor in Council believes a national emergency exists or the measures are necessary.

I might simply expand on that briefly, Mr. Chairman, to say that this will give someone who wants to contest the government's decision to invoke a declaration of a national emergency the ability to take us to court, if they believe it has been frivolously done. It will guarantee Canadians the ability that the courts could rule on whether the government had reasonable grounds to believe that a national emergency existed. This will, as a consequence, give added protection to the civil liberties of Canadians and I think it is something that should give considerable reassurance to Canadians.

In circumstances where there might be lingering doubt as to the reasonableness of the steps taken, the government could, under a changed formulation, be required to explain to the courts the reasoning by which it concluded that a declaration of national emergency was the appropriate action and that the measures taken pursuant to the declaration were reasonably necessary in order to provide for the safety and security of Canadians and of Canada.

Let me turn now to another matter. There was considerable discussion during the second reading debate of the question of defining the word "emergency" as it is used in the bill. In my view, the contention that the bill does not make clear the kinds of events it is concerned with is open to argument. Over 400 words are either used in the bill or called up by reference to other statutes in order to define the various kinds of situations envisaged.

In almost every instance where the word "emergency" is used in the bill, it is used as part of a defined phrase such as national emergency, public welfare emergency and so on, or as a clear shorthand reference to one of the defined phrases. When it is used alone and when it is used as a qualified single word as part of the defined phrases, the word emergency is used in its ordinary dictionary meaning.

The Oxford English dictionary, which is the standard dictionary used in the preparation of the English version of federal legislation, defines "emergency" *inter alia* as the arising sudden or unexpected occurrence of a state of things, an event, etc., a juncture that arises or turns up, especially a state of things unexpectedly arising and urgently demanding attention. That is the meaning intended in this bill.

In the drafting of statutes, as in the preparation of any other text, there is no need to define a term unless it is intended to alter the ordinary dictionary meaning of the term. There is no such intention here. To quote Elmer Driedger, the doyen of Canadian legislative drafting:

> Definitions should not be inserted unless they are needed. Frequently a word or expression cannot be exactly defined and the presence of a definition may cause more difficulties in construction than in its absence.

In many cases the dictionary meaning is adequate and the exact interpretation of the word or expression can safely be left to the courts. Also, the Canadian legislature drafting conventions of the Uniform Law Conference of Canada provide that an expression should be defined only where it is not being used in its normal dictionary meaning. These conventions are the standard applied by all federal, provincial and territorial jurisdictions in Canada.

In summary, it can be readily seen that there is no need to define the single word "emergency" in Bill C-77. The decision not to do so is entirely in accordance with standard drafting practice.

There was some very useful discussion on the other hand in the debate of the possibility that some aspects of the definition of a national emergency and the definitions of several of the wider classes of emergencies could lead to a wider application of the act than was intended.

In this context, the key definition is the definition of a national emergency that appears in the preamble. This definition was quite deliberately based on language used in previous Supreme Court judgments relating to the constitutionality of the so-called "emergency doctrine". Since this concept is central to the constitutionality of the bill, it was considered important that we stay as closely as possible to language that has a high degree of currency in this area. I would be very reluctant on the basis of advice we have been given by legal authorities to depart from this language.

I can appreciate, however, that positioning the definition in the preamble rather than in the body of the act has led, in the minds of some observers, to uncertainty about its status with respect to the act as a whole. I am assured by my advisers that the preamble does in fact have a status and force equal to all the other provisions of the bill. In the interest of clarity, to reassure all observers, I am proposing to move the definition of national emergency to the body of the act, to be inserted as a new clause preceding Part I. Since the bill deals only with national emergencies, having this term formally defined in the act should remove any further concern about the definition question.

We have studied very carefully the helpful suggestions put forward by the Governments of Alberta and Quebec, and I am proposing several amendments to the bill to accommodate their concerns. Both Quebec and Alberta ask that the reference to shortages of essential commodities and services, in the definition of a public welfare emergency in Part I, be qualified to confine the application of Part I of the Act to only such shortages as result from a natural disaster or major accident. These provinces were concerned that the present wording might lead to the use of Part I in what was essentially an economic emergency more appropriately dealt with by ad hoc legislation specifically tailored to the problem at hand. Such use of the Emergencies Act was not intended and clarification should be made.

Both provinces also suggested changes to clarify the provisions which ensure that the invocation of federal legislation in a national emergency would not unduly

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detract from a province's ability to deal with concurrent situations in its own jurisdiction. I find this suggestion eminently reasonable.

Finally, the Government of Quebec pointed out that in times of emergency, the intent clearly ought to be that the federal government and the governments of the provinces work together in meeting the exceptional demands put on on all government's capacities to provide for the safety and security of Canadians. There is no doubt that Quebec has correctly interpreted our intention. A major tenet of this government's general approach has been the notion that provinces and the federal government should work in concert in finding and applying solutions to the challenges which face us. Accordingly, I am proposing amendments to the bill which explicitly set out this objective, and I think it is particularly appropriate that it appears here, in a bill which is dealing with times of adversity—times when effective consultation can make the difference between successful operation and chaos.

In addition it was suggested that the act should explicitly require that those whose services are commandeered be fairly compensated for their services. I am proposing a change along those lines.

There was also concern about the potential breadth of application of the act implicit in the definitions of international emergency and of a war emergency. I indicated during second reading debate that I wished to see the legislation clear on such points. Even if on strictly legal grounds the concerns might be argued to be unfounded, I am anxious that clarification be made wherever a need for greater certainty is apparent.

I am proposing that the definitions of an international emergency and a war emergency be changed by deleting in both definitions the words "or any other country in which the political interests of Canada or any of its allies are involved" and adding, in both definitions, the words "it is so serious as to be a national emergency". I think these changes will remove any concerns about the breadth of situations envisaged or would justify the invocation of Parts III or IV of the act.

Concern was expressed in the debate about the provisions in Part II relating to a public order emergency and, in particular, about the power to make orders and regulations to prohibit or regulate public assembly. I should remind you that in considering the powers in this part, it is appropriate to keep in mind that we are talking about measures to be taken only when a threat to the security of Canada so serious as to be a national emergency has already occurred and that Parliament will have confirmed the need for special measures and will review each of the measures individually.

The power relating to public assembly, like all the powers of the act, is not available for frivolous application. Whenever any of the special powers are used during a public order national emergency, they can only be used in a way that in the words of the act is "reasonably necessary for dealing with the emergency". Thus it is specious to argue that the government could, through the public assembly provision, intefere with obviously harmless public gatherings.

On the other hand, in instances where subversive activity becomes seriously active and overt, uncontrolled public assembly can be one of the most dangerous sources of disorder, potentially leading to serious injury and widespread damage to property. It wold be ineffective if the government were empowered to deal with potentially dangerous gatherings only after the danger had been physically manifested. Remember we are talking about a situation that has already erupted to the point of justifying the declaration of a national emergency. In such circumstances unusual and temporary measures may be necessary in order to avoid escalation and the rapid spread of lawlessness. For the sake of clarity I am proposing an amendment that will ensure that the regulation of public assembly is confined to assembly directly related to the emergency.

On a more general point in connection with public order emergencies, we felt that since such emergencies relate to threats to the security of Canada, we should use a definition of such threats that is consistent with the use of the same concept in other statutes.

The CSIS Act has a definition that was given careful scrutiny by Parliament. It may well have some shortcomings in its application and interpretation for guiding continuing investigation in time of relative calm. If improvements in definition result from the current examinations of the CSIS mandate or from the general review of CSIS legislation which is statutorily required next year, such improvements will automatically be carried forward into the Emergencies Act. The CSIS Act has a built-in sunset provision that requires that Parliament review the act itself after a specified period. That would include the wording of all definitions included in the CSIS Act itself. As a consequence any amendments that were made by Parliament to the CSIS Act as part of its review next year would automatically be carried through here.

I would submit to you that concerns about the breadth of the definition of "threats to the security"—

Mr. Bill Snarr (Executive Director, Emergency Preparedness Canada): We are missing a page.

Mr. Beatty: We have a small national emergency here in this text.

Threats to the security of Canada in the CSIS Act are largely overcome in this bill, since the scope is narrowed considerably by the requirement that the threat be so serious as to be a national emergency and must necessitate the taking of special temporary measures for dealing with the emergency. Further, the CSIS definition explicitly excludes lawful advocacy, protest, or dissent as a possible threat to the security of Canada.

A number of other concerns were raised during the debate. I am sure you will be pursuing these during your committee deliberations. For example, the question of censorship is commented on as it applies to restrictions both on the media and on individuals. It was our intention that censorship powers should only be available in a war emergency. This should be made clear. In this context, however, it is worth noting that freedom of the press is a Charter freedom and the government would be obliged to convince the courts that any limitations on this freedom were reasonable and demonstrably justified in a free and democratic society.

It is evident that our intentions were far from clear with regard to the clauses in Part III dealing with powers of inquiry and of search and seizure. As I mentioned in the debate, these were included to enable the government to deal effectively with those who might be tempted by conditions of expedited procurement or commodity shortages to become involved in unscrupulous profiteering and black marketing. The relevant clauses need to be modified in order to make this clear.

On the question of compensation for injury or damage suffered by individuals through unfair or otherwise inappropriate application of the act, I am most anxious that the act set up a fair, workable mechanism. I would be prepared to study carefully the comments and considerations that you will be able to elicit from experts in this field. However, I have considered the proposal raised in several quarters that the compensation should be covered by provisions which make it mandatory rather than discretionary. I agree that such a change should be made.

In view of some of the reservations about the compensation provisions expressed in the debate I might, in the interest of clarity, point out that the act explicitly makes available to anyone who feels he or she merits compensation the right to seek compensation through the provisions of the Crown Liability Act.

This act allows the normal judicial processes of appeal to the highest court. Anyone offered compensation under the procedures set up by the bill, if he or she felt the compensation was unfair or inadequate, could decline to accept it, and proceed under the alternative route of the Crown Liability Act. One would of course not be allowed to claim double compensation by following both routes.

The compensation process set up in Bill C-77 is a less cumbersome and hence more rapid procedure than going through the courts. It might perhaps be looked upon as something akin to a settlement out of court, so that fair compensation could be dispensed quickly to a large number of people. As I pointed out earlier, redress through the courts would however still be available, if that is what the wronged individual preferred.

I have with me, Mr. Chairman, a package of amendment motions covering all of the points I have been discussing. I appreciate this is quite a collection of changes to put before you all at once. I can assure you they are all in response to issues raised by members in debate and by representatives from outside.

As I indicated when the bill was tabled, and when I spoke in debate, we see this important piece of legislation as one that needs to be built on a firm foundation of consensus. I think these tangible results of the open process of consultation so far are evidence of our sincere desire to build consensus and to act on it.

I share with you the goal of ensuring that this legislation be the best we are capable of producing, in working together. I am available now for questions and discussions, and I have asked our officials to be prepared to respond to your wishes for any follow-up testimony that may be desired.

I might, Mr. Chairman, just make one final plea in concluding. The history of the War Measures Act has not been a proud part of the history of Canada. It has been one where the rights of ordinary Canadians have been violated, and seriously violated, over the course of our history. The time has long since passed for us to keep faith with those people to whom commitments were made and for the course of years past: to abolish that legislation, and to bring in modern and contemporary and flexible

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legislation that meets current needs and properly balances the needs of the state with the rights of the individual.

By acting now in this committee, and by having Parliament act expeditiously in this legislation, we can ensure we have that contemporary legislation, but even more importantly, ensure that never again will the sorts of abuses that took place under the War Measures Act, over the course of its long and unsavoury history, be repeated. Never again will ordinary citizens have their rights stripped away from them in the way it has been done in the past in Canada.

The Chairman: Thank you, Mr. Minister, for your presentation. I would suspect the number of amendments is going to create a problem. I wish we had had them before the week's break, and we might have considered having them all incorporated in a new copy of the bill, so that we could see what it would look like with all of these amendments. Otherwise it is going to be very hard to hold them in one hand while we try to hold the bill in the other and listen to witnesses. Colleagues on the committee probably share my opinion.

Mr. Blackburn (Brant): I also want to welcome the Minister to our committee meeting today, and express my sincere gratitude for the changes the Minister has proposed in the amendments he has presented to the committee today. But like you, sir, I find it a little difficult to proceed at this time because I have not had a chance to digest them.

Mr. Beatty: Anything either I or my staff can do in terms of assisting the committee in going through the proposed amendments and demonstrating how they would apply to the legislation, we would be glad to take any time to do.

We had two choices. One was to make the possible amendments available now or to wait until after more presentations had been made. As a result of the consultations we had and debate in the House, it was clear to me there are some areas where we could clarify provisions in the bill, which did not in any way attack the intent of the bill, but ensured that civil liberties or the rights of provinces would be better respected. That would save the committee a good deal of time in terms of hearing witnesses on points that could easily be cleared up.

• 1610

Mr. Blackburn (Brant): I certainly agree. I know that there were two choices. Usually amendments coming from the Minister come part way through the hearings or at the end of the hearings. I am not being at all critical; I am very happy that we have the amendments before us. The problem is a very practical one. First of all, I do not know how to put them together this afternoon, so I cannot ask the intelligent questions. Quite frankly, there are very few. Secondly, I am wondering about witnesses scheduled to appear before us within the next two or three days. It is my personal view that they should be given at least a week to go back to their drawing boards to rewrite, at least in part, their submissions. We have no idea at this point of what their submissions contain. But certainly the Minister has gone a long way in acceding to many of the requests that we and other speakers have made at second reading in the House in shaping this bill into a much better piece of legislation.

Mr. Beatty: Copies of this text are being couriered to all those groups whose names we have at present. They are on their way to them right now. I am in the hands of the committee in terms of how you would like to proceed. I think you are quite right, Mr. Blackburn, that the vast bulk of legitimate concerns that have been raised in the consultations over the past eight months or so are accommodated in these amendments. It may be that some groups who had felt previously that they wanted to make presentations may decide now that they either want to substantially modify them or that it was not necessary to do so.

Mr. Blackburn (Brant): In terms of redress and compensation and cost, I notice that those who feel that they have been aggrieved either materially or otherwise will be able to go beyond the constraints of the previous wording in this bill and go to the courts. I am wondering, though, in going to the courts, how the costs to the persons would be handled. Would the costs of taking the government to court fall on on their shoulders or would the compensation, if they do win compensation, include court costs?

Mr. Beatty: Are you referring there to the provisions under the Crown Liability Act?

Mr. Blackburn (Brant): Yes, if they go that route.

Mr. Beatty: Perhaps Mr. Snarr could respond on that. I would think the courts would have the power to award costs if they chose to, could they not?

Mr. Snarr: I am not sure of the detailed technical requirements in the Crown Liability Act. Perhaps we might check with our legal authorities on just what those provisions might be.

Mr. Blackburn (Brant): Very often the first major obstacle in this kind of process from a person's point of view is how to cough up the first fee to get a court action started. It can be very costly even though there may be compensation at the end. And that is something else I think we have to take into consideration.

Mr. Beatty: This is one of the real concerns I had when I was Revenue Minister. Often people who felt they had a good case were simply priced out of taking their case to court. That is why we try to find informal mechanisms to give an individual the right of appeal. The point I was trying to make this afternoon was that we would see the compensation mechanism here as essentially representing an out-of-court settlement, something that would allow us informally and quickly to give redress to aggrieved people, and to try to ensure that they are treated with some fairness. It will for the first time give provision that, in a case similar to the War Measures Act matter, somebody could now apply for redress.

Mr. Blackburn (Brant): Under your proposed changes here, would the government still set the limits of the awards, acting as it were as their own judge and jury?

Mr. Beatty: If we were using the compensation provisions in the bill itself, and it were acceptable to people, yes.

Mr. Blackburn (Brant): If it were acceptable to the complainants?

Mr. Beatty: Yes, but they also have the option of going through the courts if they were not satisfied with the settlement that was offered. The government cannot tie the hands of the people who have been aggrieved.

• 1615

Mr. Blackburn (Brant): In other words, they could come before an assessor—I think that is what it is called—and if they are not satisfied with the amount of compensation, they could refuse to accept it and could go the legal route through the federal court.

Mr. Beatty: Yes.

Mr. Blackburn (Brant): In terms of search and seizure, I am not quite sure about any changes you proposed on page 16. It seems to me that the government still has a pretty heavy hand in terms of search and seizure, which is not altogether bad, I have to admit, in some cases. It may be necessary to be pretty authoritarian. Are there any safeguards against unreasonable search and seizure?

Mr. Beatty: A reasonable test would be applied by the Canadian Charter of Rights and Freedoms. It will apply to this legislation, but in the amendment we are proposing today, we are making the circumstances in which search and seizure could be used more clear. I think one of the concerns the people had before was that we were asking for a fairly broadly construed power when we wanted to apply it only in very limited cases, where somebody might have engaged in black marketeering or hoarding. We are specifying those areas in which search and seizure could take place in a much more constrained sense.

In the document you have before you, Mr. Blackburn, at page 6 after the yellow page, the amendment is listed under clause 28 and spells out more specifically the areas in which it would be allowed. We can run through it very quickly.

Subclause 28.(1) says that while a declaration of international emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as the Governor in Council believes on reasonable grounds would be putting in that objective test that we can be challenged in the courts on and are necessary for dealing with the emergency.

Paragraph 28.(1)(c) is the authorization and conduct of inquiries in relation to defence contracts or defence supplies as defined in the Defence Production Act. That is a new provision for hoarding, overcharging, black marketeering or fraudulent operations in scarce commodities, including the conferral of powers under the Inquiries Act on any person authorized to conduct such an inquiry.

Paragraph 28.(1)(d) is the authorization of the entry and search of any dwelling house premises, conveyance or place and the search of any person found therein for anything that may be evidenced relevant to any matter that is the subject of an inquiry referred to in paragraph (c) and the seizure and detention of any such thing.

Paragraph 28.(1)(e) is the authorization of or direction to any person or any person of a class of persons to render essential services of a type that that person or a person of that class is competent to provide and the provision of compensation in respect of services so rendered. That clause will require us to pay compensation to somebody who has been directed to provide a service.

We are constraining more closely the circumstances under which search and seizure can be exercised.

Mr. Blackburn (Brant): Mr. Minister, how does this differ from ordinary procedure under the Criminal Code? I do not want a lot of detail, but why would you include clause 28 in this act and not just allow the regular Criminal Code procedure to be used?

Mr. Beatty: It is a good question. Throughout the bill wherever possible, we have been relying on the provisions of the Criminal Code as opposed to building in special provisions. Mr. Snarr may want to elaborate on it.

Mr. Snarr: In this particular area in an international crisis, when the country would be gearing up for possible involvement in hostilities, there is a need for putting in place, as rapidly as possible, the procurement of defence supplies and reorganizing the economy to put it on a war footing. This requires taking a lot of short cuts and a lot of fast action. It makes it much more vulnerable to unscrupulous dealings by people who want to take advantage of the situation to make an extra buck. With

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what happened during World War II, it was found necessary to have somewhat expanded powers to prevent that kind of abuse.

Mr. Blackburn (Brant): This is to accelerate the implementation of the measures to be taken in the face of the emergency. It does not differ philosophically or basically from Criminal Code procedures.

• 1620

Mr. Snarr: No.

Mr. Blackburn (Brant): Then it simply accelerates the process under emergencies.

Mr. Beatty: Where the emergency is of such proportions that extraordinary measures must be taken, it also ensures individuals cannot profiteer or blackmarket in a way that would cripple the government's ability to respond to the emergency.

Mr. Blackburn (Brant): Would this mean honouring existing contracts when commandeering such things as labour, under paragraph 28.(1)(e)?

Mr. Beatty: By "honouring existing contracts", are you referring to the compensation provision we are incorporating?

Mr. Blackburn (Brant): No, not necessarily compensation. If you are commandeering the services of persons, would that honour any existing contractual arrangement between that individual or group of people and their employers? Would they be forced, for example, to work free of charge or would they be pressed into action—

Mr. Beatty: Somebody who had a specialized talent, for example, or a specialized expertise could be pressed into action. There is a provision we are writing in to compensate him as a result.

The sort of person we are thinking of is somebody who, in the time of the crisis, has a very specialized expertise. It was essential to have this sort of individual available to assist us in a medical emergency or an emergency where technical knowledge was necessary. Then it may be necessary for the government to say it needs the individual's help and needs it now, but will build in protection so he is properly compensated for his services.

Mr. Blackburn (Brant): I see. I suspect my time is up, Mr. Chairman. Thank you very kindly.

The Chairman: Thank you, Mr. Blackburn. If I could just put one question in, Mr. Minister, you mentioned you were planning to send out a package to some of the people, mainly from provincial governments, who had sent you suggestions. In those packages, do you have a copy of the bill with the amendments you are suggesting in the bill?

Mr. Snarr: The document we will be sending includes all the amended clauses in the new form.

Mr. Beatty: The provinces had copies of the previous bill and were making their representations based on that.

The Chairman: This does not include parts of the bill that are not amended.

Mr. Snarr: No.

Mr. Beatty: No. They have that bill already, and they are making their representations based on the original versions of it. I think we will find, particularly when we take a look at the representations made by the provinces, that virtually all the concerns they have expressed have been addressed here. There are some that are not, but the vast bulk of them have been.

Mr. Forrestall: Mr. Minister, I do welcome you. I have two immediate concerns supplementary to Mr. Blackburn's initial comments.

First of all, has the bill been amended, or are you proposing to substantially amend the bill? I am thinking, of course, that we have now approved it in principle. I am wondering what kind of problems we may find ourselves in if—

Mr. Beatty: We are proposing amendments that would be put before this committee by a member of the committee or by the government for inclusion by this committee.

Mr. Forrestall: As Parliamentary Secretary, I suppose I might do that. Are we sure we should not do this on the floor of the House at report stage? I am just wondering. I ask the question. If we are not certain, let us perhaps leave it for the time being. I believe we were going to have one other matter clarified.

Mr. Beatty: I believe the committee has the ability to make amendments to the bill as it sees fit while it is before the committee. What we are doing is indicating those amendments that in the Government's view, at this point, would be appropriate ones to make.

Mr. Forrestall: That is fine. Could I then come back again to a concern in the area of compensation? Like Mr. Blackburn and the rest of the committee, I think I can see a good weekend of reading ahead here and of some adaptations to my copy of the bill.

• 1625

Is compensation in trans-border pursuits in the time of international emergencies, which are deemed national emergencies in your new terminology, foreseen, covered and dealt with in the bill? In the original debates I do not recall anybody's alluding to it. We have discussed the notion of compensation in a variety of ways, but not in trans-border pursuit.

Mr. Beatty: I need to defer to Mr. Snarr on that.

Mr. Snarr: I am not sure I understand precisely what you mean by trans-border pursuit.

Mr. Forrestall: I will put it another way. We have something in the order of 45 or 50 notes, understandings, protocols, agreements—CANUS arrangements—for virtually all the difficulties that might arise in an emergency situation. How do we compensate in the event that we invoke this new law at a time when we perceive a national emergency as a result of something happening elsewhere?

In other words, if the United States felt it necessary to come onto Canadian territory for purposes of their own defence, how does this act handle that?

Mr. Beatty: For an American national decision to come onto Canadian soil when we have not declared a state of war emergency, for example, it would have no bearing on it. This act refers to the actions of the Canadian government. The compensation provisions would kick into effect with the declaration of an emergency, where an individual feels his rights have been abridged in some way.

Mr. Forrestall: Clearly in your own mind you see ample compensation capacity in the existing protocols and other arrangements that exist between Canada and the United States under an exception or an extraordinary situation. You do not see any need for further protection in the context of these two bills.

Mr. Beatty: As best I understand the situation you are describing, Mr. Forrestall, it is clearly outside the confines of this bill.

Mr. Forrestall: Yes, of course. In the bill itself your amendment now imports the notion of a national emergency rising out of an emergency that is external to us, but which in the reasonable view of the Governor in Council does in fact constitute a national emergency. I am just wondering where that fits with all this plethora of other Canada and United States arrangements for what we call active pursuit.

Mr. Snarr: It is my understanding that any arrangements between Canada and the United States that would permit the Americans to take actions on Canada would either be at the invitation of the Canadian government or be directly pursuant to prearranged agreements between the two governments. As a result, if any Canadian civilian were wronged or suffered damage that could be construed as action taken by the Canadian government or directly resulting from the Canadian government, then this bill would cover it. If a Canadian emergency had been declared, then this covers any damage that an individual suffers as a result of action taken by the Government of Canada.

Mr. Forrestall: That is fine. It was just the presence of a new or an extended notion that gave me some concern.

Mr. Beatty: What we are doing with these amendments today is actually restricting or better defining the situation in a national emergency. Let me just give you an example. Some people had suggested concerns that a crisis in the Middle East with regard to the supply of oil to the United States might lead us to declare an international emergency here and to suspend civil liberties in Canada.

What we want to do is to better constrain our ability to declare an emergency and to better define those circumstances as being central to the interests of Canada before an emergency can be declared, so that you could not frivolously suspend civil liberties in Canada. The effect of the amendment today is to constrain more the ability to declare an emergency.

• 1630

Mr. Forrestall: I appreciate that the other area is very complex. I think you dealt with this in your commentary. With respect to the provinces, are you now satisfied that the difficulties the provinces had with intervention in certain of their rights to do certain things is now dealt with by the amendment?

Mr. Beatty: Yes.

Mr. Forrestall: Generally have we met the express concerns of all of the provinces with respect to this?

Mr. Beatty: Yes, I have tabled any correspondence we have had from the provinces. In hearing their correspondence on the provisions of the bill and amendments I am proposing, I think that the vast bulk of concerns they had are addressed, and that very strong support for the bill has been expressed by many of the provinces. If anything, it is going to be added to as a result of this.

We have had very good co-operation from the provinces. What we have done is try to bend over backward to make sure that we did not raise concerns on their part of an invasion of provincial jurisdictions. We tried wherever possible to co-ordinate, to co-operate as fully with them as possible, and to respect the Constitution.

In comparing their submissions with the amendments and with the bill itself, I think that the vast majority of concerns expressed have been dealt with.

Mr. Forrestall: Is there anything in this that would require the provinces to enact mirroring legislation or enabling legislation?

Source: Nikkei National Museum, 2018-16-4-1-1-113
www.nikkeimuseum.org

Mr. Beatty: No, this deals exclusively with areas under federal jurisdiction.

Mr. Crofton: It is extremely helpful that you have come forward with these amendments. As our colleagues have said, it is going to take us a little while to absorb them. You have asked us to move expeditiously. We shall do our best, but of course this goes right to the heart of civil rights and many other rights in Canada, so it might take a while. We do not want to be seen to be rushing this along unduly. It has been a long time in the making, and now is the time to make sure we cross all the right t's and dot all the right i's.

Has the department given any thought to the statute of limitations per se? One would hope that we would never have to invoke any of this or that circumstances would never require the government to take any action along these lines. However, we have the case still pending before us of the Japanese Canadians, who believe their rights were infringed many years ago.

We are trying to deal not in the direct way, but in a sort of a parallel way, with settlement claims with native peoples over many years. With the lapse of time it becomes more and more difficult to deal with issues adequately, because one's perceptions and one's recollections become murky. Claims are made that are almost impossible to sustantiate or justify.

Is there any desire or any way—and I am asking this in a generalized sense—to put time constraints on? Very often a class action is looked for in the first instance. When that does or does not deal with the case, then individuals may seek restitution for various acts that were taken. What is your view, Minister, on this general area, and how it could be dealt with?

Mr. Beatty: What we have done for the first time is to build into the legislation provisions for compensation that do not exist under the War Measures Act today. I understand the difficulty the present legislation has caused. There are groups who feel aggrieved, and there has never been in their view a just settlement to them as a result of the abridging of their rights.

What we are trying to do in the provisions that we have here is give a mechanism that will provide for compensation for groups whose rights have been abused. I suppose that a problem with writing in some sort of a limitation upon the time in which that could be done is that there might be people who are probably not identified at the time as having been injured by the actions of the government. I would not want to put a limitation upon the ability of the government to respond in cases where an individual might be able to demonstrate, or where a group might be able to demonstrate that it had been aggrieved in some way.

If your point is to to ensure that the government responds quickly in cases where somebody's rights have been violated, and where compensation should be paid, that is certainly what we would like to do under this bill: to provide a quick and easy mechanism, and one that would protect the rights of the individual, if he was not satisfied with the settlement proposed.

Mr. Snarr: As the Minister said, the idea of the compensation revisions in this bill are like out-of-court settlements. Once you set up that kind of mechanism, one would not want to envisage having to maintain it indefinitely after the emergency is over. So it includes provisions for the government to prescribe, under paragraph 47(b):

> (b) prescribing the period within which application for compensation must be made;

But any mechanism or means of compensation under the provisions of this bill would not extinguish the rights of an individual to appeal through the Crown Liability Act, unless he accepted the compensation that was offered pursuant to these arrangements. Regardless of whether the individual took advantage of what was available under this bill, or did it in time, he would always have access through the Crown Liability Act.

Mr. Beatty: I may just say that one of the significant changes in the amendments here is rather than talking, as the bill does, of conditions under which compensation may be paid, we are changing it to refer to circumstances under which compensation shall be paid, to make it more direct.

Mr. Ferland: I must say that as Minister of National Defence, you are guiding Bill C-77 through this whole process somewhat like the chief executive officer of a private corporation, who knows that his subsidiaries have been asking questions, and thus, when he comes before the executive committee, says: We intended to do something about this, but the various subsidiaries proposed amendments to us, and so I am laying them before you today. I find it interesting that you are tabling amendments today that seem to meet the expectations of the provinces and the various players who have been consulted over the past eight months. It is certainly true that I do not have much experience as a Member of Parliament—indeed, I may even be the youngest one around the table—but I do like to get an idea of the general tone of a bill as quickly as possible. I think that by tabling your amendments today, you are giving us a lot more time to analyse them, so that we can put pertinent questions to our future witnesses and determine whether they do indeed meet their expectations. I really appreciate what you have done, and I wanted you to know it.

Being a Quebecker, I am particularly interested in Bill C-77. In Quebec, we have seen all sorts of laws—the padlock law, for instance. I am perhaps a little young to recall much about the padlock law, but I do know it was a provincial statute. We also experienced the War Measures Act and all the problems that flowed from it. Let us just go back 17 years. That is about how old my son is; he was born October 12, during a doctors' strike in Quebec. I can tell you we experienced a lot of things simultaneously. Consequently, we are quite sensitive to the problems associated with these kinds of emergency measures.

On the one hand, I appreciate the fact that you have defined the terms "emergency" and "public welfare emergency". Here you have certainly met my expectations, because that was precisely one of the problems I raised. I wanted to be certain we had the same understanding of the terms used, and indeed you have already answered that question.

With respect to the bill as a whole, you say that you are going to attempt to make it clear that the powers in Part III do not extend to censorship. So I suppose in the case of a minor emergency we would not be talking about censorship. But suppose we were faced with an international emergency, such as a war. I presume the bill would allow the government to censor information in such circumstances, but only in the case of a very serious emergency such as a war, when the entire country is involved in a conflict. Is that correct?

Mr. Beatty: Yes, you are correct.

Mr. Ferland: On page 1 of the bill, under Definitions, you use the terms "national emergency" and "public welfare emergency". It is my belief that you are seriously attempting to clarify matters, in order to distinguish between an emergency and a public welfare emergency, such as a tornado or hurricane. Is that right? Fine.

In subclauses 47(d) and 47(j), reference is made to regulations. I worked in private enterprise for a long time, and I know that very often when a government passes a law, the regulations that follow are supposed to be consistent with the spirit of the legislation, but in fact are very often more demanding than the spirit of the legislation alone would seem to justify. As the mayor of a municipality, I had to argue our case more than once with respect to provincial regulations flowing from provincial statutes, and I know that it is not always easy.

Who is going to define the regulations referred to in clause 47? Subclauses 47(d) and (j) read as follows:

> (d) prescribing the methods and criteria to be used in assessing any loss, injury or damage for which compensation may be paid;
>
> (j) excluding, absolutely or conditionally, any class of person or of loss, injury or damage from the persons to whom, or the loss, injury or damage for which, compensation may be paid;

Mr. Beatty: The Governor in Council.

Mr. Ferland: Will the Governor in Council also be consulting the provinces? At some point we may set regulations and call into question some sections of the Act. Here I refer to injury or claims. I have not had the time to read all of your amendments, but a bill is always accompanied by regulations. Will regulations be set for each part of the legislation? And if so, will it be done in the same spirit that has always prevailed in the course of Bill C-77's preparation, in other words in consultation with all the major players?

Mr. Beatty: Yes, the legislation requires us to do that.

Mr. Snarr: The amendments that the Minister is tabling today imply more than just consultation. We are asking that there be dialogue between the federal government and the provincial governments.

Mr. Beatty: All these regulations will be subject to parliamentary review, for instance, by the Standing Joint Committee on Regulatory Scrutiny.

We want to ensure there is a very close review by Members of Parliament of all regulations arising out of this bill. We will ensure they are tabled and made available and scrutinized by the committee. In cases where regulations in some way infringe upon rights of individuals or where there is a policy concern, Parliament will have the ability to strike down regulations. In any case, they must be tabled.

Mr. Ferland: Just so that I can get an understanding of the spirit of the legislation, if we were to be faced with a situation analogous to the one we experienced in Quebec 18 years ago, in October of 1970, what difference would there be between the former War Measures Act and Bill C-77?

Mr. Beatty: A vital difference. . . and this is the point I think Members of Parliament should keep in mind at all times. In my view the October 1970 crisis is a blot upon our national conscience. We had crimes created retroactively. We had the burden of proof being shifted to the individual to prove that he did not belong to a banned group. If an individual had attended a meeting, the onus was on him to prove he was not a member. How can you prove you do not belong to a group?

We are going to rely upon the powers of the Criminal Code as opposed to relying on special powers within the act, wherever possible. The bill does not create new criminal offences. It gives far better protections to individuals. It will be subject to the provisions of the Charter of Rights and Freedoms. It will also be subjected to far better scrutiny by Parliament. It will be required to put a declaration before Parliament within a specified period of time, which will have a double veto on it, so that if either the House of Commons or the Senate says that it believes that an invocation of an emergency was

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not justified, either one can strike it down. Both houses would have to approve its continuance.

• 1645

A specified number of members can trigger a motion to strike down or to disallow the emergency at a later date. All of the regulations arising out of the bill will have to be submitted to parliamentary scrutiny. We are, with the amendments that we are making today, giving the courts the power to look at whether the Governor in Council had appropriate reason to believe that an emergency existed to ensure that these powers could not be frivolously used. We will not be suspending the right to habeas corpus.

If this legislation had been in place in October 1970, many of the abuses that took place with a knock on the door in the middle of the night simply would not have taken place, and many of the concerns that have been expressed by groups such as Japanese Canadians about their treatment in World War II could have been properly addressed.

It is a piece of legislation that respects the needs of government to protect the integrity of the country in an emergency and also recognizes the fact that even in time of emergency citizens have basic rights that may not be taken away, and that must be respected.

Mr. Blackburn (Brant): I have one or two questions to do with parliamentary supervision. Have you made any substantive changes to those sections?

Mr. Beatty: We have so many layers of parliamentary scrutiny on the bill as it is now that one could only strip it away. Mr. Kaplan now holds the post that I once held as co-chairman of the Standing Joint Committee on Regulatory Scrutiny. When the bill was tabled in the press conference, he dismissed the parliamentary scrutiny as meaningless. The "regs and stats" committee for years, certainly when I was chairman and since, has taken the position that it is high time that there was adequate parliamentary scrutiny, that statuatory instruments should be made available to parliament, that they should be properly looked at, and that they should have the power to disallow regulations if necessary.

In addition to the provisions we have written in to give the courts the ability to strike down improper government actions, we have also built in the requirement that both Houses of Parliament vote to support the government in the invocation of an emergency.

Secondly, we have put in the provision that at any time a specified number of Members of Parliament could put a motion to strike down the emergency if they changed their minds on that.

Thirdly, the committee can review all of the regulations and make recommendations on striking down those regulations. Even in cases where regulations, for reasons of national security, may not be published, those regulations will be going to committee, and the commmittee will have the right to nullify the regulations. So there will be a degree of parliamentary scrutiny here that is probably unprecedented in any legislation of this scope in the history of Canada.

Mr. Blackburn (Brant): Can the Senate act alone in striking down an emergency?

Mr. Beatty: Yes.

Mr. Blackburn (Brant): The reason I put that—it has been a while since I looked at that part of the bill—is that the Senate is not an elected body. It is in fact a very archaic institution around here, and may indeed be reformed. However, we cannot go on that assumption. If it is reformed, it probably will take several years. While I agree with the spirit and the intent of your bill with respect to several aspects of parliamentary oversight and parliamentary supervision, it seems to me that to give a non-elected and hence unrepresentative body such as the Senate that much power could be counterproductive. I do not disagree with your reference to the House because we are directly responsible to people and to voters. But the Senate is not.

• 1650

Mr. Beatty: I smile because my view of the Senate some days is not much more charitable than yours. What I wanted to do was to build in. . . because we are dealing with the civil liberties of Canadians. The Senate will have the power to strike down the state of emergency if they believe it is not warranted. In other words, it is a protection we are building in for civil liberties.

There is an irony to it, I suppose, that an unelected assembly would have the ability, on the grounds that the government had infringed in some way on civil liberties or had acted frivolously, to strike down a state of emergency. I think that double veto, where either the House of Commons or the Senate, either in concert or unilaterally, could strike down a state of emergency, gives that extra level of comfort to Canadians.

One of the concerns I have about Parliament is that when you most need Members of Parliament to speak up in favour of civil liberties, they are often nowhere to be found. That is why we built in the provision for the courts. It is often unpopular to speak out in defence of people whose rights are being taken away.

The one advantage the Senate has in this regard is that they are able to remove themselves one step from considerations of what the public temper is at the time and to look at questions of principle related to whether in fact an action is justified.

Mr. Blackburn (Brant): I hope you are not using this as a justification for holding onto the Senate in its present form. I say that half seriously. I get your point.

Mr. Beatty: It is an extra protection for civil liberties. It circumscribes just that much more the ability of the government to act frivolously in the removal of people's basic civil liberties.

Mr. Blackburn (Brant): Could the courts not do this just as—

Mr. Beatty: The courts will too.

Mr. Blackburn (Brant): We both have the same ability.

Mr. Beatty: Not on the basis of policy. Parliament has on the basis of policy. If the courts, for example, believe the Governor in Council did not have reasonable grounds for saying an emergency existed, we could be taken to court and the court could strike down the invocation of an emergency.

If the courts also felt at any time that provisions of any of the regulations under the act infringed against the provisions of the Charter, were for example not demonstrably acceptable in a free and democratic society, the courts could strike them down.

When it comes down to a question of policy, do we believe it is politically desirable at this point to have an emergency? That is something politicians in the Senate and the House of Commons, as opposed to the courts, should be deciding.

Mr. Forrestall: I just wonder how an action is started with the courts.

Mr. Beatty: By application.

Mr. Snarr: I would think it would have to be by an individual.

Mr. Forrestall: An application by an individual. That individual could presumably be the government itself.

Mr. Beatty: I supposed we could seek a reference from the courts, if we chose to do so.

Mr. Forrestall: What is the vehicle that brings the imposition of this to an immediate end?

Mr. Beatty: There are four ways: First, any declaration has a sunset provision on it; it expires after a specified period of time, written into the bill. Second, Parliament may at any time strike down a declaration of emergency. Third, the Governor in Council may itself declare the emergency no longer exists. Fourth, the courts may declare the Governor in Council did not have just cause in declaring an emergency.

What we have done is to build in so many layers of protection that we have really developed into a level unprecedented in any legislation I have seen here in 16 years. I felt it was justified to do because we are dealing with the most basic fundamental civil liberties of Canadians.

Mr. Forrestall: Just so we understand, it remains, in my 30 years of public life, 23 here, Mr. Minister, the worst mistake I ever made in my life, and I will regret it as long as I live, too, having voted for the last round of this nonsense.

I just wanted to come back again to the area of compensation. Compensation is available, and I think has to be quite properly there. If in the event of an application to a competent authority, the court, it was found by that court that there was no. . . Presumably that court would be the Supreme Court and presumably there is some way to get to the Supreme Court because it is a national. . . I would think there is no court of jurisdiction within the provinces. If the court finds there is no emergency, what happens to the liability of the Crown in terms of compensation?

• 1655

Mr. Beatty: The Crown would be liable.

Mr. Forrestall: Nothing will interfere with that.

Mr. Beatty: No. It would be even more demonstrable, but the Crown was liable in a case where it frivolously declared a state of emergency and suspended people's rights.

Mr. Ferland: Let us try to imagine the worst possible scenario. If Canada were to declare that the country was facing a major emergency—for instance, there was the risk of an attack by a foreign nation—the bill, as I understand it, would afford a Canadian access to the courts to ask the Supreme Court of Canada whether the Governor in Council did, in fact, have the right to declare a state of emergency, and the Supreme Court of Canada could rule that the Governor in Council did not have that right. Does the bill go that far?

Mr. Beatty: Yes, it does.

In the case of a war emergency, it would involve virtually any Canadian because the powers are so sweeping. It could bring a case to court. As Mr. Snarr says, somebody would have to demonstrate that he had some reason for being there. Presumably there would be no shortage of people prepared to do that, if the government frivolously declared a war emergency.

Mr. Ferland: I am just thinking here. It seems Mr. Churchill acted very quickly in the last war. Circumstances were rather special, but Parliament ratified his decision after the fact, it would seem. In this case, such a thing would not be possible. In fact, it is the courts that will rule on such issues and decide whether the Governor in Council was justified or not in declaring an emergency. You say that it will be up to the individual to sue the Crown, at least that is my understanding. That would involve some expense, and in some cases an individual would not be able to afford to take such action. Does the bill provide any mechanism that would make

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his task easier and encourage him to have his rights recognized by a court, even if he cannot afford to take legal action? Is anything like this provided in the legislation?

Mr. Beatty: Yes, but not only in relation to individuals. Provinces, organizations and individuals may do so. I do not, however, believe there is any specific provision for the payment of individual expenses.

Mr. Snarr: That question was raised a few moments ago. We said at the time that we would do some research in this area and provide you with an answer at a later date.

Mr. Ferland: Fine. We will come back to that later.

Mr. Beatty: I suppose it would be difficult to see a circumstance where such a grievous wrong was done that no organization would be prepared to support one individual out of 25 million Canadians who wanted to take the government to court and subsequently won his case. I suspect in a case like this the courts would probably award costs anyway, would they not?

• 1700

Mr. Snarr: I am no more of a lawyer than you are, sir.

Mr. Beatty: At our peril, we offer legal opinions on this. We will check and find out.

The Chairman: Thank you, Mr. Minister. We appreciate very much your coming to the meeting and giving us the benefit of your thoughts on the bill and the amendments.

Mr. Beatty: Legal opinions are free, Mr. Chairman.

The Chairman: I was just thinking this is why this committee gets along so well. I do not think there is a lawyer on the committee. They are a very unusual group.

Mr. Blackburn (Brant): There are an awful lot of teachers.

The Chairman: Thank you, Mr. Snarr, for your kind help. The next meeting will be at 11 a.m. Thursday in room 308.

Mr. Blackburn: On a point of order, Mr. Chairman, in light of the theme of this afternoon's discussions, I do not know how we can proceed at this point. There is a gentleman sitting behind me who represents the Canadian Bar Association. In his view it will take at least two weeks for them to put together a brief to respond to the very substantive changes that have been introduced today. I welcome those changes, and I think all committee members do. Is it fair to our witnesses to proceed on the original timetable? I submit to you and to the committee it is not fair.

The Chairman: I would suggest we have our researchers write those amendments into the bill by Thursday morning. They are, all steps in the right direction, but there are no drastic changes in direction that I can see. I think we could presume it. My first inclination was to try to get a bill rewritten completely so we could look at it to see if we could all agree to accept the amendments. I think we would be better off to look on them as ink amendments for the time being and to try for Thursday anyway. I think, if you look it over carefully, that is the way it will be. However, I am a creature of the committee. If you want to postpone it for some time, then that is the way it will have to be.

Mr. Ferland: The Minister has told us—and I have no reason to doubt his word—that he has attempted to meet the expectations of the various people he consulted in the course of preparing these amendments. I am no law expert. But a legal expert surely does not require three weeks to determine whether a clause meets his expectations or is consistent with the recommendations he made to the Minister. I have no particular desire to drag on our consideration of this bill any longer than we have to. I am not suggesting that we steamroll it through, but I do think we should try and pass it in a relatively short period of time. As far as I am concerned, it is a very significant bill that we, as Quebeckers, have been waiting for for quite a number of years. So I do think we should not unduly prolong our consideration of the bill.

The amendments I have had a chance to read seem quite clear to me. If I am able to understand them, I presume a legal expert would have even less difficulty than I did. And if there really are problems with them, they will have an opportunity to say so when they appear before us, and if necessary, we can always invite them back again. But I would like to hear their first reaction to the amendments as soon as possible.

Mr. Beatty: Mr. Chairman, if the committee would bear with my interfering in its scheduling, maybe I could make just a couple of points. First, your assessment of the amendments is correct; nothing in the amendments attacks the principles underlying the bill. The amendments respond to some of the concerns raised by various groups and individuals of matters of detail and clarify provisions of the bill.

For example, people had raised questions about whether or not, in the case of a postal strike, you could declare an emergency under this bill and then use a regulation issued by the Governor in Council to force postal workers back to work. It was never our intention to do that, and we are making it abundantly clear that in cases like this the legislation cannot be used for this.

I think the substance of the amendments will be very welcome by groups and individuals who have made representations. They will find that the substance is consistent with the general thrust of the bill previously and simply clarifies or constrains it more.

The other point I would make is that counting back from the summer recess, we should be out of here by the end of June, I hope. Since October 1970, all three political parties have had a commitment in good faith made to Canadians to abolish the War Measures Act and to bring in new legislation and a period of calm designed to better protect the rights and liberties of individual Canadians. We have not kept faith with Canadians during that period. We deliberately tabled this bill at the end of June last year to give a period of calm where Canadians could look at the bill with the assurance that we would not attempt to push it through or rush it through in some way. We have all had representations from them.

There is still time for useful hearings by this committee to solicit the points of view of Canadians. The one thing I would plead with the committee to do is to keep in mind the fact that this bill will have to be reported out of committee, will have to be considered at report stage and third-reading stage in the House of Commons, and then will have to be sent to the Senate. We would like to have all the parliamentary consideration of the bill concluded in time for the bill to be proclaimed prior to breaking for the summer recess, so that we will have kept faith with Canadians with the commitment we made some 18 years ago to them.

Mr. Blackburn (Brant): I agree completely with what the Minister has just said. I have no intention whatever of deliberately dragging out the debate. My intervention a moment ago was on behalf of witnesses, not myself, although I would like to have about a week to go through this again myself. As I say, I do not know how long it took the Minister and his officials to draft those amendments and to study them, to think about them and then put them into print.

I am quite certain, Mr. Chairman, that these very reputable groups we have coming before us might just feel very upset, to put it mildly, that we are expecting to proceed on course beginning on Thursday. If that is my understanding—maybe I am wrong on that point—I would hope we would give them a reasonable length of time to rewrite their briefs, if that is what they feel they must do now. I do not think that two weeks is an inordinate length of time or delay in view of the fact that we have still quite a long time between now and the end of June.

I have no desire whatever to deliberately hold up this legislation. I am not speaking on behalf of the witnesses, but I think they would appreciate some time to reconsider their briefs. No doubt it took several weeks to prepare them in the first place.

Mr. Ferland: I understand why it took quite a few weeks to prepare the amendments. The bill was tabled almost eight months ago, and departmental officials had to analyse the briefs and recommendations sent to them and then translate all of that into legal language. All of that was done in time for our committee to begin its work, and I certainly appreciate that.

I would like these people to tell us fairly quickly whether they are satisfied or not with the way their recommendations have been expressed in legal terms. I do think we should hear from *La Ligue des droits et libertés* and the Canadian Bar Association on Thursday. If those organizations feel the amendments are inadequate or they have not had enough time to consider them, they will probably say so. We have established our own work schedule and we should try to stick to it. I repeat that I am not trying to hurry the committee, but the amendments do seem quite clear. In the course of our meeting this afternoon, I have had the time to compare some of Quebec's recommendations with those in the bill, and the two do seem to tally. I will spend a few hours tonight, tomorrow and the day after tomorrow reviewing them, but I think other speakers, especially if they are lawyers, will be better able to form an opinion on the amendments.

Mr. Forrestall: The Minister and the department have been kind enough to give us their suggestions. We do have them available. We do have a work schedule.

I sympathize with what Mr. Blackburn is saying. Some of the witnesses may have difficulty, particularly those who would appear early. As compromise, instead of two weeks, perhaps an additional week would be of benefit. I sense there is a desire to get on with it. I think as we go through the suggestions and reflect upon them, they will not seem so complex. I think I was overawed by the size of your documentation, Minister, more than the content itself.

Is there any help in the suggestion of meeting next Tuesday instead of Thursday?

The Chairman: I would like to suggest that the clerk phone the first three sets of witnesses to see if they can cope with this. We will have their answers tomorrow and I will let the committee know whether we can meet Thursday morning. Is that satisfactory?

Mr. Forrestall: It is a good compromise, Mr. Chairman. You are, as usual, an arbitrator of the first order.

The Chairman: The meeting is adjourned.

Source: Nikkei National Museum, 2018-16-4-1-1-116
www.nikkeimuseum.org

PRESS RELEASE

NEWS RELEASE / COMMUNIQUÉ

Emergency Preparedness Canada / Protection civile Canada

Date: February 23, 1988

Release: Immediate

GOVERNMENT WILL BE FLEXIBLE ON WAR MEASURES ACT REPLACEMENT

OTTAWA--The Honourable Perrin Beatty, Minister Responsible for Emergency Preparedness, today tabled before a parliamentary committee a number of amendments to Bill C-77, the legislation which authorizes special temporary measures during national emergencies and will replace the War Measures Act. The amendments cover a dozen important areas, and Mr. Beatty said they demonstrate the government's flexibility in responding to concerned Canadians' suggestions for changes to the Bill.

The main concern of us all, said Mr. Beatty, is to equip the federal government with the instruments needed to provide for the safety and security of Canadians in time of serious crisis. "We need to simultaneously circumscribe and constrain these instruments to no more than what is absolutely necessary and keep any infringement of fundamental rights and freedoms to the absolute minimum," said Mr. Beatty. "I welcome constructive changes to the Bill that achieve a better balance in the difficult reconciliation between adequate authorities and adequate safeguards."

Mr. Beatty said that the Bill, brought forward for debate last November and passed at second reading before Christmas, has generated thoughtful and constructive suggestions from many quarters, especially by civil rights associations. He said the legislation is so important to Canadians that it needs to be built on a firm foundation of consensus. He assured the committee that the government's goal is to ensure that "this legislation be the best that we, in working together, are capable of producing."

Canada

THE GLOBE AND MAIL

WED FEB.24,1988

** ACROSS CANADA **
** Ottawa to amend War Measures bill **

Canadian Press
OTTAWA
The Government yesterday proposed revisions to legislation replacing the*War*Measures*Act*, limiting Cabinet powers and curtailing strike-breaking powers. Defence Minister Perrin Beatty told a Commons committee the amendments answer criticisms that the act might be too broad. Included is a double-veto clause that would empower the Commons and the Senate to rescind a declaration it felt to be unjustified.

Source: Nikkei National Museum, 2018-16-4-1-1-117
www.nikkeimuseum.org

HOUSE OF COMMONS

Issue No. 2

Thursday, February 25, 1988

Chairman: Allan McKinnon

Minutes of Proceedings and Evidence of the Legislative Committee on

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

RESPECTING:

Order of Reference

WITNESS:

(See back cover)

Second Session of the Thirty-third Parliament, 1986-87-88

LEGISLATIVE COMMITTEE ON BILL C-77

Chairman: Allan McKinnon

Members

Derek Blackburn
Bud Bradley
Patrick Crofton
Marc Ferland
Michael Forrestall
Robert Hicks
Len Hopkins—(7)

(Quorum 4)

MINUTES OF PROCEEDINGS

THURSDAY, FEBRUARY 25, 1988
(3)

[*Text*]

The Legislative Committee on Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, met at 3:31 o'clock a.m. this day, in Room 308 West Block, the Chairman, Allan McKinnon, presiding.

Members of the Committee present: Derek Blackburn, Patrick Crofton, Marc Ferland and Len Hopkins.

In attendance: *From the Library of Parliament*: Philip Rosen and Helen Morrison, Research Officers.

Witness: *From the Canadian Bar Association*: Mr. Victor Paisley, Q.C., Chairman, Legislation and Law Reform Standing Committee.

The Committee resumed consideration of its Order of Reference, dated Wednesday, November 18, 1987, concerning Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof (*see Minutes of Proceedings and Evidence, Tuesday, December 15, 1987, Issue No. 1*).

The Committee resumed consideration of Clause 2.

The witness made a statement and answered questions.

It was agreed,—That the brief submitted by the Canadian Bar Association be printed as an appendix to this day's Minutes of Proceedings and Evidence. (*See Appendix "C-77/1"*).

At 5:00 o'clock p.m., the Committee adjourned until 11:00 o'clock a.m. Tuesday, March 1, 1988.

Santosh Sirpaul

Clerk of the Committee

EVIDENCE

[*Recorded by Electronic Apparatus*]

[*Texte*]

Thursday, February 25, 1988

• 1531

The Chairman: Gentlemen, I see a quorum. As you are aware, we are starting our own by-laws to hear witnesses with a quorum of three. We are going to resume consideration of Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof. We will continue on clause 2 today and for several days to come, I expect.

Mr. Ferland: Mr. Chairman, I have a question.

The representatives of *la Ligue des droits et libertés* were supposed to appear at 11 a.m. Why did this group not appear?

The Chairman: Thank you. The reason the other group did not come is that they wanted time to try to understand the amendments that were tabled in the last meeting. They will be appearing later.

I would like to welcome Mr. Paisly, Q.C., the Chairman of the Canadian Bar Association's Legislation and Law Reform Committee, and Mr. Giokas, the Director of Legislation and Law Reform. Mr. Paisly, would you care to make an opening statement?

Mr. V. Paisly (Chairman, Legislation and Law Reform Committee, Canadian Bar Associaton): Yes. Thank you very much, Mr. Chairman.

• 1535

Mr. Chairman and members of the committee, following the introduction of Bill C-77, the Canadian Bar Association requested its national and provincial branch sections on administrative law, constitutional law, civil liberties and criminal justice to review and comment on the Emergencies Act bill after its introduction. The Legislation and Law Reform Committee of the Canadian Bar Association has prepared this submission, which represents the position of the Canadian Bar Association with respect to the Emergencies Act bill.

The Canadian Bar Association welcomes the government's initiative in seeking to replace the War Measures Act by legislation more appropriate for peacetime emergencies. We echo the remarks of the Hon. Minister, Perrin Beatty, whose statement to this committee on Tuesday has been provided to us. We share his view that the main concern is to equip the federal government with the instruments needed to provide for the safety and security of Canadians in time of serious crisis, and at the same time to properly circumscribe and constrain those instruments to no more than what is absolutely necessary and to keep any infringement of fundamental rights and freedoms to the absolute minimum.

We have made 34 specific recommendations for amendment of the bill, which may be found at pages 59 to 65 of our brief. In general, it is our submission that the definitions of the various classes of emergencies need tightening up. The Minister's proposed amendment will go some way to meeting our concern in this regard, but our further discussion will show we still have serious concerns with respect to the definitions.

The failure to give the term "emergency" an objective definition makes it very difficult, if not impossible, either to mount a legal challenge or to permit Parliament to assess by any defined standard the purpose behind the reasons for the declaration of emergency.

The Canadian Bar Association would like to see a stronger assertion in the bill that the legislation is subject to the International Covenant on Civil and Political Rights.

We are concerned the powers given to the Governor in Council in a time of declared emergency are too sweeping. In keeping with our international commitments, this legislation should ensure that the extraordinary powers may be exercised only to the extent required by the exigencies of the emergency.

The requirement for consultation with or prior consent of the provinces in public welfare and public order emergencies could, in our view, impede the ability of the federal government to act in the national interest during these types of emergencies.

We are concerned the proposed legislation does not ensure adequate accountability of Cabinet to Parliament for its actions during an emergency.

Finally, in our view, the compensation provisions may not ensure fair or adequate compensation for legitimate claims.

The preamble to Bill C-77 provides that fulfillment of the obligation to provide for the safety and security of the individual, protection of the body politic, and preservation of the sovereignty, security and territorial integrity of the state may be seriously threatened by a national emergency. We note the Hon. Minister is prepared to move that definition from the preamble to the body of the act itself. Although this was our first concern, our concerns go somewhat farther than merely moving the definition from the preamble into the text.

Source: Nikkei National Museum, 2018-16-4-1-1-118
www.nikkeimuseum.org

Our concern about the use of the preamble for definition purposes is that, as set out in the Interpretation Act, it says:

> The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purpose and object.

In our view, the preamble may aid the interpretation of the statute, but Canada overrides specific provisions in the act itself. Rights not to be limited or abridged even in a declared emergency are sufficiently important that they should be set out in the body of the statute rather than in the preamble. Even if, as has been suggested, the effect of removing the substantial measures from the preamble to the text of the act were only symbolic, which in our view it would not be, the provision in the act for guidance for the Governor in Council at the critical time would justify this change. When orders and regulations are drafted in the heat of crisis, it is important to have specific criteria.

Canada is a state that is a party to the International Covenant on Civil and Political Rights and, as such, is obliged to ensure that its legislation conforms to article 4 of the covenant which identifies certain rights that must be respected even in times of national emergency.

Article 4 of the covenant provides that in times of public emergency threatening the life of a nation, the states that are party to the covenant may take measures derogating from their obligations to the extent strictly required by the exigencies of the situation provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.

In addition the covenant provides protection for arbitrary deprivation of life, cruel treatment and punishment, slavery and servitude, punishment for crimes not existing in law when the acts were committed, and protects recognition of everyone as a person before the law and freedom of thought, conscience and religion respectively.

To date article 4 of the covenant has not been implemented by legislation. Therefore, while Canada may be obliged by international law to respect the covenant, the courts in Canada are without power to enforce it.

If it is the intention that this legislation should prevent the kind of treatment which, for example, Japanese Canadians experienced during the Second World War, it is submitted that at least the non-discrimination provisions of article 4 of the covenant should be explicitly set out in the act itself.

In our view the importance of the International Covenant on Civil and Political Rights cannot be too highly stressed. The possibility always exists under section 33 of the Charter to expressly override the rights and protections otherwise guaranteed elsewhere in the Charter. In such circumstances, however unlikely, the protections of the covenant would become all the more important and accordingly should be firmly established as a set of guiding principles.

In terms of the definition of national emergency set out in the preamble, as we have noted, the Minister proposes to move the definition to the body of the text. Our concerns go somewhat further than this amendment proposed.

In terms of the preamble of the bill we therefore propose that the reference to the Canadian Charter of Rights and Freedoms, the Canadian Bill of Rights and the International Covenant on Civil and Political Rights presently in the preamble be transferred to the body of the legislation and that the provisions of article 4 of the covenant be expressly implemented in the legislation by adding a section containing provisions similar to article 4.

I now turn to the definitions. We note that the term "emergency" is never adequately defined in the bill, either in the preamble or in the body of the text. To state that an emergency means an emergency and to list the possible causes is not adequate in our view. The circular nature of the wording is not helped in the case of public welfare and public order emergencies by requiring them to be so serious as to be a "national emergency", a term that is unacceptable and vague.

The lack of definitional precision, coupled with the latitude given the Governor in Council to simply declare the existence of an emergency, fails to give adequate guidance to the Governor in Council as to the conditions that should exist before an emergency is declared and serves to preclude effective judicial review or objective parliamentary review of emergency declarations.

In our view, the term "emergency" should be defined in the bill with reference to the need for extraordinary powers. We propose the following definition: "emergency" would mean an urgent and critical situation of a temporary nature, in which government requires extraordinary powers to meet its fundamental obligations.

National emergency is defined in the preamble. Under that definition, a national emergency could exist simply because a situation is of such proportions or nature as to be beyond the power of a province to handle. In our view, an urgent and critical situation of a temporary nature that threatens the well-being of Canada, or is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, should not be a basis for invoking emergency powers. We note the disjunctive term "or" and are concerned as to the effect that has on the definition.

We are concerned here with a lack of definition, or precision in the definition. Our concern is really whether the definition of emergency in the bill will adequately serve to determine whether the circumstances exist that warrant the invocation of emergency powers.

In our submission, the term "national emergency" ought to be more carefully and precisely defined. Under the present definition, it is possible that threatening Canadian culture by allowing the massive importation of American television programming or magazine and periodical literature would be sufficient to warrant invocation of the act.

Mr. Blackburn (Brant): I agree. Hear, hear!

Mr. Paisly: As the present definition is worded, perhaps even the decision of a particular province to limit the protection of a particular natural resource, such that other provinces in Canada might suffer, might be grounds for invoking emergency powers.

In our view, an appropriate definition of national emergency would be drawn from the first paragraph of the present preamble and would specify that the urgent and critical situation be of such proportions or nature as to exceed the capacity or authority of a province to deal with it and that it endanger the fundamental obligations of government to ensure the safety and security of the individual, to protect the values of the body politic and to preserve the sovereignty, security and territorial integrity of the state. Nothing short of this should be considered to be a national emergency.

With respect to public order emergencies, in our submission, the definition contained in the Canadian Security Intelligence Service Act of threats to the security of Canada, which is incorporated into the definition of public order emergency, is vague and overly broad. The CSIS Act definition has itself been the subject of much criticism on this score and in particular includes a very wide subsection, which is quoted on page 16 of our brief.

Subparagraph (b) of that definition refers to foreign-influenced activities within or relating to Canada that are detrimental to the interests of Canada. This paragraph is too broad and could conceivably include within its ambit mere corporate commercial activities of an international nature. Moreover, the use of the words "clandestine or deceptive" does not prevent such ordinary international and trade activities, for example, from falling within the scope of this definition. Most large-scale trade between nations involves secret dealing and resultant elaborate security precautions. Would an international trade deal between Japan and the United States, concluded in secret, designed to restrict Canadian exports to those countries, fall within this definition? These concerns remain alive, notwithstanding the proposed amendment of the definition of national emergency.

Paragraph (c) from the CSIS Act definition refers to:

> activities within or relating to Canada directed toward or in support of acts of serious violence, for the purpose of achieving a political objective within Canada or a foreign state.

In our view, this is too wide in scope. Raising funds through legitimate means to aid, for example, Northern Ireland or the State of Israel or to support various liberation movements in communist-dominated countries such as Angola or Afghanistan, might be sufficient to trigger this definition—mere fundraising.

In our submission it would be far more appropriate to eliminate the reference to the CSIS Act definitions and to set out a definition using the term "threats to the security of Canada", only as it relates to emergencies.

We have proposed that the definition of public order emergencies be restricted to national emergencies arising from threats to the security of Canada, involving actual or potential loss of life or territory, or to those threats that would seriously inhibit the functioning of democratic institutions within Canada.

With respect to an international emergency, which we have set out in our text on page 18, this definition seems to deal with situations of apprehended war as well as political and economic threats, not only to the interest of Canada and its allies but also to any country of which the interests of Canada or its allies are involved. The ambit of this definition is too wide, especially when one considers that no guiding criteria are given with regard to what constitutes an ally.

I suppose one might consider the United States to be an ally in certain circumstances, perhaps Turkey in another. If Turkey and Greece invade one another, are they allies for this purpose? There is little in this act that would guide the Governor in Council to determine who is or is not an ally for the purpose of the emergencies act.

It is unclear what level of political, economic or security interest must be involved before this definition is triggered. What would happen if, under this act, a Vietnamese patrol boat fired at a United States destroyer in the Gulf of Tonkin? How would this definition serve to

Source: Nikkei National Museum, 2018-16-4-1-1-119
www.nikkeimuseum.org

guide Parliament in order to determine whether or not to decide on those facts that an international emergency existed or did not?

It is our submission that serious consideration should be given as to whether peril to allies or other countries is sufficient to justify restrictions on the rights of Canadians in Canada by the invocation of the Emergencies Act. The question here is not whether or not an incident imperils our allies to a greater or lesser degree, but rather whether the invocation of the Emergencies Act in Canada is justified.

In our submission there is little in the definition and the act itself that will guide the Governor in Council or Parliament in this respect. It must be kept in mind that under this bill the Governor in Council is given sweeping powers affecting the rights of Canadians during an international emergency.

It would seem as if Canadians are being asked under this definition to give up rights on the basis of an international situation, which may not yet exist, involving unknown disputants, concerning undetermined issues which may not be linked directly or indirectly with the continued existence of a free and democratic society in Canada. Accordingly, we recommend the scope of this definition be greatly restricted and limited to national emergencies.

We propose the following definition:

> International emergency means a national emergency involving Canada, and one or more other countries that arises from acts of intimidation, or coercion, or the real or imminent use of serious force or violence, and that directly or indirectly threatens the sovereignty, security or territorial integrity of Canada.

The definition of "war emergency" suffers from many of the defects of the preceding definition. The same comments that were made regarding international emergency apply with respect to the proposed definition of "war emergency". It is our submission that a distinction ought to be made between the powers necessary or when Canada is fighting a war abroad and those necessary when a war threatens Canadian territorial or political sovereignty.

In our view, it seems necessary that the basic political and legal rights of Canadians should be restricted on the basis of a war or armed conflict taking place far from Canadian shores, having only indirect impact on Canadians. Under the current definition, as we suggested, the Governor in Council could have declared a war emergency during the Vietnam conflict, which involved our ally, the United States of America.

Many of the comments we have made at pages 24 and 25 of our brief have been met by the amendment proposed by the Minister. However, with respect to the power to direct the rendering of essential services, which commences in our brief at page 26, we submit that the provision in this bill for the rendering of essential services is too broad for the following reasons.

There is no definition given to the term "essential". The duration of the service, which an individual may be compelled to provide, is not stated, nor is there a formula provided to determine it. There is no requirement to compensate the people thereby compelled to perform such services for the service actually rendered.

The proposed amendments partially resolve our concerns in this regard. But we note that under paragraph 47.(f) of the bill, which remains essentially untouched, classes of persons may be excluded from compensation. Accordingly, our concern in this regard remains alive notwithstanding the proposed amendment.

With respect to the power to regulate or prohibit travel, in our submission the ability to travel within Canada is so basic to our freedom that the justifying factors for its restriction ought to be set out.

We propose that the regulation-making power of the Governor in Council be restricted, where necessary, for the protection of the health and safety of individuals, when the regulation or prohibition of travel to, from, or within any specified area is required. We do not submit that health and safety be the only reason for restriction on travel during a public welfare emergency. There may be other justifying factors, which should be set out in the same way. Similarly in the case of public order emergencies, the subclauses should specify that the making of such regulations is for the purpose of maintaining order in a specified area.

With respect to the power to regulate or prohibit public assembly, in our submission it would be reasonable for Cabinet, in times of emergency, to have the power to regulate or prohibit public assembly of the type that will or is likely to lead to a public disorder. Cabinet should not have the power to prohibit peaceful demonstrations, for example, on Parliament Hill during an emergency. If such a prohibition is thought necessary, it should be a matter fully debated in Parliament before it becomes law.

In our submission the powers provided in the Criminal Code regarding unlawful assemblies and riots and the suppression of riots would, in most cases, afford sufficient protection of this aspect of public order. Accordingly, it should not be necessary to provide for special regulations under the Emergencies Act in this regard.

Our recommendation, therefore, is that the power to prohibit public assembly be restricted to permit the government to order the prohibition of only those public assemblies that may reasonably be expected to result in breaches of the peace.

Under power to authorize entry, search, and seizure, as a preliminary observation, it is not clear why sweeping search and seizure powers should exist for international emergencies and not for public order emergencies. We note the proposed amendments would narrow the applicability of search and seizure regulations under the Emergencies Act. Nevertheless, our concerns remain alive. Search and seizure should be provided for if reasonable grounds exist to search a particular place and on the basis of prior authorization for entry into a dwelling house.

Even under the proposed amendment, these powers are much wider than those normally available to peace officers under the existing law. No prior authorization by an impartial officer is required prior to allowing search, entry, and seizure, nor would reasonable grounds for the actions of an officer or authorized person be required for the search of a particular place.

• 1600

In our submission, the right to unlimited search and seizure, even under the narrower grounds proposed under the amendment, is excessive. If reasonable grounds exist, then the procedures provided for in the Criminal Code should be followed. To allow unlimited search and seizure of the type envisaged is excessive, and appears to lack proportionality.

Under the heading "Power to Admit to and Remove from Canada", our submissions are found on page 32 in the brief. Here we have serious concerns that the removal from, or the denial of entry to, Canada of persons other than Canadian citizens or permitted residents might include bona fide refugees fleeing from an international emergency. Accordingly, we recommend that this provision should specifically exclude such bona fide refugees. In addition, it should preclude removal of all other persons except to their country of origin, unless some other country is willing to accept such person and the removed person consents to removal to that other country.

Under the heading "Powers Reasonably Necessary or Advisable for Dealing with the Emergency", during the Second World War, it was considered to be reasonably necessary to intern Canadians of Japanese extraction. In retrospect it is clear that the subjective nature of the test under the War Measures Act, authorizing the Governor in Council to do and authorize such actions as he may deem necessary, permitted government to take action based on panic and hysteria rather than an objective assessment of factual conditions.

We recommend strongly that as in the case of public welfare, public order, and international emergencies, the criteria to govern the type of regulations that may be made during wartime be expressly defined. It is better to draft these criteria while heads are cool rather than to be forced to do so when an actual emergency is on us and while passions are running high.

Under the heading "Power to Punish", at page 34 of our brief, we are concerned with the type of punishment and the mode of trial that may be provided for contravening any order or regulation made under the proposed act. Provision is made for the imposition on summary conviction of a fine not exceeding $5,000, or imprisonment not exceeding five years, or both.

Our concern is, first, it would appear to be open to the Governor in Council to create offences carrying minimum sentences for up to five years; secondly, it appears that the traditional right of trial by jury is done away with where summary conviction offences may carry penalties of up to five years. This is well beyond the range of potential penalties that may be imposed under the Criminal Code penalties that have traditionally existed in this country.

In our view, a critical distinction exists between indictable offences and summary conviction offences. Trial by jury is a fundamental right. Offences tried on summary conviction are tried without a jury. The potential imposition of a five-year penalty for a summary conviction offence without jury trial is not the type of penalty that our democratic society should be expected to accept. The right to trial by jury for offences carrying such penalties is one of the hallmarks of the Canadian democratic tradition, and is one of our most important procedural safeguards against arbitrary, capricious, or unjust laws. The removal of the right to trial by jury in the case of a charge carrying a penalty of five years imprisonment appears to offend against paragraph 11.(f) of the Canadian Charter of Rights and Freedoms.

Prior to issuing a declaration that a public welfare or public order emergency exists, the Governor in Council is required to consult with, and, in the case of public welfare emergencies, obtain the consent of, the Lieutenant-Governor in Council of each province.

Source: Nikkei National Museum, 2018-16-4-1-1-120
www.nikkeimuseum.org

The requirement to consult prior to declaring a public order emergency is virtually identical, although there is a minor difference for which we can see no apparent reason.

With respect to the appropriateness of consultation, in our view, the requirement of consultation, laudable as it may be from the point of view of co-operative federalism, should not interfere with the ability of the federal government to exercise its constitutional mandate to act in the national interest.

In our submission, the exercise of consultation mandated by the bill presents itself as a gesture to the provincial governments. The federal government has the constitutional authority to act unilaterally in an emergency situation that has national or international dimensions, and such authority should not be whittled away. If the federal government wishes to consult with the provinces, such a move is to be applauded. But in our submission, it ought not to be mandated in law. We accordingly recommend deletion of those provisions.

I now turn to our submission with respect to parliamentary supervision, which is found on page 43 of our brief. With respect to confirming the declaration of an emergency, provision is made in clause 56 for the situation where Parliament may not be sitting, and must be summoned. In such a case, tabling must be on the first sitting day after Parliament or that House is summoned. Parliament must be summoned forthwith where Parliament is prorogued or adjourned, and a declaration of emergency has been issued.

It is our opinion that the phrase "at the earliest opportunity", as set out in subclause 56.(3), where the House of Commons has been dissolved, is unacceptably wide. A definite time limit must be placed upon the summoning of Parliament. We see no practical reason why Parliament, once dissolved, could not be rightly constituted, and recalled to sit within the same seven-day period.

We would also propose a provision to the effect that Parliament should not be dissolved or prorogued while an emergeny declaration is in effect, unless an election is called or unless a special majority otherwise agrees.

If an election is called during an emergency, provision ought to be made for the immediate recalling of Parliament when the election is over, in order to permit Parliament to sit and supervise the emergency supervision and to analyse and respond to orders and regulations coming before it, pursuant to an emergency declaration.

With respect to the limitation of debate, debate is to be limited to three days, pursuant to subclause 56.(6). We see no reason to limit debate by Parliament to three days. Following a declaration of emergency, the Governor in Council may exercise emergency powers unless and until the declaration is revoked by Parliament. There is accordingly no urgency for Parliament to come to its decision, and no less than a full debate on all issues should be entertained.

Likewise, a full parliamentary debate should be avaiable where the motion is to revoke the declaration of an emergency. As proposed, only five hours is provided for. Such a restriction, the limitation of the debate to five hours, could conceivably eliminate the possibilty of parliamentary revocation in circumstances where, for example, a full debate might have convinced Parliament to revoke, but a limited debate is not adequate to fully inform Parliament of all of the issues and all of the arguments that could be made. Five hours may not be enough.

With respect to the requirement that both Houses must agree to revoke an emergency declaration, the failure of either House to agree to confirm or continue the emergency declaration means the declaration will be terminated as of the date of the failure to confirm or continue. Emergency powers may thereby be prevented, either at the confirmation or at the continuation stage by one House of Parliament. Anomalously, on a motion to revoke a declaration, both Houses must act. Why the difference? In our submission, the agreement of either House that the declaration ought to be revoked should be sufficient.

With respect to the creation of a parliamentary review committee, we note that there are practical impediments to timely and indeed successful judicial review of government action in these circumstances. In our submission, it is Parliament that must have the primary responsibility for reviewing the declaration of an emergency.

A review committee of Parliament charged specifically with the task of assessing the continuing validity of government action is an indispensible element to ensure that the sweeping powers exercised in this bill are exercised appropriately. We recommend that the review committee should be an all-party committee of the House. It is vitally important that the review of the exercise of emergency powers be conducted with the widest variety of interests and views represented.

With respect to the requirement of secrecy, the bill provides that the review of unpublished orders or regulations shall be conducted in private. The Governor in Council could declare most of its orders or regulations to be exempt from publication and not be challenged. Well, no doubt the Governor in Council ought to have the right to keep some emergency regulations secret. In our view, that right should be strictly limited to international or defence matters that threaten the security of Canada. In such cases, the Governor in Council ought to be required at least to inform the parliamentary review committee of its desire to keep these regulations secret, to explain to the committee beforehand the reasons for the request, and to obtain the consent of the committee before secrecy is imposed on the proceedings.

The parliamentary review committee should have the power to review the government's decision to exempt a regulation or order from publication, and to refer the matter to Parliament for debate if the exemption is unwarranted. We recommend the making of regulations and orders creating criminal offences or providing punishments for offences should not be kept secret in any manner.

With respect to retroactive revocation, we submit that there should be a power to revoke retroactively to prevent a potential for abuse. Documents or other items seized during the state of an emergency could otherwise be retained after the declaration of emergency is revoked. Persons charged with the offences under the emergency powers, if convicted, could be required to complete their sentence and have the stigma of criminal conviction, despite Parliament's finding that the offended regulations should not have been made. Accordingly, Parliament should have the power to retroactively undo the declaration of an emergency.

Under the heading "Post-Event Inquiry", at page 51 of our brief, we submit that there should be an accounting by government to the citizens of Canada for its conduct in the emergency situation. We recommend the bill provide that within one year following the end of any declaration of emergency a review be conducted, either by a commission of inquiry or a specially appointed parliamentary committee, which would have full power to review all documents and report its findings to Parliament. Only in this way would it be possible to continue to improve upon the performance of the executive function of government, while at the same time respecting the institutions that we all seek to have protected during an emergency.

I turn next to our submissions with respect to compensation. Now, the Canadian Bar Association is naturally pleased to see the enactment of a scheme to compensate those who suffer unfairly as a result of the declaration of an emergency. We note that notwithstanding the proposed amendment to this act, the act still remains subject to the exclusion of a class of persons, as previously noted under paragraph 47.(f).

• 1615

Inclusion of compensation provisions in the bill is certainly praiseworthy, but if the provisions are to have real meaning, the Governor in Council should not be authorized to exclude any class of person or loss, injury, or damage from compensation. The assessor should have discretion to consider all cases of loss, injury, or damage due to the emergency.

We know there has been a suggestion that the Crown Liability Act is an alternate procedure. Indeed, in many cases it would be. Nevertheless, the Crown Liability Act is not a perfect alternative by any means. There are rather restrictive notice requirements; a notice of claim must be given within seven days of the loss. The act provides that no proceedings lie against the Crown unless within seven days after the claim arose notice in writing of the claim is delivered.

Furthermore, subsection 3.(6) of the Crown Liability Act provides that in essence the Crown is not liable in respect of any power or authority exercisable by the Crown whether in time of peace or of war, for the purpose of the defence of Canada or of training or maintaining the efficiency of the Canadian forces. In essence, in that regard at least, it cannot be the alternate route of bringing an action under the Crown Liability Act, which is a perfect alternative to the short form, or speedy form of compensation provided for under this bill. All the more reason to ensure then that no class of persons may be excluded as presently provided for.

It is our submission that a person who has had his property appropriated for the benefit of the public should be entitled to full compensation from the public.

Mr. Chairman, I wish to thank you for the opportunity to make these submissions, and if the hon. members have any questions we would be pleased to attempt to answer them as best we can.

The Chairman: Thank you very much, Mr. Paisly. We had agreed that the brief submitted by the Canadian Bar Association be printed as an appendix to this day's *Minutes of Proceedings and Evidence*.

Some hon. members: Agreed.

The Chairman: We have some 40 minutes left, gentlemen. Mr. Hopkins, you missed the first few minutes of the presentation; would you mind coming in second after Mr. Blackburn goes ahead?

Mr. Blackburn (Brant): Thank you, Mr. Chairman. I know we are very limited in our time in terms of questioning, and I want to first of all thank the Canadian Bar Association, Mr. Paisly, for laying before us such a comprehensive brief and critique of Bill C-77. So I am going to limit my questioning to just one of two issues which Mr. Paisly has raised. The issue is how we handle an emergency when Parliament is dissolved, and you referred to that. If I interpreted what you said correctly, among many things, you recommended that Parliament be recalled, assuming the emergency was of great proportion. We are talking about a war or a public order emergency at least. I do not know how we can undissolve a Parliament. I am sure we have never been in that position before. Parliament can be in recess; a session can be terminated or prorogued, and a Parliament dissolved.

Source: Nikkei National Museum, 2018-16-4-1-1-121
www.nikkeimuseum.org

So far as I know, when Parliament is dissolved, Parliament is no longer in existence. I do not know how we can recall a dissolved Parliament. Who would we recall? We could recall members who were in the previous Parliament, but it would be the previous Parliament and they would no longer be MPs. I know it is a difficult question and there may not be any answer to it.

• 1620

Mr. Paisly: I can only respond by suggesting that there is really no limit to what Parliament can determine it should do in this respect. If dissolution is for the purpose of an election, immediately after the election is concluded Parliament should be reconstituted.

Mr. Blackburn (Brant): Yes, I appreciate that. You also mentioned it as one of your suggestions. It could be done. Once the writ is returned, we have a new Parliament and it could be summoned. It takes more than several days and perhaps a few weeks before the writs are returned, but I do not think we could recall a dissolved Parliament. I do not know how we could do it constitutionally.

The second question I have concerns search and seizure. Yesterday I asked the Minister why he was writing in a section on search and seizure if the Criminal Code provides not only for search and seizure, but also for certain protections, safeguards and balances. I think you are suggesting that the whole section in Bill C-77 about search and seizure should be removed and that some statement or some abbreviated section be put in to say that search and seizure would be subject to or in accordance with prescribed sections in the Criminal Code of Canada. Is that what you were arguing, sir?

Mr. Paisly: The proposed amendment says:

> The Governor in Council may authorize the entry and search of any dwelling house, premises, conveyance or place and the search of any person found therein for anything that may be evidence relevant to any matter that is the subject of an inquiry.

That authorization does not seem to require a particular authorization by a judicial officer in terms of a particular search; nor does it seem to require reasonable grounds for a particular search. The absence of the requirement of reasonable grounds for the particular search or of prior authorization and a warrant is quite exceptional. There could be adequate justification for concern that a crime has been committed, but whether there is evidence of that crime in a particular place should depend upon the existence of reasonable grounds and some sort of review of the supposed grounds by an independent person.

Mr. Blackburn (Brant): You are suggesting that the law officer be obligated to obtain a warrant as prescribed in the Criminal Code.

Mr. Paisly: It would essentially be consistent with our submission that there be a requirement of reasonable grounds and authorization in the form of a warrant before search of a dwelling or similar place that is not movable be permitted.

Mr. Blackburn (Brant): I think the problem, which was raised by the Minister the other day, was that this would involve such things as racketeering, profiteering and hoarding in times of certain kinds of emergencies. We do not have proper legislation at present to cover those kinds of problems. Does that give you any more insight into your conclusions?

Mr. Paisly: The thrust of our concerns is not that the Governor in Council be prevented from enacting regulations that would permit a search of premises in respect of a newly defined offence or crime. Clearly there may be in these circumstances racketeering or hoarding, which is not an offence known to law at the moment. But our concern is this: Who is to determine whether in a particular place there is evidence of the particular offence? Can an officer be authorized to walk into any building for any reason, or should that person not be required to have reasonable grounds and prior authorization?

Mr. Blackburn (Brant): One of the reasons that influenced the thinking behind this clause was that at the outbreak of World War I certain unscrupulous horse traders, literally horse traders, fobbed off animals ready for the glue factory to the soldiers who were shipped overseas. Of course, they could not perform their duty in battle. It was not only a ripoff, but also a scandal. There was no attempt ahead of time to find out whether or not those horses were battle ready. It is that kind of thing I think the Minister was alluding to.

Mr. Paisly: We are not quarrelling in any way with the suggestion that there will be offences that require new definition. Our submission is that where such offences are enacted there should still be some reasonable basis before a dwelling or other place is searched without warrant.

Mr. Blackburn (Brant): The Criminal Code now will prevent all that.

Mr. Paisly: The Criminal Code provisions and procedures are adequate to that task.

Mr. Hopkins: I want to first of all refer to a paragraph on page 2 of your brief where you say it is your submission that the definitions of the various classes of emergencies need "tightening up". I gather you mean more precise definitions. Am I correct in that?

Mr. Paisly: Yes.

Mr. Hopkins: You say as it currently stands, this legislation could permit the government to invoke sweeping public order emergency powers to combat such problems as unemployment and inflation. You say it would permit the government to proclaim a state of international or war emergency in almost any situation of international conflict.

You are obviously going after the broad interpretation that could be given to many clauses of this bill, and that seems to be your theme throughout. In reference to an international emergency as listed on page 18, you go on in your bottom paragraph to add situations in which the interests of Canada or any of its allies are involved.

Again, in our opinion the ambit of this definition is too wide.

I could not help but think as you were going through these various things, particularly the international emergency one, that you are interpreting this bill almost in the light of another Monroe Doctrine, whereby Canada could virtually be drawn into a conflict where two, three or four other countries were involved, because they might be able to give the broad interpretation to the particular or special interests of Canada and, according to the definition of the bill, Canada might be coerced into war.

• 1630

I wonder whether you were trying to tell us indirectly that this bill is another doctrine brought in by Canada, which could very well be called a doctrine under the present Prime Minister's name or whoever. I am just wondering if that is the broad interpretation given to it. Are you considering this to be almost a comparison with a Monroe doctrine thing, where Canada could be drawn into it, simply because they could give a broad interpretation to the special interests of Canada, depending on the mood and philosophy of the government in power in the future?

Mr. Paisly: Certainly our concern is that this bill may last 100 years, and many facts and circumstances not currently predictable are going to be governed by the words, when it is an act. Our primary concern is that there are not adequate guiding criteria given the Governor in Council, or Parliament, as to whether the act should be declared.

What is an ally? What level of political, economic or security interest must be involved before we are in an Emergencies Act situation, as opposed to something that does not require the invocation of the act with all the attendant consequences for the people of Canada? It is impossible, in our submission, to distinguish, based on objective criteria as currently defined for the reasons set out in our brief.

Mr. Hopkins: Let me put it more precisely. Do you interpret this bill as a sort of Monroe doctrine piece of legislation?

Mr. Paisly: I would have to say no. I do not read any political purpose into the bill as defined. Our submission is that it is too imprecise to guide the Governor in Council and Parliament. We are talking about a future Governor in Council, who may not even be born today, and a future Parliament, and whether or not the circumstances exist that warrant invocation of this bill or permit Parliament to assess and review the wisdom of that enactment, if it should ever be required.

Mr. Hopkins: So you are saying that if this becomes legislation, it is not giving precise enough direction to a government of the day.

Mr. Paisly: Exactly.

Mr. Hopkins: Let us go on to the limitation of debate you mentioned. It is very seldom we ever see limitation of debate built into a piece of legislation. Suppose you are a legal counsel of the House of Commons, would you—having this timeframe for debate built in throughout the bill—look upon that as a travesty on the Standing Orders of the House of Commons, where the House really decides on the process of its own debate and time limits as far as the government of the day goes?

Mr. Paisly: Mr. Hopkins, undoubtedly many debates Parliament has engaged in have been complete and satisfactory in far less time than three days. Three days may be adequate in certain circumstances, but we see no reason for the arbitrary limit of three days. Parliament, in its wisdom, may require much more than that, in order to fully discuss the facts and circumstances and the relevant arguments that should be made.

Mr. Hopkins: But you are really saying that putting this tight framework into this legislation is infringing on the flexibility and the progress of Parliament to consider it wisely.

Mr. Paisly: The thrust of our submission is that it may serve to prevent Parliament, without any particular reason we can see, for the purpose of the protection of Canada, from fully considering the relevant issues.

Mr. Hopkins: Then at the same time you are really saying it impinges against the Standing Orders of the House?

Mr. Blackburn (Brant): Closure.

Mr. Hopkins: Sure, there is closure there. It is already there. The powers of the provinces. . . you are talking about a very important subject here, which is rather dear to many people's hearts, because there is a feeling afoot today that possibly there is too much of an attack on the central power in Canada or the federal government power

Source: Nikkei National Museum, 2018-16-4-1-1-122
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in Canada. We all realize this has occurred because of strong pressures of regional differences or special regional make-up of the country.

I think you make an almost ludicrous comment about the fact the provinces are going to be consulted on something of major international importance in an emergency, where the Government of Canada itself should be giving direction. Are you really saying the federal Government of Canada merely goes to the provinces and tells them what is going to happen? What in your view would happen if one or two provinces said no, they do not want to do it?

Mr. Paisly: Our concern is not that the federal government may consult with the provinces. It may in fact be very appropriate in certain circumstances for the Governor in Council to do so.

Our concern is that the federal government not be required to consult. This is an area in which the federal government has the constitutional authority to act unilaterally. The circumstances defined are that the problem is of national or international dimensions, and the province, accordingly, has no constitutional role requiring it to play a part.

We would certainly applaud any co-operative consultations the federal government, in its wisdom, thinks necessary. Our concern here is that the federal government essentially ought not to be bogged down in a legal requirement, that it ought not to be forced to participate in, if, in the circumstances of the situation, it is not required to.

Mr. Hopkins: Let us then go on to compensation as the final question, because I spoke on this particular item during my speech in the House. In your view, why would we have built into legislation that there is limited compensation when in fact someone might be very seriously hurt, economically or otherwise, in one of these declarations covered by the bill? Why would you disregard certain classes of people, or try to cut back on the amounts of compensation, a ceiling on compensation, or say that certain people should not be considered? You are going to put these cases forward for consideration, and the government is really going to decide who is going to get compensation or even a trial on behalf of compensation.

You are saying this is really against the Canadian Charter of Rights and Freedoms. What is your solution to this type of thing? Suppose this was presented to the Supreme Court, and you were a judge on the Supreme Court. What judgment would you give to something like that?

Mr. Paisly: Our concern is that there should be no arbitrary exclusion of classes of persons, and that it ought to be sufficient to give the assessor full discretion to determine on the facts and circumstances of a given case who is entitled and who is not entitled to compensation.

Mr. Ferland: I hope that the brief will be made available in both official languages, there are a number of passages I would be very interested to read over again. I gather from your testimony that you are in favour of a type of centralizing federalism. As I see the bill, it attempts to respect the spirit of Meech Lake and, at the same time, the evolution of Canadian politics over the past several years.

I think that the definition of "national emergency" proposed in the amendment is in keeping with the Canadian situation as well as the purpose of the bill. The purpose of the bill is to enable the Canadian government to take action in very particular situations and not, as you seem to imply, in reaction to the import of American programs or American records, for example. The bill does not authorize the government to act in such situations. As a matter of fact, in one of the sections it is clearly stated that the measures contained in the bill may not be used in the case of a strike, a lockout, etc. The bill does not deal with such situations. We do have provincial legislation and a number of other laws dealing with such matters. This act cannot be invoked at the drop of a hat simply because someone somewhere decides that there is a national emergency.

You also say that we shall have to define what we mean by our allies. In 1939, the Russians and Poles were our allies, they were all on our side. Our enemies were the Germans, the Japanese and the Italians. In 1988, it would appear that things have changed. In any case, we have greater affinity with the Germans, the Italians and the Japanese. It would be hard to set out in an act who our allies will be in the future. I would like you to give me some clarification on what you mean when we say we should be more precise in our definition of our allies.

Mr. Paisly: Mr. Ferland, the Canadian Bar Association is not taking a position in this submission on the question of centralization or decentralization of our union. Our specific concern here is that in the case of national or international emergencies, the federal government powers not be curtailed in a situation that is clearly one in which the federal government has the duty to act on behalf of all Canadians.

Our concern is a specific one, and is dictated by what we perceive to be the necessity of the circumstances that will arise when an emergency, as we would hope it be defined, occurs. It is not a circumstance that admits of lengthy and learned discussions between partners all across the country, at a convenient time or place. It is for this reason, together with the other submissions we have made, including the requirement that any such declaration be promptly reviewed by Parliament and subsequently by a review committee, that makes this a special circumstance. It is in no way, in our view, related to the general issue, which I may say is very properly one that may be questioned in relation to other legal issues.

• 1645

With respect to the question of how one would define an "ally", I do not submit that we should say the Russians are not our allies and the Italians are, or any such similar enactment be provided for. Rather the criteria for determining who is or is not an ally should be clarified for the purpose of this statute. It may be that an ally is someone with whom we have a treaty.

If I may just continue my response by pointing to the definition of "international emergency" at page 20 in our brief. It should be read to mean a national emergency involving Canada and one or more other countries, which arises from acts of intimidation or coersion, or the real or imminent use of serious force or violence that directly or indirectly threatens the sovereignty, security, or territorial integrity of Canada.

The operative force in our submission of the definition should be the threat to Canada itself.

Mr. Ferland: But we do have alliances, such as NATO. Canada might not be the first to be attacked, but if one of the member countries of the alliance was attacked, Canada could intervene under its agreement. That is my understanding. If Canadian territory actually was to be attacked, as you are suggesting, then this bill would amount to renegging on our commitment to NATO and would be making a mockery of the agreement supported by Canada for years and years.

Mr. Paisly: I would separate the question of whether or not Canada is obliged or not obliged to act or refrain from acting, to assist one of its allies pursuant to a treaty, from the question of whether or not there is a necessity to invoke the sweeping powers under the Emergencies Act. It seems to me the powers contained in the Emergencies Act are specially designed and relevant to circumstances where Canada itself is threatened. This has nothing to do with whether or not Canada may or may not be at war or assists a party at war with some other nation. It is a separate question.

Mr. Ferland: I would like a clarification. It is my opinion that the Emergencies Act proposed here enables Canada to take quick action to ensure its security, even within the framework of an alliance. Of course it can intervene. Take, as an example, our agreements with UNO under which Canada has regularly taken part in peace-keeping missions. That is not the matter at issue. But in the case of an agreement such as NATO, under your definition, I am sure that the signatories to the NATO agreement would conclude that Canada is withdrawing from NATO through the back door with this Emergencies Act. This is certainly the interpretation I would give to your statement this afternoon.

The Chairman: Could we have a response to that, please? Then we will move on to Mr. Crofton.

Mr. Paisly: It may be, Mr. Ferland, that our obligations to NATO can be fully satisfied without enacting special regulations with respect to, for example, hoarding or profiteering or with respect to demonstrations on Parliament Hill.

The special powers provided to regulate the activities of Canadian citizens under the Emergencies Act seem to me to require a special set of circumstances that may have nothing to do with the conduct of our foreign affairs or the honouring of our treaty obligations.

Mr. Crofton: This is a most interesting submission. Gentlemen, I thank you for it, but not being a lawyer, it is going to take me a little while to wade through it to understand the nuances of what you say.

Just to comment quickly on a couple of things, starting with the matter of consultation, the particular subclauses say "where appropriate and reasonable in the circumstances". I think this is something we have attempted to encourage in Parliament in the last four years, namely that the federal government should in reasonable circumstances consult with the provinces. At any time, the government is always answerable to Parliament and, through Parliament, to the Canadian people for any and all of its acts; whether it acts too quickly or too slowly, at any given time, redress is available. I do not think. . . I personally tend to support the consultative process where it is reasonable and proper.

You have suggested in your submission in various places that authority of the government should be

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confined, restricted, and limited. I have some sympathy with the thrust of your argument but it seems to me that very often in an attempt to be specific and particular and trying to fine tune, you can cause more difficulty and confusion than. . . it is counterproductive to try to be too precise and try to anticipate all of the circumstances. The measure itself is a graduated response. All of the authorities and limitations and controls of Parliament must be brought to bear and the legislation does indeed call for a presentation of the legislation to Parliament. It is not open-ended. I infer from what you have said that somehow the government is never required to discuss in Parliament exacty what it has done, but the legislation does provide for it.

The final point I would make before asking for any response is that the compensation, which was one of the measures the Minister did indeed present to us on Tuesday. . . a revision that rather than limiting restitution in any way would be replaced by words that would suggest they were proper and adequate to the circumstances.

This, of course, means there is almost certain to be private litigation on what is proper in any given circumstance. It is one of those situations where it would be very difficult to write down in any act what was appropriate in a given circumstance. It would have to be judged on its own merit.

Mr. Paisly: I suppose one of the reasons why, when lawyers are involved in a commercial arrangement rather than a three-line note on the back of an envelope, we see a 50-page document in microscopic print. To the extent that we, on behalf of the Canadian Bar Association, are attempting to foresee circumstances that may never exist, your comment is undoubtedly well taken.

On the other hand, we do acknowledge that the bill proposes that Parliament review the invocation of the Emergencies Act but we see circumstances in which this may not be required to be done in a timely way. If the circumstance arises only once in a thousand years, it is probably worth the extra line or dot of ink required to take account for that particular, practically unforeseeable, but nevertheless foreseeable circumstance.

We do express the concern that there may be circumstances in which Parliament or the powers that be are not guided as to how quickly Parliament must be recalled. To the extent that we are trying to define all of the circumstances we can foresee, whether or not it is probable that they are actually going to occur, considering the nature of the powers that may be invoked under this act, it is worth the extra effort to put it into print.

• 1655

With respect to your concern about compensation, indeed we perceive the proposed amendments as an improvement. Nevertheless, the one concern we have expressed is that by virtue of paragraph 47.(f) of the bill—the Governor in Council being empowered to exclude a class of persons—the very same potential for injustice exists that occurred during and after World War II, where hon. citizens of this country, who had done no harm and had nothing but the well-being of the country in mind, were excluded from compensation.

What is the justification for potentially excluding a class of citizens from compensation? This is the thrust of our comment. As we see it, that provision has not been affected by the proposed amendment.

The Chairman: Gentlemen, I would like to thank you very much. Obviously you have put a tremendous amount of work into your presentation. As Mr. Crofton said, it may sometimes be difficult for non-legal people to understand the niceties of what you have attempted, but we certainly will consider it very carefully during our deliberations in the coming weeks.

The next meeting will be Tuesday at 11 a.m. in room 269. The meeting is adjourned.

Source: Nikkei National Museum, 2018-16-4-1-1-124
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APPENDIX "C-77/1"

CANADIAN BAR ASSOCIATION

SUBMISSION ON BILL C-77, THE EMERGENCIES ACT

FEBRUARY 24, 1988

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I. INTRODUCTION

On June 26, 1987, the Hon. Perrin Beatty, Minister Responsible for Emergency Preparedness, introduced federal emergencies legislation. The legislation consists of two measures: Bill C-77, the Emergencies Act, and Bill C-76, the Emergency Preparedness Act. Bill C-77 would repeal the War Measures Act.

Following the introduction of the bill, the Canadian Bar Association (CBA) requested its national and provincial branch sections on Administrative Law, Constitutional Law, Civil Liberties and Criminal Justice to review and comment on Bill C-77. This submission represents the position of the Canadian Bar Association with respect to Bill C-77, the Emergencies Act.

The Canadian Bar Association welcomes the government's initiative in seeking to replace the War Measures Act by legislation more appropriate for peace time emergencies. We applaud the declared intention to have the new emergency legislation subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. We also welcome the

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provisions of the proposed legislation dealing with compensation to persons who suffer unfairly as a result of the exercise of emergency powers.

Nevertheless, we have very serious concerns about the proposed legislation. These concerns may be summarized as follows:

Firstly, it is our submission that the definitions of the various classes of emergencies need "tightening up". As it presently stands, this legislation could permit the government to invoke sweeping public order emergency powers to combat such problems as unemployment and inflation. It would permit the government to proclaim a state of international or war emergency in almost any situation of international conflict.

Secondly, the failure to give the term "emergency" an objective definition makes it very difficult if not impossible to mount a legal challenge to the declaration of emergency. The danger is that "emergency" may be held to exist whenever the Governor in Council declares it.

Thirdly, the CBA would like to see a stronger assertion in the bill that the legislation is subject to the International Covenant on Civil and Political Rights. Since Canada is a party to that Covenant and since Article 4 thereof expressly sets out certain rights which must be respected even in times of national emergency, it is our view that the legislation should expressly implement Article 4.

Fourthly, we are concerned that the powers given to the Governor in Council in a time of a declared emergency are too sweeping. In keeping with our international commitments, this legislation should ensure that the extraordinary powers may be exercised only to the extent required by the exigencies of the emergency.

Fifthly, we believe that the requirement for consultation with or prior consent of the provinces in public welfare and public order emergencies could impede the ability of the federal government to act in the national interest during these types of emergencies.

Sixthly, we have concern that the proposed legislation does not ensure adequate accountability of Cabinet to Parliament for its actions during an emergency.

Finally, it seems to us that the compensation provisions may not ensure fair or adequate compensation for legitimate claims.

Source: Nikkei National Museum, 2018-16-4-1-1-127
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II. PREAMBLE TO BILL C-77

The preamble to Bill C-77 notes the fundamental obligation of government to provide for "the safety and security of the individual, the protection of the body politic and the preservation of the sovereignty, security and territorial integrity of the state...".

The preamble further notes that fulfilment of that obligation may be seriously threatened by a national emergency that is,

> an urgent and critical situation of a temporary nature that imperils the well-being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution.

The preamble states that to deal with such a national emergency, the Governor in Council should be authorized, subject to the supervision of Parliament, to take "special temporary measures that may not be appropriate in normal times." Such measures would be subject to the following limits:

> And Whereas the Governor in Council, in taking such special temporary measures, would be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights and must have regard to the International Covenant on Civil and Political Rights, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency

(a) Effect of Preamble Definitions Generally

The Interpretation Act (RSC 1970 c I-23) limits the scope of the preamble of a statute as follows:

> s. 12 The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purpose and object.

According to accepted principles of statutory construction, the preamble may aid the interpretation of a statute but it cannot override specific provisions in the Act itself. In our opinion, rights that are not to be limited or abridged even in a declared emergency are sufficiently important that they should be set out in the body of the statute itself rather than in the preamble.

(b) International Covenant on Civil and Political Rights

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Canada is obliged to ensure that

Source: Nikkei National Museum; 2018-16-4-1-1-128
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its legislation conforms to Article 4 of the Covenant which identifies certain rights that must be respected even in times of national emergency.

Article 4 of the ICCPR reads:

> 4. 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
>
> 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
>
> 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated.

(Note: the Articles referred to in 4(2) protect against: arbitrary deprivation of life, cruel treatment and punishment, slavery and servitude, imprisonment for debt, punishment for crimes not existing in law when act committed, and protect: recognition of everyone as a person before the law, and freedom of thought conscience and religion, respectively. It may be noted also that Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is virtually identical to Article 4 of the ICCPR).

To date, Article 4 of ICCPR has not been implemented by legislation. Therefore, while Canada may be obliged by international law to respect the Covenant, the Courts in Canada are without power to enforce it.

If it is the intention that this legislation should prevent the kind of treatment which, for example, the Japanese-Canadians experienced during the Second World War, it is submitted that at least the non-discrimination provisions of Article 4 of the International Covenant should be explicitly set out in the Act.

There may be some assurance that the Charter of Rights and Freedoms will prevent such discrimination from reoccurring. It is to be noted, however, unlike Article 4 of the International Covenant, s. 1 of the Charter does not identify precisely the extent to which the rights guaranteed by the Charter may be derogated from in an emergency.

Source: Nikkei National Museum, 2018-16-4-1-1-129
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The importance of the International Covenant cannot be too highly stressed in our view. The possibility always exists under s. 33 of the Charter to expressly override the rights and protections otherwise guaranteed elsewhere in the Charter. In such a circumstance, however unlikely, the protections of the International Covenant would become all the more important and accordingly, should be firmly established as a set of guiding principles in Bill C-77.

(c) Charter of Rights and Freedoms

With respect to that part of the preamble referring to "those fundamental rights that are not to be limited or abridged even in a national emergency", it is not clear whether this portion of the preamble refers only to the International Covenant or to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights as well. We interpret it as referring to the International Covenant only. However, if it is intended to refer to the Charter as well, then the legislation contemplates certain rights which would not be subject to a s. 1 Charter limitation during any emergency. If that is the case, we believe that such rights should be expressly stated and for the reasons already given, should be set out in the text of the bill itself.

(d) Definition of National Emergency

The definition of "national emergency" set out in the preamble underlies the definitions of "public welfare emergency" and "public order emergency" in ss. 3 and 14 respectively of the bill. As we will discuss below in the next part of this submission, it is our opinion that this important definition should be modified and included in the text of the bill itself rather than in the preamble.

(e) Recommendations concerning the preamble

With respect to the preamble of the proposed bill we therefore propose that:

1. the reference to the Canadian Charter of Rights and Freedoms, Bill of Rights, and International Covenant on Civil and Political Rights presently in the preamble be transferred to the body of the legislation.

2. the provisions of Article 4 of the ICCPR be expressly implemented in this legislation by adding a section containing provisions similar to Article 4.

Source: Nikkei National Museum, 2018-16-4-1-1-130
www.nikkeimuseum.org

III. DEFINITION SECTIONS

Four types of emergencies are defined in the text of the bill: Public Welfare Emergency (s. 3); Public Order Emergency (s. 14); International Emergency (s. 25); War Emergency (s. 35). None of the definitions provided is sufficiently precise, for reasons which are elaborated below.

(a) "Emergency" in General

As a general observation, we would note that the term "emergency" is never adequately defined in this bill, either in the preamble or in the body of the text itself. In the case of the "public welfare emergency", "public order emergency" and "international emergency", their definitions all state that such an emergency "means an emergency" that is either caused by or "arises from" listed factors.

To state that an "emergency means an emergency" and then to list the possible causes is not adeguate in our view. The circular nature of the wording is not helped in the case of public welfare and public order emergencies by requiring them to be so serious "as to be a national emergency". This latter term is itself unacceptably vague.

The lack of definitional precision coupled with the latitude given to the Governor in Council to simply declare the existence of an emergency fails to give adequate guidance to the Governor in Council as to the conditions that should exist before an emergency is declared and serves to preclude effective judicial review of emergency declarations. Without an adequate definition of the term "emergency", it may be that a state of emergency will legally exist whenever the Governor in Council declares it.

In our view, the term "emergency" should be defined in the bill with reference to the need for extraordinary powers. We propose the following definition:

> "emergency" means an urgent and critical situation of a temporary nature in which government requires extraordinary powers to meet its fundamental obligations.

In our view, a twofold defect in this legislation is the failure to define the terms "emergency" and "national emergency" in the body of the legislation itself and to stipulate that in all cases the declaration of a state of emergency requires a "national emergency". (It is to be noted that, for some reason which is not apparent, neither an international nor a war emergency needs to be a "national emergency").

Source: Nikkei National Museum, 2018-16-4-1-1-131
www.nikkeimuseum.org

(b) "National Emergency" in General

"National Emergency" is defined in the preamble. Under that definition, a "national emergency" could exist simply because a situation is of such proportions or nature as to be beyond the power of a province to handle. In our view, an "urgent and critical situation of a temporary nature ... that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it" should not be a basis for invoking emergency powers.

We believe that the term "national emergency" ought to be more carefully and precisely defined. At present, it is unclear what aspect of the "well-being" of Canada must be imperilled before an urgent and critical situation becomes a national emergency. For example, under the current definition, it is possible that threatening Canadian culture by allowing the massive importation of American television programming or magazine and periodical literature would be sufficient. As the present definition is worded, perhaps even the decision of a particular province to limit the production of a particular natural resource such that other provinces in Canada suffer might be grounds for invoking emergency powers.

In our submission, an appropriate definition of national emergency would be drawn from the first paragraph of the present preamble and would specify that the urgent and critical situation "is of such proportions or nature as to exceed the capacity or authority of a province to deal with it" and that it endangers the "fundamental obligations of government" to ensure "the safety and security of the individual", to protect "the values of the body politic" and to preserve "the sovereignty, security and territorial integrity of the state". Nothing short of this should be considered to be a national emergency.

(c) Public Welfare Emergency (s. 3)

A public welfare emergency is defined in s. 3 as follows:

> "public welfare emergency" means an emergency that is caused by a real or imminent
>
> (a) fire, flood, drought, storm, earthquake or other natural phenomenon,
>
> (b) disease in human beings, animals or plants,
>
> (c) accident or pollution, or
>
> (d) breakdown in the flow of essential goods, services or resources
>
> and that results or may result in a danger to life or property, or social disruption, so serious as to be a national emergency.

Source: Nikkei National Museum, 2018-16-4-1-1-132
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Under s. 3(d) a public welfare emergency may be caused by "breakdown in the flow of essential goods, services or resources". As currently worded, this subsection may be invoked in the case of mere labour stoppages. Nowhere is the term "essential" defined and nowhere is the term "breakdown" limited except by reference to the definition of national emergency contained in the preamble. While there may be circumstances in which work stoppages or strikes may need to be terminated in the public interest, we see no reason why in almost all conceivable cases such action could not be effectively dealt with by specific legislation confined to the circumstances of the case at hand.

As a minimum safeguard, we recommend that the definition be amended to conform to Criminal Code s. 387(6) (mischief) so that ordinary work stoppages which do not reach the threshold of being considered "mischief" for purposes of the Criminal Code could not constitute a "breakdown" for purposes of s. 3 of this bill. This is not to say, however, that work stoppages which amount to criminal mischief would necessarily be grounds for invoking emergency powers.

(d) Public Order Emergency (s. 14)

A public order emergency is defined in s. 14 as follows:

> "public order emergency" means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;
>
> "threats to the security of Canada" has the meaning assigned by section 2 of the Canadian Security Intelligence Service Act.

In our submission, the Canadian Security Intelligence Service Act (CSIS) definition of "threats to the security of Canada" which is incorporated into the definition of public order emergency is vague and overly broad. The CSIS definition has itself been the subject of much criticism on this score and, in particular, includes a very wide subsection which reads as follows:

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Threats to the security of Canada means

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state.

Subparagraph (b) which refers to "foreign-influenced activities within or relating to Canada that are detrimental to the interests of Canada" is too broad and could conceivably include within its ambit mere corporate commercial activities of an international nature. Moreover, the use of the words "clandestine or deceptive" does not prevent such ordinary international and trade activities from falling within the scope of this definition. Most large scale trade between nations involves much secret dealing and resultant elaborate security precautions. It may be that an international trade deal between Japan and the United States concluded in secret and designed to restrict Canadian exports to both those countries would fall within this definition.

Subsection (c) from the CSIS definition refers to "activities within or relating to Canada directed toward or in support of acts of serious violence for the purpose of achieving a political objective within Canada or a foreign state". In our view, this is too wide in scope: raising funds through legitimate means to aid the state of Israel or to support various liberation movements in communist-dominated countries such as Angola or Afghanistan might be sufficient to trigger this definition.

In our submission, it would be far more appropriate to eliminate the reference to CSIS definitions and to set out a definition using the term "threats to the security of Canada" only as it relates to emergencies. We propose that the definition of public order emergencies be restricted to

national emergencies arising from threats to the security of Canada involving actual or potential loss of life, or territory, or to those threats which would seriously inhibit the functioning of democratic institutions within Canada.

Source: Nikkei National Museum, 2018-16-4-1-1-134
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(e) International Emergency (s. 25)

The definition of international emergency, unlike the preceding two definitions, is not linked to the antecedent definition of national emergency contained in the preamble. It reads as follows:

> "international emergency" means an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that directly threatens the sovereignty, security or territorial integrity of Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

This definition seems to deal with situations of apprehended war as well as political and economic threats not only to the interests of Canada and its allies but also to any country in which the interests of Canada or its allies are involved. In our opinion, the ambit of this definition is too wide, especially when one considers that no guiding criteria are given with regard to what constitutes an ally. In addition, it is unclear what level of political, economic or security interest must be involved before this definition is triggered.

Since, according to the preamble, the first objective of any Canadian government must be "the protection of the values of the body politic" by maintaining the free and democratic society enjoyed by Canadians, it is our submission that serious consideration be given as to whether peril to allies or other countries is sufficient to justify restrictions on the rights of Canadians in Canada.

It must be kept in mind that under this bill the Governor in Council is given sweeping powers affecting the rights of Canadians during an international emergency. It would seem as if Canadians are being asked under this definition to give up rights on the basis of an international situation which does not yet exist, involving unknown disputants concerning undetermined issues which may not be linked directly or indirectly with the continued existence of a free and democratic society in Canada.

A declaration of international emergency will have profound effects on the rights of all Canadians. It is our opinion that Canadians ought not to be subject to an emergency declaration on the basis of so wide and so arbitrary a definition. Accordingly, we recommend that the scope of this definition be greatly restricted and limited to "national emergencies" (as are all the other categories of emergencies). We propose the following definition:

Source: Nikkei National Museum, 2018-16-4-1-1-135
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> "international emergency" means a national emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that directly or indirectly threatens the sovereignty, security or territorial integrity of Canada.

(f) War Emergency (s. 35)

The definition of war emergency suffers from many of the defects of the preceding definition of international emergency and reads as follows:

> "war emergency" means war or other armed conflict, real or imminent, involving Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

The same comments which were made regarding international emergency apply with respect to the proposed definition of war emergency. In our submission, a distinction ought to be made between the powers necessary when Canada is fighting a war abroad with no threat to Canadian territorial integrity and those necessary when a war threatens Canadian territorial or political sovereignty.

In our view, it seems unnecessary that the basic political and legal rights of Canadians should be restricted on the basis of a war or armed conflict taking place far from Canadian shores having only indirect impact on Canadians. Under the current definition, the Governor in Council could have declared a war emergency during the Vietnam conflict which involved our ally, the United States of America.

In summary, it is our opinion that this definition is too broad in scope and ought to be limited to direct threats to Canadian territorial integrity and to wars in which Canada is a participant.

(g) Recommendations concerning the Definition Sections

With respect to the definitions contained in the proposed bill we therefore propose that:

1. a definition of "emergency" be added with reference to the need for extraordinary powers of government.

2. that "emergency" be defined in the Act as:

> "emergency" means an urgent and critical situation of a temporary nature in which government requires extraordinary powers to meet its fundamental obligations.

Source: Nikkei National Museum, 2018-16-4-1-1-136
www.nikkeimuseum.org

3. the definition of "national emergency" be amended so that national emergency means:

> "an emergency in which the urgent and critical situation is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and endangers the fundamental obligations of government to ensure the safety and security of the individual, to protect the values of the body politic and to preserve the sovereignty, security and territorial integrity of Canada.

4. the term "national emergency" be defined in the body of the legislation and not merely in the preamble.

5. each class of emergency (public welfare emergency, public order emergency, international emergency and war emergency) be defined with reference to the term "national emergency".

6. public order emergencies be restricted to national emergencies arising from threats to the security of Canada involving actual or potential loss of life, or territory, or to those threats which would seriously inhibit the functioning of democratic institutions within Canada.

7. the scope of "international emergency" be restricted to a national emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that directly or indirectly threatens the sovereignty, security or territorial integrity of Canada.

8. "war emergency" be limited to direct threats to Canadian territorial integrity and to wars in which Canada is a participant.

Source: Nikkei National Museum, 2018-16-4-1-1-137
www.nikkeimuseum.org

IV. THE POWERS OF GOVERNMENT DURING AN EMERGENCY

(a) Powers necessary "In the opinion of the Governor in Council"

Of great concern to us is the absence of a general qualification or limitation on the powers exercised by government in times of emergency. In our view, in keeping with Canada's international obligations, the scope of the extraordinary powers should, in general, be determined by the exigencies of the situation giving rise to the emergency. (See Article 4 of the International Covenant on Civil and Political Rights as set out in Part II above).

The bill provides in ss. 6(1), 17(1), and 28(1) that while a declaration of emergency is in effect, the Governor in Council may "make such orders or regulations ... as in the opinion of the Governor in Council are reasonably necessary for dealing with the emergency". S. 38(1) has identical wording except that the orders and regulations must be "reasonably necessary or advisable for dealing with the emergency."

In our view, it is not necessary to have the words "in the opinion of the Governor in Council". If the Executive acts reasonably and is genuinely of the view that measures are necessary to deal with the emergency, then the extraordinary powers are determined by the exigencies of the emergency and not strictly by the opinion of the Executive.

The advantage of such a change in wording is that the Governor in Council is bound by an objective test rather than a subjective one and, if the powers are demonstrably unnecessary, the regulations or orders could be challenged.

In the case of public welfare, public order, and international emergencies, the nature of the orders and regulations which may be made are in relation to limited categories of activities such as travel, use of property, powers of search and seizure etc.. In the case of a war emergency, however, a very open-ended power is given in that the only limitation is that the orders and regulations be "reasonably necessary or advisable".

Source: Nikkei National Museum, 2018-16-4-1-1-138
www.nikkeimuseum.org

(b) Power to direct the rendering of essential services

In the situation of the public welfare emergency, public order emergency, or an international emergency, there is a power in ss. 6(1)(d), 17(1)(d) and 28(1)(e) respectively to direct people "to render essential services of a type that that person, or person of that class, is competent to provide".

In our submission, the provision in this bill for the rendering of "essential" services is too broad for the following reasons:

- There is no definition given of the term "essential". This, like the declaration of an emergency itself, would seem to be a matter for the opinion of the Governor in Council.

- The duration of the service which an individual may be compelled to provide is neither stated nor is there a formula provided to determine it.

- There is no requirement to compensate the people thereby compelled to perform such services for the service actually rendered or to compensate them for loss or damage suffered during the performance of such services.

- There is no defence provided to persons who may refuse to follow a direction to perform services which might pose a special danger to life or limb (due to special medical or physical conditions for example). A defence of reasonable refusal should be available to such persons in the event they are prosecuted for their refusal.

(c) Power to regulate or prohibit travel

In the case of public welfare and public order emergencies, under ss. 6(1)(a) and 17(1)(a)(ii) the Governor in Council may make orders or regulations for "the regulation or prohibition of travel to, from or within any specified area". In the case of international emergencies, under s. 28(1)(g) the Governor in Council may make orders or regulations for "the regulation or prohibition of travel outside Canada by Canadian citizens or permanent residents as defined in the Immigration Act, 1976".

In our opinion, the ability to travel within Canada is so basic to our freedom that the justifying factors for its restriction ought to be set out. We propose the following qualification be added to this regulation - making power of the Governor in Council:

Source: Nikkei National Museum, 2018-16-4-1-1-139
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where necessary for the protection of the health and safety of individuals, the regulation or prohibition of travel to, from or within any specified area.

We do not necessarily say that the health and safety of individuals should be the only bases for a restriction on travel within Canada during a public welfare emergency. Other such justifying factors should be set out in the same way, however.

Similarly, in the case of public order emergencies, the subsection should specify that the making of such regulations is "for the purpose of maintaining order in a specified area". A similar approach should be used in connection with the regulation of travel with respect to international emergencies as well.

(d) Power to regulate or prohibit public assembly

In the case of public order emergencies, under s. 17(1)(a)(i) the Governor in Council is empowered to make orders or regulations for "the regulation or prohibition of public assembly".

We submit that the Governor in Council in a public order emergency should not have the power to prohibit all public assembly. Such a prohibition would effectively eliminate public dissent concerning the declaration of the state of emergency.

It would be reasonable for Cabinet in times of emergency to have the power to regulate or prohibit public assembly of the type that will or is likely to lead to public disorder. We believe that Cabinet should not have the power to prohibit peaceful demonstrations (on Parliament Hill for example) during an emergency. If such a prohibition is thought necessary, it should be a matter debated fully in Parliament before it becomes law.

The possibility of an outright prohibition on all public assembly would seem to violate the Charter guarantee of freedom of peaceful assembly in s. 2(c). In our submission, the power provided by Criminal Code in ss. 60 to 64 and 32 to 33 regarding unlawful assemblies and riots and the suppression of riots respectively would in most cases afford sufficient protection of this aspect of public order.

We recommend, therefore, that the power to prohibit public assembly be restricted to permit the government to order the prohibition of only those public assemblies that may reasonably be expected to result in breaches of the peace.

Source: Nikkei National Museum, 2018-16-4-1-1-140
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(e) Power to authorize entry, search and seizure

While a declaration of international emergency is in effect, the Governor in Council under s. 28(1)(c) may make regulations as follows for:

> the authorization of the entry and search of any dwelling house, premises, conveyance or place and the search of any person found therein, for anything that may be evidence of a contravention or suspected contravention of any order or regulation made pursuant to this section, and the seizure and detention of any such thing.

As a preliminary observation, it is not clear why such sweeping search and seizure powers should exist for international emergencies and not for public order emergencies. In our view, if in the public order emergency siuation the authorities are content to rely on the common law and statutory provisions which require prior judicial authorization based on reasonable grounds prior to the issuance of a search warrant, these same rules should apply in the case of international emergencies.

The extraordinary powers granted for international emergencies do not seem appropriate. The powers are much wider than those normally available to peace officers under the existing law. No prior authorization by an impartial official is required prior to allowing search, entry and seizure, as regulations may be issued on the sole basis that the Governor in Council is of the opinion that such are necessary. The police do not seem even to require reasonable grounds for their action in that they may search for "anything that may be evidence of a contravention or suspected contravention of any order or regulation" (emphasis added).

In our submission, the right to unlimited search and seizure provided in s. 28(1)(c) is excessive. If reasonable grounds exist, then the normal procedures (perhaps expedited) should be followed. To allow unlimited search and seizure of the type envisaged here is excessive, unfair and, in our opinion, appears to fail the proportionality test as set out by the Supreme Court of Canada in The Queen v. Oakes (1986) 1 S.C.R. 103 (the means employed must impair the freedom protected to the least extent possible).

While the lifting of the requirement of prior judicial authorization for the issuance of a search warrant where the physical safety of an individual is at risk may be justifiable, we can see no reason for dispensing with this requirement where economic or political interests alone are at risk. Accordingly, we recommend deletion of this provision entirely.

Source: Nikkei National Museum, 2018-16-4-1-1-141
www.nikkeimuseum.org

(f) Power to admit to and to remove from Canada

While a declaration of international emergency is in effect, the Governor in Council under ss. 28(1)(g) and (h) may make regulations as follows for:

> (g) the regulation or prohibition of travel outside Canada by Canadian citizens or permanent residents as defined in the Immigration Act, 1976 and of admission into Canada by other persons;
>
> (h) the removal from Canada of persons, other than Canadian citizens or permanent residents as defined in the Immigration Act, 1976;

We have serious concerns that the removal from or the denial of entry to Canada of persons other than Canadian citizens or permitted residents would include bona fide refugees fleeing from an international emergency.

Accordingly, we recommend that this provision should specifically exclude such bona fide refugees and, in addition, should preclude removal of all other persons except to their country of origin unless some other country is willing to accept such persons and the removed person consents to a removal to that other country.

(g) Powers "reasonably necessary or advisable for dealing with the emergency"

Where a war emergency declaration is in effect, the Governor in Council under s. 38(1) "may make such orders or regulations as, in the opinion of the Governor in Council, are reasonably necessary or advisable for dealing with the emergency." As already mentioned, the subjective nature of such a declaration which enables the Governor in Council to do what "in its opinion" is "reasonably necessary or advisable" would appear to preclude judicial review due to the absence of any guidelines whatsoever.

In our submission, this power goes too far. The government ought to be given wide powers to deal with war emergencies but, in our view, objective guidelines should be provided to assist the responsible officials.

During the Second World War, for example, it was considered to be reasonably necessary to intern Canadians of Japanese extraction. In retrospect, it is clear that the subjective nature of the test under the War Measures Act

Source: Nikkei National Museum, 2018-16-4-1-1-142
www.nikkeimuseum.org

authorizing the Governor in Council in s. 3 to "do and authorize such acts and things ... as he may ... deem necessary or advisable" permitted government to take action based on panic and hysteria rather than on an objective assessment of factual conditions.

Accordingly, we strongly recommend that, as in the case of public welfare, public order and international emergencies, provision be made for defining criteria to govern the type of regulations which may be made during wartime.

(h) Power to punish

The type of punishment which may be imposed for contravening any order or regulation made under these subsections is quite extraordinary. Under ss. 6(1)(j), 17(1)(e), 28(1)(l), and 38(2), provision is made for the imposition o mmary conviction or indictment of a fine not exceeding imprisonment not exceeding five years or both. these provisions are unacceptable for the foll

Firstly, it would appear to be open Council to create offences carrying minimu imprisonment for up to five years. In our view, it is not acceptable for the Executive branch of government to create offences carrying such minimum penalties of imprisonment.

Secondly, we believe that there should exist some difference between the penalties available upon summary procedure and upon procedure by way of indictment. The former lacks many of the important procedural safeguards provided by the latter. Under the Criminal Code, a person convicted of an offence punishable on summary conviction is liable to a fine of not more than $2000 or up to six months imprisonment or to both.

A critical distinction exists between indictable offences and summary conviction offences based on the nature of trial proceedings: for indictable offences which are punishable by imprisonment for 5 years (or more) the accused may elect to be tried by a judge and jury, by a judge sitting alone (both of which entitle the accused to the benefit of a preliminary inquiry) or by a magistrate. Offences punishable on summary conviction are tried by a magistrate without the benefit of a preliminary inquiry.

Thirdly, it is our view that imposition of a five year penalty for a summary conviction offence without a jury trial

Source: Nikkei National Museum, 2018-16-4-1-1-143
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is not the type of penalty that our democratic society should accept. The right to a jury trial for offences carrying heavy penalties is one of the hallmarks of the Canadian democratic tradition and is one of the most important procedural safeguards against arbitrary, capricious or unjust laws.

Fourthly, the removal of the right to trial by judge and jury in the case of a charge carrying a penalty of five years imprisonment would appear to offend against section 11(f) of the Canadian Charter of Rights and Freedoms which provides as follows:

> Any person charged with an offence has the right ...
>
> (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

(i) Recommendations concerning the powers of the government during an emergency

We therefore propose that:

1. with respect to the power of government to order individuals to provide essential services, that the term provisions for limiting the duration of the obligation to perform such a service, assuring compensation to the individuals required to perform these services, and for granting a limited right to refuse to provide services. (ss: 6(1)(d), 17(1)(d) and 28(1)(e).)

2. with respect to the power of government to restrict travel during public welfare, public order and international emergencies, the factors that would justify the invocation of such a restriction be identified in the legislation. (ss: 6(1)(a), 17(1)(a)(ii) and 28(1)(g).)

3. the power to prohibit public assembly during a public order emergency be restricted to the prohibition of public assemblies that may reasonably be expected to lead to a breach of the peace. (s. 17(1)(a)(i).)

4. the power under s. 28(1)(c) to authorize warrantless search and seizure during an international emergency be removed.

5. the powers to refuse admission to or order removal from Canada during an international emergency make express provision for excepting genuine refugees. (s. 28(g),(h).)

Source: Nikkei National Museum, 2018-16-4-1-1-144
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6. consideration be given to defining certain criteria governing the type of regulations which may be made during a war emergency. (s. 38(1).)

7. the Governor in Council not have the power to create offences carrying minimum terms of imprisonment. (ss: 6(1)(j), 17(1)(e), 28(1)(l), and 38(2).)

8. offences proceeded with by way of summary conviction carry lesser penalties than those which proceed by indictment.

9. any offence carrying a penalty of more than two years permit the accused alternative modes of trial including trial by judge and jury.

V. CONSULTATION

(a) When consultation required

Prior to issuing a declaration that a public welfare or public order emergency exists, the Governor in Council is required to consult with and, in the case of public welfare emrgencies, to obtain the consent of the Lieutenant Governor in Council of each province in which the effects of the emergency occur. Ss. 12(1) and (2) with respect to public welfare emergencies read as follows:

> 12 (1) Subject to subsection (2), before the Governor in Council issues, continues or amends a declaration of a public welfare emergency, the lieutenant governor in council of each province in which the direct effects of the emergency occur shall be consulted with respect to the proposed action.
>
> (2) The Governor in Council may not issue a declaration of a public welfare emergency where the direct effects of the emergency are confined to, or occur principally in, one province unless the lieutenant governor in council of the province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.

The requirement to consult prior to declaring a public order emergency is virtually identical except that s. 23 does not refer to "direct effects" but simply to "effects". In addition,

Source: Nikkei National Museum, 2018-16-4-1-1-145
www.nikkeimuseum.org

while under s. 12 the "direct effects" of the emergency are "confined to or occur principally in, one province", under s. 23(3) the "effects" of the emergency are simply "confined to one province". We can see no apparent reason for the discrepancy in the wording between the two sections.

(b) Appropriateness of Consultation

With respect to international and war emergencies under ss. 33 and 42 respectively, there is a similar requirement for consultation with the provinces prior to issuing or continuing a declaration of emergency. Both sections are in identical terms. S. 33 (international emergencies), reads as follows:

> 33 Before the Governor in Council issues or continues a declaration of an international emergency, the lieutenant governor in council of each province shall be consulted with respect to the proposed action to the extent that, in the opinion of the Governor in Council, it is appropriate and practicable to do so in the circumstances.

As already noted, public welfare, public order and war emergencies must be "national emergencies" by definition. International emergencies will, in fact, be well beyond the normal range of interest, competence or constitutional authority of any individual province or group of provinces. The federal government is the custodian of the national interest and the authority with the greatest resources to deal efficiently and effectively with national emergencies.

In our view, the requirement of consultation, laudable as it may be from the point of view of cooperative federalism, should not interfere with the ability of the federal government to exercise its constitutional mandate to act in the national interest. The whole exercise of consultation mandated by this bill presents itself as a gesture to the provincial governments.

The federal government has the constitutional authority to act unilaterally in an emergency situation which has national or international dimensions no matter how it presents itself and such authority should not be whittled away by legislation. If the federal government wishes to consult with the provinces in the interests of cooperative federalism, such a move is to be applauded but should not be mandated in legislation of this nature. We recommend deletion of these provisions.

Source: Nikkei National Museum, 2018-16-4-1-1-146
www.nikkeimuseum.org

(c) Recommendations concerning consultation

We therefore propose that:

1. the requirements for consultation with the provinces be deleted entirely.

2. if some reference to consultation with the provinces is retained, that the requirement to consult in ss. 12 and 23 prior to declaring the existence of an emergency be removed and that s. 12 be amended to provide for the same type of swift action and post-event consultation which is provided by s.23(2) regarding public order emergencies.

VI. PARLIAMENTARY SUPERVISION

Part VI of Bill C-77 provides for the tabling in Parliament of motions, for confirmation and revocation of a declaration of emergency, confirmation of a proclamation continuing or amending a declaration of emergency and for all published orders and regulations made pursuant to a declaration of emergency. In addition, provision is made in s. 60 for the establishment of a parliamentary review committee.

(a) Confirming the declaration of emergency

With respect to confirming the declaration of an emergency, s. 56(1) reads as follows:

> 56 (1) Subject to subsection (4), a motion for confirmation of a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, shall be made before each House of Parliament within seven sitting days after the declaration is issued.

Provision is made in ss. 56(4) for the situation where Parliament may not be sitting and must be summoned. In such a case tabling must be "on the first sitting day after Parliament

Source: Nikkei National Museum, 2018-16-4-1-1-147
www.nikkeimuseum.org

adjourned and a declaration of emergency is issued, under s. 56(2) Parliament must be summoned "forthwith to sit within seven days after the declaration is issued."

S. 56(3) contemplates the situation where the House of Commons has been dissolved and requires that the House be summoned:

> 56(3) If a declaration of emergency is issued at a time when the House of Commons is dissolved, Parliament shall be summoned to sit at the earliest opportunity after the declaration is issued.

It is our opinion that the phrase "at the earliest opportunity" is unacceptably wide. A definite time limit must be placed upon the summoning of Parliament. We see no practical reason why Parliament once dissolved could not be reconstituted and recalled to sit within the same seven day time period.

We would also propose adding a provision to Bill C-77 to the effect that Parliament should not be dissolved or prorogued while an emergency declaration is in effect unless an election is called or unless a special majority agrees otherwise (for example, three quarters of the members of both Houses). If an election is called during an emergency, provision ought to be made for the immediate recalling of Parliament when the election is over. This would permit Parliament to continue to sit and supervise the emergency situation and to analyse and respond to all orders and regulations coming before it pursuant to an emergency declaration.

(b) Limitation of Debate

The debate in Parliament of an emergency declaration is limited to three days by s. 56(6):

> 56(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, on the expiration of the third sitting day following the day on which consideration of the motion was commenced or at such earlier time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

We see no reason to limit debate by Parliament to three days as provided in s. 56(6). Following a declaration of emergency, the Governor in Council may exercise emergency powers unless and until the declaration is revoked by Parliament. There would appear to be no urgency for Parliament to come to its decision and no less than a full debate on all issues should be entertained.

Source: Nikkei National Museum, 2018-16-4-1-1-148
www.nikkeimuseum.org

A full Parliamentary debate should also be available where the motion before the Houses of Parliament is to revoke the declaration of an emergency under s. 57 (2) and (5) of the bill. Since the state of emergency is in effect while the debate is being held, there would seem to be no need to limit debate to a mere five hours on the issue of revocation. Such a restriction could permit the government to use procedural means to eliminate any possibility of Parliamentary revocation of a state of emergency.

(c) Both Houses must agree to revoke emergency declaration

Under ss. 56(7) and 58(5), each House of Parliament is given a veto over the confirmation, or continuation of a declaration of emergency respectively. Thus,the failure of either House to agree to confirm or continue the emergency declaration means that the declaration will be terminated as of the date of the failure to confirm or continue. Emergency powers may thereby be prevented, either at the confirmation or at the continuation stage, by one House of Parliament.

Anomalously, on a motion to revoke a declaration of emergency under s. 57, both Houses must agree. Thus, while only one House need oppose in order to prevent the confirmation or continuation of a declaration, if only one House opposes on a revocation motion the declaration will continue. The reason for this is not apparent.

The policy of ss. 56 and 58 allowing the exercise of emergency powers only where both Houses of Parliament are in agreement should be applied to s. 57 as well. In our submission, the agreement of either House of Parliament that the declaration of emergency ought to be revoked should be sufficient to terminate the exercise of emergency powers under s. 57.

(d) Parliamentary Review Committee

(1) Discretion to establish

Under s. 60(1), provision has been made for the establishment of a Parliamentary Review Committee:

> 60(1) The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designed or established for that purpose.

Source: Nikkei National Museum, 2018-16-4-1-1-149
www.nikkeimuseum.org

In our submission, the establishment of such a committee is vital to the proper functioning of this bill. Accordingly, we recommend that the permissive "may" be replaced by the mandatory "shall" so that a review committee must in all cases be established for the purposes designated.

In light of the very practical impediments to a successful and timely judicial review of the basis of any governmental action, it is our submission that Parliament and, in particular, a review committee of Parliament charged specifically with the task of assessing the continuing validity of government action is an indispensable element to ensure that the sweeping powers contained in this bill are exercised appropriately.

We note that there is no assurance in the legislation that the Parliamentary Review Committee described in s. 60 of the bill shall be an all-party committee of the House. In our view, it is vitally important that the review of the exercise of emergency powers and functions be conducted with the widest variety of interests and views represented.

(2) The requirement of secrecy

The bill provides in s. 60 (3) that the review of unpublished orders or regulations by the Parliamentary Review Committee shall be conducted in private. The Governor in Council under s. 27 of the Statutory Instruments Act may designate any regulation as being exempt from publication if its publication could:

> reasonably be expected to be injurious to the conduct of federal provincial relations or the conduct of international affairs, the defence of Canada or any state allied or associated with Canada ..., or the detection, prevention or suppression of subversive or hostile activities ....

Given its broad discretion and lack of any need to account during a time of emergency, the Governor in Council could declare most of its orders or regulations to be exempt from publication and not be challenged on this.

While the government ought to have the right to keep some emergency regulations secret, in our view that right should be strictly limited to international or defence matters or matters which threaten the security of Canada. In such cases, the Governor in Council ought to be required, at the very least, to inform the Parliamentary Review Committee of its desire to keep such regulations secret, and to explain to the committee beforehand the reasons for this request and to obtain the consent of the committee before having secrecy imposed upon the proceedings.

It is submitted that the Parliamentary Review Committee should have the power to review the government's decision to

Source: Nikkei National Museum, 2018-16-4-1-1-150
www.nikkeimuseum.org

exempt a regulation or order from publication and to refer the matter to Parliament for tabling and debate if the exemption from publication is unwarranted.

In general, we recommend that the making of regulations and orders creating criminal offences or providing punishments for offences should not be kept secret in any manner.

(3) Retroactive revocation

We believe that the power of Parliament to revoke the declaration of emergency or that of the Parliamentary Review Committee to revoke a regulation or order, should extend to revoking "retroactively" where deemed appropriate and not merely "effective on the day in which the motion is adopted". (Ss. 56(7), 57(6), 58(5), 59(8), and 60(4)).

Without a power to revoke retroactively, we see a potential for abuse of this legislation. For example, documents or other items seized during the state of emergency could be retained after the declaration of emergency is revoked. Persons charged with offences under the emergency powers could be tried or, if convicted, could be required to complete their sentences and would then carry records of convictions despite Parliament having found that the offended regulations or orders should not have been made. In our view, Parliament should have the power to effectively "undo" the declaration of emergency.

(4) Post-event inquiry

A weakness of Bill C-77 as currently worded is that it does not provide for an accounting by the government to the citizens of Canada for its conduct in the emergency situation. It does not call for an examination of whether or not the vast powers taken on by the government during the emergency were used well or abused.

When the emergency is over, the exercise of the emergency powers should be reviewed in a rational manner. We recommend the amendment of this bill to include a provision that, within one year following the end of any declaration of emergency, a review be conducted either by a commission of inquiry or by a specially appointed Parliamentary committee. The review body would have full power to review all documents and a report of its findings would be presented to Parliament.

Such a review would provide a sound basis not only for assessing how well emergency powers were used but also for analysing the adequacy of the legislation itself by which the emergency powers were assumed. Only in this way will it be possible to continue to improve upon the performance of the executive function of government while at the same time respecting the very institutions which were sought to be protected during the period when the emergency declaration was in effect.

Source: Nikkei National Museum, 2018-16-4-1-1-151
www.nikkeimuseum.org

VII. COMPENSATION

The Canadian Bar Association is pleased to see the enactment of a scheme to compensate those who suffer unfairly as a result of the declaration of emergency. Such compensation provisions serve to assure the public that the vast powers which government may give to its officials during times of emergency will be exercised with caution and that if someone suffers unfairly as a result of the exercise of these powers the unfairness will be corrected.

Part V of Bill C-77 sets out provisions for compensation. S. 46(1) makes compensation available as follows:

> 46(1) Subject to the regulations made under section 47, the Minister may award compensation to any person who suffers loss, injury or damage as a result of anything done, under any of Parts I to IV or any proclamation, order or regulation issued or made thereunder.

It must be noted that such compensation is entirely discretionary.

S. 47 states that the Governor in Council may make regulations regarding the procedure for compensation and may make such regulations, inter alia,

> (e) prescribing the maximum amount of compensation that may be paid to any person either generally or with respect to any particular loss, injury or damage for which compensation may be paid.
>
> (j) excluding, absolutely or conditionally, any class of person or of loss, injury or damage from the persons to whom, or the loss, injury or damage for which, compensation may be paid

S. 48(1) provides that the Governor in Council may, from among the judges of the Federal Court of Canada, appoint an Assessor and Deputy Assessors to hear and determine appeals regarding compensation. S. 48(3) provides that the decision of the Assessor is "final and conclusive and is not subject to appeal, except in accordance with section 28 of the Federal Court Act."

(a) Discretion to award compensation and to exclude from compensation

In our view, ss. 46 and 47(j) whereby the Governor in Council "may" award compensation but may make regulations to

Source: Nikkei National Museum, 2018-16-4-1-1-152
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exclude, absolutely or conditionally, "any class of person or of loss, injury or damage ..." places too much discretion in the hands of the Executive.

The compensation envisaged relates to persons who have suffered loss, injury or damage as a result of any of the orders made under the bill. To the extent that this loss concerns property loss, loss due to personal injury or damage resulting from a search and seizure order, the discretionary aspect of these provisions would appear to be in conflict with s. 1(a) of the Canadian Bill of Rights which recognizes "the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law". We recommend, therefore, that the Governor in Council should be under an obligation to compensate in certain circumstances and that s. 46 be amended accordingly to reflect that obligation.

Inclusion of compensation provisions in a measure such as Bill C-77 is praiseworthy. But, if such provisions are to have any meaning, the Governor in Council should not be authorized to exclude any class of person or loss, injury or damage from compensation. The assessor should have a discretion to consider all cases of loss, injury or damage due to the emergency. We therefore recommend that s. 47(j) not be enacted.

(b) Power to set maximum awards

We are concerned that Cabinet would have the power to set maximum awards for compensation (s. 47(e)) which must be adhered to. It is our view that a person who has had his property appropriated for the benefit of the public should be entitled to full compensation from the public.

(c) Compensation for services

A further problem with the compensation section is that it does not appear to specifically include compensation for services rendered under the direction of the government under ss. 6(1)(d), 17(1)(d), 28(1)(e), and s. 38(1). It is a point of interpretation as to whether or not services are covered by the phrase "loss, injury or damage". Due to this lack of clarity, it is our submission that amendments be made so as to specifically include services within the ambit of this phrase.

(d) Recommendations concerning compensation

We therefore propose that:

1. the Governor in Council be obliged in s. 46 to compensate for loss, injury or damage resulting from actions authorized during the emergency.

Source: Nikkei National Museum, 2018-16-4-1-1-153
www.nikkeimuseum.org

(e) Recommendations concerning Parliamentary supervision

We therefore propose that:

1. express provision be included for the reconstituting and recalling of Parliament within a specified time period if Parliament is dissolved when the declaration of emergency is issued.

2. a provision be added to Bill C-77 to prevent the dissolution or prorogation of Parliament during an emergency except for the purpose of calling an election and to ensure that Parliament is recalled immediately following the election.

3. the time limitations on Parliamentary debate be removed to allow full debate on motions to confirm or revoke declarations of emergencies.

4. the requirement of agreement of both Houses on a motion to revoke a declaration of emergency be removed to ensure that a state of emergency will exist or continue only as long as it has the approval of both Houses of Parliament.

5. the creation of the Parliamentary Review Committee be mandatory.

6. the review of executive orders by Parliamentary Review Committee be conducted in public except where the matters debated would require publication of sensitive information relating to the security of Canada.

7. provision be made to ensure that the Parliamentary Review Committee be a representative all-party committee of Parliament.

8. Parliament and the Parliamentary Review Committee be given the power to revoke retroactively the declaration of emergency and orders or regulations made thereunder.

9. provision be made for a mandatory and comprehensive post-event inquiry by a special commission or committee of Parliament.

Source: Nikkei National Museum, 2018-16-4-1-1-154
www.nikkeimuseum.org

2. the Governor in Council should not have the power to exclude any class of person or loss, injury or damage from compensation.

3. the Governor in Council should not have the power to set maximum amounts for compensation to any person.

4. it should be clarified that compensation includes compensation for services rendered.

VIII. SUMMARY OF RECOMMENDATIONS

The Canadian Bar Association makes the following recommendations with respect to Bill C-77:

1) the reference to the Canadian Charter of Rights and Freedoms, Bill of Rights, and International Covenant on Civil and Political Rights (ICCPR) presently in the preamble be transferred to the body of the legislation.

2) the provisions of Article 4 of the ICCPR be expressly implemented in this legislation by adding a section containing provisions similar to Article 4 of the ICCPR.

3) a definition of "emergency" be added with reference to the need for extraordinary powers of government.

4) that "emergency" be defined in the Act as:

> "emergency" means an urgent and critical situation of a temporary nature in which government requires extraordinary powers to meet its fundamental obligations.

Source: Nikkei National Museum, 2018-16-4-1-1-155
www.nikkeimuseum.org

5) the definition of "national emergency" be amended so that national emergency means:

> "an emergency in which the urgent and critical situation is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and endangers the fundamental obligations of government to ensure the safety and security of the individual, to protect the values of the body politic and to preserve the sovereignty, security and territorial integrity of Canada.

6) the term "national emergency" be defined in the body of the legislation and not merely in the preamble.

7) each class of emergency (public welfare emergency, public order emergency, international emergency and war emergency) be defined with reference to the term "national emergency".

8) public order emergencies be restricted to national emergencies arising from threats to the security of Cana involving actual or potential loss of life, or territory or to those threats which would seriously inhibit the functioning of democratic institutions within Canada.

9) the scope of "international emergency" be limited to a national emergency involving Canada and one or more othe countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that directly or indirectly threatens the sovereignty, security or territorial integrity of Canada.

10) "war emergency" be limited to direct threats to Canadian territorial integrity and to wars in which Canada is a participant.

11) with respect to the power of government to order individuals to provide essential services, that the term "essential" be defined and that consideration be given to provisions for limiting the duration for which an individual may be obliged to perform such a service, assuring compensation to the individuals required to perform these services, and for granting a limited right to refuse to provide services. (Ss. 6(1)(d), 17(1)(d) and 28(1)(e).)

12) with respect to the power of government to restrict travel during public welfare, public order and international emergencies, the factors that would justify the invocation of such a restriction be identified in the legislation. (Ss. 6(1)(a), 17(1)(a)(ii) and 29(1)(g).)

Source: Nikkei National Museum, 2018-16-4-1-1-156
www.nikkeimuseum.org

13) the power to prohibit public assembly during a public order emergency be restricted to the prohibition of publ assemblies that may reasonably be expected to lead to a breach of the peace. Ss. 17(1)(a)(i).)

14) the power under s. 28(1)(c) to authorize warrantless search and seizure during an international emergency be removed.

15) the powers to refuse admission to or order removal from Canada during an international emergency should make express provision for excepting convention refugees. (S. 28(g),(h).)

16) consideration be given to defining certain criteria governing the type of regulations which may be made durir a war emergency. (S. 38(1).)

17) the Governor in Council should not have the power to create offences carrying with it minimum sentences of imprisonment. (Ss. 6(1)(j), 17(1)(e), 28(1)(l), and 38(2).)

18) offences proceeded with by way of summary conviction should carry lesser penalties than those which proceed by indictment. (Ss. 6(1)(j), 17(1)(e), 28(1)(l), and 38(2).

19) any offence carrying a penalty of more than two years should permit the accused alternative modes of trial including trial by judge and jury.

20) the requirements for consultation with the provinces be deleted entirely.

21) if some reference to consultation with the provinces is retained, that the requirement to consult in ss. 12 and 23 prior to declaring the existence of an emergency be removed and that s. 12 be amended to provide for the same type of swift action and post-event consultation which is provided by s. 23(2) regarding public order emergencies.

22) express provision be included for the reconstituting and recalling of Parliament within a specified time period if Parliament is dissolved when the declaration of emergency is issued. (s. 56(3).)

23) a provision be added to Bill C-77 to prevent the dissolution or prorogation of Parliament during an emergency except for the purpose of calling an election and to ensure that Parliament is recalled immediately following the election.

Source: Nikkei National Museum, 2018-16-4-1-1-157
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24) the time limitations on Parliamentary debate be removed to allow full debate on motions to confirm or revoke declarations of emergencies. (ss. 56 and 57.)

25) the requirement of agreement of both Houses on a motion to revoke a declaration of emergency be removed to ensure that a state of emergency will exist or continue only as long as it has the approval of both Houses of Parliament. (s. 57).

26) the creation of the Parliamentary Review Committee be mandatory. (s. 60(1).)

27) the review of executive orders by Parliamentary Review Committee be conducted in public except where the matters debated would require publication of sensitive information relating to the security of Canada. (s. 60(3).)

28) provision be made to ensure that the Parliamentary Review Committee be a representative all-party committee of Parliament. (s. 60).

29) Parliament and the Parliamentary Review Committee be given to power to revoke retroactively the declaration of emergency and orders or regulations made thereunder. (ss. 56(7), 57(6), 58(5), 59(8), and 60(4)).

30) provision be made for a mandatory comprehensive post-event inquiry by special commission or committee of Parliament.

31) persons suffering loss, injury or damage as a result of actions authorized to be taken during an emergency should be entitled to compensation. (s. 46(1).)

32) the power to exclude classes of persons or loss, injury or damage should be deleted. (s. 47(j).)

33) the Governor in Council should not have the power to set maximum amounts for compensation to any person. (s. 47(e).)

34) it should be clarified that compensation includes payment for services rendered. (s. 46(1).)

Source: Nikkei National Museum, 2018-16-4-1-1-158
www.nikkeimuseum.org

RELEASE NEWS RELEASE

FOR IMMEDIATE RELEASE
February 25, 1988

CANADIAN BAR APPLAUDS BILL C-77, EMERGENCIES ACT

OTTAWA - The Canadian Bar Association (CBA) welcomes the federal government's new Emergency Act (Bill C-77) while recognizing a number of serious drawbacks especially in some of the definitions contained in the bill.

"The CBA welcomes the government's initiative in seeking to replace the War Measures Act by legislation more appropriate for peace time emergencies," says the 67-page brief. "We applaud the declared intention to have the new emergency legislation subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. We also welcome the provisions of the proposed legislation dealing with compensation to persons who suffer unfairly as a result of the exercise of emergency powers."

The Bar is presenting its brief to the Legislative Committee on Bill C-77 on Thursday, Feb. 25, 1988, in Room 308 of the West Block at 3:30 p.m. The CBA delegation is headed by Victor Paisley of Toronto, and includes John Giokas, the CBA's Director of Legislation and Law Reform.

The Canadian Bar submission received input from the Administrative Law, Constitutional Law, Civil Liberties and Criminal Justice Sections of the CBA from across the country.

Concerns with the emergency legislation deal with a number of its definitions, powers and accountability.

"It is our submission that the definitions of the various classes of emergencies need 'tightening up'. As it presently stands, this legislation could permit the government to invoke sweeping public order emergency powers to combat such problems as unemployment and inflation."

"Secondly, the failure to give the term 'emergency' an objective definition makes it very difficult if not impossible to mount a legal challenge to the declaration of emergency. The danger is that 'emergency' may be held to exist whenever the Governor in Council declares it."

"We are concerned that the powers given to the Governor in Council in a time of a declared emergency are too sweeping." The brief continues, "We have concern that the proposed legislation does not ensure adequate accountability of Cabinet to Parliament for its actions during an emergency."

"Finally, it seems to us that the compensation provisions may not ensure fair or adequate compensation for legitimate claims."

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Contact : Stephen Hanson, Senior Director of Communications, Canadian Bar Association, Suite 1700, 130 Albert Street, Ottawa, Ontario, K1P 5G4 (613) 237-2925

Source: Nikkei National Museum, 2018-16-4-1-1-159
www.nikkeimuseum.org

BRIEF OF THE

CANADIAN CIVIL LIBERTIES ASSOCIATION

Source: Nikkei National Museum, 2018-16-4-1-1-160
www.nikkeimuseum.org

APPENDIX "C-77/2"

SUBMISSIONS TO - The Legislative Committee on Bill C-77 (The Emergencies Act)

RE - Emergency Powers

FROM - Canadian Civil Liberties Association

DELEGATION - A. Alan Borovoy (General Counsel)
Kenneth P. Swan (Chairman of the Board)
David Schneiderman (Field Representative)

OTTAWA March 1, 1988

The Canadian Civil Liberties Association appreciates the amendments which the Minister has introduced to Bill C-77. These amendments will help to reduce the dangers of abuse that inevitably accompany the application of emergency powers. Unfortunately, however, the Bill still contains a number of vague definitions, overbroad powers, and inadequate safeguards. In its present form, the Bill could create serious and unwarranted threats to the civil liberties of the Canadian people. We seek, therefore, the adoption of the recommendations in our October 5th brief to the Minister (attached as appendix number one) as modified by this brief. The following represent some of the more serious of the problems that remain.

1. It is not enough simply to relocate the definition of "national emergency" from the preamble to the text. The components of the definition must also be addressed. In its present form, the definition fails to specify <u>in what ways or in respect of what interests</u> the "well-being of Canada" needs to be imperilled. Since this concept appears in a number of places throughout the Bill, consider the following possibilities:

(a) Could a public order emergency include a situation in which a group of multi-national companies secretly conspire to raise the prices of certain vital commodities in Canada? This could arguably satisfy the definition of foreign-influenced activities within the meaning of the CSIS Act and it could imperil some of Canada's critical <u>economic</u> interests. The terms of the Bill appear insufficient to preclude the invocation of emergency powers for such an injury to our economic well-being.

(b) Could the "intimidation or coercion" in the

Source: Nikkei National Museum, 2018-16-4-1-1-161
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definition of an "international emergency" include a threat by the United States to expand its tariffs against Canadian goods? Since this definition refers also to "real or imminent use of serious force or violence", it would appear that "intimidation or coercion" could include the application of a lower level of pressure. The terms of the Bill appear insufficient to preclude the invocation of emergency powers for such an injury to the well-being of our trade position.

(c) Could a "war emergency" include armed conflict involving the United States in, let us say Central America, so that we are clogged with refugee applications? Last summer, Parliament was reconvened in order to deal with the way a perceived crisis in refugee applications was imperilling the well-being of this country. The terms of the Bill appear insufficient to preclude the invocation of emergency powers for the situation described here.

2. There appears to be a basic conceptual error in the power to revoke emergency declarations. The amendments say that the Governor in Council may revoke these declarations if it believes on reasonable grounds that the emergency no longer exists. This confuses what it takes to revoke a proclamation with what it takes to invoke one. There should be no fetters at all on the power of the Government to revoke a declaration.

3. We appreciate the requirement that the Government compensate those whose labour it commandeers. Unfortunately, however, this provision still lacks some important ingredients:

(a) A requirement that an independent arbitrator be empowered to set the terms of compensation.

(b) A requirement that the Government indemnify those performing conscripted labour for damage that they may cause to others.

(c) A right to refuse to perform such conscripted labour in the event that there are reasonable grounds to anticipate danger to the life, limbs, or health of the potential conscriptee.

(d) Some limits on the nature and duration of the duties which may be ordered.

4. The proposed limit on the power to prohibit and regulate public assemblies seems to be misconceived. The mere fact that an assembly is "directly related" to the emergency should not, by itself, make it a candidate for prohibition. Suppose the assembly were a peaceful one protesting the declaration of the emergency itself? Even if the necessity for such a power were assumed, there should be a requirement of reasonable grounds to believe that the impugned assemblies would likely exacerbate the emergency. In any event, the Government has not yet provided a sufficient explanation as to why the ordinary law could not adequately deal with the anticipated problems from public assemblies.

5. In response to our criticism about the power to authorize and conduct inquiries for international emergencies, there is now an amendment that requires such power to be "in relation to defence contracts or defence supplies... or to hoarding, overcharging, black marketing or fraudulent operations in respect of scarce commodities". This tells us what the power is designed to address, but it does not tell us why there is a need for a power greater than what exists in the ordinary law.

Source: Nikkei National Museum, 2018-16-4-1-1-162
www.nikkeimuseum.org

6. The Bill should require an appropriate warrant-granting mechanism for any new power of entry, search, and seizure which is created during international emergencies.

7. The periods of invocation are too long. 360 days, for example, is too long even for a war emergency. During a period of time as long as this, it is hard to imagine why Parliament could not enact a special statute narrowly tailored to the particular emergency. In any event, declarations for shorter periods can always be continued. In our view, war emergencies should not endure for longer than 90 days and the others should be scaled down accordingly.

8. The following provisions should be included in the Bill:

(a) The removal of the power to exclude certain classes of people from obtaining compensation or, at least, a generic description in the Bill of those who might attract such a disentitlement.

(b) The inclusion of a description in the Bill of those classes of persons who might be entitled to priority treatment for compensation.

(c) A requirement of reasonable grounds in the section empowering the Government to withhold emergency orders and regulations from public disclosure.

(d) A requirement that no person will attract liability or culpability under any emergency regulation or order unless the relevant provisions were adequately published in advance.

(e) The inclusion of additional opportunities for Parliament to revoke or amend emergency orders and regulations - this should arise at least on those occasions when emergency declarations are continued. (In its present form, the Bill limits such opportunities to a single period within twenty days after orders and regulations are tabled in Parliament.)

(f) The inclusion of a specific requirement that the Government will use the least intrusive measures which can reasonably be expected to achieve its legitimate objectives and the power in the courts to revoke or reduce any emergency measures which fail this test.

Source: Nikkei National Museum, 2018-16-4-1-1-163
www.nikkeimuseum.org

APPENDIX NO. 1

Copy of CCLA Brief to the Minister

SUBMISSIONS TO - The Honorable Perrin Beatty
Minister of National Defence

RE - Bill C-77 (Emergency Powers)

FROM - Canadian Civil Liberties Association

DELEGATION - A. Alan Borovoy
(General Counsel)
Kenneth P. Swan
(Vice-President)

OTTAWA October 5, 1987

Source: Nikkei National Museum, 2018-16-4-1-1-164
www.nikkeimuseum.org

General Observations

The Canadian Civil Liberties Association appreciates the initiative which the government has taken to replace the War Measures Act. No conceivable emergency, including bloody war, could justify such unfettered powers and inadequate safeguards. In this regard, we appreciate particularly the fact that there is no attempt here to remove the application of the Charter.

In fairness, our organization cannot object in principle to the existence of some special powers to deal with certain extraordinary situations. But we must recognize that such powers can endanger the viability of free institutions. In this connection, there is reason to suspect that the 1970 invocation of the War Measures Act contributed substantially to the subsequent illegalities committed by the RCMP. Note, for example, the testimony that RCMP Sergeant Robert Potvin gave to the McDonald Commission.

> "And so, in our minds, while the Act had been revoked, the situation had not changed, and that to some extent many of the same measures that had been used at that time seemed to us to be still necessary. And so there was a kind of attitude, if you will, that prevailed among those of us that were doing the work".

It is essential, therefore, that the powers be tailored as narrowly as possible to emergencies that can reasonably be anticipated. And safeguards must be fashioned that can deal as effectively as possible with abuse and excess.

While CCLA welcomes the demise of the old Act, we are concerned that some of its most regrettable features could be resurrected with the birth of the new one. Unfortunately, Bill C-77 contains vague definitions, overbroad powers, and inadequate safeguards. There is too little effort to link the powers it would create with the perils for which they are designed. There is too little effort to achieve proportionality between available powers and anticipated perils.

This leads us to make what is perhaps the most important of the recommendations which follow.

> Before the Parliamentary process goes any further, the government should provide for M.P.s and the public a working paper which describes the kind of emergencies about which it is concerned, the kind of powers it seeks to deal with those emergencies, and some statement as to the ways in which the ordinary laws lack what is needed.

This would finally enable both Parliament and the public to conduct an informed and intelligent debate regarding the subject matter of this Bill.

In view of the speed with which this meeting was arranged, it will be appreciated that the ensuing submissions do not cover all of the issues that may be in contention. It is our hope, however, that this will serve as a helpful opening for the discussion. We trust that there will be further exchanges with the Minister, the relevant civil servants, and the Parliamentary Committee.

Source: Nikkei National Museum, 2018-16-4-1-1-165
www.nikkeimuseum.org

The Triggering Circumstances

One of the central weaknesses of the Bill is the failure to include a definition for the word "emergency" itself. As a consequence, many of the provisions become exercises in tautology. A "public welfare emergency" means an emergency that is caused, inter alia, by fire, flood, drought, storm etc. This section tells us about possible causes of an emergency, but it does not tell us what an emergency is. The problem is not adequately resolved by the subsequent requirement that there be "danger to life or property, or social disruption, so serious as to be a national emergency". This is simply an escalation of tautologies.

We are concerned that the explication in the preamble will not be enough to overcome this problem. There is some doubt whether the courts would apply a preamble to supply definitions that do not appear in the body of a statute. In any event, the language in the preamble is no less vague than that in the Bill itself.

How far, for example, could the government rely on the impact of that which "imperils the well-being of Canada", "danger to property", "social disruption", and "breakdown in the flow of essential" goods or services to end certain inconvenient strikes? Significantly, the Bill nowhere attempts to define what constitutes "essential". Despite the economic disruptions which may be inflicted by strikes in the post office, the railways, or even the auto industry, we would be loathe to see them become ready targets for emergency powers. While there may be some circumstances in which some strikes have to be terminated in the public interest, we believe it is preferable that such action be taken in the context of well-balanced labour legislation or by specific statutes narrowly addressed to the specific circumstances.

The problem is exacerbated by the provisions that permit the declaration of an emergency when it is considered to exist in the opinion of the Governor in Council. For many practical purposes, we fear this might mean that an emergency could be deemed to exist when the government says it does.

While no one can predict with complete certainty the scope of the latitude that a court applying the Charter might grant to the government under these sections, the risk is simply not worth taking. No public interest necessitates the existence of such open-ended terminology. The word "emergency" should be defined. And such definition should be confined to the gravest threats to our most fundamental interests - imminent and serious perils to the lives, limbs, and health of widespread numbers of people. The Bill should ensure that emergency powers will not be used for the kind of strike situations outlined above.

Moreover, as presently constituted, these sections might effectively preclude judicial review of emergency declarations for statutory purposes. So long as the government was "of the opinion" that an emergency existed, the courts might feel they have no business probing the issue.

Source: Nikkei National Museum, 2018-16-4-1-1-166
www.nikkeimuseum.org

Even though the Charter will continue to apply in the case of such emergency declarations, we believe that the courts have an important role also to play in ensuring that the government does not exceed its statutory mandate. After all, the Charter would invoke judicial scrutiny in order to promote government compliance with the fundamental precepts of our constitutional system. But violations of Charter principles do not represent the only way that governments can abuse their powers. In view of the dangers to our democratic system that emergency powers create, we believe that the Bill should be amended so that the courts can exercise the appropriate degree of supervision over compliance with the statute as well. If emergency declarations fail to comply with statutory requirements, they should be subject to judicial revocation.

In anticipation of the criticisms that this recommendation might provoke, we hasten to point out that the judicial role need not include a substitution of judicial discretion for that of the government. Essentially, the judges would do here what they so often do in other contexts - determine whether, on the facts and proper interpretation of the law, the government had reasonable grounds to believe that it faced the statutory prerequisites for an emergency.

Nor would a judicial revocation necessarily paralyze a government which believed that it faced an emergency. In such circumstances, the government could always invoke the declaration afresh but with a more elaborate recitation of the facts.

Conceivably, the additional material could persuade the courts that this time the statutory conditions were there. If the government said too little, it would risk judicial revocation. If the government said too much, it could risk political contradiction. The idea is to make the invocation of emergency powers as politically vulnerable an exercise as we can make it.

It is important also that the Bill should set a premium on handling emergencies through narrowly focused statutes enacted at the time by Parliament. For a democracy, this would be better than relying on regulations promulgated by government, through general powers created ahead of time. At least in that way, the measures adopted would more likely be linked to the problems involved and affected parties would enjoy whatever safeguards flowed from an open Parliamentary debate.

This leads us to recommend that the Bill should contain a requirement that the emergency proclamation explain why the circumstances in existence necessitated such bypassing of Parliament. The government would be effectively required to spell out the magnitude of the perils it anticipated, how delay would likely exacerbate such perils, and why Parliament could not be expected to enact an appropriate statute with sufficient speed. Once more, the role of the courts in such circumstances would be to determine whether the position taken by the government was based upon reasonable grounds.

While the definition of a "public order emergency" contains many of the above problems, it suffers from the additional disability

Source: Nikkei National Museum, 2018-16-4-1-1-167
www.nikkeimuseum.org

of being tied to the over-broad and vague definitions of "threats to the security of Canada" that are found in the CSIS Act.

For such purposes, a threat to the security of Canada includes "activities within... Canada... in support of... acts of serious violence... for the purpose of achieving a political objective within Canada or a foreign state". This is arguably broad enough to have included the actions of Candian citizens who, without any foreign direction whatever, took up collections for the state of Israel after the Yom Kippur invasion.

Similarly, the CSIS Act refers to "foreign influenced activities... that are detrimental to the interests of Canada". "Influence" covers a lot of territory. Suppose a Canadian citizen were employed by a foreign corporation which was involved in commercial negotiations with the government of Canada? That could likely qualify as foreign influence. Moreover, since it might be in the interests of Canada to sell high and buy low, would any opposite interest be considered "detrimental"? The subsequent requirement that such activities be "clandestine" or "deceptive" may not adequately reduce the problem. There is an element of the "clandestine" in virtually all commercial transactions.

For the reasons indicated above, we are not much consoled by the additional requirement in this Bill that a threat must be "so serious as to be a national emergency". In the absence of a definition for the word "emergency" and so long as the government can declare an emergency when, in its opinion, such exists, the powers at issue are simply not adequately fettered.

Indeed, our concern about facile declarations of such emergencies prompts us to recommend the adoption of a particularly tough test. In this connection, the 1979 CCLA brief to the McDonald Commission made a suggestion which we believe it would be useful for the government to consider now. Our brief would have permitted the government to invoke emergency power "at the point where it could reasonably anticipate the outbreak of illegal violence, so intense, so widespread, and so continuous that the government itself would be overthrown or it would be powerless to govern". In our view, no public order emergency of the kind contemplated by this Bill should be subject to invocation unless these kinds of circumstances prevailed. Extraordinary powers should require dire emergencies, not simply unusual abnormalities.

There are serious flaws in the definitions of both international and war emergencies. It is one thing to invoke emergency powers for a situation that directly threatens Canada or Canadians. But we must question how far such powers should be subject to invocation in the event of comparable threats to Canada's allies. Indeed, for these purposes, it is not clear what constitutes an "ally". Moreover, how far should such considerations be extended to countries "in which the political, economic or security interests of Canada or any of its allies are involved"? Would an insurrection in, let us say, Indonesia justify emergency powers in Canada if there was a threat to the economic interests of our

Source: Nikkei National Museum, 2018-16-4-1-1-168
www.nikkeimuseum.org

NATO ally, Holland?

This definition could conceivably be wide enough to include almost every country in the world. There will be precious few places where at least one of our allies does not have some such interests. In view of the fact that every day some country in the world is subject to intimidation, coercion, and even armed conflict, this could become a mandate to invoke emergency powers at any time and to sustain them in perpetuity.

The Scope of the Powers

In most of the emergency situations contemplated by this Bill, there is a power to direct people to perform "essential services" for which they are competent. While some such power may have an arguable justification in certain circumstances, the provision in the Bill is unduly broad. There are no specified limits in nature or duration and no requirement to compensate people for their services or to indemnify them if they cause compensable damage to others.

Moreover, suppose certain people were directed to perform the kind of service that might endanger their lives, limbs, or health? At the very least, the Bill should equip them with defences in the event that they are prosecuted for failing or refusing to perform in such circumstances.

Again, we are concerned that this provision could lead to the promiscuous emasculation of some vital freedoms concerning work and working conditions. As a further measure to reduce this risk, the government should not enjoy a unilateral power to regulate the terms of compensation. Instead, the Bill should repose this power in an independent adjudicator who would be chosen at the time by the Canada Labour Relations Board. Thus, the government would know in advance that, to whatever extent it wished to designate a situation as a national emergency, its power to compel assistance would be governed according to such pre- existing guidelines. The only way that the government could change these arrangements would be to introduce legislation into

Source: Nikkei National Museum, 2018-16-4-1-1-169
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Parliament to address the circumstances then in existence.

The Bill would also permit the government to regulate or prohibit "travel to, from or within any specified area". Again, it is not hard to conceive of an argument for some such power. But it does not have to be as open-ended as this. To whatever extent people's normal liberties are curtailed, the governing statute should attempt to link the curtailment to the problem. It should not bar any travel to or from any area; it should indicate what kind of areas might be rendered off limits. Comparable specificity should be used regarding the use of property and the securing of protected places.

During the course of a public order emergency, the government would acquire the power to regulate or prohibit public assemblies. This is a particularly dangerous power. In so many ways, the right of peaceable assembly serves as a prerequisite to the existence of other freedoms. It represents one of the most potent ways that citizens can challenge excesses of government power. Indeed, one of our concerns is that this power might be used to prevent legitimate critics from effectively calling into question the very declaration of a public order emergency.

Under the normal law, the police have very wide powers to control and regulate assemblies that might be turning violent. They may arrest without warrant anyone who they have reasonable grounds to believe is about to commit an indictable offence and they may detain any person who commits or is about to join in or to renew a breach of the peace. They may also direct the flow of pedestrian and vehicular traffic. And they may interpose themselves between potential assailants and their victims. Moreover, to the extent that an assembly does become unruly, there are special powers to deal with it (unlawful assembly) and perhaps there could even be a "reading of the Riot Act".

In view of the substantial powers available under the normal law, it is hard to justify the power to prohibit assemblies that is being sought in this Bill. Significantly, there is no attempt to describe with any specificity the kind of assemblies that might be curtailed and the kind of circumstances in which such a measure might be adopted. It is unacceptable that the mere declaration of a public order emergency would, by itself, authorize the government to ban any and all public assemblies at whim.

No such power should even be contemplated without an elaborate explanation by government as to why the normal law would not be adequate to address anticipated emergencies. Even at that, the government should address the feasability of less drastic measures before considering more drastic ones. It would be less bad, for example, for the government to acquire a power to regulate rather than a power to prohibit. And it would be less bad for a prohibitory power to be narrow and specific rather than broad and general.

During the course of an international emergency, the government would be authorized to create new entry and search powers even where dwelling-houses are concerned. We do not question the

Source: Nikkei National Museum, 2018-16-4-1-1-170
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potential seriousness of some conceivable international emergencies. Nor, however, do we unduly minimize the potential seriousness of a public order emergency. But we have great difficulty understanding why it might be appropriate for the government to create new entry and search powers during international emergencies when there is no apparent need for them during public order emergencies. Indeed, it is possible that there could be situations where the latter would threaten our society more than the former. Accordingly, we would recommend that no such additional power be created for international emergencies.

For similar reasons, we believe that the government should not acquire the new powers that are contemplated for establishing inquiries. This recommendation is buttressed by our awareness of the enormous powers that exist for such purposes in the normal law.

In the event of a war emergency, the government would acquire the power to do what, in its opinion, would be reasonably necessary or advisable. Again, we fear that such a provision could preclude any judicial review beyond what is contemplated by the Charter. Apart from the Charter, are there no limits on this government power? Could this power authorize deportations, exiles, or even executions? Indeed, to what extent could this power authorize a repetition of the kind of infamy that was perpetrated against the Japanese Canadians during World War II? In our view, it is not enough to rely on the Charter and the international convenants to restrict such possibilities.

In any event, it is possible to give the government wide powers to deal with a war emergency without letting the government do whatever it believes is necessary.

Moreover, any regulation creating specific powers for such purposes should require a recitation of why that power is needed to achieve the statutory objective. Again, the courts don't need to acquire a power to substitute their judgment for that of the government. Their review might be limited to determining whether the governmental explanation lies within the ball park of reasonable judgment. At the very least, the courts should scrutinize the situation in order to prevent arbitrary excess.

Indeed, the courts should be empowered to revoke or reduce any and all emergency powers for which the government fails to provide a reasonable explanation. In no case, should the government's opinion of its own correctness settle the issue.

Source: Nikkei National Museum, 2018-16-4-1-1-171
www.nikkeimuseum.org

Special Safeguards

We appreciate the fact that the Bill provides for a system of compensating those who are injured by the exercise of emergency powers. In our view, however, the government should not merely be allowed to provide for compensation; it should be required to do so. The Bill should set out a minimum frame work for compensating those who are injured and then it might permit the government to go beyond such standards.

The Bill would also empower the government to exclude certain classes of people from compensation claims. This could represent the kind of arbitrary power that would cause injustice and create divisions among the public. To whatever extent the government anticipates needing to exclude people from being able to enjoy such rights, the Bill should describe, at least generically, the kind of people who might attract such a disability. Similarly, the Bill, not simply the government, should define the classes of persons, beyond those distinguished by loss or injury, who might enjoy priority treatment.

The Bill contemplates situations in which regulations or orders might be withheld from public disclosure. There is no reason why the government should acquire an unfettered discretion to keep the public in the dark about such vital matters. To whatever extent the government believes that there is a case for some discretionary secrecy, the Bill should specify the applicable criteria. Our growing experience with both access and privacy legislation demonstrates that statutory language is quite capable of drawing the appropriate distinctions.

In any event, however, no persons should attract liability or culpability under any emergency regulation unless the relevant provisions were adequately published in advance.

The dangers to civil liberties posed by emergency powers require the adoption of yet another basic safeguard. It is not unusual for governments who face such problems to create, invoke, and apply powers that are significantly greater than are required in the circumstances. Canadians will not soon forget, for example, the spectacle of police raids against peace and student activists in Winnipeg and Guelph that were made possible by the powers created to deal with the 1970 "apprehended insurrection" of violent separatists in Quebec.

It is critical, therefore, that an emergency powers statute explicitly provide for proportionality between ends and means. The Bill should be amended so as to oblige the government to use the least intrusive measures which could reasonably be expected to achieve its legitimate objectives. And the courts should be empowered to revoke or reduce any and all emergency powers which fail this test.

Source: Nikkei National Museum, 2018-16-4-1-1-172
www.nikkeimuseum.org

Summary of Recommendations

Before further Parliamentary action is taken, the Canadian Civil Liberties Association calls upon the government to create and circulate a special working paper for M.P.s and the public. The paper should link the kinds of anticipated emergencies which provoked this Bill with the kinds of powers the government seeks to address those emergencies. It should also explain in what ways our ordinary laws lack what is needed.

In addition, CCLA recommends that the Bill be amended to provide for the following:

1. A definition for the word "emergency" which, in all the circumstances contemplated by the Bill, would require imminent and serious perils to the lives, limbs, and health of widespread numbers of people.

2. A judicial power to revoke an emergency proclamation for failing to meet the statutory prerequisites regardless of the government's opinion that the proclamation is valid.

3. A requirement that emergency proclamations explain why, in the circumstances, it was necessary to avoid the enactment of a special statute.

4. A judicial power to revoke an emergency proclamation for failing to provide a reasonable explanation as to why the enactment of a special statute was unworkable in the circumstances.

5. A re-definition of public order emergencies so as to eliminate the reference to the CSIS Act and to require that the government reasonably anticipate the outbreak of illegal violence, so intense, so widespread, and so continuous that the government itself would be overthrown or it would be powerless to govern.

6. A re-definition of international and war emergencies so as to avoid situations made possible by the current Bill in which emergency powers could be invoked in Canada in response to innumerable and various circumstances elsewhere in the world that only remotely, if at all, affect Canadian interests.

7. The inclusion of limits on the nature and duration of the duties that can be ordered pursuant to emergency powers.

8. The inclusion of danger to life, limb, or health as a defence to the refusal or failure to perform duties that have been ordered pursuant to emergency powers.

9. A requirement to indemnify those who inflict compensable injury on others as a consequence of performing duties that have been ordered pursuant to emergency powers.

10. A power in an independent adjudicator appointed by the Canada Labour Relations Board to set compensation for those who are ordered to perform duties pursuant to emergency powers.

11. The inclusion of restrictions on the government's powers over travel in order to ensure that such powers extend no further than what is required to address the emergency.

12. The inclusion of restrictions on the government's powers over property and protected places to ensure that such powers do not exceed what is necessary for the emergency.

13. The elimination of the power to prohibit and regulate public assemblies during public order emergencies.

14. The elimination of the provision enabling the government to create new entry and search powers during international emergencies.

15. The elimination of the new power in the government to establish inquiries during international emergencies.

16. A requirement that a war proclamation contain a recitation of why each of the powers created is necessary or advisable in order to achieve the statutory objective.

17. A judicial power to revoke or to reduce any war emergency power, or indeed any other emergency power, for which the government fails to provide a reasonable explanation, regardless of the government's <u>opinion</u> about the matter.

18. A duty, not merely a power, on the part of the government to provide compensation for those injured by the exercise of emergency powers.

19. The removal of the power to exclude certain classes of people from obtaining such compensation or, at least, a generic description in the Bill of those who might attract such a disentitlement.

Source: Nikkei National Museum, 2018-16-4-1-1-173

20. A description in the Bill of those classes of persons, beyond those distinguished by loss or injury, who might enjoy priority treatment for compensation.

21. The inclusion of specific criteria to restrict the power of government to withhold emergency orders and regulations from public disclosure.

22. A requirement that no person will attract liability or culpability under any emergency regulation or order unless the relevant provisions were adequately published in advance.

23. A requirement that the government will use the least intrusive measures which could reasonably be expected to achieve its legitimate objectives and a power in the courts to revoke or reduce any emergency measures which fail this test.

Source: Nikkei National Museum, 2018-16-4-1-1-174
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THE GLOBE + MAIL

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BYLINE: GRAHAM FRASER
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** Beatty out to defuse legislative 'bomb' **
** Tories have completely revamped Canada's old*War*Measures*Act***

BY GRAHAM FRASER
The Globe and Mail
OTTAWA

Defence Minister Perrin Beatty , who is trying to shepherd legislation replacing the*War*Measures*Act*through the Commons, says he used to favor retaining the Act, not replacing it.

"I was inclined towards the argument that the War Measures Act is the nuclear bomb of legislation, and you don't lightly use it," he said in an interview. "I had inclined to the view that because it was so horrible, it might be used less frequently."

Mr. Beatty's legislation, C-77, an act to authorize the taking of special temporary measures to ensure safety and security during national emergencies, is now being studied by a parliamentary committee.

Mr. Beatty said the decision to bring in the new act followed a thorough study of the old War Measures Act.

"When I sat down to actually look at it closely, it was apparent to me that every time it had been used, the history had been unhappy. There was far from any guarantee that it wouldn't be used in the future."

Mr. Beatty decided that, from a civil liberties point of view, the issue should be best dealt with in a period of calm rather than banging something together in a crisis.

"I remember the vote in 1970," said Mr. Beatty, who was a student at the University of Western Ontario when former prime minister Pierre Trudeau invoked the War Measures Act to deal with the FLQ crisis in Quebec.

Former Progressive Conservative leader Robert "Stanfield said when he retired that of all the things that took place in his long career, the thing he was most ashamed of having done was supporting the government on the War Measures Act.

"When civil liberties are most in question, there is often no politician there to support them. It was that rationale which led me to support the Charter."

He observed that, in 1970, the imposition of the War Measures Act had massive public support.

"The War Measures Act was extremely effective as a political device. As a criminal device, it wasn't effective at all," he said.

"The killers of (Quebec Labor Minister Pierre) Laporte and the kidnappers of (British diplomat James) Cross were found through normal police methods."

He said that he had not opposed the imposition of the Act himself at the time, on the assumption that the Government had information that justified it.

"On the strength of anything I've seen as solicitor-general or as Defence Minister, there's no information that the public doesn't know, or that wasn't known at the time," he said.

The publication of the diary of the late Donald Jamieson, minister of transport in 1970, is expected to increase the interest in the replacement for the War Measures Act.

In his diary, Mr. Jamieson wrote that there was no evidence of an insurrection before the proclamation of the War Measures Act by Mr. Trudeau.

On Oct. 16, 1970, at 4 a.m., Mr. Trudeau proclaimed the War Measures Act, suspending civil liberties in Canada in order to give the police extraordinary powers to deal with the kidnapping of Mr. Cross and Mr. Laporte.

Four hundred and sixty-five people were arrested and detained without charges being laid, and without being allowed to consult a lawyer.

Of these, 403 were later released without being charged. Sixty-two were charged and 18 convicted on various charges not related to the kidnappings.

On Oct. 17, Mr. Laporte's body was found.

None of the people taken into custody were found to have any connection with the kidnappings.

In June, when he tabled the legislation intended to replace the War Measures Act, Mr. Beatty argued that the abuse of civil liberties that was committed during the 1970 crisis in Quebec would not be possible under the new legislation.

Bill C-77 sets out four kinds of emergencies: public welfare emergencies, which include natural disasters or accidents beyond the capacity of a province to handle; public order emergencies that threaten Canada's security; international emergencies, which include acts of intimidation and violence that threaten Canada or its allies; and war emergencies.

Mr. Beatty said the legislation would be subject to the Charter of Rights and Freedoms, and would fulfil Canada's obligations under the International Covenant on Civil and Political Rights.

Source: Nikkei National Museum, 2018-16-4-1-1-175
www.nikkeimuseum.org

However, Alan Borovoy, general counsel of the Canadian Civil Liberties Association, argues that the powers in the draft legislation are too sweeping and the safeguards are too weak.

When he appeared before the legislative committee on Bill C-77 two weeks ago, Mr. Beatty announced that he was introducing amendments that would require the government to explain its reasoning to the courts, and to show that the measures were "reasonably necessary in order to provide for the safety and security of Canada and Canadians."

Mr. Beatty explained that "this will give someone who wants to contest the government's decision to invoke a declaration of a national emergency the ability to take us to court, if they believe it has been frivolously done."

The Defence Minister said that this would guarantee the right of Canadians to have the courts make a ruling.

"This will, as a consequence, give added protection to the civil liberties of Canadians, and I think it is something that should give considerable reassurance to Canadians."

Mr. Beatty was asked by Marc Ferland, the Progressive Conservative MP for Portneuf, to explain the differences between C-77 and the War Measures Act.

"In my view, the October, 1970, crisis is a blot on our national conscience," he replied.

"We had crimes created retroactively. We had the burden of proof being shifted to the individual to prove that he did not belong to a banned group.

"If an individual had attended a meeting, the onus was on him to prove he was not a member. How can you prove you do not belong to a group?"

He said the new legislation will rely on the Criminal Code wherever possible, as opposed to relying on special powers.

"The bill does not create special offences," he said. "It gives far better protection to individuals. It will be subject to the provisions of the Charter of Rights and Freedoms. It will also be subjected to far better scrutiny by Parliament."

Mr. Borovoy told the committee that Mr. Beatty's response to the Canadian Civil Liberties Association brief last fall was "a very constructive one and also very helpful" as many of the amendments reduced the problems the association was concerned with.

However, Mr. Borovoy said that even with the amendments, the bill "remains in several respects a flawed bill.

"The definitions remain too vague, the powers too overbroad and the safeguards too inadequate."

Similarly, in a submission before the committee on Feb. 25, Victor Paisley of the Canadian Bar Association argued that the legislation is too imprecise in its definitions.

"Our primary concern is that there are not adequate guiding criteria given the Governor-in-Council, or Parliament, as to whether the act should be declared," he said.

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** The measures taken **

The October crisis of 1970 left its psychological scars on many Canadians, people who still seek to know more clearly why the federal government invoked the*War*Measures*Act*. They will find some enlightenment - and perhaps their suspicions confirmed - in the diary of the late Donald Jamieson .

The act was used as a blunt instrument against political activists in Quebec in 1970. To help police track down two cells of kidnappers in Quebec - the Front de Liberation du Quebec - the federal cabinet stripped all Canadians of civil liberties, created the retroactive crime of previous membership in the FLQ and permitted hundreds of Quebeckers to be thrown into jail without charge or right to bail. No one was convicted.

After his cabinet invoked the act at 5:16 a.m. on Oct. 16, then-prime minister Pierre Trudeau spoke of the "apprehended insurrection" that had driven his government to take such measures. "If a democratic society is to continue to exist, it must be able to root out the cancer of an armed, revolutionary movement that is bent on destroying the very basis of our freedom."

For his part, then-justice minister John Turner suggested there were things the critics did not know that might change their minds about this repressive step. "It is my hope that, some day, the full details of the intelligence upon which the Government acted can be made public, because, until that day comes, the people of Canada will not be fully able to appraise the course of action which has been taken by the Government." But the details would not come from him until the year 2005, Mr. Turner said 14 years later, because he had given his papers on the matter to the national archives.

Don Jamieson sat as transport minister in the Trudeau cabinet in 1970. In his diary, parts of which appear in the April issue of Saturday Night magazine, he wrote that he wanted to keep a record of what he realized was a historic period, in part to counter critics who said his government had overreacted. To his discomfort, he soon realized the critics had a point.

The evidence that many people assumed existed did not exist. Jean Marchand, then-minister of regional economic expansion, could warn as much as he liked that the FLQ had infiltrated crucial decision-making positions and was capable of destroying downtown Montreal with its stockpiles of explosives. But Mr. Jamieson grew increasingly suspicious that the claims were "highly colored and based on exaggerated rumors, to say the least." No firearms, ammunition or explosives were found that provided evidence of any insurrection. The "intelligence upon which the Government acted," to use Mr. Turner's words, was more in the way of rumor and speculation.

Mr. Turner had "grave doubts" about using the War Measures Act, the diary says, but Mr. Trudeau felt the need to flex some muscle. "With the benefit of hindsight," Mr. Jamieson wrote, ". . . I am satisfied that from the very moment when British Trade Commissioner James) Cross was abducted, the Prime Minister saw the incident as an issue on which he would stand or fall and through which he might very well be able to assert the federal position in a dramatic manner." Mr. Trudeau himself had said, "I think it's only, I repeat, weak-kneed bleeding hearts who are afraid to

Source: Nikkei National Museum, 2018-16-4-1-1-176
www.nikkeimuseum.org

take these measures."
The Jamieson entries come more as confirmation than revelation, but their release, following Mr. Jamieson's death in 1986, is timely. Two bills introduced in Parliament last June seek to replace the War Measures Act to prevent any replay of the excesses of October, 1970. Canadians have a stake in seeing that the bills do just that.

880740183 MON MAR.14,1988 PAGE: A1
BYLINE: ROSS HOWARD
CLASS: News
DATELINE: WORDS: 792

** PM challenges Turner to reveal cabinet secrets of October **
** crisis **

BY ROSS HOWARD
The Globe and Mail
Prime Minister Brian Mulroney has challenged Liberal Leader John Turner to break his oath of Cabinet confidentiality and reveal all he knows about the controversial imposition of the*War*Measures*Act*in Canada in 1970.
Mr. Mulroney said the recently published memoirs of former cabinet minister Donald Jamieson indicate the Liberal government had no basis for such drastic measures, and as Justice Minister at that time, Mr. Turner should now comment.
However, Mr. Turner says the Prime Minister is trying to divert attention away from External Affairs Minister Joe Clark 's controversial

speech to the Israel-Canada Committee last week by bringing up the 1970 October crisis.
Mr. Mulroney issued his unusual challenge to Mr. Turner during a closed meeting in Toronto on Saturday when ethnic media editors pressed him to explain remarks last week by Mr. Clark.
Asked whether he agreed with Mr. Clark's comments that Israel's handling of the Palestinian unrest includes violations of human rights, Mr. Mulroney said it appears human rights were unjustifiably violated in Canada with the War Measures Act, and Mr. Turner should "give a full accounting of his role."
Mr. Mulroney told the editors that Mr. Jamieson's memoirs indicate the War Measures Act was imposed by the government of Pierre Trudeau as a "political statement" to assert federal authority, not a response to an apprehended insurrection as was claimed by the government.
"Mr. Jamieson appears to be saying the grounds mentioned publicly by Mr. Turner and Mr. Trudeau did not exist," Mr. Mulroney said.
Mr. Turner should give the House of Commons today a full explanation of "all evidence" that caused him as justice minister to approve the imposition of the Act.
Mr. Turner, in Winnipeg attending the Manitoba Liberal Party convention, told reporters Saturday that what Mr. Clark said about the Middle East has ''absolutely nothing to do'' with whatever the Liberal government did during the October crisis.
Mr. Mulroney "was just trying to get off the hook . . . about what Mr. Clark said,'' Mr. Turner said.
''As Prime Minister, Mr. Mulroney knous full well that I am bound almost to eternity by Cabinet confidentiality and I can't talk about what went on in cabinet any more than any of Mr. Mulroney's ministers can talk about what goes on in his Cabinet.''
A spokesman for Mr. Mulroney said yesterday the challenge to Mr. Turner was legitimate because Mr. Jamieson's memoirs had made the issue of the War Measures Act and the 1970 cabinet action "a public matter, now" and no longer something to be concealed behind claims of secrecy.
Mr. Mulroney, after raising that issue, told the ethnic editors that Mr. Clark's message was addressed to Israel "as a friend attempting to be helpful." However, he refused to specifically endorse Mr. Clark's references to human rights abuses.
Mr. Clark "spoke with conviction as someone who could be frank because his friendship could never be questioned," the Prime Minister said. He added: "In speaking frankly you may question his words, but not his motives."
Mr. Clark's description of Israeli suspension of food shipments to Palestinian refugee camps as an abuse of human rights has triggered protests from some members of the Jewish community in Canada.
A number of Jewish groups have fired off declarations and telegrams to Mr. Mulroney and Mr. Clark demanding a retraction of the controversial remarks, which the External Affairs Minister delivered Thursday to an Ottawa meeting of the Canada-Israel Committee.
However, while Mr. Mulroney appears to be distancing himself from the remarks without publicly rebuking the former prime minister, some Tory MPs said on the weekend that they are receiving a significant number of telephone calls of support for Mr. Clark.
"We are better to tough it out than to turn tail," said one Ontario member of Parliament who declined to be identified. The MP noted that Mr. Clark has said his remarks were cleared with the Prime Minister before he

Source: Nikkei National Museum, 2018-16-4-1-1-177
www.nikkeimuseum.org

spoke.

On Saturday, Mr. Mulroney told a banquet of 1,400 members of Toronto's black and Caribbean community that the Government is again reviewing its policy of maintaining political links to South Africa.

Mr. Mulroney said "we must determine, in the days ahead, if our involvement and influence requires more dramatic action by the Government," but he did not specify what options are being considered.

The speech was interrupted briefly at the beginning when an anti-abortion protester climbed some scaffolding, popped out from behind a curtain and began berating the Prime Minister through a megaphone.

Security agents, who had left that corner of the convention centre ballroom uncovered, had to scramble to stop him and then hustled him away.

''Some people will do anything to get a little attention,'' Mr. Mulroney said.

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THE GLOBE AND MAIL

SAT APR.02,1988

** Reduced measures **

The time to plan for emergencies is in the absence of emergencies. That may seem a truism, but 18 years after the last use - more precisely, abuse - of the*War*Measures*Act*, Canada has yet to replace that nuclear device of a law with a less sweeping act. Defence Minister Perrin Beatty is now shepherding a proposed*Emergencies*Act*through the Commons with the welcome intent of consigning the*War*Measures*Act*to the history books.

The old act is a standing threat to civil liberties. It overrides the Canadian Bill of Rights. It lets the cabinet do anything it deems advisable for the peace, order and welfare of Canada. The very invocation of the act "shall be conclusive evidence that war, invasion or insurrection, real or apprehended, exists." Unleashed in 1970, it permitted the arrest and detention of hundreds of innocent people without charge or access to legal counsel.

By contrast, the Emergencies Act, introduced last summer, would be subject to the Bill of Rights and the constitutional Charter of Rights and Freedoms. There would be provisions for compensating Canadians who suffered loss, injury or damage because of its implementation. A proposed amendment by Mr. Beatty, in response to earlier criticism, would let the courts decide whether the cabinet was reasonable in invoking or enforcing the law.

The bill divides emergencies into four categories:

Public welfare emergencies. Under Mr. Beatty's proposed amendment, this would cover floods, diseases, accidents or pollution. The authorities could order the evacuation of residents in affected areas, restrict travel and requisition property.

Public order emergencies. Faced with threats to the security of Canada "so serious as to be a national emergency," the cabinet could prohibit public assembly or travel within a specified area.

International emergencies. Under Mr. Beatty's proposed amendments to this bill, such an emergency would (a) involve Canada and at least one other country, (b) arise from acts of "intimidation or coercion" or imminent use of violence, (c) directly threaten the national interests of Canada or an ally and (d) be "so serious as to be a national emergency." The cabinet could control industries, prevent citizens from leaving Canada, appropriate property and authorize searches and seizures without warrants.

This section is a wild card and needs close scrutiny. It would, for instance, let the cabinet suspend a variety of civil liberties in Canada even if it was another country whose national interests were threatened.

War emergencies. Under a proposed amendment by Mr. Beatty, this declaration would be triggered by a war or imminent armed conflict involving Canada or an ally "that is so serious as to be a national emergency." The cabinet could give any orders it believed on reasonable grounds to be "necessary or advisable," and its use of the act, as in the other cases, would be subject to a later revocation by either House of Parliament.

A common thread is the act's definition of "national emergency," which is unnecessarily ambiguous. It includes, quite reasonably, an urgent situation which imperils the wellbeing of Canada as a whole. But it also includes an urgent situation which exceeds the capacity or authority of a province to deal with it - an amorphous phrase which in turn lowers the thresholds of the act's other definitions of emergencies.

Mr. Beatty should at least amend this definition to make peril to the wellbeing of Canada the minimum requirement for the act's operation. In his admirable crusade to replace the War Measures Act, he should leave the door open to no possible abuse.

Source: Nikkei National Museum, 2018-16-4-1-1-179
www.nikkeimuseum.org

THIRD READING AND DEBATES

Source: Nikkei National Museum, 2018-16-4-1-1-180
www.nikkeimuseum.org

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
OTTAWA, CANADA

SECOND SESSION
33RD PARLIAMENT

DEUXIÈME SESSION
33e LÉGISLATURE

Votes and Proceedings

Procès-verbaux

Tuesday, April 19, 1988

Le mardi 19 avril 1988

DOCUMENTS OFFICIELS
AVR 26 1988
GOVERNMENT
PUBLICATIONS

11.00 o'clock a.m.

onze heures

The House met at 11 a.m.

Prayers

ROUTINE PROCEEDINGS

[*English*]

COMMITTEES OF THE HOUSE

BILL C-77—REPORT OF LEGISLATIVE COMMITTEE

Hon. Allan B. McKinnon (Victoria): Mr. Speaker, I have the honour to present in both official languages the report of the legislative committee on Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

I would like to thank the members of the committee who attended very faithfully to their duties, particularly the Hon. Member for Esquimalt—Saanich (Mr. Crofton), the Hon. Member for Brant (Mr. Blackburn), the Hon. Parliamentary Secretary to the Minister of National Defence the Hon. Member Haldimand—Norfolk (Mr. Bradley); the Hon. Member for Portneuf (Mr. Ferland) and the Hon. Member for Northumberland--Miramichi (Mr. Jardine). We had over 100 amendments to this Bill and accepted 88 of them.

Source: Nikkei National Museum, 2018-16-4-1-1-181
www.nikkeimuseum.org

Mr. McKinnon, from the Legislative Committee on Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, presented the following report:

In accordance with its Order of Reference of Wednesday, November 18, 1987, your Committee has considered Bill C-77 and has agreed to report it with the following amendments:

Preamble

Strike out lines 9 to 19 inclusive, on page 1, and substitute the following therefor:

"threatened by a national emergency and, in order to ensure safety and security during such an emer-"

New Clause 3

Add immediately after line 14, on page 2, the following:

"NATIONAL EMERGENCY

3. For the purposes of this Act, a "national emergency" is an urgent and critical situation of a temporary nature that

(*a*) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(*b*) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada."

and renumber the subsequent clauses and cross-references thereto accordingly.

New Clause 4

Add immediately after New Clause 3, the following:

"4. Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations

(*a*) altering the provisions of this Act; or

(*b*) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the Immigration Act, 1976 on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

and renumber the subsequent clauses and cross-references thereto accordingly.

Clause 3

Strike out lines 24 to 29 inclusive, on page 2, and substitute the following therefor:

"plants, or

(*c*) accident or pollution

and that results or may result in a danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so"

Clause 4

Strike out lines 1 to 3 inclusive, on page 3, and substitute the following therefor:

"4.(1) When the Governor in Council believes, on reasonable grounds, that a public welfare emergency exists and necessitates the taking"

Clause 6

Strike out lines 33 to 35 inclusive, on page 3, and substitute the following therefor:

"tions with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the"

Add immediately after line 38, on page 3, the following:

"where necessary for the protection of the health and safety of individuals;"

Strike out line 9, on page 4, and substitute the following therefor:

"class, is competent to provide and the provision of reasonable compensation in respect of services so rendered;"

Strike out lines 23 to 27 inclusive, on page 4, and substitute the following therefor:

"(*j*) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any"

Strike out lines 37 to 45 inclusive, on page 4, and substitute the following therefor:

"such order or regulation, may be exercised or performed only with respect to that area.

(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation,

(*a*) shall be exercised or performed

(i) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province, and

(ii) with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed; and

(*b*) shall not be exercised or performed for the purpose of terminating a strike or lock-out or imposing a settlement in a labour dispute."

Source: Nikkei National Museum, 2018-16-4-1-1-182
www.nikkeimuseum.org

Clause 9

Strike out lines 20 to 25 inclusive, on page 5, and substitute the following therefor:

"such day as is specified in the proclamation."

Clause 10

Strike out lines 34 to 36 inclusive, on page 5, and substitute the following therefor:

"proclamation, if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist that the direct"

Strike out lines 43 to 45 inclusive, on page 5, and substitute the following therefor:

"under section 6 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary for dealing with"

Clause 11

Strike out line 18, on page 6, and substitute the following therefor:

"(*b*) believes, on reasonable grounds, that the direct effects"

Clause 15

Strike out lines 16 to 18 inclusive, on page 8, and substitute the following therefor:

"15.(1) When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking"

Clause 16

Strike out lines 4 to 7 inclusive, on page 9, and substitute the following therefor:

"(2) A declaration of a public order emergency expires at the end of thirty days, unless the declaration is previously revoked or continued in accordance with this Act."

Clause 17

Strike out lines 11 to 13 inclusive, on page 9, and substitute the following therefor:

"with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the"

Strike out line 16, on page 9, and substitute the following therefor:

"any public assembly that may reasonably be expected to lead to a breach of the peace."

Strike out lines 29 to 34 inclusive, on page 9, and substitute the following therefor:

"class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and

(*e*) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any"

Strike out lines 44 to 46 inclusive, on page 9, and lines 1 to 6 inclusive, on page 10, and substitute the following therefor:

"regulation, may be exercised or performed only with respect to that area.

(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed

(*a*) in a manner that will not unduly impair the ability of any province to take measures, under an Act of legislature of the province, for dealing with an emergency in the province; and

(*b*) with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed."

Clause 20

Strike out lines 32 to 36 inclusive, on page 10, and substitute the following therefor:

"tion."

Clause 21

Strike out line 44, on page 10, and substitute the following therefor:

"ing thirty days, as is specified in the procla-"

Strike out lines 45 and 46, on page 10 and line 1, on page 11, and substitute the following therefor:

"mation, if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist or that the effects of the"

Strike out lines 8 to 10 inclusive, on page 11, and substituting the following therefor:

"section 17 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary for dealing with the"

Clause 22

Strike out line 27, on page 11, and substitute the following therefor:

"(*b*) believes, on reasonable grounds, that the effects of the"

Clause 25

Strike out lines 32 to 37 inclusive, on page 13, and substitute the following therefor:

"and that is so serious as to be a national emergency."

Clause 26

Strike out lines 1 and 2, on page 14, and substitute the following therefor:

"26.(1) When the Governor in Council believes, on reasonable grounds, that an international emergen-"

Source: Nikkei National Museum, 2018-16-4-1-1-183
www.nikkeimuseum.org

Clause 27

Strike out lines 22 to 26 inclusive, on page 14, and substitute the following therefor:

"(2) A declaration of an international emergency expires at the end of sixty days, unless the declaration is previously revoked or continued in accordance with this Act."

Clause 28

Strike out lines 30 to 32 inclusive, on page 14, and substitute the following therefor:

"with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the"

Strike out lines 39 to 45 inclusive, on page 14, and lines 1 to 9 inclusive, on page 15, and substitute the following therefor:

"(*c*) the authorization and conduct of inquiries in relation to defence contracts or defence supplies as defined in the *Defence Production Act* or to hoarding, overcharging, blackmarketing or fraudulent operations in respect of scarce commodities, including the conferral of powers under the *Inquiries Act* on any person authorized to conduct such an inquiry;

(*d*) the authorization of the entry and search of any dwelling-house, premises, conveyance or place, and the search of any person found therein, for anything that may be evidence relevant to any matter that is the subject of an inquiry referred to in paragraph (*c*), and the seizure and detention of any such thing;"

Strike out line 14, on page 15, and substitute the following therefor:

"competent to provide and the provision of reasonable compensation in respect of services so rendered;"

Strike out lines 40 to 44 inclusive, on page 15, and substitute the following therefor:

"(*f*) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any"

Strike out lines 3 to 7 inclusive, on page 16, and substitute the following therefor:

"regulation,

(*a*) shall be exercised or performed

(i) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province, and

(ii) with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed; and

(*b*) shall not be exercised or performed for the purpose of censoring, suppressing or controlling the publication or communication of any information regardless of its form or characteristics."

Clause 31

Strike out lines 31 to 33 inclusive, on page 16, and substitute the following therefor:

"day as is specified in the proclamation."

Clause 32

Strike out lines 39 to 43 inclusive, on page 16, and substitute the following therefor:

"laration for such period, not exceeding sixty days, as is specified in the proclamation, if the Governor in Council believes, on reasonable grounds that the emergency will continue to exist."

Strike out lines 1 to 3 inclusive, on page 17, and substitute the following therefor:

"under section 28 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary for dealing with"

Clause 35

Strike out lines 7 to 10 inclusive, on page 18, and substitute the following therefor:

"Canada or any of its allies that is so serious as to be a national emergency."

Clause 36

Strike out lines 11 and 12, on page 18, and substitute the following therefor:

"36. (1) When the Governor in Council believes, on reasonable grounds, that a war emergency exists"

Clause 37

Strike out lines 31 to 35 inclusive, on page 18, and substitute the following therefor:

"(2) A declaration of a war emergency expires at the end of one hundred and twenty days, unless the declaration is previously revoked or continued in accordance with this Act."

Clause 38

Strike out lines 2 and 3, on page 19, and substitute the following therefor:

"as the Governor in Council believes, on reasonable grounds, are necessary or advisable for"

Strike out lines 6 to 11 inclusive, on page 19, and substitute the following therefor:

"regulations providing for the imposition

(*a*) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(*b*) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any order or regu-"

Source: Nikkei National Museum, 2018-16-4-1-1-184
www.nikkeimuseum.org

Add immediately after line 12, on page 19, the following:

"(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed."

Clause 40

Strike out lines 19 to 21 inclusive, on page 19, and substitute the following therefor:

"fied in the proclamation."

Clause 41

Strike out lines 27 to 31 inclusive, on page 19, and substitute the following therefor:

"such period not exceeding one hundred and twenty days, as is specified in the proclamation, if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist."

Strike out lines 36 to 38 inclusive, on page 19, and substitute the following therefor:

"to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary or advisable for dealing with"

Clause 45

Strike out line 7, on page 21, and substitute the following therefor:

"Minister, servant or agent of the Crown, including any person providing services pursuant to an order or regulation made under subsection 6(1), 17(1), 28(1) or 38(1), for"

Clause 46

Strike out lines 19 and 25, on page 21, and substitute the following therefor:

"46.(1) Subject to subsection (2) and the regulations made under section 47, the Minister shall award reasonable compensation to any person who suffers loss, injury or damage as a result of anything done, or purported to be done, under any of Parts I to IV or any proclamation, order or regulation issued or made thereunder."

Add immediately after line 25, on page 21, the following:

"(2) No compensation shall be paid to a person unless that person, in consideration of the compensation, signs, in a form provided by the Minister, a release of any right of action that the person may have against the Crown as a result of anything done, or purported to be done, under any of Parts I to IV or any proclamation, order or regulation issued or made thereunder."

and renumber subclauses 46(2) to (4) and cross-references thereto accordingly.

Source: Nikkei National Museum, 2018-16-4-1-1-185
www.nikkeimuseum.org

Clause 47

Strike out line 20, on page 22, and substitute the following therefor:

"damage for which compensation shall be"

Strike out lines 37 to 41 inclusive, on page 22,

and renumber paragraphs 47 (*k*) and (*l*) as 47 (*j*) and (*k*), respectively.

Clause 48

Strike out line 1, on page 23, and substitute the following therefor:

"48. (1) The Governor in Council shall"

Strike out line 9, on page 23, and substitute the following therefor:

"(2) The Governor in Council shall, from"

Clause 49

Strike out lines 21 to 26 inclusive, on page 23, and substitute the following therefor:

"compensation and is not satisfied with the decision of the Minister thereon may appeal the decision to the Assessor."

Clause 50

Strike out line 44, on page 23, and substitute the following therefor:

"may direct, including the payment of compensation in such amount, exceeding the maximum amount, if any, that may otherwise be paid, as the Assessor may recommend."

Add immediately after line 7, on page 24, the following:

"(4) Where the Assessor recommends the payment of compensation in an amount exceeding the maximum amount, if any, that may otherwise be paid, the Minister shall pay compensation in an amount so recommended to the person appealing."

Clause 56

Strike out lines 40 to 47 inclusive, on page 25, and lines 1 and 2, on page 26, and substitute the following therefor:

"(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption."

Clause 57

Strike out lines 19 to 24 inclusive, on page 26, and substitute the following therefor:

"signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker, that House of Parliament shall take up and consider the motion within three sitting days after it is filed."

Strike out lines 25 to 33 inclusive, on page 26, and substitute the following therefor:

"(2) A motion taken up and considered in accordance with subsection (1) shall be debated without interruption for not more than ten hours and, on the expiration of the tenth

hour or at such earlier time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

Strike out lines 34 to 45 inclusive, on page 26, and lines 1 to 16 inclusive, on page 27, and substitute the following therefor:

"(3) If a motion debated in accordance with subsection (2) is adopted by the House, the declaration, to the extent that it has not previously expired or been revoked, is revoked in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day of the vote adopting the motion."

Clause 58

Strike out lines 17 to 42 inclusive, on page 27, and substitute the following therefor:

"58. (1) A motion for confirmation of a proclamation continuing a declaration of emergency and of any orders and regulations named in the motion pursuant to subsection (3), signed by a Minister of the Crown, together with an explanation of the reasons for issuing the proclamation, a report on any consultation with the lieutenant governors in council of the provinces with respect to the proclamation and a report on the review of orders and regulations conducted before the issuing of the proclamation shall be laid before each House of Parliament within seven sitting days after the proclamation is issued.

(2) A motion for confirmation of a proclamation amending a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for issuing the proclamation and a report on any consultations with the lieutenant governors in council of the provinces with respect to the proclamation shall be laid before each House of Parliament within seven sitting days after the proclamation is issued.

(3) A motion for confirmation of a proclamation continuing a declaration of emergency shall name the orders and regulations in force on the issuing of the proclamation that the Governor in Council believed, on reasonable grounds, continued at that time to be necessary or, in the case of a proclamation issued pursuant to subsection 41(1), advisable, for dealing with the emergency.

(4) Where a motion is laid before a House of Parliament as provided in subsection (1) or (2),"

Strike out lines 1 to 10 inclusive, on page 28, and substitute the following therefor:

"(5) A motion taken up and considered in accordance with subsection (4) shall be debated without interruption."

Add immediately after line 18, on page 28, the following:

"(7) If a motion for confirmation of a proclamation continuing a declaration of emergency is amended by either House of Parliament by the deletion therefrom of an order or regulation named in the motion pursuant to subsection (3), the order or regulation is revoked effective on the day on which the motion as amended is adopted."

Clause 59

Strike out lines 19 to 23 inclusive, on page 28, and substitute the following therefor:

"59.(1) Subject to subsection (2), every order or regulation made by the Governor in Council pursuant to this Act shall be laid before each House of Parliament within two sitting days after it is made."

Strike out lines 24 and 25, on page 28, and substitute the following therefor:

"(2) Where an order or regulation made"

Strike out lines 26 to 36 inclusive, on page 28, and substitute the following therefor:

"(2) Pursuant to this Act is exempted from publication in the Canada Gazette by regulations made under the *Statutory Instruments Act*, the order or regulation, in lieu of being laid before each House of Parliament as required by subsection (1), shall be referred to the Parliamentary Review Committee within two days after it is made or if the Committee is not then designated or established, within the first two days after it is designated or established."

Strike out lines 37 to 46 inclusive, on page 28, and lines 1 and 2, on page 29, and substitute the following therefor:

"(3) Where a motion for the consideration of the Senate or the House of Commons to the effect that an order or regulation laid before it pursuant to subsection (1) be revoked or amended, signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker, that House of Parliament shall take up and consider the motion within three sitting days after it is filed."

Strike out lines 3 to 11 inclusive, on page 29, and substitute the following therefor:

"(4) A motion taken up and considered in accordance with subsection (3) shall be debated without interruption."

Strike out lines 19 to 23 inclusive, on page 29, and substitute the following therefor:

"(6) Where a request for concurrence in a motion is made pursuant to subsection (5), the House to which the request is made shall take up and consider the motion within three sitting days after the request is made."

Strike out lines 24 to 32 inclusive, on page 29, and substitute the following therefor:

"(7) A motion taken up and considered in accordance with subsection (6) shall be debated without interruption."

Strike out line 37, on page 29, and substitute the following therefor:

"effective on the day specified in the motion, which day may not be earlier than the day of the vote of"

Source: Nikkei National Museum, 2018-16-4-1-1-186
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Clause 60

Strike out lines 42 to 45 inclusive, on page 29, and substitute the following therefor:

"reviewed by a committee of both Houses of Parliament designated or established for that purpose.

(2) The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons."

and renumber subclauses 60(2), (3) and (4) as subclauses 60(3), (4) and (5) respectively.

Strike out lines 17 and 18, on page 30, and substitute the following therefor:

"motion, effective on the day specified in the motion, which day may not be earlier than the day on which the motion is adopted.

(6) The Parliamentary Review Committee shall report or cause to be reported the results of its review under subsection (1) to both Houses of Parliament at least once every sixty days while the declaration of emergency is in effect and, in any case,

(*a*) within three sitting days after a motion for revocation of the declaration is filed under subsection 57(1);

(*b*) within seven sitting days after a proclamation continuing the declaration is issued; and

(*c*) within seven sitting days after the expiration of the declaration or the revocation of the declaration by the Governor in Council."

Add immediately after line 18, on page 30, the following:

"(5) While a declaration of emergency is in effect, the Parliamentary Review Committee shall, at least once every sixty days, report or cause to be reported the results of its review under subsection (1) to both Houses of Parliament."

New Clause 61

Add immediately after line 18, on page 30, the following:

"61. (1) The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

(2) A report on an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days."

and renumber the subsequent clauses and any cross-references thereto accordingly.

Clause 68

Strike out lines 1 to 3 inclusive, on page 32, and substitute the following therefor:

"22.(1) Subject to subsection (2) and the regulations made under section 22.1, the Minister of Energy, Mines and Resources shall award reasonable compen-"

Add immediately after line 8, on page 32, the following:

"(2) No compensation shall be paid to a person under this section unless that person, in consideration of the compensation, signs, in a form provided by the Minister of Energy, Mines and Resources, a release of any right of action that the person may have against Her Majesty in right of Canada in respect of any deprivation of property as a result of anything done, or purported to be done, under this Act or any order or regulation made thereunder."

In the English version only, strike out line 26, on page 32, and substitute the following therefor:

"of property for which compensation shall"

Strike out lines 44 to 46 inclusive, on page 32, and lines 1 and 2, on page 33.

Strike out line 9, on page 33, and substitute the following therefor:

"22.2(1) The Governor in Council shall,"

Strike out line 18, on page 33, and substitute the following therefor:

"(2) The Governor in Council shall, from"

Strike out lines 31 to 36 inclusive, on page 33, and substitute the following therefor:

"for compensation under section 22 and is not satisfied with the decision of the Minister thereon may appeal the decision to the Assessor."

Strike out line 9, on page 34, and substitute the following therefor:

"sor may direct, including the payment of compensation in such amount, exceeding the maximum amount, if any, that may otherwise be paid, as the Assessor may recommend."

Add immediately after line 17, on page 34, the following:

"(4) Where the Assessor recommends the payment of compensation in an amount exceeding the maximum amount, if any, that may otherwise be paid, the Minister shall pay compensation in the amount so recommended to the person appealing."

Clause 70

Strike out lines 47 to 49 inclusive, on page 35, and lines 1 to 8 inclusive, on page 36, and substitute the following therefor:

"(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption."

Strike out lines 20 to 25 inclusive, on page 36, and substitute the following therefor:

"less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker, that House of Parliament shall take up and consider the motion within three sitting days after it is filed."

Strike out lines 26 to 34 inclusive, on page 36, and substitute the following therefor:

"(2) A motion taken up and considered in accordance with subsection (1) shall be debated without interruption

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for not more than ten hours and, on the expiration of the tenth hour or at such earlier time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

Strike out lines 35 to 49 inclusive, on page 36, and lines 1 to 11 inclusive, on page 37, and substitute the following therefor:

"(3) If a motion debated in accordance with subsection (2) is adopted by the House, the order is revoked effective on the day specified in the motion, which day may not be earlier than the day of the vote adopting the motion."

Strike out lines 28 to 38 inclusive, on page 37, and substitute the following therefor:

"(3) A motion taken up and considered in accordance with subsection (2) shall be debated without interruption."

Your Committee has ordered a reprint of Bill C-77, as amended, for use of the House of Commons at the report stage.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (*Issues Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 which includes this Report*) is tabled.

(*The Minutes of Proceedings and Evidence accompanying the Report are recorded as Appendix No. 168 to the Journals*).

Mr. Gormley, from the Standing Committee on Communications and Culture, presented the Fourteenth Report of the Committee (Tax treatment of artists and the arts).—Sessional Paper No. 332-8/2N.

Pursuant to Standing Order 99(2), the government was requested by the Committee to table a comprehensive response to the Report.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 73 and 76 which includes this report*) was tabled.

(*The Minutes of Proceedings and Evidence accompanying the Report are recorded as Appendix No. 169 to the Journals*).

Source: Nikkei National Museum, 2018-16-4-1-1-188
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GOVERNMENT ORDERS

[English]

EMERGENCIES ACT

MEASURE TO ENACT

The House proceeded to the consideration of Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, as reported (with amendments) from a legislative committee.

• (1110)

Mr. Speaker: There are 10 motions on the Order Paper and Notices offered in amendment to Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof. Motion No. 1 stands in the name of the Hon. Member for Brant (Mr. Blackburn). Motions Nos. 2 to 10 stand in the name of the Hon. Minister of National Defence (Mr. Beatty).

Amendments somewhat related to Motion No. 1 were moved, debated and negatived in the legislative committee. Motion No. 1, however, refers to persons who are finally determined under the Immigration Act, 1976 to be Convention refugees. The term "Convention refugee" is defined by the Geneva Convention of 1951, which has a different connotation from what was considered in the legislative committee. Therefore, I would rule Motion No. 1 in order. It will be debated and voted on separately.

Motions Nos. 2 and 8 are in order and will be grouped for debate. The vote on Motion No. 2 will apply to Motion No. 8. Motions Nos. 3, 4, 5 and 9 are in order and will be grouped for debate as they deal with the same subject. The vote on Motion No. 3 will apply to Motions Nos. 4, 5, and 9.

[Translation]

Motions Nos. 6, 7 and 10 are in order, and each will be debated and voted on separately.

[English]

The House will now proceed to the first motion, Motion No. 1. I will now propose the question to the House.

Mr. Derek Blackburn (Brant) moved:

Motion No. 1

That Bill C-77 be amended in Clause 30 by striking out lines 32 to 35 at page 16 and substituting the following therefor:

"(h) the removal from Canada of persons, other than Canadian citizens, permanent residents as defined in the *Immigration Act, 1976* and persons, not being persons described in paragraph 19(1)(c), (e), (f) or (g) of that Act, who are finally determined under that Act to be Convention refugees,":

He said: Mr. Speaker, I introduced an amendment on this topic at committee as we went through it clause by clause which would have prohibited the Government from forcing back a boatload or shipload of persons seeking refuge in this country during a time of emergency. I felt we had already blemished our record once many years ago in this regard. I think it was 1938 or 1939. When I say we "blemished our record" I mean as a nation. A group of Jews from Europe were desperately seeking refuge in the free world in their attempt to escape the horrors of Naziism. The Government of the day refused to allow that ship to dock in Canada and it was forced to continue on. If memory serves me correctly from reading about that episode, I think most of the persons on board ended up back in Europe.

My original motion would have prevented a Government, even under a proclamation of emergency, from allowing that kind of tragic situation to happen again.

The committee debated the amendment at length and it was lost. Motion No. 1 which I am proposing at report stage today is somewhat of a compromise. I would hope it would meet with the acceptance of members of all Parties assembled here this morning. It does not exclude those seeking refugee status but would include them once they had been determined to be refugees. In other words, once they had landed on Canadian territory and had gone through the determination process, they would be here in this country legally at that point even though still designated as refugees.

I am not an expert on the Immigration Act and I can fully appreciate that had my original proposed amendment been accepted, it would have drastically altered, I would suggest for the better, the immigration provisions existing at the present time with respect to refugees. I readily admit we have what one might call a crisis on our hands with respect to refugees coming into Canada without proper qualifications and identification. We do not know whether they are genuine refugees or not.

Rather than hold up this Bill, because another Bill is finding rough passage through this House, I was reluctantly prepared and with some considerable regret to put forward this compromise with respect to refugees. I commend the motion to the House. I would hope that at report stage this amendment would be accepted by a majority of all Parties and that that would be as far as we could carry the refugee issue in relation to Bill C-77.

Mr. Russell MacLellan (Cape Breton—The Sydneys): Mr. Speaker, I would like to speak to Motion No. 1 and say that I agree with the Hon. Member for Brant (Mr. Blackburn) that this would be a definite plus to the Bill as brought forward. As he has stated, it may only be a compromise position but this compromise position would be an improvement on the Bill as presently structured.

I think the Government is trying to deal with immigration concerns in emergency legislation. I do not think that should even be considered by this House of Commons. I think an amendment to this Act is absolutely necessary. It is unfortunate that the original amendment put forward was not adopted, but this compromise amendment is certainly better than leaving the Act the way it is at the present time. I, too, would ask the House to adopt this motion.

Hon. Chas. L. Caccia (Davenport): Mr. Speaker, it seems to me from the two interventions just made by my colleagues on this side of the House that we have here a very important principle at stake, namely of keeping immigration matters and principles standing on their own because of the highly humanitarian nature that immigration policies involve. Examples have already been given to that effect by the Hon. Member for Brant (Mr. Blackburn), reinforced by the Hon. Member for Cape Breton—The Sydneys) (Mr. MacLellan).

As the Hon. Member for Cape Breton—The Sydneys has just indicated, this amendment is a partial solution or compromise. While not perfect in itself, it would at least provide a certain degree of protection in cases of immigration situations that would have to be dealt with on their own merits and not under the over-all umbrella of this specific Bill. It seems to me that we all have a particular duty to perform in convincing the Government of the necessity and desirability of adopting this motion as a measure that attempts at least, within limits of course, to achieve the goal of being able to say: "Look. When it comes to immigration matters, we want potential immigrants treated in a fair and humanitarian manner and not under the general thrust of this specific Bill".

I hope the Parliamentary Secretary, who is well known for his sensitivity, will have a positive reply. I hope that he will be in a position to accept this particular amendment for the reasons that have been given thus far.

• (1120)

Mr. Bud Bradley (Parliamentary Secretary to Minister of National Defence): Mr. Speaker, at the outset I would like to thank my colleague, the Hon. Member for Brant (Mr. Blackburn), for this compromise amendment. I should also point out to my colleagues in the House that the Hon. Member was extremely helpful in committee. He worked very hard for the legislation, and thus for Canadians. I believe he moved some 60 amendments, 30 of which were accepted by the committee in one form or another.

The problem with this amendment at the time was the fact that in committee we were referring to bona fide refugees. There was a difficulty in legalese with respect to defining what is a bona fide refugee. The new terminology being proposed by my colleague will ensure that Canada's treaty obligations under the 1951 UN Convention relating to the status of refugees will be respected even during emergencies.

It also conforms to the Immigration Act of 1976, and the spirit of Bill C-55. It gives people who finally have been determined to be Convention refugees under that legislation protection equal to that granted to Canadian citizens and permanent residents under the Act. The Government has given a great deal of consideration to the amendment moved by my hon. friend. We are in a position at which we can accept it.

Some Hon. Members: Hear, hear!

The Acting Speaker (Mr. Paproski): Is the House ready for the question?

Some Hon. Members: Question.

The Acting Speaker (Mr. Paproski): The question is on Motion No. 1 standing in the name of the Hon. Member for Brant (Mr. Blackburn). Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Motion No. 1 (Mr. Blackburn)(Brant) agreed to.

The Acting Speaker (Mr. Paproski): Motion No. 2 and Motion No. 8 are in order. They have been grouped for debate. The vote on Motion No. 2 will apply to Motion No. 8.

Mr. Jim Hawkes (for the Minister of National Defence) moved:

Motion No. 2

That Bill C-77 be amended in Clause 52

(a) by striking out lines 35 to 45 at page 25 and substituting the following therefor:

"(b) notwithstanding the maximum amount, if any, of compensation that may be paid to the person appealing, vary the decision of the Minister; or

(c) refer the matter back to the Minister for such further action as the Assessor may direct, including the calculation of compensation without regard to the maximum amount, if any, that may otherwise be paid."

(b) by striking out lines 8 to 13 at page 26 and substituting the following therefor:

"(4) Where the Assessor varies a decision of the Minister by awarding compensation or increasing the amount of compensation awarded by the Minister or the Minister, on a matter referred back for further action, increases the amount of compensation previously awarded, the Minister shall pay that compensation or increased compensation, as the case may be."

Motion No. 8

That Bill C-77 be amended in Clause 71

(a) by striking out lines 32 to 42 at page 36 and substituting the following therefor:

"(b) notwithstanding the maximum amount, if any, of compensation that may be paid to the person appealing, vary the decision of the Minister; or

(c) refer the matter back to the Minister for such further action as the Assessor may direct, including the calculation of compensation without regard to the maximum amount, if any, that may otherwise be paid."

(b) by striking out lines 3 to 8 at page 37 and substituting the following therefor:

(4) Where the Assessor varies a decision of the Minister by awarding compensation or increasing the amount of compensation awarded by the Minister or the Minister, on a matter referred back for further action, increases the amount of compensation previously awarded, the Minister

Source: Nikkei National Museum, 2018-16-4-1-1-189
www.nikkeimuseum.org

shall pay that compensation or increased compensation, as the case may be."

Mr. Bud Bradley (Parliamentary Secretary to Minister of National Defence): Mr. Speaker, the Government is placing before the House this morning 10 motions to amend Bill C-77. Although it was not our original intent to move motions at report stage, we find ourselves obliged to move these amendments to correct oversights, to clarify ambiguous language in the Bill and, in general, to add greater precision to the Bill. I can assure Hon. Members that none of these motions will change the substance of any clause in the Bill.

There is a requirement because of their wording and because of the areas to which they relate to group them into three separate groups as you have found, Mr. Speaker. However, I hope that with the explanation that I have made being kept in mind that Members will seek to deal expeditiously with all 10 government motions.

Mr. Derek Blackburn (Brant): Mr. Speaker, I intended to get up before the Parliamentary Secretary to inform him through you that these amendments are all acceptable to me. I went through them earlier this morning. In fact, they simply clean up the legal language.

While I am on my feet and on the subject of legal language, I think one of the reasons—and this is purely my own opinion—why the committee was able to work so harmoniously was twofold. First, we had a very excellent Chairman, the Hon. Member for Victoria (Mr. McKinnon). Second, there was not one lawyer on the committee. We got through the matters expeditiously. We all understood what we were talking about. I would like to suggest that we all understand what the Bill is about today, too, as a result of that.

Mr. Don Boudria (Glengarry—Prescott—Russell): Mr. Speaker, I am not sure I want to share in that comment about the legal profession.

I have read the amendments proposed to the Bill. It is our opinion as well on this side of the House that there are no substantive change made to the Bill by the amendments.

I have a question in the area of the translation. Perhaps the Parliamentary Secretary can explain to us one part of the translation of the Bill.

When we look at Motion No. 2 (b) the English words are, "notwithstanding the maximum amount". That expression usually translates and means to me, "*nonobstant le montant maximal*". I read in the motion, "*ou bien, malgré le montant maximal*". I wonder if there could be a different interpretation. Perhaps that is not the case. I bring it to the attention of the Parliamentary Secretary nonetheless. If his officials have indicated that those words that are in the motion as printed in the Order Paper are an accurate translation which will make it clear that both versions mean exactly the same thing, then I am willing to accept that.

The Acting Speaker (Mr. Paproski): Before I can recognize the Parliamentary Secretary I need to have unanimous consent. Is it agreed?

Some Hon. Members: Agreed.

Mr. Bradley: Mr. Speaker, I thank my hon. friend for raising this matter. If my memory serves me correctly, and possibly my hon. friend from Brant can confirm this for me, this became part of a discussion in committee. It was decided that these were the words that might best explain matters.

My French is nowhere near as good as my colleague's, although his English is as good as mine. If he has a concern with that, I would be willing to accept it. The note I have just been given, with efficiency, was that both English and French versions are consistent with what they classify now as the good drafting practice for that expression.

• (1130)

The Acting Speaker (Mr. Paproski): Is the House ready for the question?

Some Hon. Members: Question.

The Acting Speaker (Mr. Paproski): The question is on Motions Nos. 2 and 8 standing in the name of the Minister of National Defence.

Is it the pleasure of the House to adopt the said motions?

Some Hon. Members: Agreed.

Motions Nos. 2 and 8 (Mr. Beatty) agreed to.

The Acting Speaker (Mr. Paproski): I would like to bring to the attention of the House that Motions Nos. 3, 4, 5, and 9 standing in the name of the Minister of National Defence will be grouped for debate.

Hon. Doug Lewis (for the Minister of National Defence) moved:

Motion No. 3

That Bill C-77 be amended in Clause 58 by striking out lines 3 to 5 at page 28 and substituting the following therefor:

"(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

Motion No. 4

That Bill C-77 be amended in Clause 60 by striking out lines 30 to 40 at page 29 and substituting the following therefor:

"(5) A motion taken up and considered in accordance with subsection (4) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

Motion No. 5

That Bill C-77 be amended in Clause 61

(a) by striking out lines 40 to 42 at page 30 and substituting the following therefor:

"(4) A motion taken up and considered in accordance with subsection (3) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

(b) by striking out lines 8 to 10 at page 31 and substituting the following therefor:

"(7) A motion taken up and considered in accordance with subsection (6) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

Motion No. 9

That Bill C-77 be amended in Clause 73

(a) by striking out lines 37 to 39 at page 38 and substituting the following therefor:

"(5) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate and amendment, put every question necessary for the disposition of the motion."

(b) by striking out lines 39 to 41 at page 39 and substituting the following therefor:

"(3) A motion taken up and considered in accordance with subsection (2) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion."

The Acting Speaker (Mr. Paproski): Is it the pleasure of the House to adopt the said motions?

Some Hon. Members: Agreed.

Motions Nos. 3, 4, 5, and 9 (Mr. Beatty) agreed to.

The Acting Speaker (Mr. Paproski): The next question is on Motions No. 6, 7, and 10.

Hon. Flora MacDonald (for the Minister of National Defence) moved:

Motion No. 6

That Bill C-77 be amended in Clause 62 by striking out lines 20 to 25 at page 32.

Motion No. 7

That Bill C-77 be amended in Clause 63 by striking out lines 33 to 36 at page 32 and substituting the following therefor:

"(2) A report of an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency."

Motion No. 10

That Bill C-77 be amended in Clause 73 of the French version by striking out lines 43 to 45 at page 38 and lines 1 to 5 at page 39 and substituting the following therefor:

"37. (1) Dans les cas où le président du Sénat ou de la Chambre des communes est saisi d'une motion signée par au moins dix sénateurs ou vingt députés, selon le cas, demandant l'abrogation d'un décret d'application de l'article 11, cette Chambre étudie cette motion dans les trois jours de séance suivant la saisine."

The Acting Speaker (Mr. Paproski): Is it the pleasure of the House to adopt the said motions?

Some Hon. Members: Agreed.

Motions Nos. 6, 7, and 10 (Mr. Beatty) agreed to.

Miss MacDonald (for the Minister of National Defence) moved that Bill C-77, as amended, be concurred in.

The Acting Speaker (Mr. Paproski): Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Motion agreed to.

Hon. Doug Lewis (for the Minister of National Defence) moved that the Bill be read the third time and passed.

He said: I rise on a point of order, Mr. Speaker. There have been discussions among the House Leaders, and I think you will find that there is unanimous consent to allow the first three speakers equal time. That would give the Official Opposition and the spokesperson for the NDP equal time to the first speaker from the Government and the Official Opposition.

There are also informal discussions continuing which would lead to a division, if required on this matter, being taken on Wednesday at 6 p.m. We would like to take some time and work out an appropriate House order which would accomplish that.

Mr. Angus: Mr. Speaker, I wish to confirm the remarks of the Hon. Member that there have been discussions with regard to equal time at the beginning, and there will be ongoing discussions regarding the House order for a vote, should it be required, on Wednesday of this week.

The Acting Speaker (Mr. Paproski): Is it the pleasure of the House to adopt the motion? On debate, the Hon. Parliamentary Secretary to the Minister of National Defence.

Mr. Bud Bradley (Parliamentary Secretary to Minister of National Defence): Mr. Speaker, last June, the Minister of National Defence (Mr. Beatty), the Minister responsible for emergency preparedness, tabled Bill C-77, the Emergencies Act, which will replace the War Measures Act legislation.

Since 1970, all Parties of the House have been on record as favouring new legislation to replace that archaic and abhorrent act. Nearly 18 years have elapsed since Canadians were promised a more enlightened approach for dealing with safety and security during national emergencies, and I am very gratified indeed to see how close we are now to fulfilling that promise.

It is time to ensure that the abuses of civil liberties committed against Japanese Canadians in World War II, and against Québecers during the 1970 October crisis, will never happen again. Bill C-77 does this, and more.

Source: Nikkei National Museum, 2018-16-4-1-1-190
www.nikkeimuseum.org

I consider the October crisis a blot on our national conscience. As a political device the War Measures Act was tremendously effective. As an instrument for dispensing justice, it was not effective at all. We saw the disgraceful state of affairs where more than 450 Canadians were arrested and detained without charges being laid, and without being allowed to consult a lawyer. Of those people who were taken into custody, 439 were later released without being charged. To quote Ron Haggart and Aubrey Golden from their book *Rumours of War*:

> They had been placed at the worst possible legal disadvantage, denied information on what was alleged against them, denied counsel, interrogated and then "tried" in someone's office in their absence.

Going back further in our history, the War Measures Act was legitimately invoked in 1939 to permit Canada to play its proper role during the Second World War. There is no doubt that during those six difficult years from 1939 to 1945, the men and women who served in Canada's Armed Forces, and the Canadians at home whose efforts supported them, brought honour to Canada and contributed in no small way to Canada's emergence as an independent nation deserving our pride and allegiance.

• (1140)

We must also look back with sadness and regret at one aspect of the use of the War Measures Act in that period. I refer, of course, to the displacement and internment of Canadian citizens of Japanese descent and the confiscation of their property. Without wishing to make judgments about the exigencies and pressures that faced the decision-makers at that time and which led to these measures, Canadians today can only look back on those events with a good deal of national shame. The Minister was determined to ensure that the legislation which replaced the War Measures Act would be abundantly clear on at least this point, that this sort of abuse of executive power could not recur.

The Minister was very aware last summer, when he presented the replacement to the War Measures Act in this House, that because of the past events to which I have just referred the legislation would be seen as much as a civil rights issue as a means for allowing the Government to act swiftly and effectively in national emergencies. We thought we had a well considered piece of legislation, but we also knew that this time we had to be absolutely sure to get it right. After 17 years it was simply too important to the country to do otherwise.

For this reason the Minister invited all Canadians to comment on the draft legislation. The Minister and I have been impressed enormously in the past month with the care and amount of time which individuals and organizations have devoted to examining this important piece of legislation. There is something special about a country whose citizens care so passionately for individual freedom that they will devote hours of thoughtful reflection to a proposed law which may never have to be invoked.

When the Minister spoke during second reading debate, he indicated that the Government had an open mind on the detailed provisions of the Bill and would welcome constructive suggestions aimed at ensuring that when finally passed it would be the best that we could produce by working together.

At this time I would like to express the Government's sincere appreciation and gratitude to the many witnesses who appeared before the legislative committee and presented briefs which were obviously the product of a good deal of intense thought, research, and study. I would also like to compliment my colleagues in this House of all Party persuasions who worked on the Bill and gave the committee the benefit of their thoughtfully considered views.

The Bill which is the product of the committee's deliberations, and which we are now proposing for third reading and passage by this House, is similar in appearance to the original Bill and is consistent with the principle of the Bill which we approved at second reading. However, I can assure you, Mr. Speaker, that it is very different in detail. It is a much improved Bill. The amendments which the committee developed and approved and which are incorporated in the Bill we now have before us are numerous. I would hesitate to try to count the number of individual changes. They cover some three dozen distinct areas.

A point of note is that my hon. friend, the Member for Brant (Mr. Blackburn), introduced 61 amendments. Forty-eight were either adopted or incorporated in a government amendment. I would like to thank him personally for the work that he has done on this piece of legislation.

All the amendments contributed to better meeting the objective which I stated earlier in debate, that we should produce a Bill which adequately equips the Government of Canada to meet its constitutional responsibilities to provide for the safety and security of Canadians during national emergencies but does so with the minimum encroachment on the rights and freedoms of individual Canadians. The Government must be given the authorities it needs to minimize human suffering during emergencies but the legislation giving these authorities must be carefully crafted to ensure that ordinary governmental powers are exceeded only to the extent that is absolutely necessary in the circumstances. I am impressed by the manner in which the legislative committee was able to adhere to these objectives and produce a vastly improved Bill.

The changes that have been made to the Bill fall into three general categories. First, there are those which add precision to the legal formulation of what the Government is empowered to do and in what circumstances it would be given these additional powers. In this category I would include changes to the definition of "national emergency" and the definitions of the four specific types of national emergency, as well as changes to many of the specific powers granted in each of the four main parts of the Act.

Second are the changes which tighten up and enhance the supervision of the Government's exercise of the special authorities granted by the Act, supervisions which would be carried out both by the courts and by Parliament.

Finally, there are several changes which enhance the regime for providing redress to those individuals who, in the confusion and upheaval which inevitably would accompany a national emergency, might have suffered loss or injury as a result of measures taken by the Government in dealing with the emergency.

Without in any way intending to minimize the contributions made by any of the witnesses who appeared before the committee, I would like to single out three important Canadian organizations which gave very serious thought to this Bill and submitted briefs which were clearly the result of pooling the insight and experience of many individuals, people who are genuinely concerned about the impact that this important Bill would have on the future of Canada.

These three organizations are the Canadian Civil Liberties Association, the Canadian Bar Association, and the National Association of Japanese Canadians. A comparison of the recommendations in their briefs with the specific amendments incorporated into the Bill gives clear evidence of the contribution which these three organizations have made.

I would like to review in a little more detail some of the key amendments in each of the three categories to which I referred a moment ago. I referred earlier to the legacy of shame which we share because of the regrettable action taken against Japanese Canadians during World War II. Our legal advisors assured us that with the safeguards we had built into Bill C-77, coupled with the Canadian Charter of Rights and Freedoms and the complex legal structure which has been put in place to implement the Charter, we could be 99.9 per cent sure that no conceivable situation could arise in which Bill C-77 could be used to empower a future Government to do anything resembling what was done to the Japanese Canadians.

However, I am sure that all Members of this House will agree with me that 99.9 per cent is not good enough. We want to be 100 per cent sure on this point. Hence the Government proposed, and the committee adopted, an amendment which states clearly and unequivocally that Bill C-77 does not empower the Government to make orders or regulations providing for detention, imprisonment, or internment of Canadian citizens or landed immigrants on the basis of race, nationality or ethnic origin, colour, religion, sex, age, or mental or physical disability. When Bill C-77 is passed, Mr. Speaker, we will have removed the last vestige of the legal underpinnings to that regrettable episode of Canadian history.

As correctly pointed out by many of the witnesses who appeared before the committee and by others who have commented on this Bill, the question of definitions is crucial. These have been gone over very carefully and I am confident that the definitions now in the Bill state as accurately and as clearly as can be done the intended scope of the Act in each of its four parts.

The definition of "national emergency" as now formulated captures the four elements common to all the proposals put to the committee. It represents the distilled consensus of the collective wisdom of the highly qualified people whose advice we were fortunate to receive. The four elements incorporated in a new definition of national emergency are; first, the notion of urgency; second, the temporary character of the abnormal situation; third, the inadequacy of the normal legal framework; and finally, the presence of a serious threat, either to the security of the country as a whole, or to public safety in circumstances which exceed provincial capabilities.

• (1150)

To qualify as a national emergency, all four elements must be present. In addition, the situation must meet the more detailed characteristics of one of the four particular types of national emergency as defined in each of Parts I through IV, and only those powers relevant to that class of emergency will be available to the Government. All of the definitions of the four types of emergencies have been tightened up by amendments.

With regard to the particular powers, permit me to enumerate some of the more important changes that have been made to limit more precisely the scope of the powers: Travel restrictions in Part I are now confined to those necessary for the protection of the health and safety of individuals. Use of Part I to terminate a labour dispute is now specifically excluded. Part II powers over public assembly are now confined to assemblies that may be reasonably expected to lead to a breach of the peace. Part III, search and seizure powers, are now confined only to the narrow requirements related to enforcing laws dealing with the defence contracts in order to prevent abuses, such as profiteering. Censorship is now explicitly excluded in Part III powers. All powers of Part I through III are to be exercised in a way that will not unduly impair the ability of a province to deal with a provincial emergency; and the powers of all parts are to be exercised with a view to obtaining the maximum possible concerted action with the provinces.

Let me now turn to a second general category of amendments. Several important changes have been made to enhance the manner in which the Government's use of the Act will be overseen by the courts and by Parliament. Perhaps the most important of these is the change in wording in about 20 subsections to ensure that judgments made about the necessity for exceptional measures must now be based on "reasonable grounds" rather than the unqualified "opinion" of the Governor in Council. This change means that all important decisions by the Governor in Council relating to the invocation and use of the emergency power will be challengeable in the courts.

I cannot emphasize too strongly how important this new approach is to the assurance of full protection of fundamental rights and freedoms. The continued application of the Charter,

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which is also assured by the Bill, coupled with the accountability of the Governor in Council inherent in this new wording, ensures that the fundamental freedoms of Canadians will be preserved as long as the nation, its institutions and its constitution are preserved.

In addition to this very basic change, a number of further amendments have been made to strengthen the parliamentary supervision, including the following: The sunset periods after which the powers will expire, unless renewed by Parliament, have been substantially reduced. All orders and regulations to be continued past the normal sunset period will have to be explicitly reconfirmed by Parliament. One House alone will be able to revoke a declaration of emergency at any time. Parliament will have a longer time to consider whether orders and regulations passed by the Governor in Council should be revoked, and will be able to reconsider any order or regulation at any time.

The all-Party Parliamentary Review Committee, which will be established whenever the Act is invoked, will keep the Government's use of its extraordinary powers under continuous review and will report to Parliament at least every 60 days. Whenever a declaration expires or is revoked, that is, when the emergency is over, a formal inquiry will be conducted. The number of MPs and Senators required to initiate a motion to revoke either a declaration or a particular order or regulation has been substantially reduced, and the time limits on debate of the motion have been removed. Orders and regulations passed by the Government will have to be tabled with much less delay.

Finally, let me comment briefly on the third category of amendment where the many changes made to the regime for compensation will add significantly to its effectiveness. Amendments include the following: The establishment of the right to reasonable compensation for commandeered services. The provision of reasonable compensation under Part V is now mandatory rather than discretionary. The appeal process in the compensation provisions is now mandatory and will allow the appeal judge to exceed the maximum compensation when to do otherwise would be unreasonable and unfair.

I think it is quite evident from this review of a selection of the amendments made by the legislative committee that it has most effectively and conscientiously acquitted its responsibilities and that Bill C-77 is much the better for its endeavours.

I said earlier that from the beginning we knew that the protection of basic rights in a national emergency would undoubtedly become the focus for public discussion of this Bill. Public discussion has, however, unfortunately led to some misunderstandings about the constitutional and legal protection of fundamental rights and freedoms in our country, both as it applies to normal times and as the protection is further strengthened in time of national emergency by provisions in Bill C-77.

The bulwark is the Canadian Charter of Rights and Freedoms, and Bill C-77 goes to considerable length to ensure that the normal mechanisms for applying Charter protections will be upheld. The suggestion made by one of the witnesses that the Government could invoke the "notwithstanding" clause of Section 33 of the Charter, using an Order in Council pursuant to this Act, is completely without foundation. The Charter unequivocably states that to use the notwithstanding clause to override certain Charter rights, Parliament must declare the override expressly in an Act of Parliament. Bill C-77 contains no such provision. There is no doubt whatsoever that any attempt to use Section 33 through an Order in Council, should any future government be so ill advised as to try it, would be struck down by the courts.

Any limitation to charter rights a government might consider necessary in a national emergency would be challengeable on two counts. First, under Bill C-77 as I indicated earlier, the Governor in Council could be challenged in court to demonstrate that there are reasonable grounds for the necessity of the measure. Second, under Section 1 of the Charter, the Government could be challenged to demonstrate that the limitations were "reasonable and demonstrably justifiable in a free and democratic society." It is difficult to imagine, Mr. Speaker, a Government going ahead with measures if there were any doubts about its ability to justify its actions in court.

There are additional protections in the system which have been put in place to ensure that all orders and regulations are consistent with the Charter, whether they are passed in normal times or in an emergency. The Statutory Instruments Act, the Canadian Bill of Rights and the Department of Justice Act have been amended, and I might point out that these amendments were made by the current Parliament to place special responsibilities on the Minister of Justice to examine every regulation and every Bill in order to ascertain whether there are any inconsistencies with the Charter and to report such inconsistency to the House of Commons at the earliest opportunity. These responsibilities of the Minister of Justice are, in a sense, separate from his role as a member of Cabinet and confer on him a quasi-judicial role for which he is responsible directly to Parliament.

To carry out this responsibility the Minister, of course, relies on the highly qualified support of the law officers of the Crown. To suggest that a Government might attempt, for some obscure motives of expediency, to pass regulations which were knowingly inconsistent with the Charter, is to impugn the integrity not only of a Minister of the Crown but also of a major and extremely important branch of the Public Service. The emergence of such an eventuality is beyond belief, Mr. Speaker.

Much has been made of mention in this Bill of the possibility of secret orders or regulations. No one has questioned that in very rare and unusual circumstances there may possibly be a need for secrecy to protect the purpose of the action being taken. However, Bill C-77 is not the source of the authority to make secret orders or regulations. This authority stems from the Statutory Instruments Act and is also available in normal times.

• (1200)

There is nothing in Bill C-77 which extends or alters in any way the restrictions on the use of secret orders inherent in the Statutory Instruments Act and its associated regulations. Quite the contrary. What Bill C-77 does do, Mr. Speaker, is to introduce a means of opening up such matters to scrutiny by Parliament, not only by requiring that all secret orders be referred to a parliamentary committee, but also by empowering that committee to revoke or amend such orders. Thus, Bill C-77 provides additional protection, not less, against abuse of secret orders in a national emergency.

Finally, Mr. Speaker, I should like to say a word about the confusion that has arisen concerning the requirement for warrants for search and seizure.

Protection against unreasonable search or seizure is a Charter right, and this has been interpreted by the Supreme Court to imply that a warrant is always required except in administrative inspections or in certain exigent circumstances where there is a physical impossibility of obtaining a warrant in time and where not to act would unreasonably thwart the administration of justice.

Any Act of Parliament that provided for a warrantless search or seizure would thus be inconsistent with the Charter, and of course Bill C-77 does not include any such provision.

The way in which the members of the legislative committee, those who made representations before it, and individual Canadians in general have responded to this legislation in terms of suggestions for amendment and fine tuning, has been most impressive. We have tried to accommodate all points of view as best we could.

Some things are above politics, Mr. Speaker. I think Bill C-77 falls into that category. All Canadians, wherever they live, whatever their political affiliation, whatever their occupation have a vested interested in suitable emergency powers legislation, legislation that can meet, swiftly and effectively, any national emergency that may confront us.

We have seen some old wounds reopened in recent weeks. The publication of Mr. Jamieson's diary, with its allegations of political expediency, along with the public representations of the National Association of Japanese Canadians remind us of the horrors of the events of October 1970 and the early 1940s.

Those events are now behind us. Let us not waste more time by engaging in unfruitful accusations. The important thing now is to get on with it, and to see that such events cannot recur.

The Bill the Minister is recommending today for third reading represents the culmination of a considerable effort on the part of Canadian men and women to try to accommodate, first and foremost, the rights of their fellow citizens, while giving Government the tools it needs to ensure the safety and security of our citizenry in a national crisis.

I trust, Mr. Speaker, that the other place will view Bill C-77 as an honest attempt on the part of those of us who have the privilege of serving Canadians in Parliament to achieve that end and thus worthy of both their careful consideration and expeditious treatment.

Mr. Derek Blackburn (Brant): Mr. Speaker, I, too, am happy to participate in the debate on the motion for the third reading of Bill C-77. I am proud to say—and I think I say this on behalf of all members of the committee—that we have, at this stage, a much better Bill than that which was introduced for first reading in the House. Bill C-77, in its final form, is a Bill that is certainly acceptable to the majority of Canadians.

Parliament does work, and this is one very good example of how we can make this place work. I would hope that this can be duplicated many times over with respect to other Bills.

Looking at the history of Bill C-77, Mr. Speaker, I note that it was introduced by the Government with great fanfare last June. The Minister expected all Canadians to be grateful that we were finally moving to replace the dreaded and Draconian War Measures Act—and there was some initial support for that concept.

My own criticisms, voiced at the press conference held at the time that the proposed Emergencies Act was introduced, were extremely limited. I had not had time to go through the Bill in any detail, but I did have, even at that time, some very grave misgivings as to what was contained in it as introduced for first reading.

I think it is also fair to say, Mr. Speaker, that the Government was surprised at the strength of the criticism the Bill as originally introduced attracted. Those who took the time to read the proposed Emergencies Act were shocked. They were startled to find that a Bill to replace the War Measures Act would contain so many threats to civil liberties, and in that sense it seemed inconsistent. Criticism rained down from lawyers, from civil libertarians, and from ethnic organizations— the very groups that the Government had hoped to please.

But, to its credit, the Government, and the Minister, did not go on the defensive. The Minister adopted, instead, a flexible attitude. He showed that he was not afraid to lose face—and I am convinced that he did not, in any event. He demonstrated that he had an open mind. We managed to avoid an ugly confrontation, the reason being that so much outside advice was taken to heart. This was wise, in our view. The Government was sailing in uncharted waters in the context of the proposed Emergencies Act. We had no pattern or blueprint to guide us. We were not amending the War Measures Act; we were starting from scratch.

The most important changes made, in my view, were those made to the opening clauses of the Bill. The definition of

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"emergency" was changed substantially, thanks largely to the unrelenting pressure from Canadians concerned about civil liberties. There are several requirements that a situation must meet before emergency powers can be used. The situation must be urgent, critical and temporary. It must endanger the lives, health and safety of Canadians, and it must exceed the capacity of any province to deal with the matter.

Alternatively, the emergency must threaten the Government's ability to preserve the sovereignty, security and territorial integrity of this country. And there is one final hurdle that must be cleared—and I think this is a very important one: emergency powers can only be used when the situation is so drastic that no other law of Canada can deal with the situation.

At the time of the introduction of the War Measures Act of 1970, it was strongly argued by the opponents of the proclamation of that Act that the Criminal Code could have handled that emergency in the City of Montreal, and elsewhere. But, the Government of the day chose to bring forward the Draconian War Measures Act, instead of using the Criminal Code, as many of us thought it should have done.

Looking back at that situation, the Government of the day would have had to have used the Criminal Code, because it was applicable at that time. These conditions should prevent any future Government from invoking emergency powers irresponsibly, on flimsy excuses.

The Cabinet, under Bill C-77, would be prohibited from giving itself new powers by Order in Council. The Act cannot be changed by Cabinet. This means that no Government could give itself the power to override the Charter of Rights and Freedoms in the Constitution. That opinion came to the committee from law officers of the Crown, who were giving us their professional advice and interpretation.

We have ensured that Parliament will have greater oversight powers during an emergency. Cabinet must report to Parliament more frequently and ask permission to continue emergency measures, and the maximum time allowed for emergency powers has been reduced to 120 days—and that is in time of war. So, the maximum time allowable is 120 days, and that for the most critical kind of emergency, that which is set out under Part IV, or an emergency involving Canada at war.

• (1210)

When Parliament debates whether to grant or extend a period of emergency, a full debate is now guaranteed. All references to time allocation have been removed from this Bill. Parliament also can now initiate a debate to revoke emergency powers much more easily. Now only 20 MPs or 10 Senators can force a debate. That debate can no longer be delayed, it must happen within three days. It will be a full debate, allowing all to be heard. We have doubled the length of debate to 10 hours. Neither can the Government avoid the verdict of Parliament. There will be no filibuster to extend emergency powers. A vote is mandatory after those 10 hours of debate.

A similar debate is guaranteed when Members want to challenge an unjust order or regulation. We have also removed any time limit on challenges. There is no longer a limited window of opportunity when MPs would have to decide whether or not to challenge an order. They can do so whenever an injustice or abuse takes place.

Parliament will also get the information necessary to take corrective action quickly. Orders and regulations must be tabled in the House or sent to a parliamentary review committee within two days of their passage by Cabinet. We have also placed more restrictions on the type of orders and regulations that Cabinet can make. For example, travel restrictions can be placed on Canadians only during a public welfare emergency to protect health and safety. Public assembly could only be restricted during a public order emergency if the Government could show reasonable grounds to believe that it would lead to violence. Even there, at the height of an emergency, I anticipate that in most circumstances, unlike under the War Measures Act, Canadian citizens living in Canada will be able to assemble to discuss that specific proclamation and that emergency, provided in the view of the law enforcement agencies that assembly will not by its nature result in violence.

Persons who might be conscripted to provide an essential service during an emergency can no longer be sued for any action committed under orders from the Government. The Government has to provide reasonable compensation to any conscriptee. If that conscriptee is unhappy with the compensation, he or she now has the right to appeal. We have made the appeal process mandatory, "We" meaning the committee. The same rights have been extended to people who might suffer material damage from government action during an emergency. They can also get compensation and appeal any award. No one can be exempted from seeking compensation. That provision of the Bill has been deleted. The Minister cannot be arbitrary or capricious in setting some artificial maximum compensation. He can be overruled by a Federal Court judge acting as an accessor.

Finally, Canadians will not be kept in the dark after the emergency is over. There will be no repeat of the deafening and shameful silence that followed the October, 1970, crisis. An inquiry must be held and its findings made public within 360 days. Any Government that abuses the emergency powers will certainly be made to pay the political price.

I think it is shameful that the people of Canada are still waiting for the official report on all aspects of the proclamation of the War Measures Act in October, 1970. That is almost 18 years ago. Books and articles have been written on it and diaries exposed after death, but we have never really had a comprehensive report. There are still people, particularly in the City of Montreal and the Province of Québec, very upset that no official report has been provided to the public.

That list of amendments is by no means exhaustive. The Government has already listed others and it would take up too much of the time of the House to hear all the amendments made since the Act was first introduced. In fact, the Bill is barely recognizable. The Speaker has been quite generous in allowing this Bill to proceed in such a different form. However, it is precisely because this Bill has changed so much that I will be recommending its support at third reading to my caucus later this week.

I do not wish to take credit for all the changes we have made. I am no lawyer and I am certainly not an expert in emergency situations. This was a collective effort. I would like to pay tribute to those organizations and individuals who provided us with their expert advice. The forceful representations of the National Association of Japanese Canadians, the Canadian Civil Liberties Association, the Canadian Bar Association, the Canadian Labour Congress, the Ukrainian Canadian Committee, the Law Union of Ontario, *La Ligue des Droits et Libertés*, Professors Maxwell Cohen and Peter Rosenthal, various provincial Governments, police forces and others deserve the thanks of this House, the committee, indeed of all Canadians.

I cannot say that all their concerns were satisfied. Neither were mine. However, they can take pride in the changes that are rooted in their contribution.

No Act of course is perfect coming from this Chamber because, as I have said on many occasions and I keep reminding myself, no one in this Chamber is perfect anyway—with some possibly notable exceptions—but nonetheless it is important to draw to the attention of my colleagues and people outside the Chamber that we really have done our co-operative best in producing what is I think a very good Bill to cope with emergencies.

In fairness, I think I should also mention some measures that might still be taken. In particular, the National Association of Japanese Canadians would like to see this Act referred to the Supreme Court. They would like a ruling that clearly states that no Charter overrides are possible under the powers of this Bill. I support that idea. We have the consensus of the executive, through Cabinet, and will soon have the approval of the legislature when this Bill passes third reading and the Senate. Why not get approval from the judiciary as well, here and now or within a reasonable period of time when the Bill is fresh in our minds and the Act becomes law? If we have done our work properly, there is nothing to fear. A Supreme Court ruling would provide a crowning touch, giving Canadians that final assurance that their rights and freedoms are secure, even in the most trying of times.

For my part, I would have liked to have seen some protection for refugees under Clause 28(g). We were discussing that earlier this morning at report stage amendments. I understand the Government's arguments about throwing open the immigration processes, but I want to avoid any chance of a repetition of that shameful incident of the 1930s when a boatload of Jews was turned away from our shores to face the concentration camps in Europe. It could be any other kind of people today given the conflict-ridden world in which we live.

However, I think we should always keep in mind, and I do not want to open up the Immigration Act in this debate, the relationship between the word "refuge" and "refugee". A refugee is a person, a human being.

We may or may not have prejudices against certain groups in the world, certain races. Being human, these things unfortunately do happen. Fortunately, they are usually only temporary. However, if we keep our minds set on the understanding and meaning of the word "refuge", I would like to think that this country of ours is still big enough, still magnanimous enough and still has a big enough heart that we can say to the world's beleaguered peoples: Yes, we are still a refuge for you. They can come here to live in peace, to work and develop, provided that basic laws are upheld and the administrative process works. I must admit that these are very important considerations that other Members in other committees are currently addressing with other Bills.

• (1220)

I would have liked to see the kind of amendment to Clause 28(h) applied here as well with respect to refugees but I can appreciate the problems that this would have caused with respect to the process of another piece of legislation dealing with refugees that will soon be back before the House. I accept the fact that my arguments failed to sway the other members in the committee's clause-by-clause discussion. Perhaps some time in the future another government and another minister may want to look at that situation again.

While I am speaking of disappointments, I have something else to say. I have mentioned those who have helped. Let me also point out that others have not. I am referring to the Liberal Party. This is not meant as a partisan cheap shot, and my colleague from Sudbury knows that I bear him no personal animosity, but he also knows that he is the third spokesman that his Party has had on this issue. None of them attended the legislative committee with any consistency. They proposed no amendments. That is very disappointing because, after all, it was a Liberal Government that last imposed the War Measures Act. His Leader was Minister of Justice at that time. That government's actions have never really been explained and a promise to replace the War Measures Act was never honoured. I hope that this legislation is not discovered to be faulty because of some oversight that might have been avoided with the help of Members of the Liberal Party.

I am also somewhat disappointed that a law of such importance got such little attention in the national press. We are dealing with the sovereignty, safety and security of our country. This Bill deals with safeguards that will protect lives, liberties, rights and freedoms of Canadians from arbitrary Government action. Yet because this debate was not as acrimonious as Question Period usually is, few people know anything about it.

The vast majority of Canadians do not know how important this work has been. It may sound strange to say, but I hope

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they never will. I hope that no disaster, either natural or caused by man's weaknesses, follies or foibles, ever befalls this country and causes this law to be used. I hope that no one has to discover that the Government no longer has the arbitrary powers of the War Measures Act. But I do hope that all who have been involved in writing this legislation will take quiet satisfaction in their work. I think Canada is a better place with this Bill on the books and the War Measures Act relegated to the pages of history texts.

It was a pleasure working in the committee with my colleagues in the House. It was a pleasure listening to the briefs and it was refreshing to see a representative of a Government that has an overwhelming majority in the House accede to the wishes of many witnesses and, indeed, to Opposition Members like myself at committee stage.

I agree with the Hon. Parliamentary Secretary, who was also most co-operative, that this is a Bill of which we can all be justly proud.

Mr. Russell MacLellan (Cape Breton—The Sydneys): Mr. Speaker, it is a pleasure to speak to a Bill of such great importance not only to our country and our citizens, but to our very way of life. Legislation such as this not only reflects the will of the Government and Parliament, but the attitudes of the people of that particular country. Not only does this Parliament wish to send such a message to other countries, we want to send it to our citizens so they may realize that not only are they protected during a time of crisis, they also have rights. The rights of Canadians are paramount.

It has been suggested that this legislation improves upon the War Measures Act, which certainly needed to be addressed. This legislation, as it is presently amended in the House of Commons, is a vast improvement over the Bill that was introduced by the Government some months ago. It is a credit to the Government and all Members of Parliament that they realized the Government had undertaken measures that even it did not quite understand.

During the debate on this legislation, there has been much criticism of the War Measures Act. Although that law has been roundly denounced, it has only been implemented three times: during the First World War, the Second World War, and the October crisis.

When one considers that the War Measures Act has been implemented on only three occasions, I am concerned that Bill C-77, the emergencies legislation, can be implemented far too often. While the number of cases in which it can be implemented have been reduced even further as a result of amendments, my Party still believes that there are occasions when this legislation can be used needlessly. We also believe that further improvements could be made to this legislation, including the provision dealing with wars which suggests that Canada does not have to be involved in such a war. It only states that this war has to be so serious as to be a national emergency. This is a very grey area that should be addressed.

The Parliamentary Secretary and the Member for Brant (Mr. Blackburn) also talked about assemblies, which are now permitted as long as they do not lead to a breach of the peace. That remains as a very grey area because the right of assembly is of paramount importance in this country. There must be nothing in the legislation that is so vague as to prevent people not only from having the right of assembly but knowing when it can occur. Witnesses who appeared before the committee also raised some of these important points. I think these have been very important, indeed.

• (1230)

I would like to mention one group which appeared, the Canadian Association of Japanese Canadians. To reiterate the injustice that was done to Japanese Canadians during the Second World War should not be considered repetitious. This is the sort of thing we must continue to talk about. To not rethink this injustice will dim our memories, giving us further inclination to allow something like this to happen again. It was a travesty, a black mark on our history. I am pleased to see the Government has made mention of it because that would indicate to me that it was in the Government's thinking as it continued to work on this Bill.

I believe it is also important at this time to mention the Charter of Rights and Freedoms which were brought forward just a little over six years ago. The Charter is absolutely fundamental to the success of a Bill such as this emergency legislation. It is now in the Constitution that Canadians have specified rights. It is in our Constitution that Canadians cannot be taken advantage of. It is in our Constitution that Canadians can rely on those rights and freedoms regardless of the expediency of Governments emergency situations.

The Parliamentary Secretary mentioned that Governments will not take advantage of expediency in cases of national emergency or other emergencies specified under this legislation. He said his Party would not do it. A short while after, he proceeded to bring up the case of the diaries of the former Secretary of State for External Affairs, the Hon. Don Jamieson. The Government could not resist bringing that up for no reason at all, using an expediency within the same speech. How is it going to be relied upon to resist expediencies in time of national crisis? It cannot be relied upon and that is a very serious situation. However, it is minimized somewhat because we do have, thanks to the former Liberal Government, the Charter of Rights and Freedoms, which underlies and, to a great extent, gives some kind of security in spite of what this Government may consider expedient at any particular time.

I was particularly dismayed at the expediency taken by the Hon. Member for Brant who himself has played a large role in the amendments brought forward. He himself could not resist the temptation to take a dig at the Hon. Member for Sudbury (Mr. Frith) who, unfortunately, was not able to be present at some of the meetings. I think that certainly minimizes the role of the Hon. Member's Party when it feels that in order to build up its particular role it has to take aim at certain Members of Parliament. Certainly, the Hon. Member for Sudbury is very concerned about this legislation and vitally interested in the rights of all Canadians.

I think it is important that we in Parliament make a very definite commitment to the rights of Canadians. It is not something we can do just once. All of our legislation must continually show this. It is a fundamental underpinning of our whole society. The witnesses that came before the committee were not merely stating an opinion as Canadians. They were stating an experience, a belief and an education about these very important subjects. If we qualify our beliefs with respect to the rights of Canadians, we are very likely to qualify our rights on other issues as well. If we qualify our beliefs and say that a certain right can be violated in a state of emergency, regardless of the seriousness of the emergency, we are gradually starting the process of the abolition of the rights of Canadians in all aspects of our Canadian way of life.

It is important to look at this issue from an aspect of the safety and security of Canadians in times of emergency. We cannot discount that. We must also look at it within the framework of the rights of all Canadians. We must not in any sense of the word try to chip away at these rights in anticipation of solving a situation regardless of how important. By chipping away at these rights, even if we are solving a situation, we are creating a greater problem, that is eroding the rights and principles on which this country is built.

The Liberal Party supports the legislation. Granted, there are things we would like to see changed. It is not a perfect Bill, in our opinion, but it is a Bill which has been much improved. As such we give it our support. We appreciate the concerns of a lot of witnesses who appeared before the committee. These concerns are definitely concerns which, in many cases, should have been given greater consideration.

I do feel it is important that this Parliament not rely on the Supreme Court of Canada to draft our legislation. If we as parliamentarians do not have the knowledge and belief of what is right for this country, then we should turn over the whole function of law making to the Supreme Court of Canada. Parliament has a role and its role is to make the laws. The role of the Supreme Court of Canada is to interpret those laws. If we cannot believe in the laws we make, particularly in areas of such tremendous importance as emergency legislation, if we are hesitant about what we are doing, then we have no right to be here.

This is an improved Bill, although it is not perfect by any means. It falls short in many ways. But it is a Bill that has been improved. We in the Liberal Party feel this legislation will be constantly reviewed through the sunset provisions and that will mean that we will constantly examine and never lose sight of the rights of all Canadians.

• (1240)

[*Translation*]

Mr. Marc Ferland (Portneuf): Mr. Speaker, as the Minister of National Defence (Mr. Beatty) observed recently, it is not up to us to rewrite history or to delete with one stroke of the pen the story of the darkest days this country ever experienced. However, it is in our power to turn the page and write a new chapter, and we can have that satisfaction today, by adopting the third reading stage of the proposed Emergencies Act.

We, my Quebec colleagues and in fact all Members of this House, have cast a little further behind us our memories of the War Measures Act, memories that still persist in the minds of so many of our fellow citizens. When former Minister Don Jamieson's memoirs were published, it was clear from the considerable emotion they aroused that the wounds of October 1970 have not completely healed.

As a Member from Quebec and sitting on the Legislative Committee responsible for examining the Emergencies Bill, I was able to measure the depth of the suffering and fear of those who came to testify against the War Measures Act. Through the various arguments and points made by each group, the same message persisted: Never again! While listening to both the protests and the hope in the voices of these men and women, I saw in my mind other faces and the suffering and indignation they expressed.

Of course, as a Government we are proud we were able to keep a major commitment to national security and to safeguarding the individual rights of Canadians in an emergency. However, I must acknowledge the work that has been done by all Members of this House, and I give praise where praise is due. I believe this House has realized that the interests of our fellow citizens are more important than ideological differences or personal rivalry.

When the Emergencies Bill, Bill C-77, was tabled, the Members of this House, as did legal experts, the media and the general public, recognized the fact that the proposed legislation had nothing in common with the War Measures Act. In fact, everyone agreed that the latter legislation should be repealed.

Bill C-77 provides unprecedented guarantees. The Emergencies Act, which will ensure a coherent and graduated response during national emergencies, will be subject to the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and it will be consistent with the 1967 United Nations International Covenant on Civil and Political Rights. It will be governed by mechanisms designed to prevent abuse, and its application will be subject to very strict control by Parliament. Furthermore, it will provide for compensation in the event of personal loss, injury or damage.

Despite this undeniable progress, certain concerns were expressed about the definition of the powers the Government could be given in an emergency, the existence of effective

Source: Nikkei National Museum, 2018-16-4-1-1-194
www.nikkeimuseum.org

control over the Government's actions and the compensation of victims.

The Government did not reject this criticism but carefully examined the various points. The Minister responsible for civil defence made it clear that he deliberately tabled the Bill early last summer to give as much time as possible to those who wished to make suggestions for improvements. Very much aware of the implications of this Bill and its impact on Canadians generally, the Government felt that passage of the Bill should be based on a broad consensus.

Provincial governments, including the Government of Quebec, legal experts, civil liberties activists and representatives of Canada's various ethnic groups responded with an interest and enthusiasm we found most impressive.

As the minister responsible for emergency preparedness, the Minister of National Defence, said recently, there were many suggestions, "sometimes contradictory, but mostly constructive. Expressed as amendments, these suggestions were meant to provide a better balance in the difficult reconciliation of the exercise of a necessary power and the no less necessary protection of rights."

The text presented to us today goes far beyond the semantic or terminological changes made to it. By clarifying some concepts, it safeguards in emergency situations the freedom we have won.

With the Emergency Measures Act, the Government will be able to handle disasters and peace-time emergencies with the desired moderation. It will be able to react in a deliberate manner to situations of international tension. It will allow the Government to meet its obligation to ensure the security of its citizens in crisis situations; this obligation is rooted in the Constitution and in history.

"Never again!" Japanese Canadians told us. The Government listened to them. The War Measures Act will be repealed and the Emergencies Act will contain guarantees making a recurrence of the persecution they suffered impossible.

The National Association of Japanese Canadians made many recommendations, and they were followed. The amendments adopted by the Government are along the lines desired by this association. Further guarantees have even been added.

Thus, the Bill explicitly excludes detention, imprisonment or internment of Canadian citizens or landed immigrants for reasons of race, nationality or ethnic origin or other discriminatory reasons.

The types of situations that would justify granting emergency powers were more clearly described and defined. Reasonable compensation for loss, injury or damage will be specified in a comminatory rather that discretionary way. The section allowing for the exclusion of some groups of people was removed. All orders and regulations issued under the emergencies legislation must be directly related to resolving the crisis. Furthermore, the Government may be required to justify its reasons for such orders and regulations before the courts.

Orders and regulations will be subject to review by a Parliamentary Review Committee, consisting of Members of the various parties and acting independently from Cabinet. The Committee will be required to report regularly to Parliament on the way the Government is handling the emergency. All orders and regulations shall be tabled within two days; time limits on debate on a motion for confirmation of a declaration of emergency, for confirmation of a proclamation continuing a declaration of emergency or for the revocation of an order or regulation, have been removed.

Limits on moving a motion for revocation or amendment of an order or regulation have been removed. An inquiry following an emergency must be completed within one year.

Never again, Mr. Speaker! No more Black October in Quebec! The very structure of Bill C-77, in which the part dealing with insurrection in peace time has been separated from provisions applying in time of war, makes this impossible. This is only one of a series of guarantees that provide safeguards against abuse.

Mr. Speaker, some venues are particularly inspiring. Today, we are keenly aware of the people of this country who elected us, and of the presence in these precincts of senior Members of all parties to whom the War Mesures Act was a thorn in the conscience of honest citizens.

Mr. Speaker, I am a junior Member of Parliament, but I must say that I was very proud to work with Members of all parties on this Bill. As so many Quebecers, I experienced the events of October 1970. In Quebec, there was general astonishment that these measures were applied. We, who were there, did not have the impression of any real danger. However, the Government at the time decided to use this reactionary piece of legislation.

An Hon. Member: At the request of the Government of Quebec!

Mr. Ferland: Legislation which, I feel, did not respond to what was needed at the time. This Bill, however, will respect the individual and respect our freedom but will also allow the Government to provide for the security of all Canadians. I think that is a step in the right direction. I think that Canada and this Parliament could only be praised for voting in favour of this legislation. I hope, Mr. Speaker, that Members will vote unanimously in favour of this Bill. That would be an example for all nations on this planet. Canada could once again show that it leads the way in passing laws that protect its citizens and at the same time let them express their views instead of being rebuffed as this happened in the past.

Heaven knows the Japanese suffered when their basic rights were violated. This legislation will prevent such abominations from happening again.

This Bill will enable the police in this country to play their proper role. I remember the testimony of various representatives of police corps in Canada who appeared before the Committee and told us: This Bill will really let us do the work we are paid to do. All the groups we met, including civil rights groups, believe this is a good Bill and that it provides the kind of legislation we expect as citizens of a free country like Canada.

However, I was somewhat disappointed in the lack of participation by my Liberal colleagues. I would have liked to see them take a more active part, as did my colleagues of the New Democratic Party and the Conservative Party, in drafting this Bill. This is a non-partisan Bill. This is a Bill that really meets Canadians' expectations. I was quite disappointed with the Liberals' participation in this Bill.

My party still proposed 35 amendments to this Bill, which were adopted. The NDP proposed 61, and 48 were associated with our amendments, and we agreed to make a Bill that really satisfied the expectations of all the interested parties we met.

We heard 22 witnesses and 15 Hon. Members took part on the legislative committee. It is a great credit to all those people who gave a great deal of time to analyse and study a difficult piece of legislation. It is not easy to pass a Bill that is meant to protect people but that limits some freedoms in times of crisis.

But for the first time, we have an Emergency Measures Bill for periods of crisis where the citizen who feels his rights have been violated can appeal, seek compensation and submit the decisions rendered to a review committee. Canadians will even be able to take the Government to court if that they think their rights have been violated or that the Government has abused its powers. I do not know so many countries on earth that have such a broad piece of legislation that protects so many citizens as the one tabled in the House for third reading today. I hope that it will be passed quickly, because Quebecers and Japanese Canadians whose rights were violated expect it, as do all those Canadians, men and women, who were wronged by the former War Measures Act.

Mr. Speaker, thank you for letting me speak today and tell Canadians that I am proud that this Bill was tabled today for third reading. This Bill in fact reflects Canada and the fairness that this Parliament, this government, really want to show to all Canadian citizens in this country.

• (1250)

[English]

Mr. John R. Rodriguez (Nickel Belt): Mr. Speaker, I wish to take this opportunity to congratulate, in particular, the Hon. Member for Brant (Mr. Blackburn) who certainly performed heroics in getting some 41 amendments to Bill C-77, the Emergencies Act. I wish to say to the Hon. Member, through you, Mr. Speaker, that the people of Canada owe a debt to his insight and persistence in participating in this, and to those members on the committee from the government side who participated in rolling up their sleeves and tackling an issue that has been a most controversial one in modern Canadian history.

I was not an elected Member of the House at the time, but I certainly was a candidate in the wings. I remember when the New Democratic Party stood up and voted against the imposition of the War Measures Act. You could not give New Democrats away around this country, Mr. Speaker. There was this great upswell that the then Prime Minister, Pierre Elliott Trudeau, represented everything that was right in the Canadian psyche, that he was acting with the best interests of Canada at heart, that he was acting with a considerable amount of insight and depth about the FLQ problem in Québec. There was this upswing and support within the communities, and within my community, that somehow or another the New Democrats were less than patriotic in their opposition to something that was so obviously correct, the imposition of the War Measures Act. We opposed the imposition of the War Measures Act.

Mr. Caccia: You approved it on first reading.

Mr. Rodriguez: There were 16 members of this caucus who stood up and voted against the imposition of the War Measures Act. I remember receiving many phone calls from people who felt that the New Democrats were not patriotic in doing that. I recall at that time our Leader, Tommy Douglas, put forward the argument that I regurgitated to our supporters in the area, that he had met with the Prime Minister and there was no information the Prime Minister gave him that would lead him to be convinced that other Acts could not have been used, for example, the Criminal Code. Mr. Douglas was not persuaded that there was a situation of apprehended insurrection. As history has unfolded, history has absolved the New Democrats and the position that they took at that time.

Mr. Caccia: With the benefit of hindsight. How about Pierre Laporte?

Mr. Rodriguez: In fact, even after the imposition of the War Measures Act, and now we come to 1988 and we finally have a Bill that goes a long way to correcting what was essentially a very Lucy-goosey kind of law at that time. For example, it does not state that there are not certain emergencies where the Government needs the power to do certain things. This Bill clearly defines what that national emergency is. In defining that, it clearly points out in Clause 3 that the Government must go through all the laws of the land, and the various codes to ensure that what it has to do cannot be done under those particular codes. It is only after the Government has gone through that process that it can then declare an emergency. It is only then that the Government can take steps under this Emergencies Act.

It seems to me that we all remember Pierre Trudeau as some great proponent of human rights.

Mr. Caccia: He was.

Source: Nikkei National Museum, 2018-16-4-1-1-195
www.nikkeimuseum.org

Mr. Rodriguez: Even after implementing this, he never took seriously the need to reform that emergency Act.

Mr. Caccia: Look at the Charter. He brought in the Charter.

An Hon. Member: Order.

The Acting Speaker (Mr. Paproski): Before I call it one o'clock, the Hon. Member will have 15 minutes, plus 10 minutes for questions and comments.

The Hon. Member for Cape Breton—The Sydneys on a point of order.

Mr. MacLellan: Mr. Speaker, the Hon. Member for Nickel Belt (Mr. Rodriguez) seems to be getting away with a lot of innuendoes. He made an inference that former Prime Minister Trudeau let everyone believe that he was seriously interested and seriously concerned. I want to know from the Hon. Member for Nickel Belt if he really doubts the sincere concern that Mr. Trudeau had at that time.

The Acting Speaker (Mr. Paproski): The Hon. Member may wish to put that question during questions and comments.

It being 1 p.m., I do now leave the chair until 2 p.m. this day.

At 1 p.m. the House took recess.

GOVERNMENT ORDERS

[*English*]

EMERGENCIES ACT

MEASURE TO ENACT

The House resumed from Monday, April 25, consideration of the motion of Mr. Beatty that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be read the third time and passed.

Hon. Doug Lewis (Minister of State and Minister of State (Treasury Board)): Mr. Speaker, there have been discussions among the Parties, leading to all-Party agreement on the disposition of Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

As will be seen from the projected order of business for today, Bill C-77 was to be called at 6 p.m. this evening, with the question on the motion for third reading to be put immediately.

As all three Parties are in favour of the Bill, there is unanimous agreement that Bill C-77 be called as the first item of business this afternoon, with the question being put immediately, in order that the Bill may be referred to the Senate, with the unanimous consent of the House.

Mr. Nelson A. Riis (Kamloops—Shuswap): Mr. Speaker, there have indeed been discussions among the Parties, and we certainly are prepared to co-operate with the Government at this point in respect of Bill C-77.

The way in which the progress of Bill C-77 has been handled, both in the House and in committee, presents us with a fine example of just how well this House and its related committees can work.

The Hon. Member for Brant (Mr. Blackburn), and the Hon. Member for Spadina (Mr. Heap) put forth 43 amendments, all of which were accepted by the Government. Those amendments improved the Bill.

Bill C-77 will replace the War Measures Act, a piece of legislation which we have been wanting to replace for some time.

All concerned, through their co-operation, made the process a success. For our part, we appreciate the co-operation shown by the Government, and in particular the willingness on the part of the Government to accept the amendments put forward during consideration of the Bill.

Mr. Speaker: Is the House agreed that I put the question on the motion for the third reading of Bill C-77?

Some Hon. Members: Agreed.

Mr. Speaker: The question is as follows: It is moved by Miss Carney, for Mr. Beatty, seconded by Mr. Clark, that Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be now read a third time and passed.

Is it the pleasure of the House to adopt the motion?

Some Hon. Members: Agreed.

Mr. Speaker: I declare the motion carried.

Bill read the third time and passed.

Source: Nikkei National Museum, 2018-16-4-1-1-196
www.nikkeimuseum.org

ANOTHER PRESS RELEASE

Source: Nikkei National Museum, 2018-16-4-1-1-197
www.nikkeimuseum.org

FACT SHEET
FEUILLET DE DOCUMENTATION

Emergency Preparedness Canada | Protection civile Canada

BILL C-77 INCORPORATES NATIONAL ASSOCIATION OF JAPANESE CANADIANS RECOMMENDATIONS

Bill C-77, the Emergencies Act, was passed unanimously by the House of Commons on April 27, 1988. In its current form it incorporates almost all of the changes proposed by the National Association of Japanese Canadians (NAJC) when it appeared before the legislative committee. Key NAJC proposals and the corresponding provisions of Bill C-77 appear below:

NAJC Recommendation	Corresponding Provisions of Bill C-77
Parliament, at all times, must be able to revoke or modify any declaration of an emergency; and,	S.59 in its amended form incorporates this proposal.
Parliament must at all times be able to amend or revoke any order or regulation made by the Cabinet.	S.61 provides for this.
All orders and regulations made under emergency powers must be directly related to alleviating the particular emergency.	All orders and regulations must be "necessary for dealing with the emergency."
Whether emergency orders and regulations are, in fact, directly related to the emergency must be reviewable at all times in a court of law, and the burden of proving the direct relationship shall rest with the government.	Government must have "reasonable grounds" for issuing all orders and regulations. This would be reviewable by courts, upon application by any individual or organization which had standing.
"National emergency" should be defined.	Defined in S.3
Any delegation of emergency powers by Parliament to the Cabinet must be predicated upon a threat to the continued existence of Canada itself.	National emergencies must "seriously threaten the ability of the government of Canada to preserve the sovereignty, security and territorial integrity of Canada". S.3(b)
Orders and regulations for war must be limited to measures strictly necessary and directly related to the emergency in question; and,	Orders and regulations for war would be limited to measures which on "reasonable grounds" are "necessary or advisable" for dealing with the emergency.
The burden of proving that the orders are strictly necessary and directly related to the emergency must rest with the Government.	This would be the case. The onus would be on government to divulge its "reasonable grounds" to court.
No order or regulation should take effect before it is approved by Parliament.	S.61 and 62 include provisions requiring approval, but to delay immediate action when necessary in an emergency could cost lives.

Source: Nikkei National Museum, 2018-16-4-1-1-198
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
The operation of all orders and regulations must be subject to the review of a Special Parliamentary Committee.	S.62 provides for just such review.
Debate upon a motion to amend or revoke an order or regulation shall be without closure.	Such debate must be "without interruption" and closure is not provided for.
In any review of the use of emergency powers, or in any trial of an accused charged under an emergency order, the onus of proving that the emergency exists and the order is reasonable must rest with the Cabinet.	Government must have "reasonable grounds" for invocation and would be required to demonstrate this before the courts.
Any emergency legislation must expressly deny the power to override rights guaranteed in the Charter of Rights and Freedoms.	The Charter itself prohibits this.

881110041 WED APR.20,1988 PAGE: A7
BYLINE: Perrin Beatty
CLASS: Letter to the Editor GLOBE + MAIL
DATELINE: Ottawa ONT WORDS: 410

** Protecting our rights from abuse **

I appreciate your drawing Canadians' attention to the federal Government's bill to replace the*War*Measures*Act*(Reduced Measures - editorial, April 2). Bill C-77 has important implications for every Canadian and it is vital that we ensure, even in times of emergency, that the basic rights of Canadians are protected.

Since the bill was introduced, the legislative committee has made a number of amendments designed to further strengthen the safeguards against abuse. For example, the power to restrict assembly is now confined to

...

assembly "that may reasonably be expected to lead to a breach of the peace." The Canadian Bar Association, as well as others, has urged that this provision be qualified along these lines.

Your editorial raised a question about the requirement under Canadian law for a warrant for searches and seizures. The Charter of Rights and Freedoms ensures that a warrant is always required, except in some specific and very exceptional circumstances where it is impossible to get a warrant in time and it would be unreasonable to thwart law enforcement through delay. The Emergencies Act does not supersede the provisions of the Charter and does not provide for warrantless search and seizure.

Your plea for amendments to some of the definitions used in the act has already been answered by the changes to the definitions of "national emergency" and "international emergency" approved by the committee. These are now defined as follows: "A national emergency is an urgent and critical situation of a temporary nature that seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.

"International emergency means an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and is so serious as to be a national emergency."

Since 1970, all political parties have been on record as favoring new legislation to replace the War Measures Act. The history of the War Measures Act has been characterized by serious abuses of the rights of Canadians. Now is the time to ensure that these abuses can never happen again.

Perrin Beatty
Minister of National Defence
Ottawa

Source: Nikkei National Museum, 2018-16-4-1-1-199
www.nikkeimuseum.org

BILL C-77

Source: Nikkei National Museum, 2018-16-4-1-1-200
www.nikkeimuseum.org

C-77

Second Session, Thirty-third Parliament,
35-36-37 Elizabeth II, 1986-87-88

THE HOUSE OF COMMONS OF CANADA

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

AS PASSED BY THE HOUSE OF COMMONS APRIL 27, 1988

C-77

Deuxième session, trente-troisième législature,
35-36-37 Elizabeth II, 1986-87-88

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-77

Loi visant à autoriser à titre temporaire des mesures extraordinaires de sécurité en situation de crise nationale et à modifier d'autres lois en conséquence

ADOPTÉ PAR LA CHAMBRE DES COMMUNES LE 27 AVRIL 1988

THE HOUSE OF COMMONS OF CANADA

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

Preamble

WHEREAS the safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity of the state are fundamental obligations of government;

AND WHEREAS the fulfilment of those obligations in Canada may be seriously threatened by a national emergency and, in order to ensure safety and security during such an emergency, the Governor in Council should be authorized, subject to the supervision of Parliament, to take special temporary measures that may not be appropriate in normal times;

AND WHEREAS the Governor in Council, in taking such special temporary measures, would be subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights* and must have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency;

NOW THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Source: Nikkei National Museum, 2018-16-4-1-1-201
www.nikkeimuseum.org

SHORT TITLE

Short title

1. This Act may be cited as the *Emergencies Act*.

APPLICATION AND CONSTRUCTION

Binding on Her Majesty

2. (1) This Act is binding on Her Majesty in right of Canada or a province.

Federal jurisdiction

(2) For greater certainty, nothing in this Act derogates from the authority of the Government of Canada to deal with emergencies on any property, territory or area in respect of which the Parliament of Canada has jurisdiction.

National emergency

3. For the purposes of this Act, a "national emergency" is an urgent and critical situation of a temporary nature that

(*a*) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(*b*) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

Construction

4. Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations

(*a*) altering the provisions of this Act; or

(*b*) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the *Immigration Act, 1976* on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

PART I

PUBLIC WELFARE EMERGENCY

Interpretation

Definitions

5. In this Part,

"declaration of a public welfare emergency" *«déclaration de sinistre»*

"declaration of a public welfare emergency" means a proclamation issued pursuant to subsection 6(1);

"public welfare emergency" *«sinistre»*

"public welfare emergency" means an emergency that is caused by a real or imminent

(*a*) fire, flood, drought, storm, earthquake or other natural phenomenon,

(*b*) disease in human beings, animals or plants, or

(*c*) accident or pollution

and that results or may result in a danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so serious as to be a national emergency.

Declaration of a Public Welfare Emergency

Declaration of a public welfare emergency

6. (1) When the Governor in Council believes, on reasonable grounds, that a public welfare emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 14, may, by proclamation, so declare.

Contents

(2) A declaration of a public welfare emergency shall specify

(*a*) concisely the state of affairs constituting the emergency;

(*b*) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and

(*c*) if the direct effects of the emergency do not extend to the whole of Canada, the area of Canada to which the direct effects of the emergency extend.

Effective date

7. (1) A declaration of a public welfare emergency is effective on the day on which it is issued, but a motion for confirmation of the declaration shall be laid before each House of Parliament and be considered in accordance with section 58.

Expiration of declaration

(2) A declaration of a public welfare emergency expires at the end of ninety days, unless the declaration is previously revoked or continued in accordance with this Act.

Orders and Regulations

Orders and regulations

8. (1) While a declaration of a public welfare emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the emergency:

(*a*) the regulation or prohibition of travel to, from or within any specified area where, necessary for the protection of the health or safety of individuals;

(*b*) the evacuation of persons and the removal of personal property from any specified area and the making of arrangements for the adequate care and protection thereof;

(*c*) the requisition, use or disposition of property;

(*d*) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered;

(*e*) the regulation of the distribution and availability of essential goods, services and resources;

(*f*) the authorization and making of emergency payments;

(*g*) the establishment of emergency shelters and hospitals;

(*h*) the assessment of damage to any works or undertakings and the repair, replacement or restoration thereof;

Source: Nikkei National Museum, 2018-16-4-1-1-202
www.nikkeimuseum.org

(*i*) the assessment of damage to the environment and the elimination or alleviation of the damage; and

(*j*) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any order or regulation made under this section.

Restriction

(2) Where a declaration of a public welfare emergency specifies that the direct effects of the emergency extend to only a specified area of Canada, the power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, may be exercised or performed only with respect to that area.

Idem

(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation,

(*a*) shall be exercised or performed

(i) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province, and

(ii) with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed; and

(*b*) shall not be exercised or performed for the purpose of terminating a strike or lockout or imposing a settlement in a labour dispute.

Control or direction of police force

9. (1) Nothing in a declaration of a public welfare emergency or in any order or regulation made pursuant thereto shall be construed or applied so as to derogate from, or to authorize the derogation from, the control or direction of the government of a province or a municipality over any police force over which it normally has control or direction.

R.C.M.P.

(2) Where the Royal Canadian Mounted Police is used or employed in a province or municipality pursuant to an arrangement under section 20 of the *Royal Canadian Mounted Police Act*, subsection (1) applies in respect of the Royal Canadian Mounted Police, subject to the terms and conditions of the arrangement.

Revocation, Continuation and Amendment of Declaration

Revocation by Parliament

10. Parliament may revoke a declaration of a public welfare emergency in accordance with section 58 or 59.

Revocation by Governor in Council

11. The Governor in Council may, by proclamation, revoke a declaration of a public welfare emergency either generally or with respect to any area of Canada effective on such day as is specified in the proclamation.

Continuation by Governor in Council

12. (1) At any time before a declaration of a public welfare emergency would otherwise expire, the Governor in Council, after such consultation as is required by section 14, may, by proclamation, continue the declaration either generally or with respect to any area of Canada for such period, not exceeding ninety days, as is specified in the proclamation if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist or that the direct effects of the emergency will continue to extend to that area, as the case may be.

Review of orders and regulations

(2) Before issuing a proclamation continuing a declaration of a public welfare emergency, the Governor in Council shall review all current orders and regulations made under section 8 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary for dealing with the emergency and shall revoke or amend them to the extent that they do not so continue.

Multiple continuations

(3) A declaration of a public welfare emergency may be continued more than once pursuant to subsection (1).

Effective date

(4) A proclamation continuing a declaration of a public welfare emergency is effective on the day on which it is issued, but a motion for confirmation of the proclamation shall be laid before each House of Parliament and be considered in accordance with section 60.

Amendment by Governor in Council

13. (1) Where the Governor in Council

(*a*) has issued a declaration of a public welfare emergency specifying that the direct effects of the emergency extend to only a specified area of Canada, and

(*b*) believes, on reasonable grounds, that the direct effects of the emergency have extended to any other area of Canada or to the rest of Canada,

the Governor in Council, after such consultation as is required by section 14, may, by proclamation, amend the declaration to specify that other area as an area of Canada to which the direct effects of the emergency extend or to remove the specification, as the case may be.

Effective date

(2) A proclamation amending a declaration of a public welfare emergency is effective on the day on which it is issued, but a motion for confirmation of the proclamation shall be laid before each House of Parliament and be considered in accordance with section 60.

Consultation

Consultation

14. (1) Subject to subsection (2), before the Governor in Council issues, continues or amends a declaration of a public welfare emergency, the lieutenant governor in council of each province in which the direct effects of the emergency occur shall be consulted with respect to the proposed action.

Indication

(2) The Governor in Council may not issue a declaration of a public welfare emergency where the direct effects of the emergency are confined to, or occur principally in, one province unless the lieutenant governor in council of the province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.

Source: Nikkei National Museum, 2018-16-4-1-1-203a
www.nikkeimuseum.org

Effect of Expiration or Revocation

Effect of expiration of declaration

15. (1) Where, pursuant to this Act, a declaration of a public welfare emergency expires either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations to the extent that they apply with respect to that area, as the case may be, expire on the day on which the declaration expires.

Effect of revocation of declaration

(2) Where, pursuant to this Act, a declaration of a public welfare emergency is revoked either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations to the extent that they apply with respect to that area, as the case may be, are revoked effective on the revocation of the declaration.

Effect of revocation of continuation

(3) Where, pursuant to this Act, a proclamation continuing a declaration of a public welfare emergency either generally or with respect to any area of Canada is revoked after the time the declaration would, but for the proclamation, have otherwise expired either generally or with respect to that area,

(*a*) the declaration and all orders and regulations made pursuant to the declaration, or

(*b*) the declaration and all orders and regulations made pursuant to the declaration to the extent that the declaration, orders and regulations apply with respect to that area,

as the case may be, are revoked effective on the revocation of the proclamation.

Effect of revocation of amendment

(4) Where, pursuant to this Act, a proclamation amending a declaration of a public welfare emergency is revoked, all orders and regulations made pursuant to the amendment and all orders and regulations to the extent that they apply pursuant to the amendment are revoked effective on the revocation of the proclamation.

PART II

PUBLIC ORDER EMERGENCY

Interpretation

Definitions

16. In this Part,

"declaration of a public order emergency" «déclaration d'état d'urgence»

"declaration of a public order emergency" means a proclamation issued pursuant to subsection 17(1);

"public order emergency" «état d'urgence»

"public order emergency" means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;

"threats to the security of Canada" «menaces envers la sécurité du Canada»

"threats to the security of Canada" has the meaning assigned by section 2 of the *Canadian Security Intelligence Service Act*.

Declaration of a Public Order Emergency

Declaration of a public order emergency

17. (1) When the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.

Contents

(2) A declaration of a public order emergency shall specify

(*a*) concisely the state of affairs constituting the emergency;

(*b*) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and

(*c*) if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.

Effective date

18. (1) A declaration of a public order emergency is effective on the day on which it is issued, but a motion for confirmation of the declaration shall be laid before each House of Parliament and be considered in accordance with section 58.

Expiration of declaration

(2) A declaration of a public order emergency expires at the end of thirty days unless the declaration is previously revoked or continued in accordance with this Act.

Orders and Regulations

Orders and regulations

19. (1) While a declaration of a public order emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the emergency:

(*a*) the regulation or prohibition of

(i) any public assembly that may reasonably be expected to lead to a breach of the peace,

(ii) travel to, from or within any specified area, or

(iii) the use of specified property;

(*b*) the designation and securing of protected places;

(*c*) the assumption of the control, and the restoration and maintenance, of public utilities and services;

(*d*) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and

(*e*) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any order or regulation made under this section.

Restriction

(2) Where a declaration of a public order emergency specifies that the effects of the emergency extend to only a specified area of Canada, the power under subsection (1) to

Source: Nikkei National Museum, 2018-16-4-1-1-204b
www.nikkeimuseum.org

make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, may be exercised or performed only with respect to that area.

Idem

(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed

(*a*) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province; and

(*b*) with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed.

Control or direction of police force

20. (1) Nothing in a declaration of a public order emergency or in any order or regulation made pursuant thereto shall be construed or applied so as to derogate from, or to authorize the derogation from, the control or direction of the government of a province or a municipality over any police force over which it normally has control or direction.

R.C.M.P.

(2) Where the Royal Canadian Mounted Police is used or employed in a province or municipality pursuant to an arrangement under section 20 of the *Royal Canadian Mounted Police Act*, subsection (1) applies in respect of the Royal Canadian Mounted Police, subject to the terms and conditions of the arrangement.

Revocation, Continuation and Amendment of Declaration

Revocation by Parliament

21. Parliament may revoke a declaration of a public order emergency in accordance with section 58 or 59.

Revocation by Governor in Council

22. The Governor in Council may, by proclamation, revoke a declaration of a public order emergency either generally or with respect to any area of Canada effective on such day as is specified in the proclamation.

Continuation by Governor in Council

23. (1) At any time before a declaration of a public order emergency would otherwise expire, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, continue the declaration either generally or with respect to any area of Canada for such period, not exceeding thirty days, as is specified in the proclamation if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist or that the effects of the emergency will continue to extend to that area, as the case may be.

Review of orders and regulations

(2) Before issuing a proclamation continuing a declaration of a public order emergency, the Governor in Council shall review all current orders and regulations made under section 19 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary for dealing with the emergency and shall revoke or amend them to the extent that they do not so continue.

Multiple continuations

(3) A declaration of a public order emergency may be continued more than once pursuant to subsection (1).

Effective date

(4) A proclamation continuing a declaration of a public order emergency is effective on the day on which it is issued, but a motion for confirmation of the proclamation shall be laid before each House of Parliament and be considered in accordance with section 60.

Amendment by Governor in Council

24. (1) Where the Governor in Council

(*a*) has issued a declaration of a public order emergency specifying that the effects of the emergency extend to only a specified area of Canada, and

(*b*) believes, on reasonable grounds, that the effects of the emergency have extended to any other area of Canada or to the rest of Canada,

the Governor in Council, after such consultation as is required by section 25, may, by proclamation, amend the declaration to specify that other area as an area of Canada to which the effects of the emergency extend or to remove the specification, as the case may be.

Effective date

(2) A proclamation amending a declaration of a public order emergency is effective on the day on which it is issued, but a motion for confirmation of the proclamation shall be laid before each House of Parliament and be considered in accordance with section 60.

Consultation

Consultation

25. (1) Subject to subsections (2) and (3), before the Governor in Council issues, continues or amends a declaration of a public order emergency, the lieutenant governor in council of each province in which the effects of the emergency occur shall be consulted with respect to the proposed action.

Idem

(2) Where the effects of a public order emergency extend to more than one province and the Governor in Council is of the opinion that the lieutenant governor in council of a province in which the effects of the emergency occur cannot be adequately consulted before a declaration of a public order emergency is issued or amended without unduly jeopardizing the effectiveness of the proposed action, the lieutenant governor in council of that province may be consulted with respect to the action after the declaration is issued or amended and before the motion for confirmation of the declaration or amendment is laid before either House of Parliament.

Indication

(3) The Governor in Council may not issue a declaration of a public order emergency where the effects of the emergency are confined to one province, unless the lieutenant governor in council of the province has indicated to the Governor in Council that the emergency exceeds the capacity or authority of the province to deal with it.

Effect of Expiration or Revocation

Effect of expiration of declaration

26. (1) Where, pursuant to this Act, a declaration of a public order emergency expires either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations to the extent that they apply with respect to that area, as the case may be, expire on the day on which the declaration expires.

Source: Nikkei National Museum, 2018-16-4-1-1-205
www.nikkeimuseum.org

Effect of revocation of declaration

(2) Where, pursuant to this Act, a declaration of a public order emergency is revoked either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations to the extent that they apply with respect to that area, as the case may be, are revoked effective on the revocation of the declaration.

Effect of revocation of continuation

(3) Where, pursuant to this Act, a proclamation continuing a declaration of a public order emergency either generally or with respect to any area of Canada is revoked after the time the declaration would, but for the proclamation, have otherwise expired either generally or with respect to that area,

(*a*) the declaration and all orders and regulations made pursuant to the declaration, or

(*b*) the declaration and all orders and regulations made pursuant to the declaration to the extent that the declaration, orders and regulations apply with respect to that area,

as the case may be, are revoked effective on the revocation of the proclamation.

Effect of revocation of amendment

(4) Where, pursuant to this Act, a proclamation amending a declaration of a public order emergency is revoked, all orders and regulations made pursuant to the amendment and all orders and regulations to the extent that they apply pursuant to the amendment are revoked effective on the revocation of the proclamation.

PART III

INTERNATIONAL EMERGENCY

Interpretation

Definitions

27. In this Part,

"declaration of an international emergency" «déclaration d'état de crise internationale»

"declaration of an international emergency" means a proclamation issued pursuant to subsection 28(1);

"international emergency" «état de crise internationale»

"international emergency" means an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that is so serious as to be a national emergency.

Declaration of an International Emergency

Declaration of an international emergency

28. (1) When the Governor in Council believes, on reasonable grounds, that an international emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 35, may, by proclamation, so declare.

Contents

(2) A declaration of an international emergency shall specify

(*a*) concisely the state of affairs constituting the emergency; and

(*b*) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency.

Effective date

29. (1) A declaration of an international emergency is effective on the day on which it is issued, but a motion for confirmation of the declaration shall be laid before each House of Parliament and be considered in accordance with section 58.

Expiration of declaration

(2) A declaration of an international emergency expires at the end of sixty days unless the declaration is previously revoked or continued in accordance with this Act.

Orders and Regulations

Orders and regulations

30. (1) While a declaration of an international emergency is in effect, the Governor in Council may make such orders or regulations with respect to the following matters as the Governor in Council believes, on reasonable grounds, are necessary for dealing with the emergency:

(*a*) the control or regulation of any specified industry or service, including the use of equipment, facilities and inventory;

(*b*) the appropriation, control, forfeiture, use and disposition of property or services;

(*c*) the authorization and conduct of inquiries in relation to defence contracts or defence supplies as defined in the *Defence Production Act* or to hoarding, overcharging, black marketing or fraudulent operations in respect of scarce commodities, including the conferral of powers under the *Inquiries Act* on any person authorized to conduct such an inquiry;

(*d*) the authorization of the entry and search of any dwelling-house, premises, conveyance or place, and the search of any person found therein, for any thing that may be evidence relevant to any matter that is the subject of an inquiry referred to in paragraph (*c*), and the seizure and detention of any such thing;

(*e*) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered;

(*f*) the designation and securing of protected places;

(*g*) the regulation or prohibition of travel outside Canada by Canadian citizens or permanent residents as defined in the *Immigration Act, 1976* and of admission into Canada by other persons;

(*h*) the removal from Canada of persons, other than Canadian citizens, permanent residents as defined in the *Immigration Act, 1976* and persons, not being persons described in paragraph 19(1)(*c*), (*e*), (*f*) or (*g*) of that Act, who are finally determined under that Act to be Convention refugees;

(*i*) the control or regulation of the international aspects of specified financial activities within Canada;

(*j*) the authorization of expenditures for dealing with an international emergency in excess of any limit set by an Act of Parliament and the setting of a limit on such expenditures;

(*k*) the authorization of any Minister of the Crown to discharge specified responsibilities respecting the international emergency or to take specified actions of a

Source: Nikkei National Museum, 2018-16-4-1-1-206
www.nikkeimuseum.org

political, diplomatic or economic nature for dealing with the emergency; and

(*l*) the imposition

(i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any order or regulation made under this section.

Restriction

(2) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation,

(*a*) shall be exercised or performed

(i) in a manner that will not unduly impair the ability of any province to take measures, under an Act of the legislature of the province, for dealing with an emergency in the province, and

(ii) with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed; and

(*b*) shall not be exercised or performed for the purpose of censoring, suppressing or controlling the publication or communication of any information regardless of its form or characteristics.

Control or direction of police force

31. (1) Nothing in a declaration of an international emergency or in any order or regulation made pursuant thereto shall be construed or applied so as to derogate from, or to authorize the derogation from, the control or direction of the government of a province or a municipality over any police force over which it normally has control or direction.

R.C.M.P.

(2) Where the Royal Canadian Mounted Police is used or employed in a province or municipality pursuant to an arrangement under section 20 of the *Royal Canadian Mounted Police Act*, subsection (1) applies in respect of the Royal Canadian Mounted Police, subject to the terms and conditions of the arrangement.

Revocation and Continuation of Declaration

Revocation by Parliament

32. Parliament may revoke a declaration of an international emergency in accordance with section 58 or 59.

Revocation by Governor in Council

33. The Governor in Council may, by proclamation, revoke a declaration of an international emergency effective on such day as is specified in the proclamation.

Continuation by Governor in Council

34. (1) At any time before a declaration of an international emergency would otherwise expire, the Governor in Council, after such consultation as is required by section 35, may, by proclamation, continue the declaration for such period, not exceeding sixty days, as is specified in the proclamation if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist.

Review of orders and regulations

(2) Before issuing a proclamation continuing a declaration of an international emergency, the Governor in Council shall review all current orders and regulations made under section 30 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary for dealing with the emergency and shall revoke or amend them to the extent that they do not so continue.

Multiple continuations

(3) A declaration of an international emergency may be continued more than once pursuant to subsection (1).

Effective date

(4) A proclamation continuing a declaration of an international emergency is effective on the day on which it is issued, but a motion for confirmation of the proclamation shall be laid before each House of Parliament and be considered in accordance with section 60.

Consultation

Consultation

35. Before the Governor in Council issues or continues a declaration of an international emergency, the lieutenant governor in council of each province shall be consulted with respect to the proposed action to the extent that, in the opinion of the Governor in Council, it is appropriate and practicable to do so in the circumstances.

Effect of Expiration or Revocation

Effect of expiration of declaration

36. (1) Where, pursuant to this Act, a declaration of an international emergency expires, all orders and regulations made pursuant to the declaration expire on the day on which the declaration expires.

Effect of revocation of declaration

(2) Where, pursuant to this Act, a declaration of an international emergency is revoked, all orders and regulations made pursuant to the declaration are revoked effective on the revocation of the declaration.

Effect of revocation of continuation

(3) Where, pursuant to this Act, a proclamation continuing a declaration of an international emergency is revoked after the time the declaration would, but for the proclamation, have otherwise expired, the declaration and all orders and regulations made pursuant to the declaration are revoked effective on the revocation of the proclamation.

PART IV

WAR EMERGENCY

Interpretation

Definitions

37. In this Part,

"declaration of a war emergency" *«déclaration d'état de guerre»*

"declaration of a war emergency" means a proclamation issued pursuant to subsection 38(1);

"war emergency" *«état de guerre»*

"war emergency" means war or other armed conflict, real or imminent, involving Canada or any of its allies that is so serious as to be a national emergency.

Declaration of a War Emergency

Declaration of a war emergency

38. (1) When the Governor in Council believes, on reasonable grounds, that a war

Source: Nikkei National Museum, 2018-16-4-1-1-207
www.nikkeimuseum.org

emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 44, may, by proclamation, so declare.

Contents

(2) A declaration of a war emergency shall specify the state of affairs constituting the emergency to the extent that, in the opinion of the Governor in Council, it is possible to do so without jeopardizing any special temporary measures proposed to be taken for dealing with the emergency.

Effective date

39. (1) A declaration of a war emergency is effective on the day on which it is issued, but a motion for confirmation of the declaration shall be laid before each House of Parliament and be considered in accordance with section 58.

Expiration of declaration

(2) A declaration of a war emergency expires at the end of one hundred and twenty days unless the declaration is previously revoked or continued in accordance with this Act.

Orders and Regulations

Orders and regulations

40. (1) While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

Punishment

(2) The Governor in Council may make regulations providing for the imposition

(*a*) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or

(*b*) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment

for contravention of any order or regulation made under subsection (1).

Restriction

(3) The power under subsection (1) to make orders and regulations, and any powers, duties or functions conferred or imposed by or pursuant to any such order or regulation, shall be exercised or performed with the view to achieving, to the extent possible, concerted action with each province with respect to which the power, duty or function is exercised or performed.

Revocation and Continuation of Declaration

Revocation by Parliament

41. Parliament may revoke a declaration of a war emergency in accordance with section 58 or 59.

Revocation by Governor in Council

42. The Governor in Council may, by proclamation, revoke a declaration of a war emergency effective on such day as is specified in the proclamation.

Continuation by Governor in Council

43. (1) At any time before a declaration of a war emergency would otherwise expire, the Governor in Council, after such consultation as is required by section 44, may, by proclamation, continue the declaration for such period, not exceeding one hundred and twenty days, as is specified in the proclamation if the Governor in Council believes, on reasonable grounds, that the emergency will continue to exist.

Review of orders and regulations

(2) Before issuing a proclamation continuing a declaration of a war emergency, the Governor in Council shall review all current orders and regulations made under section 40 to determine if the Governor in Council believes, on reasonable grounds, that they continue to be necessary or advisable for dealing with the emergency and shall revoke or amend them to the extent that they do not so continue.

Multiple continuations

(3) A declaration of a war emergency may be continued more than once pursuant to subsection (1).

Effective date

(4) A proclamation continuing a declaration of a war emergency is effective on the day on which it is issued, but a motion for confirmation of the proclamation shall be laid before each House of Parliament and be considered in accordance with section 60.

Consultation

Consultation

44. Before the Governor in Council issues or continues a declaration of a war emergency, the lieutenant governor in council of each province shall be consulted with respect to the proposed action to the extent that, in the opinion of the Governor in Council, it is appropriate and practicable to do so in the circumstances.

Effect of Expiration or Revocation

Effect of expiration of declaration

45. (1) Where, pursuant to this Act, a declaration of a war emergency expires, all orders and regulations made pursuant to the declaration expire on the day on which the declaration expires.

Effect of revocation of declaration

(2) Where, pursuant to this Act, a declaration of a war emergency is revoked, all orders and regulations made pursuant to the declaration are revoked effective on the revocation of the declaration.

Effect of revocation of continuation

(3) Where, pursuant to this Act, a proclamation continuing a declaration of a war emergency is revoked after the time the declaration would, but for the proclamation, have otherwise expired, the declaration and all orders and regulations made pursuant to the declaration are revoked effective on the revocation of the proclamation.

PART V

COMPENSATION

Interpretation

Definitions

46. In this Part,

"compensation" «*indemnisation*»

"compensation" means compensation under subsection 48(1);

"Crown" «*Couronne*»

"Crown" means Her Majesty in right of Canada;

"Minister" «*ministre*»

"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Part.

Liability

Protection from personal liability

47. (1) No action or other proceeding for damages lies or shall be instituted against a Minister, servant or agent of the Crown,

Source: Nikkei National Museum, 2018-16-4-1-1-208
www.nikkeimuseum.org

including any person providing services pursuant to an order or regulation made under subsection 8(1), 19(1), 30(1) or 40(1), for or in respect of any thing done or omitted to be done, or purported to be done or omitted to be done, in good faith under any of Parts I to IV or any proclamation, order or regulation issued or made thereunder.

Crown not relieved of liability

(2) Subsection (1) does not relieve the Crown of liability for the acts or omissions described therein and the Crown is liable under the *Crown Liability Act* or any other law as if that subsection had not been enacted.

Compensation

Compensation

48. (1) Subject to subsection (2) and the regulations made under section 49, the Minister shall award reasonable compensation to any person who suffers loss, injury or damage as a result of any thing done, or purported to be done, under any of Parts I to IV or any proclamation, order or regulation issued or made thereunder.

Release

(2) No compensation shall be paid to a person unless that person, in consideration of the compensation, signs, in a form provided by the Minister, a release of any right of action that the person may have against the Crown as a result of any thing done, or purported to be done, under any of Parts I to IV or any proclamation, order or regulation issued or made thereunder.

Subrogation

(3) The Crown is subrogated to all rights of any person to whom compensation is paid to recover damages in respect of the loss, injury or damage for which the compensation is paid and may maintain an action in the name of that person or in the name of the Crown against any person against whom the action lies.

Application of recovered sums

(4) Any sum recovered by the Crown pursuant to an action under subsection (3) shall be applied

(*a*) first, to payment of the costs actually incurred in the action and in levying execution, and

(*b*) second, to reimbursement of the Crown for the compensation paid to the person whose rights were subrogated,

and the balance, if any, shall be paid to that person.

Settlement

(5) No settlement or release bars the rights of the Crown under subsection (3) unless the Minister has concurred therein.

Regulations

49. The Governor in Council may make regulations

(*a*) prescribing the form and manner of making applications for compensation, the information and evidence to be submitted in connection therewith and the procedure to be followed in the consideration of applications for compensation;

(*b*) prescribing the period within which applications for compensation must be made;

(*c*) prescribing the criteria to be used in determining the eligibility of any person for compensation;

(*d*) prescribing the methods and criteria to be used in assessing any loss, injury or damage for which compensation shall be paid;

(*e*) prescribing the maximum amount of compensation that may be paid to any person either generally or with respect to any particular loss, injury or damage;

(*f*) prescribing the terms and conditions for the payment of compensation;

(*g*) providing for the payment of compensation in a lump sum or in periodic payments;

(*h*) providing for *pro rata* payments of compensation;

(*i*) establishing priorities among persons applying for compensation on the basis of classes of persons or classes of loss, injury or damage or otherwise;

(*j*) respecting the giving of notices to persons affected by applications for compensation; and

(*k*) generally, for carrying into effect the purposes and provisions of this Part.

Appeals

Assessor and Deputy Assessors

50. (1) The Governor in Council shall, from among the judges of the Federal Court of Canada, appoint an Assessor and such number of Deputy Assessors as the Governor in Council considers necessary to hear and determine appeals under this Part and, subject to this Part, may prescribe their jurisdiction.

Acting assessor

(2) The Governor in Council shall, from among the judges of the Federal Court of Canada, appoint an acting assessor to act in the place of the Assessor in the event of the Assessor's absence or incapacity.

Deputy Assessor

(3) The Assessor may designate a Deputy Assessor to hear and determine any appeal under this Part and, where the Assessor does so, the references in sections 52 and 53 to the "Assessor" shall be construed as including references to the "Deputy Assessor".

Appeal

51. (1) Any person who has applied for compensation and is not satisfied with the decision of the Minister thereon may appeal the decision to the Assessor.

Limitation period

(2) No appeal may be made under this section more than three months after the day on which the person applying for compensation receives notice of the Minister's decision thereon or such longer period as the Assessor may, either before or after the expiration of that period of three months, allow for special reasons.

Powers of Assessor

52. (1) On the hearing of an appeal under this Part, the Assessor may

(*a*) confirm the decision of the Minister;

(*b*) notwithstanding the maximum amount, if any, of compensation that may be paid to the person appealing, vary the decision of the Minister; or

(*c*) refer the matter back to the Minister for such further action as the Assessor may direct, including the calculation of compensation without regard to the maximum amount, if any, that may otherwise be paid.

Source: Nikkei National Museum, 2018-16-4-1-1-209
www.nikkeimuseum.org

Costs

(2) In any appeal under this Part, costs may be awarded to or against the Crown.

Decision final

(3) The decision of the Assessor on any appeal under this Part is final and conclusive and is not subject to appeal to or review by any court, except in accordance with section 28 of the *Federal Court Act*.

Payment

(4) Where the Assessor varies a decision of the Minister by awarding compensation or increasing the amount of compensation awarded by the Minister or the Minister, on a matter referred back for further action, increases the amount of compensation previously awarded, the Minister shall pay that compensation or increased compensation, as the case may be.

Sittings and hearings

53. (1) The Assessor may sit and hear appeals at any place or places, and shall arrange for such sittings and hearings as may be required.

Expenses

(2) The Assessor is entitled to be paid such travelling allowances as are paid for attendances as a judge of the Federal Court of Canada under the *Judges Act*.

Procedure

54. The Assessor may, with the approval of the Governor in Council, make such rules respecting the conduct of appeals and the procedure for the bringing of appeals as the Assessor deems necessary to enable the Assessor to discharge the Assessor's duties under this Act.

Registrar

55. The Governor in Council may appoint a registrar of appeals and such other persons as the Governor in Council considers necessary to carry out the purposes of this Part.

Payment

Payment out of C.R.F.

56. Compensation and costs awarded against the Crown under this Part shall be paid out of the Consolidated Revenue Fund.

PART VI

PARLIAMENTARY SUPERVISION

Interpretation

Definitions

57. In this Part,

"declaration of emergency" «déclaration de situation de crise»

"declaration of emergency" means a proclamation issued pursuant to subsection 6(1), 17(1), 28(1) or 38(1);

"Parliamentary Review Committee" «comité d'examen parlementaire»

"Parliamentary Review Committee" means the committee referred to in subsection 62(1);

"sitting day" «jour de séance»

"sitting day", in respect of a House of Parliament, means a day on which that House is sitting.

Consideration of Declaration of Emergency

Tabling in Parliament when sitting

58. (1) Subject to subsection (4), a motion for confirmation of a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for issuing the declaration and a report on any consultation with the lieutenant governors in council of the provinces with respect to the declaration, shall be laid before each House of Parliament within seven sitting days after the declaration is issued.

Summoning Parliament or House

(2) If a declaration of emergency is issued during a prorogation of Parliament or when either House of Parliament stands adjourned, Parliament or that House, as the case may be, shall be summoned forthwith to sit within seven days after the declaration is issued.

Summoning Parliament

(3) If a declaration of emergency is issued at a time when the House of Commons is dissolved, Parliament shall be summoned to sit at the earliest opportunity after the declaration is issued.

Tabling in Parliament after summoned

(4) Where Parliament or a House of Parliament is summoned to sit in accordance with subsection (2) or (3), the motion, explanation and report described in subsection (1) shall be laid before each House of Parliament or that House of Parliament, as the case may be, on the first sitting day after Parliament or that House is summoned.

Consideration

(5) Where a motion is laid before a House of Parliament as provided in subsection (1) or (4), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion.

Vote

(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation of declaration

(7) If a motion for confirmation of a declaration of emergency is negatived by either House of Parliament, the declaration, to the extent that it has not previously expired or been revoked, is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

Revocation of Declaration of Emergency

Motion for revocation

59. (1) Where a motion for the consideration of the Senate or the House of Commons to the effect that

(*a*) a declaration of emergency under Part I or II be revoked either generally or with respect to any area of Canada, or

(*b*) a declaration of emergency under Part III or IV be revoked,

signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker, that House of Parliament shall take up and consider the motion within three sitting days after it is filed.

Vote

(2) A motion taken up and considered in accordance with subsection (1) shall be debated without interruption for not more than ten hours and, on the expiration of the tenth hour or at such earlier time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Source: Nikkei National Museum, 2018-16-4-1-1-210
www.nikkeimuseum.org

Revocation of declaration

(3) If a motion debated in accordance with subsection (2) is adopted by the House, the declaration, to the extent that it has not previously expired or been revoked, is revoked in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day of the vote adopting the motion.

Consideration of Continuation or Amendment of Declaration of Emergency

Motion for confirmation of proclamation continuing a declaration

60. (1) A motion for confirmation of a proclamation continuing a declaration of emergency and of any orders and regulations named in the motion pursuant to subsection (3), signed by a Minister of the Crown, together with an explanation of the reasons for issuing the proclamation, a report on any consultation with the lieutenant governors in council of the provinces with respect to the proclamation and a report on the review of orders and regulations conducted before the issuing of the proclamation, shall be laid before each House of Parliament within seven sitting days after the proclamation is issued.

Motion for confirmation of proclamation amending a declaration

(2) A motion for confirmation of a proclamation amending a declaration of emergency, signed by a Minister of the Crown, together with an explanation of the reasons for issuing the proclamation and a report on any consultations with the lieutenant governors in council of the provinces with respect to the proclamation, shall be laid before each House of Parliament within seven sitting days after the proclamation is issued.

Orders and regulations named

(3) A motion for confirmation of a proclamation continuing a declaration of emergency shall name the orders and regulations in force on the issuing of the proclamation that the Governor in Council believed, on reasonable grounds, continued at that time to be necessary or, in the case of a proclamation issued pursuant to subsection 43(1), advisable, for dealing with the emergency.

Consideration

(4) Where a motion is laid before a House of Parliament as provided in subsection (1) or (2), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion.

Vote

(5) A motion taken up and considered in accordance with subsection (4) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation of proclamation

(6) If a motion for confirmation of a proclamation is negatived by either House of Parliament, the proclamation, to the extent that it has not previously expired or been revoked, is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

Revocation of orders or regulations

(7) If a motion for confirmation of a proclamation continuing a declaration of emergency is amended by either House of Parliament by the deletion therefrom of an order or regulation named in the motion pursuant to subsection (3), the order or regulation is revoked effective on the day on which the motion, as amended, is adopted.

Orders and Regulations

Tabling in Parliament

61. (1) Subject to subsection (2), every order or regulation made by the Governor in Council pursuant to this Act shall be laid before each House of Parliament within two sitting days after it is made.

Reference to Committee

(2) Where an order or regulation made pursuant to this Act is exempted from publication in the *Canada Gazette* by regulations made under the *Statutory Instruments Act*, the order or regulation, in lieu of being laid before each House of Parliament as required by subsection (1), shall be referred to the Parliamentary Review Committee within two days after it is made, or if the Committee is not then designated or established, within the first two days after it is designated or established.

Motion for revocation or amendment

(3) Where a motion for the consideration of the Senate or the House of Commons to the effect that an order or regulation laid before it pursuant to subsection (1) be revoked or amended, signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker, that House of Parliament shall take up and consider the motion within three sitting days after it is filed.

Vote

(4) A motion taken up and considered in accordance with subsection (3) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Motion for concurrence

(5) If a motion debated in accordance with subsection (4) is adopted by the House, a message shall forthwith be sent from that House informing the other House that the motion has been so adopted and requesting that the motion be concurred in by that other House.

Consideration

(6) Where a request for concurrence in a motion is made pursuant to subsection (5), the House to which the request is made shall take up and consider the motion within three sitting days after the request is made.

Vote

(7) A motion taken up and considered in accordance with subsection (6) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation or amendment of order or regulation

(8) If a motion taken up and considered in accordance with subsection (6) is concurred in, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day of the vote of concurrence.

Parliamentary Review Committee

Review by Parliamentary Review Committee

62. (1) The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of

Source: Nikkei National Museum, 2018-16-4-1-1-211
www.nikkeimuseum.org

Parliament designated or established for that purpose.

Membership

(2) The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons.

Oath of secrecy

(3) Every member of the Parliamentary Review Committee and every person employed in the work of the Committee shall take the oath of secrecy set out in the schedule.

Meetings in private

(4) Every meeting of the Parliamentary Review Committee held to consider an order or regulation referred to it pursuant to subsection 61(2) shall be held in private.

Revocation or amendment of order or regulation

(5) If, within thirty days after an order or regulation is referred to the Parliamentary Review Committee pursuant to subsection 61(2), the Committee adopts a motion to the effect that the order or regulation be revoked or amended, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day on which the motion is adopted.

Report to Parliament

(6) The Parliamentary Review Committee shall report or cause to be reported the results of its review under subsection (1) to both Houses of Parliament at least once every sixty days while the declaration of emergency is in effect and, in any case,

(*a*) within three sitting days after a motion for revocation of the declaration is filed under subsection 59(1);

(*b*) within seven sitting days after a proclamation continuing the declaration is issued; and

(*c*) within seven sitting days after the expiration of the declaration or the revocation of the declaration by the Governor in Council.

Inquiry

Inquiry

63. (1) The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency.

Report to Parliament

(2) A report of an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency.

PART VII

CONSEQUENTIAL AND RELATED PROVISIONS

1978-79, c. 17

Energy Supplies Emergency Act, 1979

64. Subsection 2(1) of the *Energy Supplies Emergency Act, 1979* is amended by adding thereto, in alphabetical order within the subsection, the following definition:

"sitting day"
«jour de séance»

" "sitting day", in respect of a House of Parliament, means a day on which that House is sitting;"

65. Subsection 9(7) of the said Act is repealed.

66. The said Act is further amended by adding thereto, immediately after section 9 thereof, the following section:

Protection from personal liability

"**9.1** (1) No action or other proceeding for damages lies or shall be instituted against the Board, its members or a Minister, servant or agent of Her Majesty in right of Canada for or in respect of anything done or omitted to be done, or purported to be done or omitted to be done, in good faith under this Act or any order or regulation made thereunder.

Crown not relieved of liability

(2) Subsection (1) does not relieve Her Majesty in right of Canada of liability for the acts or omissions described therein and Her Majesty in right of Canada is liable under the *Crown Liability Act* or any other law as if that subsection had not been enacted."

67. Subsections 11(2) to (11) of the said Act are repealed and the following substituted therefor:

Effective date

"(2) An order made under subsection (1) is effective on the day on which it is made, but a motion for confirmation of the order shall be laid before each House of Parliament and be considered in accordance with section 36.

Revocation

(3) Where an order made under subsection (1) is revoked, any mandatory allocation program instituted as a result of that order immediately terminates, but without prejudice to the previous operation of that program or anything duly done or suffered thereunder or any offence committed or any punishment incurred."

68. Subsection 12(6) of the said Act is repealed.

69. Subsection 13(1) of the said Act is repealed and the following substituted therefor:

Allocation of alternative fuels

"**13.** (1) Where it is considered necessary to do so for the purpose of conserving the available supplies of such petroleum products as have been included in a mandatory allocation program, the Governor in Council may, by order, amend the mandatory allocation program by adding any alternative fuel thereto and establishing mandatory allocation thereof."

70. Subsection 19(2) of the said Act is repealed.

71. The heading preceding section 22 and section 22 of the said Act are repealed and the following substituted therefor:

"*Compensation*

Compensation

22. (1) Subject to subsection (2) and the regulations made under section 22.1, the Minister of Energy, Mines and Resources shall award reasonable compen-

Source: Nikkei National Museum, 2018-16-4-1-1-212
www.nikkeimuseum.org

sation to any person who suffers deprivation of property as a result of anything done, or purported to be done, under this Act or any order or regulation made thereunder.

Release

(2) No compensation shall be paid to a person under this section unless that person, in consideration of the compensation, signs, in a form provided by the Minister of Energy, Mines and Resources, a release of any right of action that the person may have against Her Majesty in right of Canada in respect of any deprivation of property as a result of any thing done, or purported to be done, under this Act or any order or regulation made thereunder.

Regulations

22.1 The Governor in Council may make regulations

(*a*) prescribing the form and manner of making applications for compensation under section 22, the information and evidence to be submitted in connection therewith and the procedure to be followed in the consideration of applications for compensation;

(*b*) prescribing the period within which applications for compensation must be made;

(*c*) prescribing the criteria to be used in determining the eligibility of any person for compensation;

(*d*) prescribing the methods and criteria to be used in assessing any deprivation of property for which compensation shall be paid;

(*e*) prescribing the maximum amount of compensation that may be paid to any person either generally or with respect to any particular deprivation of property;

(*f*) prescribing the terms and conditions for the payment of compensation;

(*g*) providing for the payment of compensation in a lump sum or in periodic payments;

(*h*) providing for *pro rata* payments of compensation;

(*i*) establishing priorities among persons applying for compensation on the basis of classes of persons or classes of deprivation of property or otherwise;

(*j*) respecting the giving of notices to persons affected by applications for compensation; and

(*k*) generally, for carrying into effect the purposes and provisions of section 22.

Appeals

Assessor and Deputy Assessors

22.2 (1) The Governor in Council shall, from among the judges of the Federal Court of Canada, appoint an Assessor and such number of Deputy Assessors as the Governor in Council considers necessary to hear and determine appeals from decisions of the Minister under section 22 and, subject to this Part, may prescribe their jurisdiction.

Acting assessor

(2) The Governor in Council shall, from among the judges of the Federal Court of Canada, appoint an acting assessor to act in the place of the Assessor in the event of the Assessor's absence or incapacity.

Deputy Assessor

(3) The Assessor may designate a Deputy Assessor to hear and determine any appeal under section 22.3 and, where the Assessor does so, the references in sections 22.4 and 22.5 to the "Assessor" shall be construed as including references to the "Deputy Assessor".

Appeal

22.3 (1) Any person who has applied for compensation under section 22 and is not satisfied with the decision of the Minister thereon may appeal the decision to the Assessor.

Limitation period

(2) No appeal may be made under this section more than three months after the day on which the person applying for compensation receives notice of the Minister's decision thereon or such longer period as the Assessor may, either before or after the expiry of that period of three months, allow for special reasons.

Powers of Assessor

22.4 (1) On the hearing of an appeal under section 22.3, the Assessor may

(*a*) confirm the decision of the Minister;

(*b*) notwithstanding the maximum amount, if any, of compensation that may be paid to the person appealing, vary the decision of the Minister; or

(*c*) refer the matter back to the Minister for such further action as the Assessor may direct, including the calculation of compensation without regard to the maximum amount, if any, that may otherwise be paid.

Costs

(2) In any appeal under section 22.3, costs may be awarded to or against Her Majesty in right of Canada.

Decision final

(3) The decision of the Assessor on any appeal under section 22.3 is final and conclusive and is not subject to appeal to or review by any court, except in accordance with section 28 of the *Federal Court Act*.

Payment

(4) Where the Assessor varies a decision of the Minister by awarding compensation or increasing the amount of compensation awarded by the Minister or the Minister, on a matter referred back for further action, increases the amount of compensation previously awarded, the Minister shall pay that compensation or increased compensation, as the case may be.

Sittings and hearings

22.5 (1) The Assessor may sit and hear appeals at any place or places, and shall arrange for such sittings and hearings as may be required.

Expenses

(2) The Assessor is entitled to be paid such travelling allowances as are paid for attendances as a judge of the Federal Court of Canada under the *Judges Act*.

Procedure

22.6 The Assessor may, with the approval of the Governor in Council, make such rules respecting the conduct of appeals and the procedure for the bringing of appeals as the Assessor deems necessary to enable the Assessor to discharge the Assessor's duties under this Part.

Source: Nikkei National Museum, 2018-16-4-1-1-213
www.nikkeimuseum.org

Registrar

22.7 The Governor in Council may appoint a registrar of appeals and such other persons as the Governor in Council considers necessary to deal with appeals under section 22.3.

Payment out of C.R.F.

22.8 Compensation and costs awarded against Her Majesty in right of Canada under this Part shall be paid out of the Consolidated Revenue Fund."

72. Subsections 34(4) and (5) of the said Act are repealed.

73. The said Act is further amended by adding thereto the following sections:

Consultation

"**35.** Before the Governor in Council makes an order under section 11, 12, 13, 19 or 34, the lieutenant governor in council of each province shall be consulted with respect to the proposed order to the extent that, in the opinion of the Governor in Council, it is practicable to do so in the circumstances.

Tabling in Parliament when sitting

36. (1) Subject to subsection (4), a motion for confirmation of an order made under section 11, signed by a Minister of the Crown, together with an explanation of the reasons for making the order and a report on any consultation with the lieutenant governors in council of the provinces with respect to the order, shall be laid before each House of Parliament within seven sitting days after the order is made.

Summoning Parliament or House

(2) If an order is made under section 11 during a prorogation of Parliament or when either House of Parliament stands adjourned, Parliament or that House, as the case may be, shall be summoned forthwith to sit within seven days after the order is made.

Summoning Parliament

(3) If an order is made under section 11 at a time when the House of Commons is dissolved, Parliament shall be summoned to sit at the earliest opportunity after the order is made.

Tabling in Parliament after summoned

(4) Where Parliament or a House of Parliament is summoned to sit in accordance with subsection (2) or (3), the motion, explanation and report described in subsection (1) shall be laid before each House of Parliament or that House of Parliament, as the case may be, on the first sitting day after Parliament or that House is summoned.

Consideration

(5) Where a motion is laid before a House of Parliament as provided in subsection (1) or (4), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion.

Vote

(6) A motion taken up and considered in accordance with subsection (5) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation of order

(7) If a motion for confirmation of an order is negatived by either House of Parliament, the order is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

Motion for revocation

37. (1) Where a motion for the consideration of the Senate or the House of Commons to the effect that an order made under section 11 be revoked, signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker, that House of Parliament shall take up and consider the motion within three sitting days after it is filed.

Vote

(2) A motion taken up and considered in accordance with subsection (1) shall be debated without interruption for not more than ten hours and, on the expiration of the tenth hour or at such earlier time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation of order

(3) If a motion debated in accordance with subsection (2) is adopted by the House, the order is revoked effective on the day specified in the motion, which day may not be earlier than the day of the vote adopting the motion.

Tabling in Parliament

38. (1) A motion for confirmation of an order made under section 12, 13, 19 or 34, signed by a Minister of the Crown, together with an explanation of the reasons for making the order and a report on any consultation with the lieutenant governors in council of the provinces with respect to the order, shall be laid before each House of Parliament within seven sitting days after the order is made.

Consideration

(2) Where a motion is laid before a House of Parliament as provided in subsection (1), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion.

Vote

(3) A motion taken up and considered in accordance with subsection (2) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion.

Revocation of order

(4) If a motion for confirmation of an order is negatived by either House of Parliament, the order is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion."

R.S., c. N-4

National Defence Act

74. The heading preceding section 218 and sections 218 to 220 of the *National Defence Act* are repealed and the following substituted therefor:

Compensation

"**220.** Any person who suffers loss, damage or injury by reason of the exercise of any of the powers conferred by section 217 shall be compensated from the Consolidated Revenue Fund."

75. The fourth paragraph of the form set out in section 237 of the said Act is repealed.

Source: Nikkei National Museum, 2018-16-4-1-1-214
www.nikkeimuseum.org

76. Subsection 238(2) of the said Act is repealed.

77. Sections 241 and 242 of the said Act are repealed and the following substituted therefor:

Advances

"**242.** Such moneys as are required to meet the expenses and costs occasioned by the calling out of the Canadian Forces as provided for in this Part and for the services rendered by them shall be advanced out of the Consolidated Revenue Fund by the authority of the Governor in Council."

78. Section 260 of the said Act is repealed.

R.S., c. R-1

Radio Act

79. Subsection 6(1) of the *Radio Act* is amended by adding the word "and" at the end of paragraph (*b*) thereof, by striking out the word "and" at the end of paragraph (*c*) thereof and by repealing paragraph (*d*) thereof.

Repeal of R.S., c. W-2

War Measures Act

80. The *War Measures Act* is repealed.

SCHEDULE
(*Subsection 62(3)*)

OATH OF SECRECY

I, ..., swear that I will not, without due authority, disclose or make known to any person any document or information acquired by me by reason of the duties performed by me on behalf of or under the direction of a Parliamentary Review Committee established pursuant to the *Emergencies Act*. So help me God.

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Source: Nikkei National Museum, 2018-16-4-1-1-215
www.nikkeimuseum.org

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SCHEDULE

SUMMARY OF AMENDMENTS TO C-77,
APPROVED BY THE HOUSE OF COMMONS
APRIL 25, 1988

	Purpose	Paragraph Affected
1.	Revise the definition of "national emergency" and relocate it from the Preamble to the main body of the Act.	3
2.	Specify that the GinC cannot alter the Act by order or regulation.	4(a)
3.	Specify that the GinC cannot order detention, imprisonment or internment of Canadian citizens or landed immigrants on the basis of race, national or ethnic origin, colour, etc.	4(b)
4.	Change the definition of "public welfare emergency" so that "a breakdown in the flow of essential goods, services or resources" is not a primary cause justifying the declaration of an emergency.	5
5.	Change "...in the opinion of the Governor in Council..." to "...on reasonable grounds, the Governor in Council believes that...", so that executive judgments can be challenged in the courts.	6(1), 8(1), 12(1), 12(2), 13(1), 17(1), 19(1), 23(1), 23(2), 24(1), 28(1), 30(1), 34(1), 34(2), 38(1), 40(1), 43(1), 43(2), 60(3)
6.	Require that "reasonable" compensation be paid for commandeered services.	8(1)(d), 19(1)(d), 30(1)(e),
7.	Clarify that travel restriction in a public welfare emergency be limited to the "protection of the health and safety of individuals".	8(1)(a)

Source: Nikkei National Museum, 2018-16-4-1-1-216
www.nikkeimuseum.org

8. Revise the penalties sections to specify separate maximums for summary conviction and for indictment.	8(1)(j), 19(1)(e), 30(1)(ℓ), 40(2)
9. Clarify the provision that a province's ability to deal with a concurrent provincial emergency will not be unduly impaired.	8(3)(a)(i), 19(3)(a), 30(2)(a)(i)
10. Require that, to the extent possible, federal powers should be exercised in concert with the provinces.	8(3)(a)(ii), 19(3)(a), 30(2)(a)(i), 40(3)
11. Clarify that Part I cannot be used to terminate a labour dispute.	8(3)(b)
12. Permit the Governor in Council to revoke a declaration arbitrarily.	11, 22, 33, 42
13. Reduce the sunset periods for Parts II to IV to 30, 60 and 120 days respectively.	18(2), 23(1), 29(2), 34(1), 39(2), 43(1)
14. Narrow the scope of the power to regulate public assembly in Part II to assemblies "that may reasonably be expected to lead to a breach of the peace."	19(1)(a)(i)
15. Change the definitions of "international emergency" and "war emergency" to narrow application and add "...and is so serious as to be a national emergency".	27, 37
16. Confine the application of Part III inquiry and search and seizure powers to the enforcement of laws dealing with defence contracts and to the prevention of profiteering or black marketing.	30(1)(c), 30(1)(d)
17. Include convention refugees in the exemptions from the power to remove people from Canada.	30(1)(h)
18. Clarify that Part III powers do not extend to censorship.	30(2)(b)
19. Provide that persons whose services are commandeered will be considered servants or agents of the Crown, and thus be indemnified.	47
20. Provide for reasonable compensation for loss, injury or damage.	48(1)
21. Make the compensation provisions of Part V mandatory rather than discretionary.	48(1), 49(d), 50(1), 50(2)
22. Rule out double compensation.	48(2)
23. Delete the section permitting exclusion of classes of persons from compensation.	49
24. If on appeal the assessor so recommends, require the Minister to make a compensation award which exceeds the prescribed maximum.	52
25. Remove the time limits on debate on a motion to confirm or continue an emergency declaration or revoke an order or regulation.	58(6), 60(5), 61(4), 61(7)

Source: Nikkei National Museum, 2018-16-4-1-1-217
www.nikkeimuseum.org

26.	Lower the minimum number of members or senators required to initiate a motion to revoke a declaration, order or regulation from 30 and 15, to 20 and 10 respectively and reduce the maximum time to take up the motion from 6 to 3 days.	59(1), 61(3)
27.	Extend the time limit on debate from five to ten hours on a motion to revoke a declaration.	59(2)
28.	Permit one House alone to revoke a declaration.	59(3)
29.	Change the effective date of a revocation from the day of concurrence to the day specified in the motion (but not retroactive).	59(3), 61(8), 62(5)
30.	Include current orders and regulations in a motion to continue an emergency declaration, and thus require their confirmation.	60
31.	Reduce the maximum time delay in tabling orders and regulations from 15 days to 2 days.	61(1)
32.	Remove the reference to the "opinion" of the GiC with respect to orders or regulations exempted from publication, and reduce the maximum delay for referral to the Review Committee from 15 to 2 days.	61(2)
33.	Remove the time limit on Parliament's revocation of orders or regulations.	61(3)
34.	Reduce the maximum time for the second House to take up a motion to revoke an order or regulation from 6 days to 3 days.	61(3)
35.	Make the establishment of joint Review Committee of both Houses mandatory.	62(1)
36.	Require all-party representation on the Review Committee.	62(2)
37.	Require the Parliamentary Review Committee to report to Parliament at least every 60 days, and in any case whenever a declaration is continued or revoked.	62(6)
38.	Provide for a post-event inquiry, to be tabled within one year.	63
39.	Change the consequential amendments to be consistent with the amended Parts V and VI.	71, 73

Source: Nikkei National Museum, 2018-16-4-1-1-218
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DEBATES OF THE SENATE

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OFFICIAL REPORT
(HANSARD)

Wednesday, April 27, 1988

THE HONOURABLE MARTIAL ASSELIN, P.C.
SPEAKER *pro tempore*

Court of Canada, in her capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 27th day of April, 1988, at 5.15 p.m., for the purpose of giving Royal Assent to certain Bills.

Yours sincerely,
Léopold H. Amyot
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

EMERGENCIES BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a Message had been received from the House of Commons with Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

Bill read first time.

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the second time?

On motion of Senator Phillips, with leave of the Senate and notwithstanding rule 44(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

EMERGENCIES BILL

SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Bielish, for the second reading of the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.—(*Honourable Senator Stewart (Antigonish—Guysborough)*).

Hon. John B. Stewart: Honourable senators, this is one of the most important bills introduced by the government in the present Parliament. It is a bill which demands close examination by the Senate. I turned up the pages of the *House of Commons Debates* for 1914, when the War Measures Act was enacted, and I found that the second reading is recorded in nine *Hansard* lines. Then, at the committee and third reading stage, it took exactly 31 *Hansard* lines. Honourable senators, I think we must find time and space to give this bill a more thorough consideration.

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As Senator Hicks stated in his most helpful address yesterday, and as Senator Kelly had stated earlier, the bill seeks to anticipate four different kinds of emergency situations: four situations in which the normal processes of parliamentary government would be set aside. The first of these is a public welfare emergency such as a drought; the second is a public order emergency; the third is an international emergency; and the fourth category is a war emergency.

The bill is extraordinary in at least three ways: First, it delegates to the Governor in Council legislative powers that are normally retained jealously by Parliament itself. Second, it authorizes the Governor in Council to legislate on matters that normally come within the exclusive legislative jurisdiction of the provincial legislatures. Third, it authorizes massive interventions in Canadian society—interventions touching and even controlling people's lives and liberties, people's property and the operation of the economy. Talk about government intervention in the market! This bill authorizes intervention in the market of a kind that we have not seen in any other piece of legislation since at least 1945. This is massive intervention in society and in the market.

I have reviewed Senator Kelly's address given on April 28, 1988. In that address he commended the massive delegation of power to the Governor in Council which would be effected by this bill. I could not help thinking back to the days when the Right Honourable John George Diefenbaker used to denounce government by order in council. In those days that was one of the great Liberal vices. However, now it seems appears delegation of legislative power has become a good thing.

It is true that the bill makes elaborate provision for supervision by Parliament of the use of the powers delegated to the Governor in Council. However, so great is the shift of actual power—as distinct from supervisory power—from Parliament to the executive government in the case of international emergencies or war emergencies that we must ask ourselves what need there would be for Parliament itself to meet and to act—that is, what need aside from the performance of its supervisory role.

I do not argue at this time that the bill should not be enacted in its present form. That is not the case I wish to make. My submission is a much more modest one. It is that we need to know far more than we have been told so far about the meaning of the bill and about the implications of the bill.

Just what are the powers that the government is asking Parliament to delegate? For each of the four types of emergency the Governor in Council would be able to arm itself with emergency powers by a declaration of emergency. In the case of a war emergency, the bill states—and I quote from clause 38(1):

> When the Governor in Council believes, on reasonable grounds, that a war emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 44, may, by proclamation, so declare

[Senator Stewart]

The provision for a declaration in each of the other three types of emergency is exactly the same, except for minor variations concerning consultation with provincial governments.

Notice, honourable senators, that in all four instances the essential requirement is strictly subjective. That requirement is the belief of the Governor in Council, the belief of the ministers. There must be *prima facie* grounds for that belief, but it is on the Governor in Council—not on any court—that Parliament is being asked to confer the power to declare an emergency.

Similarly, when we turn to the orders or regulations that would be possible under the proposed statute, we are told that the Governor in Council may make such orders or regulations as the Governor in Council believes are necessary or advisable. In the case of a public welfare emergency such as a great drought, those orders or regulations may deal with ten matters, including the requisition, use or disposition of property, and the direction of persons to perform essential services.

Honourable senators, since this is really a new provision not paralleled in the War Measures Act, we must ask just what kind of emergency is contemplated that would go beyond the capacity or the authority of a provincial government. I am not suggesting that one cannot envision such circumstances, but I think that before Parliament delegates authority to deal with a situation, the kind of situation that the government has in mind ought to be described.

What situations have arisen in the past that show that this extensive delegation of power is desirable or advisable? What does the government have in mind? In what instances in the past has the government found itself legally incompetent to do what ought to have been done?

In the case of a public order emergency, the Governor in Council is to be empowered to make extraordinary new law dealing with five matters. Those matters include the prohibition of any public assembly that may reasonably be expected to lead to a breach of the peace; travel to any specified area or the use of specified property. Honourable senators, why are such extraordinary powers needed in Canada? We are not now talking about a welfare emergency; we are talking about a public order emergency. What kind of threat to peace, order and good government—or to law and order, to use a more conventional expression—is anticipated here? What does the government have in mind? What situations have arisen in the past that would suggest that this kind of power is required for the future?

• (1450)

An international emergency is defined as:

> —an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that is so serious as to be a national emergency.

The orders or regulations to be made by the ministers in such a situation may deal with 12 matters, including the appropriation and control of property, the control of any industry or service, the control of travel, and the appropriation of money without normal parliamentary authority. This is an extraordinary request by the government for parliamentary power.

Honourable senators will have noticed that in the case of the three aforementioned types of emergency the Governor in Council would be limited to specific matters, matters such as property, travel, performance of essential services, and the like. However, in the case of war emergencies, there is no specification. In other words, there is no limitation. The bill simply and starkly provides for a wholesale delegation. Clause 40(1) reads:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

A war emergency is defined as:

> —war or other armed conflict, real or imminent, involving Canada or any of its allies that is so serious as to be a national emergency.

The War Measures Act, which is the act supplanted by this far more comprehensive bill, provides for war or insurrection. This bill makes provision for three other lower level types of emergency. The government is asking for delegated power for three new types of emergency. It is asking for emergency powers over new sectors of Canadian public life. We need a full explanation of the need for these new powers.

Now I would like to focus the attention of honourable senators on the provisions for war emergencies. Here the government contends that it is abolishing the bad, old War Measures Act, that it is replacing the bad, old War Measures Act with a fine new statute. I ask: In what way would the power of the Governor in Council to make orders and regulations under this proposed statute be less, or more moderate, than the powers under the War Measures Act? The War Measures Act states:

> The Governor in Council may do and authorize such acts and things, and make such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada, and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor General in Council extend to all matters coming within the classes of subjects hereinafter enumerated.—

And the act goes on to set out a list of enumerated heads. In contrast, this bill is wonderfully succinct. I have already quoted its operative provision with regard to war emergencies. It says that "the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency." It is very economical in its language. There seems to be no difference whatsoever in the scope or plenitude of delegation when it is believed by the government that war is real or to be expected. Senator Flynn was absolutely right in his remarks on this point yesterday.

We must know what powers it is that the government is seeking from Parliament. I would like to put forward some questions concerning specific powers. I do not propose that this is an exhaustive list; certainly it is not. I have picked out a few questions, most of which deal with important powers. Perhaps one of my questions would be dismissed in the other place as trivial.

The first question is: Could the provisions of other acts of Parliament be altered by orders in council made under this bill? Clause 4 of the bill states in part:

> Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations
>
> (*a*) altering the provisions of this Act; or—

What about orders or regulations altering the provisions of other acts?

We must remind ourselves that there is jurisprudence relative to the alteration of the provisions of acts of Parliament by order in council. In 1918 the Supreme Court of Canada, in a famous case, found that exemptions from military service established by Parliament itself in the Military Service Act, 1917 had been legally altered by order in council. Exemptions had been reduced by an order in council made under the War Measures Act. It was argued in that case that the enumeration of the several specific heads on which orders might be made had the effect of limiting the power delegated by Parliament to the Governor in Council by the general words; however, that contention was dismissed. The Chief Justice of Canada said in the ruling:

> It was also urged, at the argument, that the powers conferred by section 6 were not intended to authorize the Governor in Council to legislate inconsistently with any existing statute, and particularly not so as to take away a right (the right of exemption) acquired under a statute. Here, again, Mr. Newcombe's answer appears to be conclusive. There is no difference between statute law and common law, and consequently if effect is given to that point the government would be denied any power to amend the law as a war measure, no matter how urgent or necessary that might be for public safety. Such an interpretation seems absurd and impossible. It seems to me obvious that Parliament intended, as the language used implies, to clothe the executive with the widest powers in time of danger. Taken literally, the language of the section contains unlimited powers.

He was speaking there of the War Measures Act.

• (1500)

The question I am asking is: How do the powers that would be delegated in clause 40 differ from the powers given to the Governor in Council under the War Measures Act? There seems to be no difference, except that here the delegation is accomplished in more economical language.

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Then I ask another question: Could orders or regulations under the Emergencies Act now proposed be used to introduce conscription and to send conscripted personnel overseas? This could be done under the comparable provisions of the War Measures Act. I remind honourable senators that in 1940 the Mackenzie King government had Parliament enact the National Resources Mobilization Act which prohibited sending conscripted persons overseas. Then in the spring of 1942, after a plebiscite, the government of the day undertook to remove that prohibition in what came to be called, rather awkwardly, the "National Resources Mobilization Act Amendment Act." One of the members of the King government, Mr. Cardin, from the province of Quebec, resigned from that government because he did not accept this as good public policy. In a letter to Mr. Cardin the Prime Minister stated:

> As you are aware, the government might have proceeded in this matter by order in council under the War Measures Act. Having regard, however, to its responsibility to parliament, the government has felt that such action as is necessary to bring existing legislation into conformity with the will of the people expressed in the vote on the plebiscite should be taken, not by order in council under the War Measures Act, but by act of parliament.

In other words, Mr. King was saying we could have gone the order-in-council route—we could have used the delegated power—but we preferred not to. Mr. King liked to pat himself on the back for being a great lover of Parliament.

Honourable senators, in a speech delivered later Mr. King made a very important interpretation of the War Measures Act and, therefore, by implication, to the extent that this bill parallels the War Measures Act, of the present bill itself. He said:

> Up to the present, I have said nothing of the powers which, under the War Measures Act, the governor in council already possesses. Under that act, as interpreted by judicial decision and by the legal advisers of the government, the governor in council has authority, notwithstanding section 3, to send men enlisted under the National Resources Mobilization Act to points outside the boundaries of Canada and the territorial waters thereof. In other words, if, to-day, in the opinion of the government, the war situation demanded the dispatch overseas of men already called up under compulsion for military service, the government has the necessary legal power to order their dispatch.

In other words, Mr. King is reporting that according to the advice that had been given to the government of that day by the law officers of the Crown, under the War Measures Act, they could have conscripted men and they could have sent them overseas even though there might have been on the statute books a prohibition. Indeed, the War Measures Act was used in November 1944 for the latter purpose.

My question is: How different would the legal situation be if the bill now before us were law? That is a question I think we must have answered. It is not good enough to say that it is a question that is not cogent today. If we pass this bill, will we be delegating to the Governor in Council the capacity to conscript people into the armed forces and to send them outside Canada?

Third, what provision does the bill make for dealing with insurrection, real or imminent? When Senator Kelly moved second reading on April 28, he referred to the 1970 incident. He said:

> . . . I think the best that can be said of the events in 1970 is that when the government went to the cupboard, the only thing available was the War Measures Act, a very blunt instrument designed, as its name suggests, for wartime use.

The implication of Senator Kelly's comment is that this bill will put something additional, something better, something more suitable in the cupboard. Well, where is that something? One immediately looks at the provisions with regard to a public order emergency; yet they seem to be inadequate for the kind of situation to which Senator Kelly is referring. Perhaps there is something in the bill—but if there is, I have not been able to find it—which would be appropriate to the kind of situation to which he referred.

Fourth, could an order be made ordering the internment of Canadian citizens during an emergency? The relevant provision in the bill, clause 4(*b*), states:

> Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations . . .
>
> (*b*) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the *Immigration Act, 1976* on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

What about other grounds? Camille Houde would not have been protected by any of those prohibitions when he was detained during World War II.

Senator Flynn: It is the same as we have in the Charter. Why do they repeat it?

Senator Stewart: I am sorry, I do not understand the point.

Senator Frith: He is asking the same question as you, which is: Why do they repeat the language?

Senator Stewart: There is a point that we should notice here. Under the Canadian Bill of Rights, a person detained would have access to the remedy of *habeas corpus*. That was used during the Second World War, or at least its use was anticipated by Mr. St. Laurent who was the then Minister of Justice. What would have happened if there had been access to a writ of *habeas corpus* in the case of the Russian spies who were held incommunicado in 1946? I am referring to the Gouzenko incident. Mr. St. Laurent said that a writ of *habeas corpus* would not have helped those who were detained. They would have obtained their writ, but the government would have displayed an order for their detention and that would have satisfied the court that they were legally detained. So the

writ of *habeas corpus* does not mean a detained person is going to get a trial on the merits.

● (1510)

Fifth, what, if any, legal obstacle would there be in the law of Canada, constitutional or otherwise, to the imposition of new taxes by order in council during a war emergency?

This possibility was canvassed in 1939. There seems to have been a view that that could be done under the War Measures Act. If the powers in the Emergencies Bill are comparable, if they are parallel to those in the War Measures Act insofar as war emergencies are concerned, I ask the question: Could the executive government proceed to levy new taxes on Canadian corporations, for example, without parliamentary action?

Those are some of the major questions that I think we have to raise here. They were not raised in the other place.

An Hon. Senator: Shame!

Senator Stewart: I have another question which is peculiarly a Senate question. Provision is made in clause 61(1) for the tabling of orders and regulations made pursuant to the act. However, clause 61(2) makes provision for the review of secret orders or regulations. In other words, what is anticipated is that most orders and regulations would be tabled and made public in Parliament; however, some orders and regulations might be held back. That, incidentally, was done in the case of the order in council that permitted the holding of the spies incommunicado in 1946. There is a cautionary provision, however; there is to be a Parliamentary Review Panel. That panel is to be "a committee of both Houses of Parliament."

Then we are told, in clause 62(2):

> The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons.

My question is: Does this mean that if emergency orders were made by the present Progressive Conservative government, the presence of one Progressive Conservative senator would be sufficient to constitute a joint committee? Or if on some future date orders in council were made by a Liberal government or an NDP government that the presence of one Liberal senator, or, if it happened to be an NDP government, one NDP senator—if one can imagine that—would be sufficient? There appears to be no provision for participation of senators from both sides of this house on the Parliamentary Review Committee. I think that is probably an oversight which could be corrected easily with unanimous support in this house.

Honourable senators, I am not arguing that this bill should not be passed in its present form insofar as its major components are concerned; what I am saying is that we have to do better than they did in 1914. There are very important questions concerning taxation, conscription, the expenditure of public money and other matters to which we have to have clear and unequivocal answers from persons in positions to give clear and unequivocal answers. I think this is a measure that we have to take seriously. The country will applaud us if senators on both sides of the chamber do thorough work on this proposed measure.

Hon. Senators: Hear, hear!

Hon. William M. Kelly: Honourable senators—

The Hon. the Speaker: Honourable senators, I wish to inform the Senate that if the Honourable Senator Kelly speaks now his speech will have the effect of closing the debate on the motion for second reading of this bill.

Senator Kelly: First of all, I want to thank Senator Hicks, Senator Flynn and, of course, Senator Stewart for their interventions. This is indeed an important bill. I cannot help but agree totally with many of the comments Senator Stewart has made. There are serious questions that need answers. I am tempted to try to offer my own comments on the questions, but I think they would fall short of what is needed here. I think it is important to see that this bill moves to committee as soon as possible, where the minister, representatives of the Department of Justice and other appropriate witnesses can respond to these very sensitive and important questions.

Motion agreed to and bill read second time.

MOTION FOR REFERRAL TO COMMITTEE—DEBATE ADJOURNED

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. William M. Kelly: Honourable senators, I move that Bill C-77 be referred to the Special Committee of the Senate on National Defence.

The Hon. the Speaker: It is moved by the Honourable Senator Kelly, seconded by the Honourable Senator Nurgitz, that the bill be referred to the Special Committee of the Senate on National Defence.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, having listened to Senator Stewart, I think we should consider the appropriateness of having this bill referred to a Committee of the Whole. Therefore, I move the adjournment of the motion of reference so that I may have an opportunity to discuss this with my colleagues and also with the leadership on the other side.

The Hon. the Speaker: It is moved by the Honourable Senator Frith, seconded by the Honourable Senator Cottreau, that further debate be adjourned until the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Jacques Flynn: Honourable senators, I believe Senator Frith moved the adjournment of the debate on the motion to refer the bill to the Special Committee of the Senate on National Defence.

Senator Hicks: Yes. That is all Senator Frith did.

Senator Frith: What motion was put?

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Senator Flynn: I do not know.

Senator Frith: The motion I moved, Your Honour, was that the debate on Senator Kelly's motion to refer the bill to the Special Committee of the Senate on National Defence be adjourned.

Senator Hicks: Yes, and that does not interfere with the motion for second reading.

Senator Frith: The motion for second reading has been adopted.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

On motion of Senator Frith, debate adjourned.

EMERGENCIES BILL

REFERRED TO COMMITTEE OF THE WHOLE

On the Order:

Resuming the debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Nurgitz, that the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be referred to the Special Committee of the Senate on National Defence.—(*Honourable Senator Frith*).

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I have received a letter from Senator Kelly, and I believe a copy was sent to Senator Doody.

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, in all modesty, I have to say that it is the other way round.

Senator Frith: That is only as it should be. He should have sent it to his deputy leader first.

The effect of his letter is that this bill should be referred to a Senate Committee of the Whole. If so, with consent, we can amend the motion accordingly and have it passed.

Senator Doody: Honourable senators, we have no problem with that. A time has been tentatively set for Wednesday, May 31. That time has to be confirmed with the minister's office, but I understand that he and his officials have agreed to attend on us at that time. If that is agreeable, there will be a Committee of the Whole on this particular bill at that time.

The Hon. the Speaker: It is moved by the Honourable Senator Doody, for Senator Kelly, seconded by the Honourable Senator Frith:

That Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, be referred to a Committee of the Whole on Wednesday next.

Is it your pleasure, honourable senators, to adopt the motion?

Senator Frith: Since a date has not been agreed to, perhaps we can just refer it to a Committee of the Whole. Then the Committee of the Whole can be set up to meet the minister's schedule.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion that it be referred to a Committee of the Whole?

Hon. Senators: Agreed.

Motion agreed to.

EMERGENCIES BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE ADJOURNED

Pursuant to order adopted by the Senate on Thursday, May 26, 1988, the Senate was adjourned during pleasure and put into a Committee of the Whole on Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, the Honourable Senator Molgat in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole to consider Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

Senator Doody: Honourable senators, I ask leave to invite the Honourable Perrin Beatty, Minister of National Defence, and Messers. Snarr and Molot, his advisors, to participate in the deliberations.

Senator MacEachen: Honourable senators, before we ask the minister to come in I should like to make a suggestion regarding a method we have employed in the past which would facilitate the work of the Committee of the Whole on this particular bill.

Would it be agreeable if we asked our whips to establish a steering committee that could do some of the work required to plan for the meetings? For example, do we need other witnesses? If that is agreeable, we could have a smaller committee than we had for the Meech Lake hearings. In this case, five and three might be an appropriate number.

Senator Phillips: May I ask the Leader of the Opposition if he envisages the Committee of the Whole continuing for some time, or are we going to have one session only?

Senator MacEachen: Honourable senators, I have no way of knowing. It is not my intention to have a long set of hearings. However, I do think it might be worthwhile to have a steering committee consider whether or not we need additional witnesses and to plan the work of the committee. It proved useful in the case of Meech Lake and it might be useful in this case.

Senator Hicks: Honourable senators, perhaps I can add something that may be useful in coming to a decision on the suggestion of the Leader of the Opposition in the Senate.

On the assumption that the bill might have been referred to the Special Committee on National Defence, as was Bill C-76, the national office of the Red Cross organization have written to me and submitted a brief. I have not known how to reply to them. I now propose that I shall write and tell them that the bill is being dealt with in Committee of the Whole of the Senate and that I have handed their correspondence over to the chairman of that committee. It may well be that we will have to hear these people, who, I think, are anxious to come before a committee.

Senator Doody: Honourable senators, that is a slightly different vision of the activities of this committee than I had believed was the intention of the Senate when I discussed this matter with my counterpart. I thought the minister would be the witness for this committee and that there would not be a parade of witnesses. That may very well still be the case, and perhaps a smaller committee would be necessary to talk to the Red Cross and others. Toward that end, I see nothing wrong with having the whips and chairman meet to discuss the forming of a subcommittee or a steering committee, or any other committee.

At this point I can say that I did not envisage a parade of witnesses through the Committee of the Whole on this particular piece of legislation.

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Senator MacEachen: I do not personally envisage a parade either. There may be a number of witnesses. For that reason it occurred to me that the task of discussing the question of witnesses could be delegated to a steering committee. Consequently, I was suggesting that the whips be empowered to select the members from each side under the chairmanship of the chairman of the committee.

Senator Doody: Agreed.

The Chairman: Is there any further discussion? Is that a motion you are making, Senator MacEachen?

Senator MacEachen: I would make it a motion.

The Chairman: It is moved by Senator MacEachen that a steering committee be established, being five and three, and that the whips be empowered to select the members. Is there any further discussion? There being no further discussion, are you ready for the question?

Some Hon. Senators: Question!

The Chairman: Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Chairman: Will those honourable senators who are against the motion please say "nay"?

Some Hon. Senators: Nay.

The Chairman: In my opinion, the "nays" have it. Would you like to have a standing vote?

Senator Bosa: Why don't you call the vote again?

The Chairman: I am not empowered to call it again unless that is the wish of the committee.

Senator Barootes: Mr. Chairman, I have a suggestion to make. Why don't we entertain the minister, receive his thoughts and then make the decision that the honourable senator wishes following that? If we have satisfaction from this level, we may not need a vote. If we do not have satisfaction, perhaps, then, that would be the appropriate time to say we will form a steering committee or subcommittee.

Senator Doody: Honourable senators, that is what I had in mind. We may be heading into a procedural wrangle or a vote that may not be necessary. I am not suggesting it will not be necessary. It may well be that we will have other meetings and other witnesses in this forum or another forum, but perhaps we could forestall the vote, or the confrontation or whatever, until after we hear the minister. Then we could decide what course of action the committee should take.

Senator MacEachen: Mr. Chairman, that is agreeable to me. I understood that the deputy leader had agreed previously to the notion of a steering committee. It was a surprise to me that a number of "nays" were uttered from the other side.

Senator Doody: I had, honourable senators, and then I heard that the numbers were back to five and three and the steering committee was to be the same sort of committee that would be preordained and preorganized. As I say, it may not be necessary to take a vote on the numbers and on the times and so on, but if it is the wish of the committee to do that, then that is what we will do. However, we would be better served by asking the minister to come before us now and then deal with the procedural aspects later.

Senator MacEachen: It is the government that wishes this bill. Therefore, it might begin to show some cooperation in accommodating the committee rather than taking this attitude.

Senator Doody: I do not think the government is taking an attitude. The government is trying to accommodate the committee. We have tried to accede to the requests of the Senate in asking the minister to attend before us at the earliest possible opportunity. That he has done. He is now waiting outside the chamber. He wants to answer any questions that senators may have. Whatever the Senate wishes to do, obviously history and tradition point in the direction the Senate should take.

The government is not trying to be uncooperative. I thought we were trying to be most accommodating. I cannot quite understand what the problem is. If it will facilitate the movement of this bill through the Senate, then it will be three and five or eight and three or whatever. I just do not think it is necessary to get into that phase of it right now.

The Chairman: Is it your wish, honourable senators, to defer the matter for now and return to it later?

Some Hon. Senators: Agreed.

• (1810)

Pursuant to rule 18 of the Rules of the Senate, the Honourable Perrin Beatty, P.C., Minister of National Defence, Mr. W. Snarr, Executive Director, Emergency Preparedness Canada and Mr. H.J.L. Molot, General Counsel, Advisory and Administrative Law Section, Ministry of Defence were escorted to seats in the chamber.

Senator Doody: Honourable senators, I would like to welcome the Minister of National Defence to our chamber this evening, the Honourable Perrin Beatty, and his officials, Mr. Snarr and Mr. Molot.

In the event that honourable senators wish to ask questions directly of the officials, it will be necessary to have leave of the Senate to do so. If so, then I request that leave at this point. Certainly the minister is prepared to answer any or all questions honourable senators might have.

The Chairman: Thank you very much, Senator Doody.

Mr. Beatty, I want to add my words of welcome on behalf of the committee. I believe it is your first visit to the Senate. Following our normal procedure, we will hear your opening statement, if you have one, and then proceed to questions, if that is agreeable.

Hon. Henry Perrin Beatty, Minister of National Defence: I thank you very much.

The Chairman: You have the floor.

Mr. Beatty: Thank you very much, honourable senators. It is indeed my first opportunity to appear in Committee of the Whole in the Senate. Those of us who sit in the House of Commons often eye covetously seats in the Senate. This one is a temporary gift from the Senate which I will be glad to surrender back to you later this evening, but I am honoured to have the opportunity to be here.

It is a tremendous pleasure for me to be able to be before you today on Bill C-77, the Emergencies Bill that is designed to replace the War Measures Act with comprehensive and properly safeguarded emergencies legislation.

I was saddened to learn that the Canadian people, and, more especially, the Canadian forces, lost a good friend last Friday. Senator Paul Lafond had served his country with great distinction both in the RCAF during World War II, when he won the Distinguished Flying Cross, and in the Senate of Canada. Never forgetting his military service and the need to improve Canada's defence capabilities, he chaired the Special Committee of the Senate on National Defence and guided the committee through four studies, with one yet to be completed on Canada's Land Forces, leaving his mark on Canadian history.

[Translation]

The recommendations of his distinguished committee are very familiar to me and as Minister of National Defence, I was guided by their wise proposals in preparing the White Paper.

My wife, the Department of National Defence and the Canadian Forces join me in offering Mrs. Lafond and the members of his family our most sincere condolences.

[English]

Honourable senators, I read with considerable interest the record of the debate which took place in this chamber on second reading of the bill. Honourable senators have raised a number of points which merit careful consideration, and I will do my best to respond to these concerns during this evening's deliberations.

Permit me to summarize briefly what I consider to be the major features of the bill.

The Emergencies Act will enable the federal government to fulfil its constitutional responsibility to provide for the safety and security of Canadians during "national" emergencies. This responsibility stems from the "peace, order and good government" clause of the Constitution and the so-called "emergency doctrine," which has been elaborated by both British and Canadian courts since Confederation.

The bill will provide the government with appropriately safeguarded authorities to deal with four types of national emergencies: public welfare emergencies, public order emergencies, international emergencies and war emergencies. It will enable the government to act quickly to minimize injury and suffering in an national emergency and, at the same time, ensure that the exceptional powers acquired are no greater than those absolutely necessary to deal with the situation. In other words, there will be proportionality between the severity of the emergency and the response of the government.

[The Hon. the Speaker:]

The bill will enable the government to mount a national response when a major disaster or situation involving public disorder either extends beyond the boundaries of the single province or exceeds the capacity of the province to deal with it effectively.

It will enable the government to react to a serious international emergency by instituting, in concert with our allies, appropriate and gradual pre-emptive and preparative measures designed to stabilize the situation and prevent further deterioration. Under current legislation, the only option open to the government would be the much more provocative step of invoking the War Measures Act.

The Emergencies Bill will remove the need to deal with national emergencies by hastily introducing *ad hoc* legislation during the confusion and disruption, which is characteristic of the early stages of a national emergency.

Finally, it will help to improve the national standard of emergency preparedness by stimulating emergency planning within the federal government and in cooperation and consultation with the provinces.

[Translation]

I would like to take a moment to review in more detail some of the federal-provincial aspects of this Bill. In a federal state where jurisdiction is divided between two orders of government, each vested with its own area of jurisdiction and exclusive responsibilities, the cardinal principle in normal times must be that neither shall infringe upon the rights of the other; that is, that each shall respect the boundaries of its own jurisdiction.

The emergency doctrine affirms that in times of national crisis the federal government may, on behalf of the country as a whole, act in areas which are normally within the legislative competence and jurisdiction of the provinces. The problem, then, is how best to centralize control while achieving the close degree of federal-provincial co-operation necessary to integrate responsibilities and co-ordinate efforts to provide for the safety and security of Canadians.

[English]

The absence of any legal requirement to consult with the provinces before exercising federal powers under the emergency doctrine has been the subject of some comment by several groups which have examined the issue in the broader context of constitutional reform. Studies such as the Task Force on Canadian Unity, the 1976 "beige paper" of the Quebec Liberal Party, the report of the Canadian Bar Association Committee on the Constitution, and a report of the Standing Committee of the Senate, the Goldenberg report, reached a common conclusion, namely, that federal-provincial cooperation and consultation is a vital factor in designing any new approach for dealing with national emergencies in Canada.

Bill C-77 has been carefully drafted in close consultation with the provinces. It represents a consensus of the views of the territorial, provincial and federal governments. The bill that has flowed from that consensus will, I believe, protect and respect legitimate provincial interests, while allowing the fed-

Source: Nikkei National Museum, 2018-16-4-1-1-224
www.nikkeimuseum.org

eral government to fulfil its responsibility to deal effectively with national emergencies.

Under Bill C-77, the provinces must be consulted before a national emergency is declared. Subsequently, the federal government must exercise its emergency powers with a view to achieving concerted action with the provinces. In the case of a public welfare or public order emergency in which the effects of the emergency are confined to a single province, the federal government may declare an emergency only after the province concerned has indicated that its capacity to cope has been exceeded.

In response to a point raised by Senator Hicks, let me reassure honourable senators that the consultation provisions will not impede the federal government in responding in a timely manner to emergencies requiring a national response. For international or war emergencies, areas which are of clear federal jurisdiction, the bill calls for consultation only "to the extent that is appropriate and practicable to do so in the circumstances." Even for peacetime emergencies there is nothing resembling a provincial veto, except where the emergency is confined to a single province and where the sole ground for federal intervention is the inability of the province to cope with the situation. In these circumstances, the act defers to the judgment of the province as to its capabilities. Even here, however, if the effects of the emergency have national implications, the federal government could intervene in spite of provincial objections.

Perhaps even more important than the federal-provincial dimension of emergencies legislation is the question of the balance between adequate authorities, on the one hand and the preservation of fundamental rights and freedoms, on the other. A large portion of Bill C-77 is devoted to provisions that construct a comprehensive regime of both judicial and parliamentary safeguards against the misapplication or abuse of emergency powers. The act will be subject to both the Canadian Charter of Rights and the Bill of Rights and must have regard to the International Covenant on Civil and Political Rights. The balance between authorities and safeguards which has been struck in Bill C-77 represents the product of extensive public consultation and thoughtful recommendations from public interest organizations. In particular, I might mention the contribution made by the Canadian Bar Association, the Canadian Civil Liberties Association, the National Association of Japanese Canadians and the Ukrainian-Canadian Committee.

• (1820)

Several of the organizations which presented briefs expressed their satisfaction with the process that permitted their views to be heard and, in very many cases, to be acted upon favourably.

[Translation]

The mainstay of the protection of fundamental rights and freedoms is the Charter, and under C-77 the normal mechanisms for applying Charter protections will be upheld.

Section 33, the notwithstanding clause of the charter, has not been used in the Bill and cannot be invoked by Order-in-Council. The added protection of the Bill of Rights is of particular significance since some provisions of the Bill are not duplicated by the Charter, for example the protection of the right to the enjoyment of property and the provision for a fair hearing for the determination of rights and obligations.

[English]

Bill C-77 is subject to both judicial and parliamentary sanctions. Any limitation of Charter rights which a government might consider necessary in a national emergency would be subject to at least two channels of judicial review. In the first place, the Governor in Council could be challenged in court to demonstrate that there were reasonable grounds for declaring an emergency, as well as reasonable grounds for each of the orders or regulations made pursuant to the declaration.

Second, under section 1 of the Charter, the government could be challenged to demonstrate that Charter limitations imposed were "reasonable and demonstrably justifiable in a free and democratic society". It is difficult to imagine a government going ahead with measures if there were any doubts about its ability to justify its actions in court.

There are many features of this emergencies legislation that will ensure that the government will be accountable to Parliament and, through Parliament, to the people of Canada for its use of emergency powers. The list is long, but if you will bear with me I would like to summarize the key ones *ad seriatem*.

—application is confined to "national emergencies" which are precisely defined in the bill;

—specific powers are set out for four types of national emergency, each of which is also precisely defined;

—following invocation of the legislation, the government must come before Parliament without delay, with an explanation of the basis for its action and with a report of its consultations with the provinces, and seek Parliament's confirmation of the declaration of emergency;

—if Parliament is not in session, it must be recalled, and, if dissolved, must be called at the earliest opportunity to consider the government's emergency actions;

—both houses must approve the declaration.

I might just depart from my text here, honourable senators, to say that it was a matter of some contention when this bill was before the House of Commons committee as to whether or not we should include a veto on the invocation of the legislation for the Senate. One can easily see circumstances where a majority in the House of Commons would be in favour of proceeding and the Senate might not. We took the decision that we were protecting civil liberties of Canadians: that this double veto was defensible and necessary and that the refusal by either house—either the Senate or the House of Commons—to approve the declaration would result in its being struck down. It is a double parliamentary protection for the rights of Canadians.

To continue the list:

—all orders and regulations must be promptly tabled in Parliament;

—a review committee of both houses, with all-party representation, must be struck to continuously monitor the government's use of the legislation;

— either house can initiate a motion to revoke or amend the declaration, or any order or regulation;

Again, honourable senators, let me depart here from my text. Let us visualize a situation where both houses of Parliament have approved the invocation and then, after that, it has been tested in the courts and the courts have found that what was being done by the government was legal and proper and that the government was capable of justifying the fact that an emergency existed and was able to demonstrate that in all cases what it was doing was consistent with what was acceptable in a free and democratic society. Let us go one step further and say that, even if there had been an attempt, for example, to have it struck down in the House of Commons and the House had voted to leave the measures in the legislation in force, the Senate would be capable of putting down a motion to revoke or amend the declaration or any order or regulation—again, giving that double scrutiny.

—the government must have the continued support of both houses for its actions, since a revocation or amendment motion is effective if passed by either house;

—the declaration automatically expires after a set period unless renewed by Parliament;

—on continuation of a declaration, all active orders and regulations must be confirmed by Parliament;

—the review committee must report regularly to Parliament, and in any case must report whenever a motion to revoke or continue a declaration is tabled;

—there is no automatic closure on debate of motions of confirmation, revocation or continuation of a declaration.

—if there is a need for secret orders or regulations, they will be subject to review and possible revocation or amendment by the review committee meeting *in camera*.

Honourable senators, this might apply in cases where action had to be taken about specific installations that were essential in wartime, for example, where it would not be possible to indicate publicly where those installations were.

—a comprehensive inquiry must be conducted following the termination of an emergency, and reported on within one year.

Honourable senators, if, in spite of this exhaustive system of constraints and safeguards, anyone suffers loss or damage as a result of the government's use of its special powers, that person will be able to obtain compensation. The legislation provides for a compensation process which the government is obliged to put in place and which includes an appeal process overseen by a federal judge acting as an "assessor." If someone is not satisfied with the compensation provided by this administrative process, then he or she is free to seek redress through the more formal, judicial route under the Crown Liability Act.

[Senator Beaudoin]

During second reading debate, several honourable senators raised questions about the powers which Bill C-77 grants to the government during a war emergency and, in particular, how these powers differ from those of the War Measures Act. I can understand these concerns, since a simple comparison of the bare statements of the powers in the two pieces of legislation—clause 40 in Bill C-77 and clause 3 in the War Measures Act—suggests that there is not much difference. Let me assure you that the difference between the two pieces of legislation is very great indeed, and in fact represents much of the reason why Bill C-77 is a longer, more complex piece of legislation.

The War Measures Act incorporates almost no safeguards. Bill C-77 includes a structure of safeguard upon safeguard which taken together render misuse of the legislation virtually impossible. Let me review some of these.

[Translation]

First, with regard to the definition of a war emergency, C-77 removes application to "insurrection", and by incorporation of the general definition of national emergency, confines application to situations which seriously threaten the ability of the government to preserve the sovereignty, security and territorial integrity of Canada. In addition, the latter definition adds the important provision that the situation must be such that it cannot be effectively dealt with under any other law of Canada.

Thus the field of application of Part IV of C-77 is narrower than that of the War Measures Act. Under the War Measures Act, the declaration is conclusive evidence that the invocation is necessary; under C-77 the Government must justify invocation to Parliament, and furthermore, its action is challengeable in the courts since there must be "reasonable grounds" for invocation. Under the War Measures Act, the only constraint on specific measures is the Charter.

Under C-77, there must be "reasonable grounds" for the necessity of all measures taken, and they are put under continuous scrutiny by Parliament with specific procedures for amendment or revocation of the orders or regulations on which the measures are based.

The War Measures Act has no time limit. C-77 limits the duration of war powers to 120 days, and they can only be renewed if Parliament is pursuaded that renewal is necessary.

Both the War Measures Act and C-77 are subject to the Charter, but only C-77 is subject to the additional protection of the Bill of Rights.

[English]

Under the War Measures Act, one could conceive of the government claiming in a particular case that the discriminatory internment was "reasonable and demonstrably justifiable in a free and democratic society" arguing that the terms of section 1 of the Charter were met. But Bill C-77 rules out this loophole unequivocably.

Honourable senators, I stress that point in particular. Never again in Canada will we have the travesty where Canadian

Source: Nikkei National Museum, 2018-16-4-1-1-225
www.nikkeimuseum.org

citizens are incarcerated in internment camps based upon their country of origin or their racial and ethnic heritage. It is specifically forbidden under the terms of this legislation, unlike the case with the War Measures Act where the rights of hundreds of Canadians have been abrogated in the past.

The War Measures Act makes no provision for compensation for losses suffered by individuals as a result of the application of the act. Bill C-77 includes a compensation regime. Thus, while the bare engine under the hood of Bill C-77 may look a lot like the War Measures Act, the vehicle has vastly improved steering, brakes and speed controls and operates at all times under the watchful eyes of parliamentary and judicial traffic cops.

Let me respond briefly at this time to a few specific points raised during debate by Senator Stewart, although I suspect that honourable senators may want to explore these important matters in more detail later. The senator raised three questions, all in relation to measures taken by order in council during a war emergency. These were: conscription, internment and the imposition of new taxes. First, with regard to conscription, our advice is that this would be legally possible by order in council under Part IV of Bill C-77, but whether it would also be politically feasible is a question that can only be answered at the time. In addition to the various constraints on such action which I have already touched upon, there is additional Charter protection which forbids forcing Canadian citizens to leave the country. Thus, to send conscripted troops overseas, the test of section 1 of the Charter would have to be met. Internment by order in council would be possible in a war emergency under Bill C-77, but, again, only if reasonable grounds for its necessity were present and the Charter conditions were met. *Habeas Corpus* would continue to apply and continued detention would be challengeable under section 1 of the Charter. As I mentioned earlier, discriminatory internment would not be possible under Bill C-77 under any circumstances, since clause 4 specifically rules out the use of Bill C-77 for internment on the basis of race, national origin and so on.

Finally, with regard to taxation, I am pleased to say that I can give a short, unequivocal answer. Taxes cannot be imposed by order in council. The Constitution sets out quite specific procedures for levying taxes and a bill is always required. I think, honourable senators, that that is all I need say about the detail of Bill C-77. I am sure that you will want to explore more deeply specific areas of the act's purview.

I conclude, before inviting any questions or comments from honourable senators, by offering one other personal note. The last time the War Measures Act was invoked, October 1970, it was a case of considerable concern for members of Parliament on all sides of the house. It was an instance, as well, where there was great agonizing among all Canadians. Each one of the political parties represented in Parliament gave a good-faith commitment to Canadians that they wanted to see that odious act, the War Measures Act, scrapped for all time, and to ensure that in future, while the government would have the powers to respond in an effective way in times of emergency, the basic civil rights of Canadians could never again be abrogated in the way they were taken away in the past under the War Measures Act. That was October 1970. It is now 1988, some 18 years later. I believe that all political parties, all parliamentarians have an obligation to deliver on that commitment and to do so in good faith and with expedition. I think Canadians have a right to expect that we will pass this legislation and a right to expect that we will put in place a regime which will give the government the powers it needs to protect the integrity of Canada, our survival in times of crisis and individual safety in cases where individuals might be put in jeopardy and ensure that we will have at all times adequate protection of the civil liberties of every Canadian. If we can pass this legislation, and do so before more time elapses, then we will have done credit to Parliament and we will have honoured the commitment made in good faith by each of the political parties so many years ago.

Thank you, Mr. Chairman. If honourable senators have any questions, I would be pleased to receive them.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I am sure we appreciate the minister's exposition of the bill and his emphasis on safeguards. First, I would like to ask: Is it not true that the Canadian Charter of Rights, the Canadian Bill of Rights and the International Covenant apply now in the case of the War Measures Act?

Mr. Beatty: Mr. Chairman, it is not true. The Canadian Charter of Rights applies in the case of the War Measures Act, but the Bill of Rights does not apply. However, the Bill of Rights will apply in the case of Bill C-77.

Senator Stewart (Antigonish-Guysborough): Where is that provided outside the preamble?

Mr. Beatty: Subsection 6(5) of the War Measures Act excludes the Canadian Bill of Rights.

Senator Stewart (Antigonish-Guysborough): And you are contending that without explicit provision in the operative clauses of this bill the Bill of Rights will prevail?

Mr. Beatty: Yes. I am sure that the honourable senator is aware that there is in the preamble specific reference to the Bill of Rights, which specifically ensures that it will apply. However, without specific exclusion the Bill of Rights would apply in a statute such as this.

Senator Stewart (Antigonish-Guysborough): You have emphasized at considerable length and in detail the safeguards in this bill, and you have talked about wiping out the odious War Measures Act. In what particulars do the powers delegated to the Governor in Council under this legislation differ from the powers of the Governor in Council under the War Measures Act when a declaration has been made in the situation contemplated under clause 38 of this bill, other than those protections afforded under the Charter of Rights, the Bill of Rights and the International Covenant?

Mr. Beatty: Mr. Chairman, Senator Stewart is referring to the declaration of a war emergency. I mentioned some cases where there are substantial differences between Bill C-77 and the War Measures Act. For example, under the War Measures Act, it was legally possible to incarcerate Japanese Canadians based on their racial origin.

Senator Stewart (Antigonish-Guysborough): I have already set that aside. I accept that point; indeed, I mentioned it in my speech on the motion for second reading.

Mr. Beatty: That is specifically excluded in this bill.

Senator Stewart (Antigonish-Guysborough): What I am asking is: Aside from those exclusions, how do the powers differ?

Mr. Beatty: It would differ as well because of the application of the Bill of Rights, which does not apply in the case of the War Measures Act.

Senator Stewart (Antigonish-Guysborough): In other words, what you are saying is that simply by enacting that the Bill of Rights and the Covenant would apply as limitations on the War Measures Act you could have achieved virtually the same result.

Mr. Beatty: Not at all. The most disgraceful application ever of the War Measures Act was the incarceration of, for example, Japanese Canadians. Simply applying the Charter of Rights and—

Senator Stewart (Antigonish-Guysborough): The Covenant.

Mr. Beatty: —the Bill of Rights—

Senator Stewart (Antigonish-Guysborough): And the Covenant.

Mr. Beatty: —and the Covenant would not necessarily guarantee that that sort of incarceration based on ethnic heritage could not take place.

Senator Stewart (Antigonish-Guysborough): But you can incarcerate Canadian citizens on any ground other than those specified in clause 4(*b*).

Mr. Beatty: Could you repeat the question?

Senator Stewart (Antigonish-Guysborough): Incarceration on grounds other than those specifically excluded in clause 4(*b*) would be permissible under the proposed legislation, is that correct?

Mr. Beatty: Yes.

Senator Stewart (Antigonish-Guysborough): Does that include internment?

Mr. Beatty: Yes, for example, internment of prisoners of war.

Senator Stewart (Antigonish-Guysborough): What about Canadians suspected by the Governor in Council or, perhaps, the Minister of Justice—as during the Second World War—of being security risks?

Mr. Beatty: It would depend, obviously, on how it was defined. In the case of the Second World War, the security risk was based on the individual's ethnic heritage.

Senator Stewart (Antigonish-Guysborough): I am not talking about that. I am talking about Canadian citizens who are not Japanese but ordinary Canadian citizens born in this country, such as the Mayor of Montreal. Could the Mayor of Montreal have been interned under this proposed legislation?

Mr. Beatty: You would have to, Mr. Chairman, establish reasonable cause and it would be testable as well under the Charter in the courts.

Senator Stewart (Antigonish-Guysborough): You are saying seriously that, under this provision, all those persons interned, incarcerated or detained—whatever term one wishes—could bring their cases to trial in court on the facts of their particular cases.

Mr. Beatty: Absolutely, and that is the least they have the right to expect.

Senator Stewart (Antigonish-Guysborough): I am not arguing the point. I am just trying to contemplate the situation in the courts.

Mr. Beatty: When you look on the deprivation of an individual's liberty as incarceration in an internment camp, we, as parliamentarians, must bend over backwards to ensure that the rights of the subject are protected.

Senator Stewart (Antigonish-Guysborough): I do not think you are confronting my question directly. As I see what would happen, there would be the declaration of an emergency and then an order in council would be made authorizing defence-of-Canada regulations, or whatever the term would be, and under those regulations, in turn, there would be other regulations. One of those other subordinate regulations might say that the Minister of Justice or his deputy could utter an order authorizing the internment of a particular person on security grounds. The interned person then would have a right to a writ of *Habeas Corpus*. He would get that writ and go into court. At that point the agent of the Minister of Justice would appear and display the order. The question is: Will the person who is challenging his own detention be able to require the government to disclose the facts on the basis of which the detention order against him had been made?

Mr. Beatty: To the court, yes. What is more, if you had a sweeping regulation of some sort that purported to allow classes of individuals to be swept up, as opposed to one individual, that very regulation itself could be tested before the courts.

Senator Stewart (Antigonish-Guysborough): I should like to ask the minister if he has asked his officials specifically about the kind of situation to which I am now referring, or is he just answering out of what seems to be common sense?

Mr. Beatty: In the preparation of the bill, we have gone over every single clause of the bill. I have pursued the question of how we can build in protections for individual Canadians throughout, and what we have in the legislation before the Senate today is the most comprehensive set of protections for civil liberties that has ever existed in this sort of legislation.

Source: Nikkei National Museum, 2018-16-4-1-1-226
www.nikkeimuseum.org

Senator Stewart (Antigonish-Guysborough): You can say that, but I am trying to find out just what the protections really are.

Mr. Beatty: Absolutely, and that is why, senator, I went to considerable pains in my opening remarks to respond to some of the misapprehensions you have.

Senator Stewart (Antigonish-Guysborough): Pehaps we are getting too defensive. You have told us that conscription could be introduced without a decision by the Parliament of Canada, but you question whether conscripted persons could be sent outside Canada. Is that correct?

Mr. Beatty: That is right. Of course, a decision based on any regulation which the Governor in Council makes under the bill is testable on a number of grounds before the courts and also in both houses of Parliament. If there were an attempt to use this legislation to avoid putting in an ordinary bill dealing with conscription, members of either house, the House of Commons or the Senate, could put a motion to nullify the order.

Senator Stewart (Antigonish-Guysborough): But the presumption is reversed. In the situation your bill will create, the Governor in Council will bring in conscription. Later, perhaps many weeks later if Parliament is dissolved, Parliament will have a chance to review what the government has already done, but by then the boys and girls will already be in uniform in camps. It is going to be difficult to unscramble that situation.

Mr. Beatty: As a former joint chairman of the Standing Joint Committee on Regulations and Other Statutory Instruments, I have some considerable sensitivity to the abuse by government of delegated legislation. Having had a good deal of experience over the years, I can tell the honourable senator that I am not aware of a single instance which came before the committee while I was joint chairman in which the protections were as sweeping as they are here, and, indeed, if one looks at the powers we have today under the War Measures Act, the powers that are here are considerably more circumscribed or restrained. In the case of the War Measures Act, one might ask oneself why governments would not have used the old War Measures Act for conscription.

Senator Stewart (Antigonish-Guysborough): We are not here to defend the War Measures Act, rather, we are trying to do what was not done in the case of the War Measures Act in 1914 or in 1939.

Mr. Beatty: Absolutely.

Senator Stewart (Antigonish-Guysborough): That is why I suggest we should not be defensive. Would you repeat the grounds on which you asserted that military personnel could not be sent overseas.

Mr. Beatty: It is because of the provisions of the Charter.

Senator Stewart (Antigonish-Guysborough): Specifically what section?

Mr. Beatty: Section 6(1).

Senator Stewart (Antigonish-Guysborough): What does that state?

Mr. Beatty: It states:

> Every citizen of Canada has the right to enter, remain in and leave Canada.

The emphasis, as is pointed out to me, would be on the word "remain."

Senator Stewart (Antigonish-Guysborough): You have legal advice that section 6(1) does not mean, simply, that ordinary Canadians—those who are not in the special status of members of the armed forces—have the right to remain in Canada? Does section 6(1) refer to members of the Canadian Armed Forces?

Mr. Beatty: It is absolutely inclusive. That is the advice I have received.

Senator Stewart (Antigonish-Guysborough): You say that new taxes could not be imposed, but, of course, the government has a continuing right to tax, not to impose new taxes, so new money will be going annually into the Consolidated Revenue Fund. That would not be the case in the United Kingdom where they have to re-enact their finance bill each year.

Let us turn to appropriations. Under what situations could the Governor in Council authorize appropriation from the Consolidated Revenue Fund, without prior resort to Parliament, if this bill were to become law?

Mr. Beatty: That would occur in reasonable circumstances which would have been provided for by Parliament.

Senator Stewart (Antigonish-Guysborough): When you say "reasonable circumstances," do you mean there has to be a *prima facie* case.

Mr. Beatty: Yes. The government has the power now to reallocate funds within the funds provided for by Parliament.

• (1350)

Senator Stewart (Antigonish-Guysborough): Yes, I understand that.

Mr. Beatty: But you could not simply divert the funds from one particular vote of Parliament to something that was totally unrelated to it without violating the law.

Senator Stewart (Antigonish-Guysborough): We know that; but what you seem to be saying now is that under this proposed act there could be major new appropriations without specific parliamentary authorization and quite aside from the provisions of the Financial Administration Act.

Mr. Beatty: Let us take a look at what in fact we are saying. Senator, you suggested that we would be able to impose the right to tax by order in council. That is wrong.

Senator Stewart (Antigonish-Guysborough): I am not asserting that.

Mr. Beatty: You did previously.

Senator Stewart (Antigonish-Guysborough): No, I did not; I asked that question.

Mr. Beatty: You asked it rhetorically, and the answer is that you cannot do that.

Secondly, with delegated legislation, yes, you do have the ability—with all sorts of delegated legislation—to create new organisms or to create bodies which need to be funded. That exists in statute after statute in our law. There is nothing novel about that at all. To suggest that there is something somehow peculiar in the case of Bill C-77 is simply wrong.

Senator Stewart (Antigonish-Guysborough): You are saying that with this new act,on the statute books Appropriation Acts of the kind that are now required would be necessary in every circumstance?

Mr. Beatty: The same rules would apply in the future that apply now.

Senator Stewart (Antigonish-Guysborough): Are you saying that there is no change in the—

Mr. Beatty: Pardon?

Senator Stewart (Antigonish-Guysborough): I want to make sure I am not interrupting, because I want you to get the best information that is available to you from your officials.

I want to know what difference this measure would make with regard to the appropriation of funds by the Governor in Council. We know there are certain circumstances, such as with Governor General's Warrants, under which that this can be done. What new abilities will the Governor in Council have to appropriate funds if this bill becomes law?

Mr. Beatty: None that is novel in any way.

Senator Stewart (Antigonish-Guysborough): Then why is it provided in the bill that in the case of an international emergency there can be appropriation?

Mr. Beatty: What clause are you referring to? Are you referring to clause 36?

Senator Stewart (Antigonish-Guysborough): Would you look at clause 30(1)(*j*), which states:

> the authorization of expenditures for dealing with an international emergency in excess of any limit set by an Act of Parliament and the setting of a limit on such expenditures,

Mr. Beatty: That is simply the ability to top up things like revolving funds and so forth.

Senator Stewart (Antigonish-Guysborough): Oh come! It states:

> the authorization of expenditures for dealing with an international emergency in excess of any limit set by an Act of Parliament—

That is a little more than topping up.

Mr. Beatty: I am advised that the only case where such limits are placed is in acts dealing with revolving funds, for example. It does not say "appropriation," incidentally, in that clause.

Senator Stewart (Antigonish-Guysborough): I would be interested in hearing the distinction.

Mr. Beatty: An example, senator, would be that the Export Development Act or the Defence Production Act may have limits in terms of the amounts of money that can be spent under those acts, quite apart from any amounts of money that might have been voted and appropriated by Parliament. This would allow one to waive the limit, but would be consistent with the appropriation powers of Parliament. Parliament would have appropriated the funds for that purpose.

Senator Stewart (Antigonish-Guysborough): Clause 40(1) states:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

Would appropriation be possible by order or regulation under that clause?

Mr. Beatty: No, because there is a constitutional requirement that there be a bill to appropriate funds. The Constitution supersedes the provisions of the bill.

Senator Stewart (Antigonish-Guysborough): I understand that, but surely a government—not a government in which you were a member, of course—would argue that an order made under this clause would be adequate.

Mr. Beatty: That is a novel construction, senator; you are right that I would not argue that. I would be very surprised if anyone else did.

Senator Stewart (Antigonish-Guysborough): A similar argument was made during the First World War, not with regard to the appropriation of money but in relation to putting aside the provisions of a statute.

Mr. Beatty: I missed World War I, and my memory may be faulty there, but, as a parliamentarian, one thing I know is that the development of parliamentary democracy stemmed in large part over the issue of control of the purse. Precedents are well established in jurisprudence, and the long struggle for the development of parliamentary democracy would forbid precisely that.

Senator Stewart (Antigonish-Guysborough): I want your word on the record, and that of reliable authorities, that, in fact, we are not setting aside the great tradition to which you referred.

Mr. Beatty: Absolutely not, senator.

Senator Stewart (Antigonish-Guysborough): All right. When I say "All right," I am thanking you for what you have said; I do not mean I necessarily agree.

I was pleased when you were explaining the measure that you said candidly that in many of the situations contemplated

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it would be necessary to rely upon the peace, order and good government clause. As we know, this is a clause which has been used to take over matters which normally are under the exclusive legislative jurisdiction of the provincial legislatures.

Would it be possible under clause 40(1) to forbid provincial borrowing in foreign money markets?

Mr. Beatty: The advice I receive is that it may be.

Senator Stewart (Antigonish-Guysborough): Can we get a definitive answer? I ask that question because that was an important constitutional question in the fall of 1939.

Mr. Beatty: I suppose if one were to look at hard cases, and if a province wanted to borrow money from a country with which Canada was at war—

Senator Stewart (Antigonish-Guysborough): Something of worry to the Government of Canada would be the matter of foreign exchange controls. It might want to intervene to prevent Nova Scotia, for example, from disrupting its emergency planning with regard to the control of foreign exchange.

I am asking if the Governor in Council could intervene under this provision to say that a provincial government could not borrow U.S. dollars or British pounds.

Mr. Beatty: I will seek legal counsel on that, senator.

Senator Stewart (Antigonish-Guysborough): I think it would be helpful if we had an answer to that question.

Let me ask you this—

Mr. Beatty: I can convey that advice to you rapidly. The advice I have received is that it would be possible.

Senator Stewart (Antigonish-Guysborough): Thank you for that answer.

You say that you have examined all of the possibilities. You assert that you believe that this bill would be adequate to permit the Government of Canada to do what would be necessary in the case of an international emergency or a war emergency. You have extolled planning. Does the government have an emergencies book? Have you starting drafting orders in council under this bill?

Mr. Beatty: Work in this area, senator, has been in place for the last 20 or 25 years.

Senator Stewart (Antigonish-Guysborough): So in a sense, you do have a war book or an international emergencies book?

Mr. Beatty: Yes, senator, we do have the elements of it, I gather.

Senator Stewart (Antigonish-Guysborough): That is why you are convinced that this bill provides you with an adequate foundation for any order or regulation that you might need.

Mr. Beatty: I am convinced, because my advisers from the Department of National Defence and Emergency Preparedness Canada have looked at what the needs would be in a time of crisis and have satisfied themselves that powers that would be essential to them to carry out their responsibilities would be there.

Senator Stewart (Antigonish-Guysborough): When he was speaking to us on April 28, Senator Kelly made reference to what he called "the 1970 incident," and he said:

> I think the best that can be said of the events in 1970 is that when the government went to the cupboard, the only thing available was the War Measures Act, a very blunt instrument designed, as its name suggests, for wartime use.

You have just told us that you tried to anticipate every requirement. Do you have draft orders or regulations for the kind of situations to which Senator Kelly referred?

Mr. Beatty: You are referring to a situation analogous to the October 1970 crisis?

Senator Stewart (Antigonish-Guysborough): I am referring to whatever the situation was about which Senator Kelly spoke when he moved second reading.

Mr. Beatty: One would like to be privy to all of the information that the Government of Canada then had at hand. On the strength of what I have seen, senator, it was the usual criminal processes that were used that were helpful in terms of dealing with the killers of Pierre Laporte and the kidnappers of James Cross. I think the invocation of the War Measures Act in that instance was unjustifiable. I agree with the late Don Jamieson that, on the strength of anything that I have seen, the justification for the invocation was not there. I believe that in a similar circumstance the ordinary provisions under the Criminal Code and ordinary police procedures would have been adequate to deal with such a crisis.

Senator Stewart (Antigonish-Guysborough): You are saying, therefore, that this bill really would not apply in a case of insurrection, real or apprehended. Do you think that this bill would not apply to a genuine case of insurrection, real or apprehended?

Mr. Beatty: I am saying that, if there were a public order emergency, the bill specifically applies such that essential services could be restored or restrictions could be placed upon freedom of assembly. We could provide protection for vital points in cases where there was civil disorder. The question you asked previously related to the October 1970 crisis. I cannot comment on what information was available to the government at the time. Mr. Turner then said he hoped that one day all Canadians would know the basis on which the government took the decision it did. I do, too, but, on the strength of what I have seen to date, I could not have justified to cabinet or to the Canadian people the invocation of the War Measures Act.

Senator Stewart (Antigonish-Guysborough): We talked earlier about the delegation in an emergency to the Governor in Council of matters that normally fall under the jurisdiction of provincial legislatures. Have you consulted with the government of the province of Quebec, for example, on the matter of censorship or control of provincial borrowing?

Mr. Beatty: Throughout the whole of the writing of the bill, which literally extended over a period of years, there was close consultation with all of the provinces. Indeed, we received representations from the Province of Quebec that I believe were made public before the House of Commons committee.

Senator Stewart (Antigonish-Guysborough): You are telling us that the government of the province of Quebec is completely satisfied with the provisions of this bill relating to situations in which the Governor in Council would be exercising powers that are normally under provincial jurisdiction.

Mr. Beatty: Yes. What I am saying, senator, is that we invited from each of the provinces an expression of any concerns it had. A number of concerns were expressed by a number of different provinces, the vast bulk of which concerns were dealt with through modifications to the initial draft of the bill. My understanding is that the Government of Quebec is satisfied with this bill, as are the other provincial governments.

Senator Stewart (Antigonish-Guysborough): Is the government of the province of Quebec satisfied with the specific provisions for dealing with what was thought of in 1970 as insurrection, real or apprehended? Does the Premier of Quebec think that this will give you an adequate legal regime for dealing with that kind of situation?

Mr. Beatty: I personally met with the minister responsible from Quebec. A succession of meetings have been held at the officials level. We have received official correspondence from the Government of Quebec, and it was not the Premier of Quebec who responded to the letter but the appropriate minister. He was speaking on behalf of the Province of Quebec, indicating the satisfaction of the Government of Quebec with the sort of changes we were looking at.

Senator Stewart (Antigonish-Guysborough): I am sure, Mr. Chairman, that other senators want to ask questions. May I ask one more?

The Chairman: All right.

Senator Stewart (Antigonish-Guysborough): I wanted to ask a question concerning the Parliamentary Review Committee. Subclause 62(1) makes a provision for a committee of both houses. Then, subclause 62(2) states:

> The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons.

Reading those two subclauses together suggests that the participation of one senator would be adequate to constitute a joint committee. There is no rule, either here or elsewhere, with regard to the proportion of members on joint committees. This matter was debated when the joint committee on Meech Lake was being set up. We thought that the present government was very unreasonable in the stand it took with regard to the number of senators who would be members of that committee. One member from the Senate would suffice to make a committee qualify as a joint committee. In the present Parliament, that could be a Conservative senator. Perhaps in another Parliament, a Liberal senator—or even, possibly, an NDP senator, if the NDP had a majority in the House of Commons. I do not want to distract you with that—

[Senator Beatty]

Mr. Beatty: It tantalizes me, senator, when you mention an NDP senator.

Senator Stewart (Antigonish-Guysborough): Let us think of the problem without having particular parties in mind. It seems to me that something might be done to this part of the bill to ensure that both sides of the Senate would be represented on that committee.

Mr. Beatty: Senator, in designing this particular provision of the bill, we did not attempt to fix what would be the absolute number of members from the House of Commons, for that matter. We did try to provide that there would be representation from each of the political parties in the House of Commons. It would also be possible, presumably, that representation of the Senate might involve independent senators. One would hope that reasonableness would apply in any case where the two houses are called together to meet with one another.

When you say, senator, that you felt that the government of the day was unreasonable in terms of the number of senators included in the Meech Lake committee, I could say that members of the NDP probably felt that the government was unreasonable, too, in terms of the number of senators included, but for different reasons.

Senator Stewart (Antigonish-Guysborough): You make my point, namely, that reasonableness is a highly subjective test. It seems to me that to plead reasonableness is almost as unreliable as pleading goodwill as a basis for procedure.

● (1910)

Mr. Beatty: Senator, as long as you are here, I am sure there will be goodwill and there will be no difficulty with that.

Senator Stewart (Antigonish-Guysborough): Come now!

Mr. Beatty: In many elements of parliamentary and constitutional procedure in the past we have resisted setting up very rigid structures which are not capable of being adapted to particular circumstances. I do not think it is unreasonable to expect there would be goodwill in a national crisis or that reasonableness would apply.

In the provisions of this bill—many of which I mentioned to you earlier—we have built a panoply of protections for civil liberties, a structure which ensures involvement by members of the House of Commons and senators that is unprecedented. I cannot think of a single piece of legislation that has come before Parliament in my 16 years as a member of Parliament which has built in so many checks and balances to protect civil liberties, using both the courts and Parliament.

Senator Stewart (Antigonish-Guysborough): You are pleading that the provisions for parliamentary surveillance here are sweeping and, indeed, highly detailed. You do not rely upon reasonableness when you come to other major provisions in that same clause. The bill says, "within three sitting days" and "within seven sitting days." There the bill is very specific. However, in subclauses 62(1) and (2), you rely on reasonableness.

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Mr. Beatty: Senator, we could write all sorts of additional rules for the committee and constrain the committee much more than we have done. We have tried to stick to the essentials here. I believe we have struck a formula which ensures proper parliamentary scrutiny and involvement, but also gives sufficient flexibility to deal with the specific circumstances of the day.

Senator Stewart (Antigonish-Guysborough): Our differences have been adequately recorded. Therefore, Mr. Chairman, I will not pursue this point.

The Chairman: The next senator on my list is Senator Marsden, followed by Senator Neiman.

Senator Marsden: I would like to deal with the public welfare emergency sections. I do not bring to the question the kind of knowledge or parliamentary experience that Senator Stewart does. However, I am interested in how this might apply to a number of situations. As I am sure you know, one has to imagine what might occur in order to understand how this will apply.

In responding to Senator Stewart about the internment situation, you referred specifically to subclause 4(*b*) and the basis on which people can no longer be interned—race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. I believe those items cover all grounds in the Charter.

There are a number of grounds that are not covered in the Charter. How do you think this bill would apply in a situation which is currently facing the country in relation to disease in human beings, and that is the current ferment on the subject of AIDS? There are people who take very extreme positions about what ought to be the situation of those who are HIV positive or, in fact, have the disease. Would it be a correct interpretation of this section to suggest that, should a government accept that kind of argument, people might be interned, and, given that AIDS affects all kinds of people from all classes, but is heavily concentrated at the moment in homosexual people—and sexual orientation is not a protected ground under the Charter, nor is it in this bill—that such people might be detained or interned? Paragraph 8(1)(*g*), for example, would allow the government to establish emergency shelters and hospitals. We are not necessarily talking about internment camps. Would detainment in that case be possible as a public welfare emergency?

Mr. Beatty: Senator, you are referring to the public welfare provisions. There is no power of internment whatsoever, and that sort of situation would not apply. You would indeed have the ability to establish emergency shelters or hospitals.

In a case where a natural disaster destroyed the housing of hundreds of thousands of people—because of an earthquake, for example—you would be required to set up immediately provisions to provide for shelter, for hospitals and so on for the people who are affected. That is what this provision is designed to deal with.

Senator Marsden: Does not paragraph 8(1)(*a*) say that the Governor in Council might regulate or prohibit travel to or from a specified area where necessary for the protection of the health or safety of individuals? As I said, we are not talking about internment camps, but this would allow the government, I assume, to confine people to these hospitals or emergency shelters when it considered the situation to be a public welfare emergency, or am I misinterpreting that? In other words, could the unprotected grounds in the Charter be the basis for this kind of action on the part of the government?

Mr. Beatty: Paragraph 8(1)(*a*) is designed to deal with a situation where, for example, a natural disaster took place, where public safety would be jeopardized by people moving into the area which was struck by the event, and we would be able to proscribe travel into that area.

Senator Marsden: I understand that. The whole point of this discussion is to think of situations to which it might apply. Clause 5 clearly says that a public welfare emergency means an emergency that is caused by a real or imminent disease in human beings, animals or plants. AIDS could be an imminent disease in human beings.

One examines the failure of other nations to protect the civil liberties of people who are affected, and, in fact, to cause them a great deal of harm. One wants to be sure that nothing of that nature would be possible in this country.

Mr. Beatty: Indeed, and I fully share your concern. The courts would find that such a stretching of those provisions would go well beyond the intent of Parliament. Even if you attempted to claim that you were setting up a quarantine of some sort for people smitten by disease, if you were able to get around the provisions that specifically proscribe internment based on mental or physical disability, you would still collide with the provisions of the Charter—section 1 of the Charter and the mobility provisions in the Charter.

Senator Marsden: Are you telling me that sexual orientation, for example, is protected under the Charter?

Mr. Beatty: I did not think the argument you were making was that a government would attempt to claim that sexual orientation is *ipso facto* a threat to public health in some way. If you were claiming that you were trying to maintain a quarantine of some sort and trying to stretch the provisions of a law to provide for that, it would be more likely you would be trying to apply it in cases where somebody had been demonstrated to be infected. Even in that case I do not believe that would be permitted.

Senator Marsden: In fact, the argument you say I was not making is the one I was making. If someone was clearly infected and a danger to the public, that is covered under existing law, provincially and federally.

Who would have thought that Canadians would intern other Canadian citizens of Japanese origin? I am trying to think of a situation we would not anticipate. Suppose a government decided that there was an imminent problem because of the spread of a terrible disease, and it decided that certain categories of people should be detained. Then let us suppose that those categories were so classified on grounds that you have not mentioned in subsection 4(*b*). What would follow from that, in your view?

• (1920)

Mr. Beatty: The advice that I received is that we would be going through such a legal gyration and stretching of the legislation in an attempt to avoid the provisions of the Charter that it would be thrown out by the courts. That is the best advice that I have received. If I can offer my non-lawyer's legal opinion—it is worth what you pay for it—the patent absurdity of an attempt by a government to use such provisions in that way would be turned back by the courts very quickly.

Senator Marsden: Let's hope so.

Can you tell us briefly where, in the last few years in Canada, you think a public welfare emergency might have been declared and where, therefore, this clause of the bill would have been useful?

Mr. Beatty: Yes, I certainly can give an example. You will recall the Mississauga derailment, where there was a potential for a chemical spill which could have seriously damaged the health and threatened the lives of individual Canadians. Say that that had taken place in Prince Edward Island and the resources of the province were stretched so thin that it was impossible for them to respond. It might be necessary for us to use the federal authority to bring in resources from other provinces. That would be an example of a situation where this legislation would be put in place.

Another example would be if there were a serious earthquake in the lower mainland of British Columbia devastating that area, and the consequences were such that it was too acute for the Government of British Columbia alone to be able to deal with. The federal government could intervene and bring in resources from other provinces as a result.

Virtually every other developed country has emergencies legislation to deal with natural disasters and other emergencies like this. Canada, for some reason, simply has a lacuna in the law. If that sort of devastating disaster were to take place in Canada today, our choice would be either not to respond and allow the suffering and loss of lives, or to act illegally and attempt retroactively to validate illegal actions.

Senator Marsden: So that the discussions which your colleague, the Minister of Agriculture, has been having about the possible removal of animals suffering because of the drought could presumably be a situation where the federal government would step in, if necessary?

Mr. Beatty: You would have to look at the definition of "national emergency." First, you would have to demonstrate that it was a national emergency. It would have to meet that test.

Second, you would have to look at the definition of "public welfare emergency." Certainly "drought" applies there. "disease, accident or pollution" is mentioned there also. It states

> —and that results or may result in a danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so serious as to be a national emergency.

You are asking me to give you an opinion in a hypothetical case. I would be surprised if it were to apply in a case like that.

The sort of case where it would be far more likely to apply would be in the case of an incident, similar to the one in Bhopal, taking place in, say, the province of New Brunswick, where you desperately need to bring resources in quickly; the lives of people are in jeopardy; and the immediate effects of a disaster may be confined to one province, but that province may not itself have the ability to respond with the resources within the province itself. In that case, the federal power would have to be used on an emergency basis without wasting time, and you would be able to commandeer resources in other parts of the country and bring them in as necessary to restore conditions and protect people.

The Chairman: Next is Senator Neiman.

Senator Neiman: Mr. Minister, you have reassured me with regard to many of the questions I had respecting Bill C-77, but I have a couple more which I would like to hear your comments on.

In your list of the most important features within the bill, you mentioned that, if Parliament is not in session at the time the emergency is declared, it will be recalled at the earliest possible opportunity.

I have been looking through the bill and I do not see a time specified with respect to recall. Have I missed it?

Mr. Beatty: Let me just find the appropriate section, and I would be pleased to respond.

I believe what you are referring to is clause 58(2), which states:

> If a declaration of emergency is issued during a prorogation of Parliament or when either House of Parliament stands adjourned, Parliament or that House, as the case may be, shall be summoned forthwith to sit within seven days after the declaration is issued.

Senator Neiman: In the definition of "public order emergency" it specifies that it arises from "threats to the security of Canada", and that, in turn, is being given the meaning assigned by section 2 of the Canadian Security Intelligence Service Act.

I do not have a copy of that act before me, but I wonder, on the one hand, how broad that definition may be or, on the other hand, how secretive it may be. There are criteria that deal with such matters as subversion or foreign influenced activities, but how specific can we consider this particular definition?

Mr. Beatty: We are searching now for a copy of the CSIS Act, because it was incorporated by reference. If I can find it, I would be pleased to put it on the record.

As a former Solicitor General, I have had a good deal of experience with the CSIS Act. One of the things that was specifically provided for there, for example, is the right to

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legitimate dissent, and that is specifically protected by Parliament.

We incorporated by reference this definition because it represented the most recent time that Parliament had been engaged with the issue of what in fact represents a threat to the security of Canada. The CSIS Act was the product of extensive deliberations both in committee and in both houses.

There is also a provision within the CSIS Act which sunsets the act and brings it back for reconsideration by Parliament next year. Any changes which are made by Parliament to the definition of threats to the security of Canada and the CSIS Act—whatever Parliament deems at that time to be appropriate in dealing with the whole issue of counter-terrorist and counter-subversion, and so on—would be automatically incorporated by reference in this legislation as well. We did not want to attempt to refight the battles of the CSIS Act with emergencies legislation, but say that whatever is decided by Parliament with regard to the statute which is most designed to deal with this whole issue would be incorporated by reference.

Let me put the definition on the record. It states:

> "threats to the security of Canada" means
>
> (*a*) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (*b*) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
>
> (*c*) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and
>
> (*d*) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,
>
> but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (*a*) to (*d*).

One of the distinctions I would stress here is that while the CSIS Act may give to CSIS the responsibility, if you look at subversive activities or if you are dealing with the issue of foreign directed activities within Canada, the scope is relatively broad as it relates to the generation of intelligence by CSIS

• (1930)

Where it would differ in this bill is that you must demonstrate the fact that a situation is so grave as to constitute a national emergency. It may well be that, in instances where there is foreign-directed activity in Canada, it is appropriate for the government to keep an eye on it to make sure they know what is happening. However, one would have a very hard time indeed, in many instances, in demonstrating that such activity constituted a national emergency, which is defined in clause 3 as being:

> . . . an urgent and critical situation of a temporary nature that
>
> (*a*) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
>
> (*b*) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada
>
> and that cannot be effectively dealt with under any other law of Canada.

So, senator, that definition of "national emergency" again tempers and constrains the definition under the CSIS Act.

Senator Neiman: Mr. Minister, you mentioned that the provisions of the Charter and of the International Covenant on Civil and Political Rights and our other federal statutes will override and safeguard the various provisions of this bill. However, the bill, as it is presently drawn, leaves the reference to the Charter and to the Covenant and the other statutes solely in the preamble clauses of the bill. I know that the Canadian Bar Association, which is one body to which you referred, and I think perhaps the Attorney General of Alberta, recommended very strongly that you put those references into the body of the statute. This has been done with respect to other statutes; for instance, the Freedom of Information Act and the Young Offenders Act.

It would seem to me that this particular bill is of more importance and significance than those other statutes, and I wondered why it had been decided not to incorporate reference to those protective, overriding rights in the body of the bill itself.

Mr. Beatty: Senator, owing to the fact that, as Solicitor General, I amended the Young Offenders Act, I am searching my memory as to whether there was a provision therein that specifically incorporated the provisions of the Charter of Rights. I accept your word that there was, although I do not recall it at this time.

Senator Neiman: That was my advice, and I stand to be corrected on that also, Mr. Minister.

Mr. Beatty: The advice that we had in drafting the bill was that it was not necessary to do that; that the provisions of those protections to which you referred would apply to this bill without further reference to them anywhere in the bill. In the case of the War Measures Act, provisions of other statutes were excluded from applying in that case.

The Charter of Rights, for example, would apply and take precedence over other legislation unless precluded from doing so. The same would apply in the case of the Bill of Rights.

Senator Neiman: Mr. Minister, even under section 1 of the Charter itself exceptions can be made, and it is my understanding that the Charter provisions in any case, if they are included in the preamble to a bill, simply serve as a guidepost, whereas, if they are incorporated into the bill itself as part of a definition—for instance, of "national emergency" or whatever the case may be—they then become an essential ingredient of the definition.

Mr. Beatty: Senator, in the case of the Charter of Rights, it specifically states within the Charter itself that it applies to other statutes. The power of the Charter of Rights to apply to this particular bill stems from the provisions in the Charter itself. You say that there are provisions under which one could suspend, if you like, the powers of the Charter. I understand that it would make no difference whether or not we made specific reference to the Charter in a separate clause of the bill. The ability to suspend the powers of the Charter, or to circumscribe the powers of the Charter, is provided for in the Charter itself.

The same applies here. The best legal advice that I can get from the Department of Justice—and I, as a non-lawyer, transmit it to you—is that it would have been, at best, redundant to include those provisions and in any event totally unnecessary. The provisions apply unless it is specifically stated that they do not apply.

Senator Neiman: Very well. That, in itself, is reassuring, Mr. Minister. If I may conclude by perhaps supporting an observation of Senator Stewart's with respect to clause 62 regarding the composition of the parliamentary review committee. I would certainly much prefer to see that clause stipulate that all parties—and even independent members, as you yourself suggested—be represented from both houses, because, on the one hand, I see that you have said that in the House of Commons the membership will be drawn from a party having at least 12 members, whereas you made the comment yourself that within the Senate you might choose an independent member. I have no problem with that whatsoever, but I do think that, in both houses, whatever parties there are—or independent members as the case may be—should be represented on such a committee.

Mr. Beatty: Senator, in the past you and I have served on joint committees together and certainly the experience has been an edifying one for me. As a member of the House of Commons, I felt that it was a useful experience to serve on a joint committee. Certainly, the reason that, over opposition from some quarters in the House of Commons, I wanted to build in the double veto, for example, to give the Senate the power to nullify a decision of the House of Commons to allow us to invoke this legislation was that I am convinced that the integrity of this place should be maintained and that it has an important role in terms of protecting the civil liberties of Canadians.

The real issue here, I suppose, is whether it is necessary to write down in minute detail all of the structures of the committee or whether we should expect that, as Senator Stewart was saying, good will and common sense should apply.

During my years in Parliament I suppose there have been instances when I may have questioned whether or not good will and common sense applied in all cases. However, for the most part, I think the two houses have worked well and in close collaboration, and I would expect that any other member of the House of Commons who assumed my responsibility at a different time as Minister responsible for Emergency Preparedness would also feel that the Senate had something to offer on this committee and would draw on the resources available to it.

Senator, the legitimacy of the process—the fact that we are asking Canadians to entrust us with extraordinary powers which affect their civil liberties—requires that we demonstrate to them that we are operating in a way that is open, aboveboard and proper. Therefore, a procedure which was clearly designed to circumvent the spirit of the legislation itself, which was designed to ensure a joint parliamentary committee, would, by its very nature, damage public support for anything the government was doing. I think it would be self-defeating if the government attempted to do that.

By the same token, however, it would be possible for the Senate, acting irresponsibly, to strike down the will of the majority of the elected representatives in the House of Commons. The best protection against that would have been to exclude the Senate, and that was argued to me by members of the NDP. I do not believe that senators will act irresponsibly. I believe that we have a responsibility to show good will to one another, and I am confident that, if such a committee were set up, both houses would consult with one another and would set up a committee that was fully representative of both bodies.

Certainly, I am quite prepared to leave on the parliamentary record that that was my intention at the time the bill was passed.

Senator Neiman: Thank you, Mr. Chairman.

• (1940)

The Chairman: At the moment there are no other questioners on my list, but Senator Stewart has indicated that on the second round he would have a question.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, it develops now that I have one question more than I anticipated. But first I wonder if I could have the assurance from the minister that he would check the blues and correct what I am sure he did not intend to say, that I was advocating that it was sufficient to rely on reasonableness and goodwill when delegating these enormous powers. I think he said exactly the opposite of what he intended to say. I am sure he will want to correct that remark.

I would like clarification on two points. First, when talking earlier about conscription the minister told us that it would be legally possible under this act to introduce conscription by order in council. As I understood the minister, he said that it would not be possible under an order made under this act to send conscripted persons outside Canada to Norway or Alaska, for example, because of section 6(1) of the Charter, which

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says, "Every citizen of Canada has the right to enter, remain in and leave Canada." Did I understand that point correctly?

Mr. Beatty: Section 6, yes.

Senator Stewart (Antigonish-Guysborough): Does that mean that Parliament itself by statute cannot authorize that conscripted persons or persons in the armed forces be sent outside Canada?

Mr. Beatty: Parliament would have to demonstrate that the conditions of section 1 of the Charter were being met.

Senator Stewart (Antigonish-Guysborough): Then why couldn't the same demonstration be made in the case of persons being sent outside Canada by order in council under this statute?

Mr. Beatty: One would have to demonstrate that the conditions were being met. If one could demonstrate that the conditions were—

Senator Stewart (Antigonish-Guysborough): Then you are saying that by law there would be no difference, that provided the demonstration was made in each case, an order under this statute would have the same effect as a statute explicitly and directly authorizing the government to send armed forces personnel overseas.

Mr. Beatty: You would be required in either case to meet the provisions of section 1 of the Charter. I believe that during World War I we used the powers of the War Measures Act in order to conscript. Of course, the provisions of the Charter did not exist at that time, but, if it had applied, you would have had to meet the provisions of section 1. Under Bill C-77, there is the additional requirement of reasonable grounds.

Senator Stewart (Antigonish-Guysborough): So what you are saying is that, when this bill becomes law, the power of the Governor in Council will be the same as the power of Parliament with regard to sending persons outside Canada. In other words, the test is the same in both cases.

Mr. Beatty: If the provisions of the Charter are met, yes.

Senator Stewart (Antigonish-Guysborough): So we are giving to the Governor in Council all the power that the Parliament of Canada itself has, both with regard to conscription and to sending persons outside Canada?

Mr. Beatty: Provided that reasonable grounds can be demonstrated by the Governor in Council for doing so.

Senator Stewart (Antigonish-Guysborough): The answer is that the powers are the same because the limitation is the same in both instances.

Mr. Beatty: Except that there is the additional constraint under the provisions of Bill C-77 of demonstrating the necessity. That constraint on Parliament would not exist if it were passing a conscription bill.

Senator Stewart (Antigonish-Guysborough): You say "demonstrate the necessity." Where is that explicitly required in this bill?

Mr. Beatty: It is required under subclause 40(1), where it says, "... believes, on reasonable grounds, are necessary or advisable for dealing with the emergency."

Senator Stewart (Antigonish-Guysborough): In other words, that subclause applies if there is a *prima facie* case, but that is quite a different thing from what you are talking about. It does not mean that a court must find that it is necessary. It means simply that if the minister of the day believes that he has reasonable grounds—

Mr. Beatty: There must be an objective test with the very invocation of the statute in the first place. The invocation of Bill C-77 itself is contestable in the courts.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, we can go on digging this well for a long time, but I do not know that we will get much more water. I want to turn to another question. It is one that I raised when I spoke on second reading of the bill. Bill C-77 provides that an order in council made under it could not be used to change the terms of Bill C-77. We know that it was decided by the Supreme Court of Canada during World War I that an order in council made under the War Measures Act could be used to set aside the provisions of statutes, not just orders or regulations but statutes made by Parliament itself. According to subclause 4(*a*), an order or regulation may not be used to set aside part of this statute. However, that subclause implies that an order or regulation could be made to set aside the provisions of other statutes. Is that a correct deduction?

Mr. Beatty: I am told that it might be possible in instances where it was directly relevant and necessary to deal with the emergency provided for under this statute.

Senator Stewart (Antigonish-Guysborough): So your answer is yes, by an order in council or a regulation made under this act, statutes enacted by Parliament could be set aside. You are asking for that power?

Mr. Beatty: The advice I have received is that there was during World War I an instance in which the courts found it appropriate under the War Measures Act to extend powers and to alter the provisions of the statute law using an order under that act. Under this proposed statute, anything done would have to be directly relevant to the purposes of the statute, would be contestable in terms of the various checks and balances provided in the statute, and would be subject to scrutiny by Parliament and could be nullified by Parliament at any time. I am advised that it is far from certain that even under those circumstances the courts would, today, with the provisions of the Charter and the other provisions that have been put in place since World War I, find that such an action would be possible.

• (1550)

Senator Stewart (Antigonish-Guysborough): I do not think anyone would argue that what was done during World War I with regard to military exemptions was not relevant. Your answer seems to imply that you would be content to accept, for greater certainty, an amendment to clause 4(*a*) so that it would read "... altering the provisions of this or any other act." You would be happy to accept that?

Mr. Beatty: I would not be prepared to see amendments made which would delay the progress of this bill.

Senator Stewart (Antigonish-Guysborough): So, delay would be the only ground on which you would object to that amendment?

Mr. Beatty: There may be specific instances where it is necessary for the Governor in Council to use such powers, properly safeguarded by Parliament and by courts as provided for in the statute. But, at this point, reopening the bill and going in, as you say, for greater certainty, if that is the concern, would, I think, do a disservice to Canadians. The bill has been before Parliament now for almost a year. The time has come for Parliament to deliver on the commitment it made some 18 years ago to repeal the War Measures Act and to put modern legislation in its place.

Senator Stewart (Antigonish-Guysborough): You seem to imply that if we take, say, half the time that you took in the other place it will be reasonable, and I would be prepared to accept that.

Mr. Beatty: I do not know, Mr. Chairman, whether Senator Stewart was simply throwing that comment out facetiously or whether he intended to have a serious reply from me.

I think the members of the House of Commons took their responsbility very seriously as, indeed, did the government. The government tabled the bill at the end of June. I announced my intention to have such a bill on June 5 in the defence white paper. I tabled it before the summer recess. I left it out for public scrutiny and invited public commentary. We had extensive hearings in the parliamentary committee. A large volume of amendments were made to it. The elected representatives of the people, I think, did their job exceptionally well.

The real question comes down to whether we, as members of Parliament, both houses, are prepared to honour a commitment that was made in good faith and to act, or whether we are prepared to delay the progress of this bill and to have opened up the possibility that Canadians could either be forced to deal with a crisis for which there is no appropriate authority on the part of the government to deal with, or that the civil liberties of Canadians could once again be abrogated in the way they have been abrogated in the past by using this odious War Measures Act which is on the books today.

Senator Stewart (Antigonish-Guysborough): I do not want any misunderstanding. You say that the government introduced the bill in June of 1987. It was passed by the House of Commons on April 27, 1988. It is now just a little over the month later, yet you seem to be suggesting that we are already delaying the bill.

Mr. Beatty: No, I was not suggesting that, senator. Certainly, I would not try to put words in your mouth and I know you would not try to put them in mine. I am not suggesting you are trying to delay the bill. I am suggesting that you should not delay the bill.

[Senator Stewart (Antigonish-Guysborough)]

Senator Stewart (Antigonish-Guysborough): That seems to be not war, invasion or insurrection apprehended, but delay apprehended. I suggest that it is unreasonable to apprehend.

Mr. Beatty: Any delay, senator, would be unreasonable. We should proceed.

The Chairman: Since there are no other questioners, Mr. Minister, it is left for me to thank you very much on behalf of my colleagues for the time you have spent with us, which is now almost two hours. We very much appreciate that you made yourself available to appear along with your officials. I hope that you have found your first venture into the Senate a pleasant one and we look forward to having you with us again on some other occasion.

Mr. Beatty: Thank you very much, Mr. Chairman.

Hon. Senators: Hear, hear!

The Chairman: Honourable senators, we should now clear up the matter that was before us and put into suspended animation prior to the minister's entering the chamber. There had been a discussion regarding the establishment of a steering committee. We became involved in the beginning of a vote and then it was my understanding that there was no need for a vote and that the matter could be settled by agreement.

Senator Doody: I gather from speaking with Senator Stewart that there is a desire to have at least one more and perhaps other witnesses appear before the committee. To that end, I think the suggestion of Senator MacEachen is a sensible one and we should ask the two whips to set up a steering committee. The numbers involved in the committee and so on will be the same as they have always been in this place. I see little point in pursuing the cause of justice and equity. I will let it go at that.

The Chairman: I suppose that depends on how one defines "justice and equity."

Senator Doody: We had a discussion a moment ago about fairness and reasonableness and I do not want to plough all that up again.

Senator Petten: Mr. Chairman, the numbers are five and three.

The Chairman: The suggestion is five and three.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I think we have had an example of how dangerous it is to use figures in this place. Senator Doody has implied that I indicated that there would be at least one more witness. Technically, he is correct, but the implication is that one, perhaps two more witnesses will be heard. I did not wish to convey that impression.

What I have in mind, honourable senators, with regard to this bill is that, since the government is asking for such extreme powers, such great powers, we ought to know precisely what powers we would be giving the government if the bill passes. We can satisfy ourselves on that by hearing a reasonable number of witnesses. I do not want to say "at least one."

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because that seems to imply that later this week the minister's impatience will be satisfied.

Senator Doody: I did not mean to imply that "at least one" meant one; nor did I try to define the word "reasonable."

The Chairman: Is it agreed, honourable senators, that we will ask the two whips to establish a steering committee, to put forward the names of the members and that the numbers will be five and three?

Hon. Senators: Agreed.

Senator Doody: Mr. Chairman, I move that the committee adjourn, report progress, and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which was referred Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, reports progress and asks for leave to sit again.

The Hon. the Acting Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. C. William Doody (Deputy Leader of the Government) moved that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

[*English*]

EMERGENCIES BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

Leave having been given to revert to Order No. 3:

The Senate again in Committee of the Whole on the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, the Honourable Gildas L. Molgat in the Chair.

Senator Phillips: Honourable senators, I move, seconded by Senator Petten,

That the following Senators be appointed to serve on the Steering Committee of the Committee of the Whole on the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, namely, the Honourable Senators Asselin, Cochrane, Frith, Hébert, Kelly, Marsden, Molgat and Stewart (*Antigonish-Guysborough*).

• (1440)

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: Although there is no chairman at the moment for the steering committee, would it be agreeable, honourable senators, that the committee meet when the Senate rises on Tuesday next, or at our next sitting?

Hon. Senators: Agreed.

Senator Doody: Mr. Chairman, I move that the committee adjourn, report progress, and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which was referred the Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, reports progress and asks for leave to sit again.

The Hon. the Speaker *pro tempore*: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this committee have leave to sit again?

Hon. C. William Doody (Deputy Leader of the Government) moved that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

Source: Nikkei National Museum, 2018-16-4-1-1-232
www.nikkeimuseum.org

EVIDENCE

[Recorded by Electronic Apparatus]

[Texte]

Tuesday, March 1, 1988

• 1107

The Chairman: I would like to call the meeting to order.

There is a point I would like to raise, which does not concern our witnesses. It has to do with a number of amendments that were tabled by the Minister when he was here. It would be my intention, as we get eventually to clause by clause, to have a designated hitter for the Conservatives, who will present those amendments one by one as they come up through the clauses. I would suggest, as a *modus operandi*, that we go through them, and the first amendments that will be considered will be the Minister's in each case, so that we can get them out of the way. They will of course be debatable, one by one, and then any further amendments that are offered by members of the committee will be debated in the same clauses. I cannot see any other way to do it, given the number of amendments that we have to deal with—39, I believe.

Today we will go on with clause 2 of Bill C-77. For the benefit of the witnesses, that allows us to talk about any part of the bill at this time.

I would like to welcome Mr. Alan Borovoy, the general counsel of the Civil Liberties Association, and his field representative, Mr. David Schneiderman.

Now, it is customary, if you have a brief, to deliver it to us verbally and then we have questions after that. I wish to apologize to Mr. Ferland. The brief is in English only. We will have it translated and it will be distributed in both languages.

Mr. Borovoy, would you like to speak first?

Mr. Alan Borovoy (General Counsel, Canadian Civil Liberties Association): Thank you, Mr. Chairman. I regret that my colleague, the chairman of our board, Ken Swan, was unable to attend today. He is particularly knowledgeable about these matters. We regret his absence but will soldier on, in any event.

We are very grateful for the response of the Minister to the brief we presented to him last October. His response, from our point of view, has been a very constructive one and also very helpful. Many of the amendments that he has introduced would help significantly to reduce the problems that we are concerned about with respect to this legislation.

Having said that, we must also point out that the bill, even with those helpful amendments, remains in several important respects a flawed bill. In our view it still requires additional amendments in order to reduce adequately the kinds of risks, and needless risks, to civil liberties that in our view still obtain in this bill.

The definitions remain too vague, the powers too overbroad—if I am not compounding my superlatives—and the safeguards too inadequate.

Let me start with the definitions—the definition of an emergency. The bill talks now about a situation that is critical, temporary, and urgent and would imperil the well-being of Canada as a whole. That is at least a major portion of the definition of a national emergency. The problem with this is it does not indicate in what ways the situation will imperil the well-being of Canada, or in respect of what interests.

For example, there seems to be nothing in the bill that would prevent an economic interest from qualifying as a national emergency. Yet the Minister, in one of the background papers, or one of his statements, has indicated that it is not his intention to allow economic circumstances to qualify for emergency powers. If one reads the definitions, however, they do not adequately accord with his statement of intent.

Let me try to illustrate this with some examples. Let us take a public order emergency as a possibility. Suppose some multinational companies agreed in secret—conspired surreptitiously—to raise the prices of certain vital commodities in Canada. We go to the definition of a threat to the security of Canada in the CSIS Act, and we find there, because in order to qualify as a public order emergency it has to be caused by a threat to the security of Canada, that this is a foreign-influenced activity, it is detrimental to the interests of Canada, and it is clandestine in the sense that it is a surreptitious conspiracy. I submit that the example I gave you arguably could qualify as a threat to the security of Canada, and then it could imperil the economic well-being of this country and thereby qualify as a national emergency within the meaning of Mr. Beatty's proposed definition. There appears to be nothing in the definition that could preclude that possibility.

Take an international emergency: a situation involving Canada and another country arising out of intimidation or coercion or violence or serious force, or the imminent use of violence or serious force. Suppose the United States threatened, as I understand it has periodically done, to expand its tariffs against Canadian goods. Could this qualify as intimidation within the meaning of this clause? Bear in mind that it uses the words "intimidation, coercion", and then "violence or serious force".

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Clause 9 of Bill C-204, which resembles my bill, Bill S-4, would also add products manufactured from tobacco to the list of products covered by the Hazardous Products Act. This would enable the Governor in Council to pass regulations regarding the advertising, sale and importation of such products. The government's bill, Bill C-51, the Tobacco Products Control Act, would also deal with advertising of tobacco products. To avoid a possible conflict between the two bills, C-204 and C-51, if they were both enacted, Bill C-204 provides that the Hazardous Products Act would not apply if Bill C-51 were in force.

As a result of amendments at the committee stage, I do not believe there was any conflict between the effects of Bill C-204 and Bill C-51.

Bill C-51, rather than the amended Hazardous Products Act, would apply to the advertising and promotion of tobacco products. It has, in fact, been argued that the addition of tobacco products to the Hazardous Products Act, as proposed by Bill C-204, could assist in supporting Bill C-51 against any constitutional challenge. As I said, Bill C-204 deals with smoking in the federal workplace and on common carriers, subjects that are not covered by Bill C-51. The government has already announced its policy: Smoking in the federal public service is to be completely prohibited by January 1, 1989, while it is anticipated that regulations under the Canada Labour Code will be implemented to restrict smoking in federally-regulated sectors. These policies, however, are not entrenched in legislation.

The government's policy prohibits smoking altogether, at least in the federal public service, while Bill C-204 would allow smoking in designated smoking rooms. Originally Bill C-204 required such rooms to be enclosed and separately ventilated, but this provision was removed by the Legislative Committee in the other place. Now they only need to be enclosed and separate ventilation is required only in buildings constructed after January 1, 1990. There is no requirement for a smoking room to be provided, although its absence would mean that no smoking at all would be allowed. It should also be noted that Bill C-204, unlike the government's policy, would apply to the House of Commons, the Senate and the Library of Parliament.

Of course, there is controversy over the regulation of smoking in the workplace. Nevertheless, many private sector employers and municipalities, as well as several government departments and agencies, have already instituted such policies. Whether tobacco is the major cause of indoor pollution or merely one of several is also debated by many experts. It is, however, seen as a preventable irritant, and one that can and should be addressed. This is not to deny that many other problems of ventilation and indoor air quality must also be dealt with.

As far as various modes of transportation are concerned, both government policy and consumer demand have caused major changes. I believe that this bill will help a great deal to promote better health standards in Canada. The opponents of this bill who cry that it curtails freedom of commercial speech have no solid ground, because the guarantees in the Canadian

EMERGENCIES BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other acts in consequence thereof, the Honourable Eymard G. Corbin in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole.

Pursuant to Order adopted earlier this day, Mr. W. Snarr, Executive Director, Emergency Preparedness Canada, and Mr. H.J.L. Molot, General Counsel, Advisory and Administrative Law Section, Department of Justice, were escorted to seats in the Senate chamber.

Senator Doody: Honourable senators, with us now are Mr. Snarr and Mr. Molot who, I am sure you will remember, attended with the minister at the previous meeting of the Committee of the Whole. I am sure they will be pleased to answer any questions honourable senators may have.

The Chairman: On behalf of the Committee of the Whole, I should like to welcome back Mr. Snarr and Mr. Molot and invite them, if they so wish, to make a preliminary statement.

If not, the Chair is prepared to recognize honourable senators who wish to speak.

Since I gather there is no opening statement, I call on Senator Stewart, followed by Senator Frith.

Senator Stewart (Antigonish-Guysborough): There are several points on which I think these two gentlemen can be most helpful. I have a list of those points, but it may be that other senators will want to intervene; if so, I would be more than happy to give way.

My first question relates to the matter of overseas service by conscripted personnel. On May 31, at page 3531 of *Debates of the Senate*, the minister said:

> ...with regard to conscription, our advice is that this would be legally possible by order in council under Part IV of Bill C-77...

He then turned to the question of sending conscripted Canadians overseas. In this regard, he stated that the Charter provides an obstacle in that it forbids forcing Canadian citizens to leave the country. He quoted section 6(1) of the Charter of Rights and Freedoms, which states:

> Every citizen of Canada has the right to enter, remain in and leave Canada.

However, he also drew attention to section 1 of the Charter, which states that the Charter guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. He told the committee that to send conscripted troops overseas the test of section 1 of the Charter would have to be met.

My question is this: Is it not true that section 1 of the Charter would be no more of an obstacle or restraint on the government in the case of conscripted personnel than it would be in the case of volunteered personnel?

Mr. W. Snarr, Executive Director, Emergency Preparedness Canada: Section 1 of the Charter is a limitation on any action to limit the rights individuals have under the Charter. If a person were asked to leave the country in service of the country and had no objections, obviously there would be no impediment either way. Section 1 would arise if an individual who was being forced to leave took exception to that action and contested the government's authority to do it, in which case he would have recourse to the courts. In those circumstances, the government would have to demonstrate that its action in sending him overseas was reasonable and demonstrably justifiable in a free and democratic society.

Senator Stewart (Antigonish-Guysborough): In other words, you are asserting that the status of conscripted personnel would not be materially different from that of volunteered personnel, is that correct?

Mr. Snarr: The difference only arises—subject to advice from Mr. Molot—on the legal fine points. It seems to me that the difference would only arise in terms of the individual's desire to have access to, or to exercise, his rights under the Charter.

[The Hon. the Speaker.]

Senator Stewart (Antigonish-Guysborough): The question is—whether or not he wished to exercise his rights—would there be a difference in their status?

Mr. Snarr: I do not think so.

Senator Stewart (Antigonish-Guysborough): That is fine.

I want to turn to quite a different point. At page 3534 of *Senate Debates* the minister stated—and I had better have his words before me—that:

> —there is a constitutional requirement that there be—

Senator Frith: Could Senator Stewart tell us where that passage is to be found on that page?

Senator Stewart (Antigonish-Guysborough): I will find it. I simply wrote down the passage and the page number.

Senator Frith: That is fine.

Senator Stewart (Antigonish-Guysborough): It is on page 3534; however, I cannot put my finger on the line. He stated

> —there is a constitutional requirement that there be a bill to appropriate funds.

The preliminary question is: How immediate to the appropriation does the bill have to be?

We were referring to clause 30(1)(*j*). I should like to ask now what specific requirements does the government have in mind when it asks for the authority to make orders of the kind that would be authorized under that particular subclause?

Mr. Snarr: Mr. Chairman, clause 30(1)(*j*) authorizes the government to make orders or regulations concerning expenditures. The presumption is that these would be expenditures of funds which had already been appropriated or voted by Parliament.

There are a number of acts of Parliament—the Defence Production Act and some of the legislation dealing with the procurement of supplies—that authorize the government to make these expenditures through revolving funds, but in several cases there are limits put on the expenditure of the funds, regardless of or independent of the total amount of money that had been appropriated through legislation.

The purpose of clause 30(1)(*j*) is to permit those limits to be altered, presumably in the positive direction, to enable the government to rapidly expand its procurement program to meet the needs of an emergency, particularly an emergency looking toward possible hostilities and the government needing to acquire materiel for the mobilization of the armed forces.

Senator Stewart (Antigonish-Guysborough): The government is not asking for that specific authorization in the case of a war emergency. Why is no such specific authorization sought in the case of Part IV or war emergency?

Mr. Snarr: The general approach taken to Part IV was that because of the extreme gravity of a war emergency, where the future existence of the country is at stake, and the complete unpredictability of the way in which the situation might unfold and what demands may be put on the country to meet such an

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emergency, the widest possible scope should be given to the government to take action necessary to meet the contingencies.

So, in that respect, clause 40(1) gives very general authority to the government to take whatever action the Governor in Council believes, on reasonable grounds, is necessary or advisable for dealing with the emergency. This is quite similar to the bare bones power that was included in the War Measures Act.

Senator Stewart (Antigonish-Guysborough): If the government were to declare an international or war emergency when Parliament was adjourned, would it be possible to appropriate money from the Consolidated Revenue Fund for purposes not covered by any other appropriation?

Mr. Snarr: I think there is provision under the system of Governor General's Warrants by which appropriations can be made when Parliament is not in session.

Perhaps I can ask Mr. Molot if he is familiar with the finer points of the limitations of the government with regard to appropriating funds through Governor General's Warrants.

Mr. H.J.L. Molot, General Counsel, Advisory and Administrative Law Section, Department of Justice: I am not that familiar with the finer points. There is a system in place under the Financial Administration Act, but the requirements under that particular act would have to be met in order for the warrants to be available. They are only used in extraordinary circumstances.

Senator Stewart (Antigonish-Guysborough): Resort to the use of Governor General's Warrants is not all that rare. The circumstances you have described may be extraordinary, but the use of warrants is not all that unusual.

I asked specifically about the situation when Parliament was adjourned. I know about Governor General's warrants.

Mr. Molot: Do you mean, apart from Governor General's warrants, what other method of appropriation is there?

Senator Stewart (Antigonish-Guysborough): What I am asking is: If it is contemplated—we were told that the government had looked ahead and tried to anticipate any eventuality—that if the government had to declare an international or war emergency when Parliament was adjourned, the government would use Governor General's warrants for its new financial requirements. Is that what you have in mind?

Mr. Molot: No, we do not have that in mind. That is, I suppose, a possibility, but I think the straightforward approach would be that if Parliament were adjourned at the time that the money was needed then Parliament would be recalled.

There are other provisions in the bill in which Parliament's role is essential, as you are aware, and so Parliament's presence is necessary in order to—

Senator Stewart (Antigonish-Guysborough): Let me put before you a more difficult situation. In the event that Parliament were dissolved, would it be the intention of the government to use Governor General's warrants?

Mr. Snarr: Mr. Chairman, it would be the intention of the government to take whatever action was necessary, in the interests of the survival of the nation, within the bounds of what is constitutionally and legally possible. Certainly, if Parliament were dissolved and the only recourse to the funds that were required was through Governor General's warrants, that would be the intention.

Senator Stewart (Antigonish-Guysborough): So, if that circumstance ever arose, the intention would be to make use of Governor General's warrants. Is that your response?

Mr. Snarr: I think this would be the avenue of last resort, yes.

Senator Stewart (Antigonish-Guysborough): You implied that there are other avenues. What we are trying to discover is what we are delegating, and when you say "this would be the avenue of last resort", what other avenues are you implying? Do you have any in mind? Frankly, I do not know of any. You seem to suggest that there are others.

Mr. Snarr: The other avenue would be to go through Parliament and appropriate funds in the normal fashion.

● (1500)

Senator Stewart (Antigonish-Guysborough): So, assuming that Parliament had been dissolved, the government would be left only with Governor General's warrants. That is understandable.

My third point relates to taxation. At page 3531 of *Debates of the Senate*, the minister dealt with a question that I raised concerning taxation. He said:

> Finally, with regard to taxation, I am pleased to say that I can give a short, unequivocal answer. Taxes cannot be imposed by order in council. The Constitution sets out quite specific procedures for levying taxes and a bill is always required.

It is elementary that new taxes must have a statutory basis, but the bill now before us prompts two questions. The first is: Can Parliament delegate the power to impose a tax? The second is: If so, is the government, by this bill, asking Parliament to delegate the power to impose taxation? Those are the two questions I would like to have answered.

Mr. Snarr: In answer to the first question, the advice we have been given is that Parliament cannot delegate the power to levy new taxes. In the light of that information, I think the second question is irrelevant.

Senator Stewart (Antigonish-Guysborough): Yes. When you say "we have been given", you are not now speaking as a minister, but are you implying that you have outside counsel on this point?

Mr. Snarr: Perhaps I should have said that the answer I have been given by the Department of Justice is as I stated.

Senator Stewart (Antigonish-Guysborough): In other words, that is Mr. Molot's answer?

Mr. Snarr: I assume that Mr. Molot has the full resources of the department at his disposal and that, where necessary, he consults his colleagues.

Senator Stewart (Antigonish-Guysborough): All right. You have said that it is the position of the government that the power to impose new taxes cannot be delegated by Parliament. Is that provision to be found in the Constitution Act, 1867, and, if so, where?

Mr. Snarr: That is my understanding, senator. Perhaps Mr. Molot can speak to this point.

Mr. Molot: I did not bring that act with me, but I believe this matter is covered in section 53 or section 54.

Senator Stewart (Antigonish-Guysborough): I have a copy of the act here. Perhaps I could put it in your hands so that you can read to me the relevent section.

Mr. Molot: Section 53 states:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Then there is a procedure attached to that, in section 54, whereby that bill must be preceded by a recommendation of the Governor General. That has been taken to mean that all taxing measures must originate with a bill and that the bill must originate from the House of Commons.

Senator Stewart (Antigonish-Guysborough): Upon a recommendation, in the case of both appropriation and taxation?

Mr. Molot: Yes.

Senator Stewart (Antigonish-Guysborough): Is there jurisprudence on this point? Has it been decided by a court of relevant jurisdiction that Parliament cannot delegate the power to tax?

Mr. Molot: In theory, if there were an express provision in a bill delegating to the Governor in Council, for example, the power to impose tax or to set the rate of tax, that might lead to an arguable case that section 53 is being complied with.

Senator Frith: Yes, as long as the bill originated in the House of Commons.

Mr. Molot: That is right, and as long as the delegated power is expressed. But there is no power of this sort expressed in Bill C-77. I would assume that a court, not finding it there, would say that section 53 of the Constitution Act has not been complied with.

Senator Stewart (Antigonish-Guysborough): You say you would "assume".

Mr. Molot: Since I am not aware of a case, senator, I can only give my legal view that I do not think a court would agree that Bill C-77 has authorized delegated legislation to impose tax.

Senator Stewart (Antigonish-Guysborough): Do you know of any case, tried by a court of relevant jurisdiction, that has said that express words are necessary?

Mr. Molot: There may be one, but I am not aware of it.

Senator Stewart (Antigonish-Guysborough): So, the government takes the position that, since there are no express words in this bill delegating the power to tax, that power is not being delegated?

Mr. Molot: Yes.

Senator Stewart (Antigonish-Guysborough): Are there any other powers of Parliament that it cannot delegate except by express words? We were told earlier today that the delegation, in the case of a war emergency, is of "the widest possible scope". I think those were the words used. Are there any other powers that are held back because they are not delegated in this bill by express words?

Mr. Snarr: One power came up several times during the discussion of the human rights implications of Bill C-77, and that was in relation to section 33 of the Charter of Fundamental Rights and Freedoms, the so-called "notwithstanding clause". It was contended by one of the witnesses who appeared before the Legislative Committee in the House of Commons that the Governor in Council could, by order, invoke the provision of the "notwithstanding clause" and thereby set aside some of the basic rights that we all enjoy under the Charter.

Again, on the advice of legal counsel, the government is convinced, it is virtually certain, that any court would rule that such action was *ultra vires*, that no government would be so disrespectful of the laws of the country even to attempt such an action.

Senator Stewart (Antigonish-Guysborough): I know the point to which you refer. Perhaps it would be useful to the committee if you were to put on our record the words of subsection 33(1).

Mr. Snarr: Subsection 33(1) of the Charter reads:

> Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

The operative words, of course, are "in an Act of Parliament or of the legislature".

Senator Stewart (Antigonish-Guysborough): You are saying it is the government's position that, even by express words, Parliament could not delegate to the Governor in Council the right to exercise the "notwithstanding" power.

Mr. Snarr: That is correct.

Senator Stewart (Antigonish-Guysborough): Unfortunately, you used the words "the government is convinced" and "virtually certain", instead of "absolutely certain".

Mr. Snarr: One can only be absolutely certain in these matters when the situation has occurred and has been contested and ruled upon by the highest court of the land.

Senator Stewart (Antigonish-Guysborough): So you would be prepared to advise, for absolute certainty, that an amendment be made, provided, of course, that it did not take a great deal of time?

Source: Nikkei National Museum, 2018-16-4-1-1-235
www.nikkeimuseum.org

Mr. Snarr: I would certainly not recommend that there be an amendment for absolute certainty. The certainty is so great that an amendment is, in my view, completely unnecessary. Not only that, it would seem to me that whenever one introduces clauses in legislation, albeit for the meritorious objective of greater certainty, one is undermining, in effect, the related legislation or the related legal foundations on which the whole of our system is based. It brings into question that if one does not put in the "for greater certainty" clause in other legislation, it opens up a greater degree of uncertainty.

• (1510)

Senator Stewart (Antigonish-Guysborough): My next line of questioning deals with the matter of setting aside the provisions of other statutes. Under this bill it will not be possible for the Governor in Council to put aside the provisions of this statute. That opens up the question of putting aside the provisions of other statutes. On May 31, 1988, Mr. Beatty appeared before us. At page 3541 of *Debates of the Senate*, Mr. Beatty said:

> I am told that it might be possible in instances where it was directly relevant and necessary to deal with the emergency provided for under this statute.

I then comment:

> So your answer is yes, by an order in council or a regulation made under this act, statutes enacted by Parliament could be set aside. You are asking for that power?

Are there any statutes, other than the one that would eventuate from Bill C-77, if it passes, that are exempt from the power that the government is seeking in the bill—the power to set aside provisions of acts of Parliament by orders in council?

Mr. Snarr: As far as I know, there is no legislation that could not be temporarily overridden, if it were necessary to do so, to meet the purposes of this legislation.

Senator Stewart (Antigonish-Guysborough): So this is really a super statute. There is the Constitution, then there is this statute and then there are all the other statutes, which are subordinate.

Mr. Snarr: The qualification that the order or regulation makes, insofar as it overrides other legislation, must be very narrowly confined to matters which are intended toward the purpose of the act, that is, dealing with the emergency. There is a considerable body of legislation which constrains the procedure under which this is done. I have in mind the Statutory Instruments Act, for example, which gives quite a degree of confinement as to what the government can do by order or regulation.

In my view, it would not be possible for the government, on the basis of Bill C-77, to enact a regulation which, in effect, undid the restrictions that were in the Statutory Instruments Act.

Senator Stewart (Antigonish-Guysborough): Are you saying that that would be legally impossible?

Mr. Snarr: That is my view, yes.

Senator Stewart (Antigonish-Guysborough): Is that the view of the government?

Mr. Molot: I think that is true, senator. That is given added support by the very fact that reference is made in the body of the bill to the Statutory Instruments Act. Therefore, it becomes a basic or fundamental part of the structure of Bill C-77. The same could be said for the Canadian Bill of Rights. Presumably that could not be "notwithstood" by order.

Senator Stewart (Antigonish-Guysborough): You say "presumably".

Mr. Molot: Again, we have the preamble.

Senator Stewart (Antigonish-Guysborough): Nevertheless, this is really a super statute.

I come now to the question of grounds for internment. Although the minister made a great effort to be helpful on this subject, I am not sure that I, for one, understand exactly what would happen. There would be regulations such as the Defence of Canada Regulations. Under those regulations, let us say that an appropriate official makes an order for internment of a specified person. We are well down the genealogical tree from the emergency act itself.

What would happen in a court? The *habeas corpus* writ would be obtained. There would be counsel. Clearly, there would not be a trial on a charge, because there would be no charge. The person has been taken into custody, not because of something he or she has actually done that was contrary to the law but in anticipation that he or she might to do something which would be damaging to the peace, order and good government of Canada. Therefore, there cannot be a trial on a charge.

The government of the day would be saying that they believe, they guess that it would be better if this person were put away for a while. The minister said that all facts would be disclosed. I wondered at the time if he had thought that through. At page 3532 of *Debates of the Senate* of May 31, 1988, I asked him:

> The question is: Will the person who is challenging his own detention be able to require the government to disclose the facts on the basis of which the detention order against him had been made?

The minister replied:

> To the court, yes.

What facts would be disclosed?

Mr. Snarr: Subject to further refinement from Mr. Molot, the situation would be that the principle of *habeas corpus* would be invoked and the government would be required to show cause why the individual should continue to be kept in custody. In order to do that, the government would have to demonstrate that keeping the individual in custody was consistent with the law. With all the protections that are available through the Charter and through the explicit protections in Bill C-77, the government would have to disclose enough information to the court to convince the judge that what he or she was doing was legal, that the Crown had reasonable grounds on which to take this action, and that the individual was not being detained on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Senator Stewart (Antigonish-Guysborough): We all understand that it would have to be shown that the detention was consistent with the law. However, the law may well say that, if the minister believes someone is likely to commit an offence, that person may be detained. In that case the requirement that the detention be consistent with such a law would not mean very much.

I do not intend to ask my next question as a rhetorical question. It is not the judgment of the court as to whether the facts that the minister has available to him are adequate for the court to form a belief. It is simply that there are facts and that a reasonable person might, on the basis of those facts, form the belief that, in this particular case, the minister happened to form. Is that not the situation?

Mr. Snarr: Senator, that is precisely the situation. The only way a judge could determine the answer to the question you pose is to have those facts given to him so that he could decide whether a reasonable person would form the belief that it was necessary to incarcerate the individual.

• (1520)

Senator Stewart (Antigonish-Guysborough): I asked if the facts would be disclosed, not to the judge or the court but to the person.

Let me come at it this way. I am asking the witness if he is aware of situations which arose during the Second World War, where, for security reasons, it was impossible to tell persons interned why they were being interned. In other words, to inform them of the causes of their internment would be to violate state security. Are you aware of that problem? You have stated that, notwithstanding that, we will give these persons who we believe are a threat to the security of Canada information which may well be damaging to the security of Canada. Is that what your bill is doing?

Mr. Snarr: Certainly not; the bill is not doing that at all.

At the risk of repeating myself, the bill states that, if the matter is contested, the government must put that information in the hands of the judge.

Senator Stewart (Antigonish-Guysborough): So the minister was not quite responsive when he replied with a "yes" to my question, when I asked: "Will the person who is challenging his own detention be able to require the government to disclose the facts on the basis of which the detention against him had been made?"

Mr. Snarr: I think the minister was being quite specific and forthcoming in his reply that, yes, the government would be obliged to disclose the facts.

The disclosure must be sufficient, and sufficiently in accordance with accepted procedure to justify within our judicial system the individual's incarceration.

There is an additional Charter protection, as far as the individual is concerned, that states that everyone has the right on arrest or detention to be informed promptly of the reasons therefor. If the government wished to deny that information to the individual being held on security grounds, they would have the additional obligation to explain to the judge why it was reasonable and demonstrably justifiable, in a free and democratic society, that this information be withheld.

Senator Stewart (Antigonish-Guysborough): But you are conjuring up in my mind the image of a minister going to a judge and saying, "I believe he or she is a dangerous person and the reasons I happen to think this are such and such. I cannot say them in an open court, but these are the reasons."

Mr. Snarr: I can visualize situations in which that kind of process would be entirely justified.

Senator Stewart (Antigonish-Guysborough): That is the answer that I was expecting. I had hoped that I would get it by a less circuitous route.

Mr. Snarr: It would be under extreme situations, and very unusual, and ones that one would expect to occur only in rare instances, even in the depths of a disastrous war.

Senator Frith: Mr. Chairman and Senator Stewart, would Senator Stewart allow me to pursue that point?

Senator Stewart (Antigonish-Guysborough): Please do.

Senator Frith: I wish to clarify something.

Listening to the exchange, the first question was that, assuming a person who is detained asks for a writ of *habeas corpus*, and on return of the writ before the judge the person asks for the facts, that immediately raises the question of ministerial discretion, and the Crown is right—not this minister, but any person who exercises the executive's right—to claim executive privilege for reasons of national security or otherwise. I think Duncan and Cammell-Laird is one of the leading older cases on this question.

I thought that what Senator Stewart was pursuing was: Is there anything in this bill that would change the right of the executive to claim privilege against disclosure? I then heard you say that the bill would require it. That is what triggered my curiosity. Is there something in this bill that deals with the question of executive discretion in those circumstances, other than the general law that enables the executive to claim this discretion and protection, and then limiting how far the court can go behind it?

Mr. Snarr: What is different in this bill from a lot of other legislation that gives the executive certain powers is the repetition throughout the bill, in every place where the Governor in Council is authorized to take exceptional actions, that the action must be reasonable and he must believe on reasonable grounds that it is necessary. So that there is an objective test for everything that the executive does. That is tied up with the words "the Governor in Council believes on reasonable grounds—"

This is an important change that was made to the bill between first reading and eventual passage. In the original

Source: Nikkei National Museum, 2018-16-4-1-1-236
www.nikkeimuseum.org

drafting of the legislation, in all those places where you see those words "believes on reasonable grounds", it said, "Where in the opinion of the Governor in Council it was necessary."

Senator Frith: Yes

Mr. Snarr: This would be completely unchallengable; there would be not test whatsoever.

Senator Frith: That is an answer. Thank you.

Senator Stewart (Antigonish-Guysborough): I have one other question, which is a different kind. We know that the powers that will be exercised by the government under this bill, if it becomes a statute and its provisions are invoked, could well reach into areas which normally come under the exclusive legislative jurisdiction of the provincial legislatures.

On the basis of the minister's answer, I assume that careful anticipation has been made; that a war book has been prepared; and that you have analyzed what areas of provincial legislation would come under the Governor in Council, although those areas would not come under the Parliament of Canada. What would some of the leading areas be? What would the principal areas be which would be taken over and cease to fall under our normal federal structure?

Mr. Snarr: It is difficult to generalize on that point. I might preface my response by saying that, depending on the situation, there is almost no area of provincial jurisdiction that might not need to be intervened in because of the exigencies of emergency.

The easiest way to describe the sort of things that might be necessary is to state that to meet the needs of a national emergency there could be a need to marshal the resources of the country as a whole towards that emergency, where resources and capabilities that exist in one province might have to be applied in another province or put together to be applied outside of the country in the case of war.

Looking at a domestic peacetime emergency, where the provinces may be perfectly willing—in fact, even desirous—to help out their fellow citizens in other provinces, there is not the legal or constitutional authority for them to requisition resources within their own province and apply them in other provinces. Federal authority would be the only one available

● (1530)

One could give other examples, particularly in a war-time context. For example, matters having to do with the local management of the economy, which are generally left to the provinces—and here I am referring to things such as the distribution of the necessities of life. In times of war when these became scarce, in order to be fair throughout the country, it might be necessary to introduce federal measures which would impose or supersede the authority of the provinces in those areas.

Senator Stewart (Antigonish-Guysborough): Would it be possible, by order in council, to declare works to be of national importance? I have forgotten the exact subsection in section 92 of the Constitution Act, 1867 that permits Parliament to make works federal. Would it be possible to do that by order in council in a sufficiently great emergency?

Mr. Snarr: It would seem to me that it might be possible but it would, in a sense, be superfluous. If the action of taking over some activity which was normally within provincial jurisdiction were necessary in order to meet the exigencies of a situation, then the federal government would only need to pass an order to that effect; it would not have to use the constitutional basis of declaring a federal work.

Senator Stewart (Antigonish-Guysborough): There is a normal constitutional process. What I am asking you is if that normal process could be avoided by use of an order in council under the powers of this statute?

Mr. Snarr: Mr. Chairman, the advice I am given—and I must qualify it to be of the "off-the-top-of-the-head" variety, if Mr. Molot will permit me—is that to invoke the provision of the Charter that permits the federal government to declare certain undertakings or works as federal works and thereby bring them within the federal jurisdiction—

Senator Frith: Excuse me, it is not in the Charter; it is in the Constitution.

Mr. Snarr: I am sorry, it is in the Constitution—that it would require an act of Parliament to use that specific power. However, I would still maintain that, if the needs of the emergency were such that that was necessary, the federal government could still have the same effect through an order in council, pursuant to the Emergencies Act, without having to make reference to the constitutional provision.

Senator Stewart (Antigonish-Guysborough): We were told by Mr. Beatty that extensive consultation had taken place with the government of each of the provinces, I believe. Was there, in fact, discovery on this point? In other words, did you notify Prince Edward Island, Quebec and British Columbia that, by order in council, it would be possible to take over works within provinces which would normally be under provincial jurisdiction? Was that question explored with them?

Mr. Snarr: I can assure honourable senators that, without any doubt whatsoever, the provinces were fully aware of the implications of Bill C-77 with regard to intervention into matters normally within their jurisdiction. That, in fact, was their primary concern in almost all of the discussions that took place, both at the level of officials and at the level of ministers. The provinces repeatedly wanted to be reassured about the limitations that would be put on the government through this bill so that such intervention into provincial affairs would only be done where it was absolutely necessary.

In fact, I may say that at some of the earlier discussions several of the provinces took exception to this and contested whether, in this day and age, such intervention was constitutionally possible. However, it only took a very few minutes of consultation with their own legal authorities to inform them that it certainly was possible and was, in fact, the basis of the emergency doctrine of the Constitution.

Senator Stewart (Antigonish-Guysborough): I have one remaining question. Is there legislation in the United Kingdom that is comparable to Part IV of this bill?

Mr. Snarr: No, there is not. The Defence of the Realm Act, which was passed by the United Kingdom on separate occasions, you might say, in relation to the two World Wars, was subsequently repealed after each of the wars. However, they do have other legislation in place to deal with peacetime emergencies which is much briefer than Bill C-77. In some respects, it is not as comprehensive, since, being a unitary state, they do not have to be concerned with the federal-provincial implications, as we do. Also, I might say that in many instances they have not paid the same attention to detail with respect to the safeguards of individual rights and to detail with respect to the supervision of Parliament.

Senator Stewart (Antigonish-Guysborough): So you are saying that in the United Kingdom there is no parallel to Part IV of this bill and, in fact, no parallel to Part III. Is that right?

Mr. Snarr: As I say, there is certainly no parallel to Part IV. However, I am not sure, just on the basis of memory, of the extent to which their emergency legislation would permit them to take preparatory action in a national crisis, which is the intent of Part III.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman.

The Chairman: Next on my list I have Senator Frith and he will be followed by Senator Marsden.

Senator Frith: Mr. Chairman, the questions I had have been canvassed by Senator Stewart and by the witness. I will therefore yield to Senator Marsden.

Senator Marsden: Mr. Chairman, I am wondering if it is fair to assume that the witnesses read the transcripts of our exchange with the minister and therefore have read the questions which I put to Mr. Beatty, when he came before us the other day, concerning the public welfare emergency section. Is that a fair assumption?

Mr. Snarr: If you recall, senator, we were present.

Senator Marsden: My apologies. I would like to go back to that question, if I may, Mr. Chairman, and I would like to refer specifically to the question of internment. I may just be missing something here, but, under the orders and regulations section of the bill, clause 8(1) states that in a public welfare emergency the Governor in Council may make such orders or regulations with respect to the establishment of emergency shelters and hospitals; evacuate people; regulate or prohibit their travel, take away or dispose of their property, et cetera.

What is the difference between that and internment, which the minister said was not possible under a public welfare emergency?

Mr. Snarr: Once an individual has been interned, we generally envisage a situation in which he has been put in a very restrictive and confined environment and is not allowed to stray therefrom for any purpose whatsoever. The kind of provisions that are envisaged in clause 8 for a public welfare emergency are designed to provide for the safety of individuals and are therefore more what one might call the "inverse of internment". There are areas from which people would be excluded, but, aside from that, they could roam wherever they pleased.

Senator Marsden: May I then ask if the witness is saying that that is what clause 8(1)(*a*) means when it says:

> (*a*) the regulation or prohibition of travel to, from or within any specified area where necessary . . .

It sounds to me as though such people might be quite confined. Perhaps another way of asking the question is this: Is "internment" defined somewhere in this bill or in some other act where I might look?

● (1540)

Mr. Snarr: Senator, to answer your second question first, the word "internment" is not defined in this legislation and, to my knowledge, I do not think it is defined elsewhere. I can see your concern, particularly with regard to the word "from" in the phrase "the regulation or prohibition of travel . . . from . . . any specified area where necessary for the protection of the health or safety of individuals." One ought to keep in mind in considering the implications of that clause that we are talking, first, about a natural disaster or major accident. It is simply a temporary situation and the power to invoke measures pursuant to clause 8 are restricted to a relatively short time frame. The measures must be very strictly confined to those that are necessary in order to meet the purposes of the act, which, in this particular clause, is "for the protection of the health or safety of individuals." The example that comes immediately to mind with regard to the prohibition on travel from a specified area is one where there is the necessity to quarantine certain individuals who are suffering from a highly contagious disease, both for their safety and for the safety of others. It may be necessary to confine them while they are in the condition where the disease is communicable. This, however, is not the least bit exceptional. I would not be surprised if there is sufficient authority within legislation with regard to the Department of National Health and Welfare or at the provincial level to take the kind of measures necessary to meet that situation, and therefore this legislation would not even need to be invoked for that purpose.

Senator Marsden: In the example that is offered, no doubt you are quite correct. Of course, the provision requires that the internment can be no longer than seven sitting days before it has to be reviewed. As you know, one has to try to think of extreme circumstances to determine how much protection the bill will provide. I come back to the question of why the minister would have replied that there is no power of internment, when, for at least seven days and perhaps longer, people may be confined to an emergency shelter, which, I suppose could be called an internment camp under certain circumstances, and may not move "to, from or within" an area. What is the difference? I do not see the difference between that phrase and internment.

Source: Nikkei National Museum, 2018-16-4-1-1-237
www.nikkeimuseum.org

Mr. Snarr: The difference relates to the purpose for which the restrictions are being applied and, indeed, with regard to the specific nature of the restrictions. I do not have a dictionary with me so I do not know what the generally accepted dictionary definition of "internment" is. It conjures up in my mind, as I am sure it does in the minds of many people, rather arbitrary confinement in a prison-like environment, where the concern is not so much with the safety of the individual as it is with what that individual might wilfully do to other people or what damage the individual might wilfully do to the rest of the country. It conjures up in my mind something very similar to imprisonment, detainment and so on.

Coming back to the example I used, when we talk about quarantine, we do not use the word "internment".

Senator Marsden: Recently I have had occasion to look at provincial legislation on this matter and it varies considerably from province to province. One can easily imagine where the federal government might wish to step into a situation involving disease. Many provinces have the power to deal with such incidents and some have power which may or may not be adequate, so this provision may have to apply in some future case.

The witness has described what this provision conjures up in his mind. It conjures up in my mind something entirely different. I can think of conditions in modern life where people might be declared insane or, for example, where some post-World War II condition might apply, and one can see the possibility of confinement for seven days. What kind of protection would those people or their relatives have if the people so confined could not move within the specified area, could not have contact with one another and they could not travel in or out? What kind of protection does this act provide within that seven-day period, before the House of Commons comes to their rescue?

Mr. Snarr: On your first point, the emphasis in paragraph 8(1)(*a*) ought to be placed on prohibition of travel. In other words, the power is not given to detain or to intern but to prohibit travelling, which has a slightly different connotation. I can see that you could interpret it in such a way as to mean travel within, for example, a 30-square-foot area, but I think the word "travel" connotes something more than that, and that therefore what you have described would not likely be permitted under paragraph 8(1)(*a*).

On your second question, there is, of course, the Charter rights which prevent people from being arbitrarily detained. Everyone has the right upon detention to be informed, and there are the legal rights which apply to everyone. If the order were worded in such a way as to confine travel significantly enough, then it would not take much imagination to conclude that that means detainment, and therefore the Charter of Rights and Freedoms would be triggered.

Senator Marsden: Thank you.

The Chairman: Honourable senators, I have no other names on my list at this time. Therefore, on behalf of the committee, I thank the witnesses for coming here today.

Senator Doody: Mr. Chairman, I move that the committee adjourn, report progress and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

● (1550)

The Hon. the Acting Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Eymard G. Corbin: Honourable senators, the Committee of the Whole, to which was referred Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, reports progress and asks leave to sit again.

The Hon. the Acting Speaker: Is leave granted, honourable senators.

Hon. Senators: Agreed.

The Hon. the Acting Speaker: Honourable senators, when shall this committee have leave to sit again?

Hon. C. William Doody (Deputy Leader of the Government) moved that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

PATENT ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

Resuming the debate on the motion of the Honourable Senator Bonnell, seconded by the Honourable Senator Petten, for the second reading of the Bill S-15, An Act to amend the Patent Act.—(*Honourable Senator Cogger*)

Hon. C. William Doody (Deputy Leader of the Government): Honourable senators, Senator Cogger did intend to speak to this order today, but he had to leave to attend a committee meeting. He will be ready to proceed either tomorrow or on Tuesday next.

Order stands.

AGRICULTURE AND FORESTRY

WESTERN CANADA—DROUGHT CONDITIONS—REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming the debate on the consideration of the Eighth Report of the Standing Senate Committee on Agriculture and Forestry (drought conditions in Western Canada), presented in the Senate on 31st May, 1988.—(*Honourable Senator Fairbairn*)

EMERGENCIES BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

The Senate again in Committee of the Whole on the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole to consider Bill C-77. This afternoon we have a witness who wishes to appear before the committee. I understand that the witness is available; so we shall await her entry into the chamber.

Pursuant to the Order adopted by the Senate on June 8, 1988, Ms. Ann Sunahara, Legal Counsel, National Association of Japanese Canadians, was escorted to a seat in the chamber.

The Chairman: Our witness this afternoon, honourable senators, is Ann Sunahara, barrister and solicitor, appearing on behalf of the National Association of Japanese Canadians. A copy of a letter from Ms. Sunahara has been distributed to all members of the committee.

I welcome you to our committee, Ms. Sunahara. Our normal practice is to have an introductory statement by the witness of some 15 minutes and then to proceed with questioning by honourable senators. If that is agreeable, we are ready to proceed.

● (1450)

Ms. M. Ann Sunahara, Legal Counsel, National Association of Japanese Canadians: Thank you, sir. I thank the Senate for giving the National Association of Japanese Canadians an opportunity to offer comments on Bill C-77.

[Senator Frith]

The National Association of Japanese Canadians, as you probably know, is the democratically elected representative of Canada's 56,000 Japanese Canadians. Japanese Canadians have a very special concern about emergency measures legislation, being among the best-documented victims of the War Measures Act. The National Association of Japanese Canadians regards Bill C-77 as part of an attempt to redress what happened during the Second World War. Reform of the War Measures Act is something that the National Association has been seeking since 1945.

The National Association of Japanese Canadians is determined that any reform of the War Measures Act must prevent a recurrence of what happened to Japanese Canadians. As you know, 20,881 men, women and children were uprooted from their homes in February of 1942, processed through detention camps in British Columbia and the sugar beet fields of Alberta and Manitoba; and forced to choose between moving east of the Rocky Mountains or being deported to Japan. Their property was sold and the proceeds were used to pay for their incarceration. They were not permitted to return to their homes on the Pacific coast, or to enter British Columbia, until 1949. Even those Japanese Canadians who were finally able to get into the armed forces were not permitted to return to B.C. before 1949.

Consequently, I was asked by the National Association of Japanese Canadians to prepare an analysis of the Emergencies Act. We presented a 61-page brief to the legislative committee on Bill C-77, a copy of which will be made available to any senator who wishes it.

Many of our concerns in that brief were met by the other House in its amendments. Our principal concerns were with the definitions of the types of emergencies and with Parliament's ability to control the executive when exercising emergency powers and to revoke inappropriate orders in council.

Two of our concerns were not met. Our first concern is with secret orders, which we feel are both unnecessary and unwise and are already provided for in the CSIS Act. Our second concern—and what brings me here today—is with the Charter override which we see within this act.

You have received through the material I submitted my legal opinion of the minister's reasons as to why there is no Charter override. In brief, using the War Measures Act cases, our argument is that Parliament has the power to delegate to a subordinate body anything within its powers. It did so in the War Measures Act, delegating what has been termed by the courts to be "plenary powers of legislation". In other words, the cabinet, by order in council, could legislate as if it were Parliament, using any of the federal government's powers to legislate.

Since the Second World War, of course, and since October 1970, when the War Measures Act was last used, Parliament has gained one more power, the power to pass orders or laws that override certain Charter rights, the fundamental freedoms, equality and legal rights. That means that Parliament, of course, can now pass laws that take away the right to trial

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that take away the right against unreasonable search and seizure, that take away the presumption of innocence until proven guilty, which take away the right of assembly, the right of free speech and freedom of the press. These are serious and necessary rights in our society.

• (1500)

It is our submission that the powers delegated to the executive under the proposed Emergencies Act are as broad as they were under the War Measures Act. Since Parliament is not precluded from delegating its powers under section 33 of the Charter, it is our position that, by that broad delegation of powers in the proposed Emergencies Act, Parliament has delegated to the cabinet, or will if the bill is passed, the power to pass orders in council having the effect of statutes that can override Charter rights. The mechanism is to put the correct phrasing within the order in council in order to make it specific enough, define which rights, and so forth, as required by section 33. But, in the absence of an expressed provision withdrawing that right from the executive under the proposed Emergencies Act, the executive can pass orders in council overriding Charter rights.

The law in the matter is set out, in my opinion, with case references and in a way I hope is not too legalistic. It is because of this danger that the National Association of Japanese Canadians is requesting this house to amend clause 4 of the act to include a subparagraph (c) which would specifically withdraw from the executive the power to invoke section 33 of the Canadian Charter of Rights and Freedoms in any order in council it makes under the proposed act.

The best solution, of course, would be a Charter amendment, but since that is not immediately available we ask that this house protect the rights of Canadians and define the limits of the powers of the executive under the proposed Emergencies Act to restrict them from using a Charter override.

Those are my submissions.

The Chairman: Thank you, Ms. Sunahara. The first name I have on my list is that of Senator Stewart (Antigonish-Guysborough).

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman.

You mentioned that the bill now provides for a good deal of parliamentary control over the activities of the Governor in Council. Evidently you are familiar with the experience of Japanese Canadians during the 1939 to 1945 period. Do you think that the provision of similar controls in the War Measures Act would have been helpful to Japanese Canadians at that time? I am not, of course, talking about the provision of clause 4(b); I am talking about what we may call parliamentary surveillance.

Do you believe that in the political mood of those times that kind of parliamentary surveillance would have been of any use at all in the protection of Japanese Canadians?

Ms. Sunahara: I think the best answer to that is found in the attempt to deport Japanese Canadians in 1945. In October of 1945 Parliament refused to allow the right to deport Canadians to be included in the National Emergency Transitional Powers Act of 1945. The government withdrew the clause in that bill that would have given them that power, saying that Parliament would be consulted if there were to be any move to deport anyone from Canada. In a House depleted by the Christmas recess three weeks later, the government tabled an order in council, under the War Measures Act, deporting 10,000 Japanese Canadians, because at that point Parliament had no control over any order in council. That order in council was automatically continued by the National Emergency Transitional Powers Act of 1945. I think that is the best example. The Canadian Parliament had spoken and had told the government not to deport Canadians, and the executive turned around and tried to do exactly that.

I may add that there was a happy ending to that; two years later, after massive public objection, the deportation of Japanese Canadians was halted and the order withdrawn.

Another example was the order in council selling Japanese Canadian property. That was put before the House of Commons on the advice that it was to enable the custodian of seized property to dispose of certain depreciating properties, and, the implication was, with the consent of the owners. Everything was ordered to be sold two months later. Everything was ordered sold: real property, personal property, everything! The House of Commons and the Senate could do nothing about it.

Senator Stewart (Antigonish-Guysborough): What was the date of that transaction?

Ms. Sunahara: The order in council was placed before the House in April of 1943, and it was at the end of May that the brochures were printed and distributed to sell off all Japanese Canadian property.

Senator Stewart (Antigonish-Guysborough): I ask you that question because much has been made of the parliamentary controls in this bill, and I do not want to attempt to diminish the importance of those controls, but my reading of the Second World War experience is that in the political environment of 1940, 1941 and 1942 parliamentary control would have meant virtually nothing, that the government of the day was being harassed constantly to do more to provide greater national security rather than protect the civil liberties of Canadians and others.

Ms. Sunahara: We are aware that public opinion, as reflected in the political sphere, is not the most thorough way to protect Canadian civil liberties. The National Association of Japanese Canadians has greater confidence in Parliament as a whole than it has in an executive, which may have certain political objectives it wishes to accomplish on its own.

Again, their own experience has been that a large number of members of the House of Commons and the Senate fought on behalf of Japanese Canadians. I believe Senator Croll, in fact, took part in much of the opposition to what was done to Japanese Canadians. Having a public forum in which the subject could at least be discussed is also a vital thing. We all know that the cabinet operates in secrecy and that what it does remains secret for 20 years, which is the other problem.

Senator Stewart (Antigonish-Guysborough): I am intrigued by the fact that you raised an objection to secret orders, but evidently you do not want to take time on that today. You are satisfied that the matter of secret orders has been reasonably well covered.

Ms. Sunahara: We still stand on our position that the power for secret orders is unnecessary since any provision for secret orders has already been made by Parliament in the CSIS Act.

Our concern today, and our primary concern with this bill, is the potential Charter override. Because there are secret orders, we feel that is potentially draconian.

Senator Stewart (Antigonish-Guysborough): Let us talk about what has been called Charter override. What the Charter says is that Parliament or the legislature of a province may expressly declare in an act of Parliament, or of the legislature as the case may be, that the act, or a provision thereof, shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of the Charter.

• (1510)

You are fearful that the words in clause 40(1) of Bill C-77 may constitute a delegation to the Governor in Council of Parliament's authority to say that a right in the Charter shall be set aside by an order in council or a regulation. Is that your argument?

Ms. Sunahara: The version of the bill I have—if you are referring to the clause which gives the Governor in Council the power to make orders and regulations in a war emergency—has been renumbered since I wrote my brief.

Our concern is that that clause is essentially the same as the section of the War Measures Act which has been held in law to confer plenary powers of legislation upon the cabinet.

Senator Frith: Can you give us that citation so it is on the record? Do you mind, Senator Stewart?

Senator Stewart (Antigonish-Guysborough): It would be helpful to have the citation.

Ms. Sunahara: The reference is the *Chemicals Reference*, a 1943 case of the Supreme Court of Canada. It is "1943, Supreme Court Report 1", and the statement will be found at page 17 of Chief Justice Duff's judgment.

Senator Frith: And it never went further?

Ms. Sunahara: No, it did not.

Senator Frith: At that time there were appeals to the Privy Council.

Ms. Sunahara: There were appeals to the Privy Council, but—

Senator Frith: But it was not done.

Ms. Sunahara: —it was not proceeded with so this is the binding law in Canada.

[Senator Sunahara]

Senator Stewart (Antigonish-Guysborough): When you say it is plenary power, you mean that Parliament is delegating 100 per cent of its own legal competence.

Ms. Sunahara: But keeping back—as they established in the *Re Gray* case during the First World War—the power to revoke the delegation; otherwise it becomes an abdication.

I might add that, while the courts found in the War Measures Act that power to revoke the delegation, it was not a practical power in that the only way it could be done was by bringing down the government.

Senator Stewart (Antigonish-Guysborough): But we are talking about the law. You are saying that you believe that the War Measures Act and this bill, if enacted, both delegate plenary power to the Governor in Council. By that you mean that, aside from Parliament's ability to repeal or amend the act in question itself, the Governor in Council could do anything that Parliament itself could do.

Ms. Sunahara: Yes.

Senator Stewart (Antigonish-Guysborough): Except for the specified exceptions which appeared in clause 4.

Ms. Sunahara: Yes. The full quotation from the *Chemicals Reference* is "... plenary powers of legislation as large as and of the same nature as those of Parliament itself."

Senator Stewart (Antigonish-Guysborough): I will use a specific example which may be helpful. Under your interpretation, could the Governor in Council have used the War Measures Act to introduce taxation? New taxes?

Ms. Sunahara: Yes, or they could have amended any existing tax act by order in council.

Senator Stewart (Antigonish-Guysborough): How do you get around the provision in the Charter that says that the Parliament may use the "notwithstanding" clause only by an expressed declaration?

• (1520)

Ms. Sunahara: That can be done through the wording of the order in council. If you wanted, for instance, to pass an order in council which said that the Royal Canadian Mounted Police could arrest anyone deemed to be a threat to the national security of Canada and could hold them without trial, the order in council would have to be phrased as saying, basically, "Notwithstanding the right to trial extended in paragraph 11.(*b*) of the Canadian Charter of Rights and Freedoms, the Minister of Justice may deem persons to be a threat", et cetera.

Senator Stewart (Antigonish-Guysborough): That was not quite my question. I am questioning your view that this is as plenary a delegation as that made by the War Measures Act. I am questioning it because of the provisions of section 33 of the Charter. That section gives Parliament the "notwithstanding" power, but it can exercise the "notwithstanding" power only by express declaration of Parliament.

Parliament has not made an express declaration in Bill C-77. Therefore, I would be inclined to argue that Parliament

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has not delegated to the Governor in Council the "notwithstanding" power.

Ms. Sunahara: If Parliament has delegated plenary powers of legislation to the executive, then Parliament is basically saying to the executive, "Act in our place and stead to do whatever we can do." Therefore, when an order in council is equivalent to an act of Parliament, the executive, acting in Parliament's place and stead, is passing an act which would include the "notwithstanding" clause.

Senator Stewart (Antigonish-Guysborough): Yes, I understand your argument. My difficulty with it is this: The Charter has intervened since the time of the enactment of the War Measures Act. I question your assumption that the delegation in Bill C-77 is as extensive as was the delegation in the War Measures Act. It seems to me that Parliament can exercise the "notwithstanding" provision only by parliamentary express declaration.

Ms. Sunahara: The whole question in law is whether, if Parliament delegates powers to a body and that body, acting in Parliament's place, wishes to make an express declaration, it can do so. That point is not yet settled in law. Our first request to the minister was to refer this question to the Supreme Court of Canada. Let us get this matter settled.

I have an opinion—which is concurred in, I might add, by the Dean of the Law School of the University of Alberta—that, when granting plenary powers, they include all of Parliament's powers. These powers may have been defined in 1942 in terms of sections 91, 94 and 95 of the British North America Act, but today they are defined in sections 91, 92 and 94, and the intervening Constitution Acts, and the Charter of Rights and Freedoms. Therefore, when plenary powers are delegated now, the delegation is of powers greater than it was possible to delegate in 1939.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I think I have exhausted this line of questioning. I am sure that other senators will want to put questions to this witness.

The Chairman: Thank you, Senator Stewart. Next on my list is Senator Marsden, followed by Senator Frith.

Senator Marsden: I should first like to say to the witness how much we appreciate her coming and how valuable it is to have before us someone so familiar with this piece of legislation. I wonder if she would be prepared to go beyond the clauses with which she is particularly concerned to tell us whether she has looked at this piece of legislation from one or two other points of view. If she has not, I quite understand her not wanting to respond.

Have you, Ms. Sunahara, looked at what is required under the various types of emergencies from the point of view of privacy and the privacy legislation we now have in this country?

Ms. Sunahara: I looked at the original bill from an historical point of view. I am an historian as well as a lawyer, having written a history of Japanese Canadians. I looked at it from the practical point of view; in other words, I considered what was done to Japanese Canadians at the time of the Second World War and asked whether we could do it again.

Historically, the only powers governments have ever needed in times of emergency—powers that have been properly used—were economic ones, the powers, basically, to ration, to get war production moving, to control goods and services, et cetera. The powers to infringe upon civil liberties have been more abused than used—and the Ukrainians will endorse my statement to that effect.

With regard to privacy, if we can allow search and seizure without reasonable grounds, we open the door completely to wire taps. Wire taps eliminate privacy—they introduce *Nineteen Eighty-Four*. In that regard, the other problem, the reverse side of the Privacy Act, is the new Freedom of Information Act, which freezes all documents referred to by cabinet in a time of emergency for 20 years, regardless of their significance. A judge cannot even look at them to determine whether there is a national security element to them. Quite frankly, when I went into the archives in the course of my research, I found that some of the "secret" information on Japanese Canadians was little better than laundry lists, which I would have thought should have been made public years ago.

Senator Marsden: You seem to be focusing heavily upon what happens in time of war, but could I ask you to look at some of the less dramatic events in this regard? The public welfare emergency is one that preoccupies me, and, if I am correct, search and seizure is not really an element of it. Property can be confiscated and disposed of; people can be evacuated and detained, and their travel can be regulated or prohibited, but that is not quite the same sweep as that to which you refer.

Ms. Sunahara: No, but my primary objection to the public welfare emergency is that it tramples upon provincial rights. Of course, being an Albertan, I am quite sensitive to provincial rights. Provincial agencies are in place to handle natural disasters. There has been no evidence in Canada that people have ever refused to give their services. True, no formal arrangement has been made to compensate them for their services, but, as a lawyer, I would reply that there is always a suit in *quantum meruit*.

It seems to me to be a lot of power to deal with something that is so extremely rare. When I was analyzing all of this I was trying to think of an example of public welfare emergency. Short of the hypothetical tidal wave hitting Vancouver—

Senator Marsden: Let me propose one which concerns me at the moment. As you are aware, this legislation covers diseases in human beings, animals and plants. One of the potential threats to civil liberties in this country is any law that may be made concerning people who have tested HIV positive, or people who have AIDS, where privacy is already a matter that has been raised in certain provincial jurisdictions. It is specifically with that example in mind that I ask you about privacy in relation to public welfare emergencies.

Ms. Sunahara: Both British Columbia and Alberta now have in place acts that require persons who have been diagnosed to be AIDS patients to be reported and that permit a medical officer to go to a court and obtain an order to confine them. This is another example of something that, technically, I suppose, is interprovincial, in that we have the freedom to move from province to province in Canada. I might add that any attempt to restrict that movement would be contrary to section 6 of the Charter, which cannot be withstood.

Quite frankly, to put a federal veneer on top of all this is, in my view, a redundancy. Public health is a provincial matter; the provinces all have public health departments. If we added another layer of bureaucracy to this, not only would it be more expensive but someone could conceivably be cleared by a provincial public health officer only to find himself in trouble with a federal public health officer. If anything is going to bring justice into disrepute, that will do it.

● (1330)

Senator Marsden: So your major argument on this section is that it is redundant and therefore unnecessary.

Ms. Sunahara: It is a replication of provincial powers. I would think it could be accomplished at much less cost by agreements and cooperation between the provinces.

In my original draft I suggested that the federal government could perhaps serve well to set up some sort of data bank of experts for flying in medical doctors who specialize in trauma, if a tidal wave does hit Vancouver. To create an entire bureaucracy over and above the provincial bureaucracy seems unnecessary.

Senator Frith: I want to ensure that you focused on section 53 of the Constitution Act when you quickly said that you felt the delegation to the executive could include the power to tax. That section reads:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

Whereas the other powers that Parliament has are powers of Parliament. In section 91, for example, it says that Parliament may make laws in certain classes of subjects.

I am not arguing with your conclusion. You answered it rather quickly, and I thought that Senator Stewart's question meant to focus your attention on the power to tax as a bit different from general legislative power.

Ms. Sunahara: If Senator Stewart was making a reference to section 53, I did not catch that. As I understand it, that provision in section 53 is to ensure that money bills originate in the elected House. Since the executive is composed almost entirely of persons from the elected House the tabling of an order in council in that House, I would say off the top of my head, would satisfy section 53.

Parliament, under this Emergencies Act, does have the power to revoke orders in council. As another senator has pointed out, that is not necessarily a reliable way to protect civil liberties.

The National Association of Japanese Canadians would like to see this act make it possible for a government to exercise the powers it needs to, but difficult for it to misuse them. That is basically the fine line that we have been trying to draw in our submission.

Senator Frith: I think that is a very important line.

Mr. Chairman, I should like to have a few more items put on the record so that someone wanting to get Ms. Sunahara's point of view can get at least the essence of it all in one place.

Let us deal with section 33 and ensure we understand what section 33 can override. It is substantial, but it may be worthwhile getting that on the record. Your position is that because of section 33 and the *Chemicals Reference* case, Parliament can delegate to the executive the powers it has to override the Charter, as found in subsection 33(1).

Those powers relate to the following sections of the Charter. Section 2 deals with fundamental freedoms: freedom of conscience and religion, freedom of thought, freedom of peaceful assembly, and freedom of association. All of those, you say, on your interpretation, could be overridden by the executive; is that correct?

Ms. Sunahara: Yes.

Senator Frith: Then let us deal with sections 7 to 15 of the Charter. Section 7 deals with life and liberty. Section 8 deals with search and seizure. Section 9 deals with detention or imprisonment. Section 10 says that everyone has the right on arrest or detention to certain information. Section 11 deals with proceedings in criminal and penal matters. That section contains subsections from (*a*) through to (*i*), inclusive. Section 12 says that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. Section 13 deals with witnesses' rights against self-incrimination. Section 14 deals with the right to have an interpreter. Section 15 deals with equality rights before and under the law, and equal protection of benefits of the law.

You say that each of those could be overridden by the cabinet or an order in council by reason of the delegation in this act—Bill C-77—of Parliament's power under section 33; is that right?

Ms. Sunahara: That is right. The other authority is the case of *Re Gray* in 1919, a case of the Supreme Court of Canada that held that Parliament did have the ability to delegate its law-making powers to a subordinate agency and had done so in the War Measures Act, notwithstanding the fact that the delegation was very broad.

Senator Frith: I understand that this opinion is supported by the Dean of the Law School in Alberta.

Ms. Sunahara: Yes, Timothy J. Christian.

Senator Frith: The opinion is that those cases stating that the delegation granted plenary parliamentary powers would apply today as well as they did then, although at that time there were no limits on legislative power, except the limits within the distribution of powers.

Just to dramatize the question a little more, prior to the Charter we were all taught in law school that Parliament was supreme. The classic example was that, so long as it was

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within its powers under section 91, it could make a man a woman or a woman a man. You probably remember hearing that.

Ms. Sunahara: Or a person of both.

Senator Frith: You say that, notwithstanding those unfettered powers which were in existence at the time of both the *Gray* case and the *Chemicals Reference* case, there is nothing in the reasoning to change their application to present day, when Parliament's rights are circumscribed by the Charter.

Ms. Sunahara: When they met in the kitchen to draft section 33, they did not think about limiting the delegating powers. Since the power to delegate Charter powers has not been put in there, there is nothing to prevent Parliament from delegating that power, unless some argument in law can be made. In fact, it would be stimulating to attempt it. Until the Supreme Court of Canada makes a ruling, there is absolutely nothing to stop the delegation of section 33 powers. Then the other question is: Has it been sufficient here?

The bottom line is that it is an unsettled point of law. Until it is settled, we do not know the limits of the powers that are being given under this act.

Senator Frith: Or any limitations by reason of the existence of the Charter.

Ms. Sunahara: Precisely.

Senator Frith: In effect, you are saying that the argument could be made that the legislative context is different, but you yourself think that the dicta in the *Chemicals Reference* and *Gray* cases should apply now just as strongly as they did then in terms of the grant of plenary power.

Ms. Sunahara: Basically, yes. Let me put it this way: If I had to argue that the Charter must be construed differently from the rest of the Constitution, which is basically what you have to argue, and that it must be construed as no delegation, where the rest of the Constitution allows delegation, I would expect to lose that argument, although there are some jurisprudential arguments that can be made. The matter remains unsettled, and we are asking, in view of the fact that it is so unsettled, that this house amend the act to make the minister's intention clear, that there is no intention to give a Charter override in this act.

● (1540)

Senator Frith: That brings me to my last point. Your suggestion for an amendment, on page 2 of the memorandum that you distributed, means that an additional subclause should be added to clause 4 so that it would read

> Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations . . .
>
> (c) invoking section 33 of the Canadian Charter of Rights and Freedoms and the powers thereunder to declare

The minister, according to a letter that is to be attached to your document, said, "there is very little basis for concern." I take it he did not say that there is no basis for concern.

Ms. Sunahara: The position of the National Association of Japanese Canadians is that "very little basis" is too much.

Senator Frith: I hear you.

If he simply says, "There is very little basis for concern," I take it he is saying that he does not think that section 33 can be invoked by the Governor in Council. Did he say that?

Ms. Sunahara: The best way is to look at the last sentence, where he states:

> However, there is not the faintest suggestion in either that Parliament's power under section 33 of the Charter may be exercised by the Governor in Council.

In essence, what he is saying is that in their view section 33 cannot be exercised in this way. That is just a legal opinion.

Senator Frith: I understand. I wanted to get his legal position. You do not need to argue it for the moment. His position is that he does not think the Governor in Council can invoke section 33.

If that is so, all you do is make clear his opinion with paragraph (c).

Ms. Sunahara: Yes.

Senator Frith: His opinion is that it cannot be invoked, and your paragraph (c), in effect, agrees.

Ms. Sunahara: Yes.

Senator Frith: In effect, you are making clear that what he says is already the case.

Ms. Sunahara: Yes.

Senator Frith: Did you put your actual wording of paragraph (c) to him in that context and say, "Well, if the Governor in Council cannot invoke section 33, then why not say so?"

Ms. Sunahara: That is basically our position.

Senator Frith: Did you put this exact amendment to him?

Ms. Sunahara: We put the concept to him, thinking that he would prefer to draft it in his own words. I did put a suggestion to the Legislative Committee of a simpler version than this, but I drafted this one because I thought of a few other things—for example, that we do not want an order in council that amends the Criminal Code to allow search and seizure without reasonable grounds. My original draft, which I put to the minister, has been modified in this version put before this house.

Senator Frith: Are you prepared to say that on the basis of your experience up to now, if we amended this bill by adding your suggested paragraph (c) to clause 4, we would simply be making clear what the minister already says is so?

Ms. Sunahara: Yes.

Senator Frith: Thank you, Mr. Chairman.

The Chairman: Thank you Senator Frith. I do not have any other hands up at the moment on the first round. Senator Stewart, if you wish, you may begin to question on the second round.

Senator Stewart (Antigonish-Guysborough): Thank you very much, Mr. Chairman.

The bill makes frequent use of the expression "on reasonable grounds". For example, in clause 38.(1) it states:

> When the Governor in Council believes, on reasonable grounds, that a war emergency exists . . . the Governor in Council . . . may . . . so declare.

In the clause that we have been discussing chiefly, clause 40, subclause (1), it states:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

What is the functional effect of the words "on reasonable grounds"? What difference does their inclusion in those two examples make?

Ms. Sunahara: It is my understanding that that amendment was done to permit the courts to review the grounds upon which the order is made. There is still some question, however, as to whether someone challenging must prove that the grounds were unreasonable or whether the onus is on the government to prove that they were reasonable. That distinction is important. For example, in the *Japanese-Canadian* case we did not get the documents to prove the unreasonableness of what was done to Japanese Canadians until 1976—30 years after the event.

The evidence that would be needed to prove reasonableness or unreasonableness can only come from the government. This is another reason why we wanted this amendment put in about the Charter override. You can imagine the disability of someone who has been subjected to an order removing his legal rights having to turn around and prove that the basis for subjecting him to that order was itself unreasonable. I can think of a number of examples off the top of my head.

Senator Stewart (Antigonish-Guysborough): You are concentrating on the question of the reasonableness or unreasonableness of the grounds; I wanted to focus on the verb "believes".

Ms. Sunahara: Yes, okay.

Senator Stewart (Antigonish-Guysborough): Does this mean that the court has to share the belief of the Governor in Council, or does it mean simply that the court will find that there are, or are not, grounds to believe, and that the Governor in Council can form its own belief, although the court might not share that belief?

Ms. Sunahara: The latter is the case. In law, "believes" is usually construed as meaning "believes in good faith." In order to rebut a belief you would have to establish that the Governor in Council was not acting in good faith, which we all know would be absolutely impossible to do.

The courts also do not, and traditionally have not, questioned the beliefs of the government. It is not the case that the court has to come to the same conclusion. In fact, there are several cases like the ones referred to. I go into this in my submission to the Legislative Committee. The courts simply do not question the grounds on which a government forms its opinion; they take the view that they have the best evidence and that they are reasonable men. Therefore, unless bad faith is shown, the Governor in Council must have believed it in order to have passed the order in council.

● (1550)

Senator Stewart (Antigonish-Guysborough): So what you are saying is that the inclusion of the words "on reasonable grounds" throughout the clauses of this bill really does not mean very much. You could get into court and the Governor in Council would send someone to appear there and say that the Governor in Council did, indeed, believe.

Ms. Sunahara: It would also enable you perhaps to buy time in order to publicize the situation by arguing that, in your particular case, the grounds were not reasonable. For instance, if the order were to outlaw a particular group, it would give you the opportunity to argue that you were not a member of the group and therefore, as it applied to you, it was not a reasonable order. That is the kind of argument to which I refer.

Senator Stewart (Antigonish-Guysborough): Thank you, Mr. Chairman.

The Chairman: As there are no other senators who wish to question you, I should like to thank you very much, Ms. Sunahara, for giving us the benefit of your study of and knowledge in this particular field. It has been very helpful to us.

Ms. Sunahara: Thank you, sir.

The Chairman: Honourable senators, during the course of the questioning there was reference to a fact sheet prepared by Emergency Predparedness Canada on the specific questions regarding the recommendations of the Japanese-Canadians. Is it your wish that that fact sheet be distributed to honourable senators at this time?

Senator Doody: Perhaps we could append it to the committee proceedings.

The Chairman: If that is your wish, honourable senators.

Senator Frith: Provided that we are appending the evidence of Ms. Sunahara, we can append the fact sheet as well.

Senator Doody: What Ms. Sunahara said will appear in *Hansard*.

Senator Frith: Yes, but she did not read through all of her written submission.

Senator Doody: I see.

Senator Frith: Therefore, I do not see why we should not append both submissions.

Source: Nikkei National Museum, 2018-16-4-1-1-241
www.nikkeimuseum.org

The Chairman: Honourable senators, is it agreed that we append both the letter, which was distributed to honourable senators from Ms. Sunahara, and the fact sheet from Emergency Preparedness Canada?

Hon. Senators: Agreed.

The Chairman: Honourable senators, is it your wish to proceed further or is it your wish to rise and report progress?

Senator Frith: Is there no one here to speak in support of the memorandum from the department?

The Chairman: No. It was delivered to the back door of the Senate and the request was made that it be distributed.

Senator Frith: Is it signed by someone?

The Chairman: No, but it is written on departmental letterhead.

Senator Frith: Which department are you referring to, Mr. Chairman?

The Chairman: It is on the letterhead of Emergency Preparedness Canada.

Senator Frith: We might want to have a look at it and call someone from the department. However, in the meantime, we will append it.

(For text of documents, see appendix, p. 3724.)

Senator Doody: In the meantime, perhaps the committee could rise and report progress.

Senator Frith: Mr. Chairman, I move that the committee adjourn, report progress, and ask for leave to sit again.

The Chairman: Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which was referred Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other acts in consequence thereof, reports progress and asks for leave to sit again.

The Hon. the Speaker *pro tempore*: Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this committee have leave to sit again?

Hon. Royce Frith (Deputy Leader of the Opposition) moved that the Committee of the Whole be given authority to sit again at the next sitting of the Senate.

Motion agreed to.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FIFTY-SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifty-sixth report of the Standing Committee on Internal Economy, Budgets and Administration, presented on Thursday, June 16, 1988.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I move that the fifty-sixth report of the Standing Committee on Internal Economy, Budgets and Administration be now adopted.

Motion agreed to and reported adopted.

The Senate adjourned until Tuesday, June 28, 1988, at 2 p.m.

APPENDIX

(See p. 3723)

EMERGENCIES BILL

COMMITTEE OF THE WHOLE — APPENDED DOCUMENTS

LETTER OF JUNE 2, 1988 WRITTEN BY M. ANN SUNAHARA

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

June 2, 1988,

Re: The Emergencies Act and Charter Override

I am a legal counsel to the National Association of Japanese Canadians with respect to their submission to the Legislative Committee on Bill C-77 and their ongoing concerns with the new Emergencies Act.

As you may be aware, part of our submission was concerned with the possibility that that Act might empower the Governor in Council to use Parliament's powers to override Charter rights. In response to our concerns the Minister responsible, Perrin Beatty, assured us that he had a legal opinion to the contrary on which he was relying.

Source: Nikkei National Museum, 2018-16-4-1-1-242
www.nikkeimuseum.org

The Minister has now provided us with a summary of that opinion. We are forced to conclude that it is seriously flawed and that there remains the distinct possibility that fundamental freedoms and legal rights could be overridden by Order in Council in time of emergency.

The National Association of Japanese Canadians finds this possibilty unacceptable and has requested the Minister to refer this matter to the Supreme Court of Canada for a definitive ruling.

The better solution, of course, is to amend Bill C-77 to expressly remove all possibility that a future executive could make Orders in Council that override Charter Rights. That objective can be accomplished by amending section 4 to read (amendment underlined):

> "4. Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations
>
> (a) altering the provisions of this Act; or,
>
> (b) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the Immigration Act, 1976 on the basis of race, national or ethnic origin, colour, religion, sex or mental or physical disability; or,
>
> (c) invoking section 33 of the Canadian Charter of Rights and Freedoms and the powers thereunder to declare in any order or regulation that the order or regulation, or any other order or regulation or Act of Parliament, or any provision thereof, shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of the Charter."

The Minister responsible has stated that no Charter override is intended. It is in the interest of all Canadians that that intention be set out in the Act so that it binds future governments and the courts. Only with an amendment like that above will Canadians know for certain the extent of the legislative powers of the executive in time of national emergency.

Accordingly, the National Association of Japanese Canadians seeks your support for its requests that the Senate amend Bill C-77 to expressly exclude any possibility of the exercise of Parliament's Charter override powers by the executive.

For your information please find enclosed copies of:

(a) pages 32 through 35 of our submission to the Legislative Committee on Bill C-77 which outline our concerns;

(b) the initial request of the President of the NAJC for a reference of this matter to the Supreme Court of Canada;

(c) a letter from the Minister Responsible for Emergency Preparedness outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act;

(d) the response of the President of the National Association of Japanese Canadians; and,

(e) a copy of my opinion referred to in the President's response.

The Minister's reasons appear to rest on the argument that Parliament cannot delegate its constitutional powers.

This argument is directly contrary to the rulings in cases dealing with Orders in Council made under the War Measures Act, cases which determined that Parliament could delegate legislative powers to the executive and that, in the War Measures Act, Parliament had in fact delegated "plenary powers of legislation as large as and of the same nature as those of Parliament": Chemicals Reference, [1943] S.C.R. 1 at 17.

The National Association of Japanese Canadians is of the view that any possibility of a Charter override is too great a threat to Canadian civil and human rights to be left unresolved. The NAJC is very concerned that the government is looking to a flawed legal opinion for its belief that the Emergencies Act has not given the Governor in Council the power to exercise Parliament's override powers under s.33 of the Charter. The possibility that this power could be used in secret Orders in Council is particularly worrying.

Source: Nikkei National Museum, 2018-16-4-1-1-243
www.nikkeimuseum.org

We ask for your support for an amendment to Bill C-77 like that set out above. If you have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

M. Ann Sunahara.

cc. Art Miki, President, NAJC,

ENCLOSURE (A) TO LETTER DATED JUNE 2, 1988

Can the Cabinet Override Charter Rights?

This question arises because of the legal force and effect given to the the War Measures Act. In a case contesting the War Measures Act the courts held that Parliament not only could delegate its constitutional powers to the executive government, but also that Parliament, in fact, delegated unlimited powers to the Cabinet, including the power "supersede the existing law whether resting on statute or otherwise": Re Gray (1919) 57 S.C.R. 150, per Fitzpatrick, C.J. at 157 - 158 and per Duff J. (as he then was) at 168. The English courts reached a similar conclusion with respect to the British Act on which the War Measures Act was based: R v. Halliday [1917] A.C. 260. Under the War Measures Act, the Governor in Council (effectively the Cabinet) "is vested with plenary powers of legislation as large as and of the same nature as those of Parliament": Reference Re Regulations Relating to Chemicals [1943] S.C.R. 1 per Rinfret J. at 17- 18. An order properly passed under that Act, therefore, "may have the effect of an Act of Parliament": Ibid, per Duff C.J. at 9.

Under the general emergency powers in the War Measures Act, therefore, Parliament could not only delegate its constitutional powers without limit, but the orders and regulations passed by the Cabinet are equivalent to Acts of Parliament. Section 33 of the Charter permits Parliament to declare in an Act of Parliament that the Act shall operate notwithstanding the fundamental freedoms set out in Section 2 and the legal and equality rights set out in Sections 7 through 15 of the Charter. If Parliament can delegate this power to the Cabinet, and if wording of section 38 of the Emergencies Act transfers unlimited powers to the Cabinet in a war emergency, then the Cabinet would have the power to override important Charter rights when making emergency orders.

Source: Nikkei National Museum, 2018-16-4-1-1-244
www.nikkeimuseum.org

The counterarguments are that Parliament cannot delegate its Charter powers or that its must do so expressly. Both these arguments were rejected in Re Gray, supra, in Canada, and in R v. Halliday, supra, in England. Indeed, in Re Gray the Chief Justice put the onus on Parliament to expressly limit the powers it confers on the executive if that is its intention: at 160.

There is nothing in the Charter that prevents Parliament from delegating its powers to the executive. Legal precedent suggests that it can delegate its constitutional powers and has done so in the past both in the War Measures Act and in the various Acts dealing with the government of the North West Territories: See S.C. 1871, c. 16. Indeed in the latter case, Parliament had to revise its original delegation of powers to expressly forbid the Lieutenant-Governor in Council to pass laws inconsistant with those of Parliament:See S.C. 1873, c. 34.

We doubt that the intention of the drafters of the Charter was that the federal Cabinet should have an uncensored right to pass laws that override Charter rights. As Justice Mayrand noted in Alliance des Professeurs de Montreal et al. v. Attorney-General of Quebec (1985) 21 D.L.R. (4th) 354 (Que. C.A.), the Charter requires that a law overriding its provisions should specify precisely what provisions will be overridden in order to encourage "an enlightened and serious examination of the proposed legislation.": at 356. When Parliament overrides the Charter, it does so in the glare of publicity and public debate. If the Cabinet is able to override the Charter under war emergency powers, it will do so in the privacy and secrecy of Cabinet. Indeed, given the provisions for secret orders in the proposed Emergencies Act, it need not even tell Parliament or the Canadian people about the order overriding the Charter.

The use of such orders would be limited only by the imagination of the Cabinet. Property could be secretly confiscated. Special prisons could be set up. People could be incarcerated or executed without trial. Government money could be diverted for the private use of Cabinet members.

Not only could all these abuses occur in secrecy but, even if public, the judiciary can do nothing to protect the Charter rights. Where the clauses overriding the Charter are properly drafted, the courts cannot even require the government to prove the law overriding the Charter right was

Source: Nikkei National Museum, 2018-16-4-1-1-245
www.nikkeimuseum.org

justifiable: Alliance de Professeurs de Montreal et al. v. Attorney-General of Quebec (1985) 21 D.L.R. (4th) 354 (Que. C.A.) per Mayrand J.A. at 356.

The wording of Section 38 of the Emergencies Act is very broad and may well give unlimited powers to the Cabinet. Because there is doubt about the delegation of the Charter override, we feel that this Committee should take to advice of the Chief Justice in Re Gray and expressly exclude the override power from Section 38.

ENCLOSURE (B) TO LETTER DATED JUNE 3, 1988

National Association of Japanese Canadians
National Executive Office
735 Ash Street,
Winnipeg, Man.,
R3N 0R5

April 20, 1988,

The Honourable Perrin Beatty,
Minister of National Defence,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Sir,

The National Association of Japanese Canadians applauds the constructive changes to Bill C-77, the Emergencies Act, which have recently been proposed by your department and by the Legislative Committee on Bill C-77.

Unfortunately, we are of the view that they are not sufficient.

In our submission of March 15, 1988, we raised serious concerns about the possibility that the proposed Act might unwittingly give the Governor-in-Council the power to override the Charter. We are aware that this is contrary to your intention.

We are also informed that you have an opinion from the Department of Justice stating that the proposed Act does not include a Charter override. Since we have not seen that opinion, we cannot judge either how complete it is or the strength of its ultimate conclusion. Our own legal counsel are of the view that the question remains moot, given the law arising from the use of the War Measures Act.

We are of the view that this question is too important to all Canadians to be left to the opinion of lawyers, who may not be correct. Accordingly, we urge you to immediately make a reference of this important issue to the Supreme Court of Canada for a definitive ruling. Further, we urge that, should the Supreme Court find that override powers have been given to the Governor-in-Council, that the appropriate amendment be made to ensure that only Parliament can override Charter rights in time of emergency.

Sincerely yours,
The National Association of
Japanese Canadians

per: Art Miki,
President.

Source: Nikkei National Museum, 2018-16-4-1-1-246
www.nikkeimuseum.org

ENCLOSURE (C) TO LETTER DATED JUNE 2, 1988

Minister Responsible for Emergency Preparedness

Ministre responsable pour la Protection civile

May 5, 1988

Mr. Art Miki
President
National Association of
Japanese Canadians
National Executive Office
735 Ash Street
Winnipeg, Manitoba
R3N OR5

Dear Mr. Miki:

Thank you very much for your letter of April 20, 1988 concerning the changes which have been made to Bill C-77, the Emergencies Act. I am gratified that you find the changes constructive and that they merit the applause of your organization.

I appreciate your wish to be reassured that Bill C-77 does not permit the Governor in Council to override the Charter of Rights and Freedoms. However, I am advised that there is very little basis for concern on this point, for the following reasons:

1. While it is true that the Supreme Court of Canada in the Chemicals Reference, [1943] S.C.R. 1 at 17, stated that the Governor in Council under the War Measures Act

> "...is vested with plenary powers of legislation as large and of the same nature as those of Parliament itself",

the Court also made clear that the Governor in Council only has that authority "when acting within those limits", that is when acting "within the ambit of the Act by which his authority is measured". It follows therefore that the powers of the Governor in Council under the War Measures Act are not to be treated as coequal with those of Parliament under the Constitution Act 1867.

2. As broad as the executive authority of the Governor in Council under the War Measures Act may be, and even though Re Gray, 57 S.C.R. 150, held there that an order in council under the War Measures Act could amend an Act of Parliament, the Supreme Court of Canada is clear that this was only possible so long as the order in question is "in conformity with the conditions prescribed by ...the provisions of the War Measures Act" (Chemicals Reference at page 9). Therefore, while one Act of Parliament may be read as authorizing the Governor in Council to amend or repeal another Act of Parliament, it is very different to suggest that Parliament could authorize someone else to exercise its constitutional powers.

3. S. 33 is part of the Constitution Act 1867-1981 and hence cannot be treated like an ordinary Act of Parliament that is potentially subject to War Measures Act jurisprudence. For example, the reference to Parliament in s. 33 is the same as the reference to Parliament's lawmaking function under s. 91 of the Constitution Act, and yet it has never been suggested that the Governor in Council could be delegated the latter authority. In fact, the Chemicals Reference makes it clear that the Governor in Council was exercising authority on the basis of the War Measures Act rather than on Parliament's constitutional legislative authority under s. 91 of the Constitutional Act.

4. The argument in question ignores the fact that the Charter clearly distinguishes between "Parliament" and "the government of Canada" (see ss. 32(1)(a), 36(1)) and "Parliament" and "the executive government of Canada" (S. 44). The necessary implication of this is that the powers or authority of the one were never intended to be exchanged with or delegated to the other.

Source: Nikkei National Museum, 2018-16-4-1-1-247
www.nikkeimuseum.org

5. Governor in Council powers under the War Measures Act or its successor must be exercised in conformity therewith. However, there is not the faintest suggestion in either that Parliament's power under s. 33 of the Charter may be exercised by the Governor in Council.

The thoughtful study of Bill C-77 undertaken by your Association and the helpful suggestions which resulted were influential in making C-77 a much improved Bill. The positive contribution of the National Association of Japanese Canadians to this work has been very much appreciated by the Government, and I would like to convey my personal thanks to you and to your associates.

Sincerely,

(Signed)

Perrin Beatty

ENCLOSURE (D) TO LETTER DATED JUNE 3, 1988

National Association of Japanese Canadians
National Executive Office
735 Ash Street,
Winnipeg, Man.,
R3N 0R5

May 25, 1988,

The Honourable Perrin Beatty,
Minister of National Defence,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Sir,

Thank you for your reply of May 5, 1988 to our concerns about a possible Charter override in the Emergencies Act.

We note your comment that, in your view, "there is very little basis for concern" and your reasons for holding that view.

However, having read those reasons, our legal counsel is of the view that they are seriously flawed in law. Please find attached a copy of her reasons.

Further, even if our legal counsel is wrong, we are of the view that any possibility that the Act would permit the Governor-in-Council to override Charter rights by Order-in-Council is too great a risk to the civil and human rights of Canadians to be left undecided and unknown. The Canadian people have a right to know the extent of the powers of the executive in time of emergency, and to know the boundaries of those powers with certainty.

Again we reiterate that this question is too important to all Canadians to be left to the opinion of lawyers. Accordingly, we urge you to immediately make a reference of this important issue to the Supreme Court of Canada for a definitive ruling. Further, we urge that, should the Supreme Court find that override powers have been given to the Governor-in-Council, that the appropriate amendment be made to ensure that only Parliament can override Charter rights in time of emergency.

Sincerely yours,
The National Association of
Japanese Canadians

per: Art Miki,
President.

Source: Nikkei National Museum, 2018-16-4-1-1-248
www.nikkeimuseum.org

ENCLOSURE (E) TO LETTER DATED JUNE 2, 1988

M. ANN SUNAHARA
Barrister & Solicitor
9890 91 Avenue
Edmonton, Alberta,
T6E 2T5
(403) 433 - 8104

Mr. Art Miki,
President,
National Association of Japanese Canadians,
National Executive Office,
735 Ash Street,
Winnipeg, Manitoba,
R3N 0R5

Dear Mr. Miki,

Re: Charter Override and the Reasons of the Minister Responsible for Emergency Preparedness

1.0 The following legal opinion comments upon the reasons cited by the Minister Responsible for Emergency Preparedness in his letter of May 5, 1988, for his belief that "there is very little basis for concern" about a Charter override in the Emergencies Act.

1.1 While my analysis is hindered by the summary nature of the Minister's reasons, I am forced to conclude that the Minister's legal counsel appear to have made the following errors:

(a) they have confused the concepts of subdelegation and intradelegation;

(b) they have failed to appreciate the legal basis for the Emergencies Act itself; and,

(c) they have misconstrued the Chemicals Reference [1943] S.C.R. 1 and the other War Measures Act cases.

(a) DELEGATION OF POWERS:

2.0 The Minister's reasons are predicated upon the assertion in reasons 2, 4 and 5 that Parliament cannot delegate its powers under s. 91 of the Constitution Act, 1867 to the Governor in Council. This assertion is patently wrong in law. There is nothing express in the Constitution Acts, 1867-1981, which includes the Charter, about delegation of powers: Bora Laskin, Canadian Constitutional Law, 4th Ed., 1975, at 2. It has long been accepted that

Parliament, as our sovereign body, can enact any law it chooses within the sphere of its powers, and therefore can enact a law delegating legislative powers to any subordinate body whether that body is the Governor in Council, a Minister of the Crown, or any other official or body: Peter Hogg, Constitutional Law of Canada, 1977, at 214; 217-218.

2.1 This delegation of powers to a subordinate is called subdelegation. Because the Governor in Council (in fact, the Cabinet or executive) is inferior to Parliament, and holds its powers from Parliament (with the exception of those powers it holds in common law or by royal prerogative), Parliament can delegate to the Governor in Council/Cabinet/executive whichever of its powers it wishes and with whatever restrictions it wishes.

2.2 The only bodies Parliament cannot delegate to are the Provinces. This is because Parliament and the provincial Legislatures are separate but equal entities under the Constitution Act, 1867 and subordinacy is necessary for subdelegation. Intradelegation between Parliament and the Provinces, therefore, is not possible, but subdelegation from Parliament to the executive is.

2.3 Therefore, contrary to the statements of the Minister, Parliament can constitutionally confer legislative powers upon the executive : Ibid at 216 and Laskin, supra, at 2 and Hodge v. The Queen (1883) 9 A.C. 117.

2.4 Indeed, Parliament has done so on several occasions in the past. The most notable examples of such subdelegation are the Northwest Territories Act R.S.C. 1970, c. N-22, ss. 8, 13; the Yukon Act R.S.C. 1970, c. Y-2, ss. 9, 16, as am; and the War Measures Act R.S.C. 1970, c. W-2.

2.5 The validity of the first two mentioned delegations of legislative power has never been challenged.

Source: Nikkei National Museum, 2018-16-4-1-1-249
www.nikkeimuseum.org

that Parliament be constitutionally capable of passing the order and is not barred from delegating the particular matter to the executive.

3.2 In the other three types of emergencies, the exercise of the powers is limited only by the subject matter of the orders and not by the breadth of powers exercised in the orders: See ss. 6(1), 17(1) and 28(1). In each case the Governor in Council is empowered to make:

> "such orders or regulations with respect to the following matters, as the Governor in Council, believes on reasonable grounds are necessary for dealing with the emergency": 6(1), 17(1), 28(1)

3.3 Even in the least encompassing emergency, the public welfare emergency, the enumerated subject matters on which the executive may make orders and regulations make it clear that the executive is exercising s. 91 powers, including the "Peace, Order and good Government" (P.O.G.G.) powers. The enumerated subject matters include matters exclusively within the s. 92 powers of the Provinces, such as "the requisition, use or disposition of property": s. 6(1)(c). Such intrusions into provincial powers by the executive can only be legal where the powers delegated by Parliament to the Governor in Council include its P.O.G.G. powers.

3.4 The listed subject matters also evidence an intention to delegate other s. 91 powers. The ability to prescribe a sentence not exceeding five years imprisonment (s. 6(1)(j)) requires s. 91(27) criminal law powers. The "regulation of the distribution and availability of essential goods, services and resources" (s.6(1)(e)) requires s. 91(2) trade and commerce powers.

3.5 Finally, some of the enumerated subject matters require infringement of Charter rights. Section 17(1)(a) contemplates prohibiting the right to public assembly in section 2 of the Charter. Section 28(1)(g) permits prohibiting Canadians from leaving Canada, contrary to section 6 of the Charter. Section 28(1)(d) permits search and seizure without a warrant contrary to section 8 of the Charter.

3.6 Finally, there are the comments of the Minister himself. The Minister stated on February 23, 1988, to the Legislative Committee on Bill C-77 [the Emergencies Act] that "We will not be suspending the right to habeus corpus". The right to have the validity of detention determined by way of habeus corpus and to be released if the detention is not lawful, is a protected Charter right: s. 10(c). To imply that it can be suspended under the Emergencies Act is to imply that the executive under the Emergencies Act could infringe or override a Charter right.

3.7 The powers given in the Emergencies Act are very broad indeed, and, I submit, may be as broad as those of the War Measures Act. In short the Emergencies Act also appears to vest the executive "with plenary powers of legislation as large as and of the same nature as those of Parliament itself": Chemicals Reference, supra, at 17. The limitations placed on those powers are essentially the same:.

> (a) that a state of national emergency exist;
>
> (b) that, the Governor in Council believes on reasonable grounds that the Order is necessary; and,
>
> (c) that the Order "could be enacted by Parliament, in the execution of its emergency powers, or otherwise; and, further more, that Parliament is not precluded by the British North America Act or by any other lawful enactment concerning legislative powers, from committing the subject matter of it to the Executive Government for legislative action.": Chemicals Reference, supra, per Duff C.J. at 10.

In other than a war emergency the executive's powers are further limited by the requirement that the order deal with a subject matter enumerated under section 6(1), 17(1) or 28(1) respectively.

(c) MISCONSTRUCTION OF WAR MEASURES ACT CASES

4.0 The Minister's counsel have misconstrued the War Measures Act cases, and in particular the Chemicals Reference case and the distinctions within it between the exercise of powers under the War Measures Act by the executive and the exercise of s. 91 powers by Parliament.

Source: Nikkei National Museum, 2018-16-4-1-1-250
www.nikkeimuseum.org

The third has. In Re Gray (1919) 57 S.C.R. 150 the Supreme Court of Canada found that Parliament had the ability to delegate law-making powers, and that it had done so validly in the War Measures Act notwithstanding that that delegation was very broad. Since Parliament retained the power to restrict or withdraw the grant of power to its delegate, the Governor in Council, the delegation of legislative power to the executive in the War Measures Act was constitutional: See Ibid at 215 - 216 and Re. Gray at 171.

2.6 In the War Measures Act, as the Minister's reasons acknowledge, Parliament delegated to the Governor in Council "plenary powers of legislation as large as and of the same nature as those of Parliament itself.": Chemicals Reference [1943] S.C.R. 1 at 17. At that time Parliament's powers were defined in ss. 91, 94 and 95 of the then British North America Act, now the Constitution Act, 1867. Those powers included the powers in the preamble to s. 91 to make laws for the "Peace, Order, and good Government of Canada" (P.O.G.G.). On three occasions the courts have upheld legislative Orders-in-Council under the War Measures Act which, but for the delegation of P.O.G.G. powers, would otherwise have been unconstitutional as infringing on matters assigned exclusively to the Provinces in s. 92: See Fort Frances Pulp and Power Co. v. Manitoba Free Press [1923] A.C. 695 at 705; Wartime Leasehold Reference (1950) [1950] S.C.R. 124; and Co-operative Committee on Japanese Canadians v. Attorney-General of Canada et al [1947] A.C. 87.

2.7 This does not mean that the powers of the executive under the War Measures Act are equal to those of Parliament. They cannot be. Parliament must always retain the power to withdraw its grant of power from the executive. Otherwise the delegation of powers would amount to an abdication and hence would be illegal: See Re Gray, supra, at 171.

2.8 What it does mean is that under the War Measures Act the executive could make Orders-in-Council having the force and effect of statutes on behalf of and as if the executive were Parliament. Such Orders were valid in law so long as the executive was acting in good faith within the limits of the War Measures Act; that is,

> (a) where a state of war or apprehended insurrection existed;
>
> (b) where, in the opinion of the Governor in Council, the Order was necessary; and,
>
> (c) where the Order "could be enacted by Parliament, in the execution of its emergency powers, or otherwise; and, further more, that Parliament is not precluded by the British North America Act or by any other lawful enactment concerning legislative powers, from committing the subject matter of it to the Executive Government for legislative action.": Chemicals Reference, supra, per Duff C.J. at 10 - 11.

2.9 In summary, therefore, not only does Parliament have the power to delegate legislative power, but in the past it has delegated to the executive powers that were so broad that the executive was thereby authorized to make any order that Parliament, "in the execution of its emergency powers, or otherwise," was capable of making (Emphasis added).

(b) THE LEGAL BASIS OF THE EMERGENCIES ACT

3.0 The Emergencies Act has the same legal basis as the War Measures Act, which it replaces. Its stated purpose is to enable the government of Canada to respond quickly to emergencies without the cumbersome procedure of Parliament. As in the War Measures Act, Parliament in the Emergencies Act empowers the Governor in Council to make orders and regulations in its stead.

3.1 The question is: How broad are the powers given the executive in the Emergencies Act? On the plain reading of the Act they appear very broad indeed. In time of war emergency the Act expressly grants the executive the power to make:

> "such orders or regulations as the Governor in Council believes on reasonable grounds are necessary or advisable for dealing with the emergency.": s. 38(1).

As with the War Measures Act, the only restrictions are that there be an emergency; that the Governor in Council believes on reasonable grounds that the orders are necessary; and

Source: Nikkei National Museum, 2018-16-4-1-1-251
www.nikkeimuseum.org

Counsel have failed to appreciate that the War Measures Act empowers the executive to make laws in Parliament's place and based on Parliament's constitutional powers. The Chemicals Reference stands for the principle that where Parliament

(i) has the constitutional ability to enact the order the executive has made; and,

(ii) has not been precluded from committing the subject matter of that order to the executive,

then the order of the executive is legal and of the same force and effect as if it had been enacted by Parliament itself: per Duff C.J. at 10.

4.1 The application of these principles to the issue of whether Parliament can or has delegated its powers under s. 33 of the Charter to the executive in the Emergencies Act produces the following analysis:

1. Parliament has the constitutional power to pass orders that override sections 2, and 7 - 15 of the Charter: s. 33.

2. Parliament has the ability to delegate its constitutional powers to subordinate body: Re Gray, supra at 171.

3. Parliament in the past has delegated "plenary powers of legislation" to the Governor in Council in the War Measures Act: Chemicals Reference, supra at 17.

4. The powers delegated under the Emergencies Act are as broad as those under the War Measures Act: paragraphs 3.1 to 3.6.

5. Parliament is not precluded by any lawful enactment from committing a Charter override to the executive: Laskin, supra at 2.

6. Therefore, Parliament is able to and, under the Emergencies Act, has empowered the executive to make Orders in Council which override Charter rights.

CONCLUSION:

With respect, the Minister's reasons are without substance in law. Indeed, if he were correct and Parliament were not capable of delegating legislative power, then the Emergencies Act would be illegal in its entirety and without force and effect.

Since Parliament can delegate legislative powers to subordinate bodies, and since the executive is such a subordinate body, then where that delegation is broad enough to grant the executive plenary powers of legislation, and where Parliament is not precluded from delegating the matter to the executive, Parliament can delegate any of its constitutional powers, including its power to override Charter rights. Contrary to the statements of the Minister, there exists a very strong basis for concern that the Emergencies Act empowers the executive to make Orders that override Charter rights.

EMERGENCY PREPAREDNESS CANADA
FACT SHEET

BILL C-77 INCORPORATES NATIONAL ASSOCIATION OF JAPANESE CANADIANS RECOMMENDATIONS

Bill C-77, the Emergencies Act, was passed unanimously by the House of Commons on April 27, 1988. In its current form it incorporates almost all of the changes proposed by the National Association of Japanese Canadians (NAJC) when it appeared before the legislative committee. Key NAJC proposals and the corresponding provisions of Bill C-77 appear below:

NAJC Recommendation	Corresponding Provisions of Bill C-77
Parliament, at all times, must be able to revoke or modify any declaration of an emergency; and,	S.59 in its amended form incorporates this proposal.

Source: Nikkei National Museum, 2018-16-4-1-1-252
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
Parliament must at all times be able to amend or revoke any order or regulation made by the Cabinet.	S.61 provides for this.
All orders and regulations made under emergency powers must be directly related to alleviating the particular emergency.	All orders and regulations must be "necessary for dealing with the emergency."
Whether emergency orders and regulations are, in fact, directly related to the emergency must be reviewable at all times in a court of law, and the burden of proving the direct relationship shall rest with the government.	Government must have "reasonable grounds" for issuing all orders and regulations. This would be reviewable by courts, upon application by any individual or organization which had standing.
"National emergency" should be defined.	Defined in S.3
Any delegation of emergency powers by Parliament to the Cabinet must be predicated upon a threat to the continued existence of Canada itself.	National emergencies must "seriously threaten the ability of the government of Canada to preserve the sovereignty, security and territorial integrity of Canada". S.3(b)
Orders and regulations for war must be limited to measures strictly necessary and directly related to the emergency in question; and,	Orders and regulations for war would be limited to measures which on "reasonable grounds" are "necessary or advisable" for dealing with the emergency.
The burden of proving that the orders are strictly necessary and directly related to the emergency must rest with the Government.	This would be the case. The onus would be on government to divulge its "reasonable grounds" to court.
No order or regulation should take effect before it is approved by Parliament.	S.61 and 62 include provisions requiring approval, but to delay immediate action when necessary in an emergency could cost lives.
The operation of all orders and regulations must be subject to the review of a Special Parliamentary Committee.	S.62 provides for just such review.
Debate upon a motion to amend or revoke an order or regulation shall be without closure.	Such debate must be "without interruption" and closure is not provided for.

Source: Nikkei National Museum, 2018-16-4-1-1-253
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
In any review of the use of emergency powers, or in any trial of an accused charged under an emergency order, the onus of proving that the emergency exists and the order is reasonable must rest with the Cabinet.	Government must have "reasonable grounds" for invocation and would be required to demonstrate this before the courts.
Any emergency legislation must expressly deny the power to override rights guaranteed in the Charter of Rights and Freedoms.	The Charter itself prohibits this.

June 21, 1988

returned to the Senate without amendment. I would imagine that you, as the mover, would not push your objection, due to the fact that you could not come that day to our committee's meeting, as far as to ask us to begin the study all over again. From your comments, I think that would be a farfetched conclusion to reach. But, after all, that is your business.

[English]

Senator Haidasz: Honourable senators, I only wanted to correct a statement that Senator Flynn had made. Senator Tremblay has now put the statements and the facts on the record.

This being the threshold of the passing of a very important health bill in this chamber, I should like to thank all honourable senators—including the chairman of the committee and Senator Flynn—for cooperating in expediting the study and passage of Bill C-204.

Motion agreed to and bill read third time and passed.

● (1600)

EMERGENCIES BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE CONTINUED

On the Order:

> The Senate again in Committee of the Whole on the Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other acts in consequence thereof, the Honourable Gildas L. Molgat in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole.

Honourable senators, the committee will resume consideration of Bill C-77. As far as I know, there are no further witnesses to be heard. Is it your pleasure to proceed now with a clause-by-clause study of the bill?

Hon. Senators: Agreed.

The Chairman: Shall the title be postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 1, the short title, stand?

Hon. Senators: Agreed.

The Chairman: Shall clause 2 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 3 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 4 carry?

Hon. Senators: Carried.

[Senator Tremblay]

The Chairman: Shall clause 5 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 6 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 7 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 8 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 9 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 10 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 11 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 12 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 13 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 14 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 15 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 16 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 17 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 18 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 19 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 20 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 21 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 22 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 23 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 24 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 25 carry?

Source: Nikkei National Museum, 2018-16-4-1-1-254
www.nikkeimuseum.org

Hon. Senators: Carried.

The Chairman: Shall clause 26 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 27 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 28 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 29 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 30 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 31 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 32 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 33 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 34 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 35 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 36 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 37 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 38 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 39 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 40 carry?

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, I am sorry to break your momentum. Clause 40, subclause (1), states:

> While a declaration of a war emergency is in effect, the Governor in Council may make such orders or regulations as the Governor in Council believes, on reasonable grounds, are necessary or advisable for dealing with the emergency.

The record of the debate on Bill C-77 in the other House and the record of the consideration of that bill by the committee of the other House suggests that the members did not realize that they were delegating to the Governor in Council the authority to conscript Canadians to serve in the armed forces. Certainly, if they did realize that, little or nothing was said about that important delegation of power.

The Minister of National Defence, when he was before this committee, told us that clause 40 would authorize the government to introduce conscription by order in council. Honourable senators will agree that Parliament should not delegate so great a power to the Governor in Council in general and inclusive words. The minister told us that the government is not asking for the power to impose taxes by order in council; yet we are being asked to give the government the power to conscript personnel. "Send men, not money" is hardly a proposition to which senators would wish to subscribe. I hoped that such a proposition would not attract the support of members in the other place.

On the basis of that line of argument, Mr. Chairman, I move:

> That clause 40 of Bill C-77, on page 20, be amended by adding, immediately after subclause (1) thereof, the following subclause:
>
> (1.1) The power under subsection (1) to make orders and regulations may not be exercised for the purpose of requiring persons to serve in the Canadian Forces.

The Chairman: It is moved by the Honourable Senator Stewart (Antigonish-Guysborough), seconded by the Honourable Senator Sinclair:

> That clause 40 of Bill C-77, on page 20, be amended by adding, immediately after subclause (1) thereof, the following subclause:
>
> (1.1) The power under subsection (1) to make orders and regulations may not be exercised for the purpose of requiring persons to serve in the Canadian Forces.

Is it your wish, honourable senators, to adopt the amendment?

Senator Bonnell: Honourable senators, before you vote on the amendment, does that mean that according to this legislation—this is the first that I have heard of this—the government of the day has passed a bill that is prepared to demand, by order in council, that people put their lives at stake rather than their pocketbooks? They will not pass taxes by order in council, but they will ask them to put their lives up by order in council without an act of Parliament?

In this modern day, with airplanes, telex, telephones and Fax machines, Parliament can be convened quickly in order to pass an act of Parliament rather than conscripting people. Surely to goodness we do not need to have orders in council to have people put their lives on the line when we do not ask them for taxes by the same method.

Senator Flynn: Honourable senators, Senator Stewart has proposed an interesting amendment.

If the generality of the terms of clause 40 has to be limited in the way suggested, it should be limited in many other ways also. Senator Bonnell may be surprised to know that the present legislation, the present War Measures Act, says exactly the same thing, and yet it has never been used to apply conscription; it has never been used to impose a tax, it has never been used in this way.

I suspect that if any government were to try to take away the discretion of Parliament in these important matters—other than those attempts or experiments in the previous two world wars—Parliament would certainly step in, as it has the right to do because there is a control by Parliament over these decisions. The government has to report to Parliament, and Parliament may intervene, as is provided in some clauses later on.

If we are to give to the terms of clause 40 the meaning suggested by Senator Stewart, we will have to go much further and say that that does not include the power to tax—or the power to do a few other things that do not come to mind at this point.

I do not know if he really wants this amendment to be voted on; if he merely wants to draw the attention of the house to the wide implications of the text of subclause (1) of clause 40, I agree with him. However, if we are to limit this text, we will have to consider many situations other than this one. I certainly would not be prepared to support his amendment without also supporting a host of other amendments that would have to be considered.

Senator Olson: Honourable senators, Senator Flynn has just given the best of reasons for supporting Senator Stewart's amendment. He said two things:—

Senator Flynn: That is your view, but possibly someone else has something to say.

Senator Olson: Perhaps I could have a few quiet minutes in which to express my views; after all, we granted you the courtesy of silence.

• (1610)

In any event, it seems to me that Senator Flynn has indicated that, while that authority was there, in fact, under the War Measures Act—

Senator Flynn: There is no question. It was there!

Senator Olson: No one is disagreeing with you, but what Senator Stewart said was that it was never used during those two wars. When conscription was asked for, the Prime Minister of the day came to Parliament and sought authority from Parliament to invoke it, whether or not he had authority under the War Measures Act to do so. I am not arguing whether or not he did it; I am just assuming that the government had the authority to do so through the Governor in Council.

Senator Flynn: What I suggested was that, if it was not done, it was because they did not think that they were allowed to do it.

Senator Olson: Well, honourable senators, there may also have been a couple of other reasons, but, in any event, the point that I am making is that we went through two world wars and approximately 70 years with this provision in the War Measures Act. If it was not used even under the most severe conditions in all of that time, then we should not put it back into law now. If the government intends to impose conscription, as Senator Bonnell has pointed out, and to force people by law to join the armed forces, then surely we should make it a statutory requirement that the government must come and ask Parliament for that authority.

Therefore, in my view, that is the very best reason for supporting the amendment that has been moved by Senator Stewart.

Senator Bonnell: Honourable senators, what Senator Flynn has said is probably 100 per cent right; Mackenzie King, in his time, went before Parliament to ask for conscription and would have been given permission by order in council. Of course, in those days we did not have airplanes and other such quick methods to call Parliament together. However, this is 1988. Let us not go back to the old days by giving to a few people the power to conscript our young men and women and ask them to put their lives on the line, when this matter can be dealt with by a Parliament which can now be called together within two days. The members of both houses can be present here in Parliament to consider the matter and Royal Assent can be given, all in one day. But at least the representatives of the people of this country would have an opportunity to have their say.

Imagine a scenario in which the government of the day has the authority to put through an order in council to send our boys and girls overseas to fight in a war. Then, a month later, Parliament is called back and rejects that order in council. What happens then? Must we then bring everyone home again?

Honourable senators, this is 1988; let us be practical about these matters. Surely it should not be left to the whim of a few people in cabinet to make that immediate decision to conscript our Canadian boys and girls into the armed forces without giving the representatives of the people of this country the opportunity to be heard and to speak on their behalf.

Senator Flynn: I do not want anyone to believe that I agree with the interpretation put on this clause by Senator Stewart. However, I was sufficiently reminded of the experience during the two world wars to say that, in fact, I would never interpret the text in the way that this amendment would suggest it could be interpreted.

There is also, of course, a big difference in this legislation that has to be underlined, and that is that we now have the Charter of Rights and Freedoms, which is applicable to the powers granted to the government and restricts the powers given to the government.

Again, if you say that we must restrict these powers, I think the Senate will have to consider many other areas where it would be as sensible to restrict these powers. If that is absolutely what you want, that would be an entirely new exercise than the one proposed by Senator Stewart.

Senator Stewart (Antigonish-Guysborough): No, Mr. Chairman, I think Senator Flynn is correct in asserting that the power that would be delegated by clause 40 is similar to the power delegated in the War Measures Act. There is no real change in the power delegated.

However, Senator Flynn says that he disagrees with my interpretation. I must tell him that I am not relying on my own

Source: Nikkei National Museum, 2018-16-4-1-1-255
www.nikkeimuseum.org

interpretation. When I spoke at second reading I quoted what the Prime Minister of the day in 1942 and 1944 said, and earlier today I quoted what the Minister of National Defence, Mr. Beatty, said on May 31, 1988. Honourable senators, on this very point, Mr. Beatty said:

> With regard to conscription, our advice is that this would be legally possible by order in council under Part IV of Bill C-77.

That is Mr. Beatty's interpretation, and I think his interpretation is correct. I do not know why Senator Flynn has problems with accepting the interpretation given by the Minister of National Defence.

We then come to the other question: If Parliament, in fact, does delegate this power anew, will it be used? Honourable senators, that is a matter of speculation. Surely we ought not to grant this power simply on the basis that it might not be used. As a matter of fact, although it was not used in World War I, we must recall that the War Measures Act was used to change the provisions with regard to exemptions from military service. Also, during World War II, in the fall of 1944 it was used as one of the two bases for sending some 16,000 Canadians overseas. Thus we see that, although the government of the day felt that for political and not legal reasons it should not use the power that had been delegated to it under the War Measures Act, it did use those powers in closely related situations.

In any case, honourable senators, what I am saying is that the House of Commons did not confront this question. They did not say in express words that they wished to delegate to the Governor in Council the power to introduce conscription. One of the functions of my amendment will be to allow the House of Commons to decide, and declare overtly, whether they wish to delegate to the Governor in Council the power to introduce conscription.

Some Hon. Senators: Hear, hear!

Senator Roblin: Mr. Chairman, I should like to add a word on this point. I must admit it is a matter I have not heard discussed in detail—as to the effect of the large powers conferred by clause 40 which we are now discussing. It strikes me that there are a good many other powers besides the one we are discussing that would probably need to be considered, as Senator Flynn has suggested, if we decided that we were going to modify the powers in this clause.

It seems to me, however, that we have overlooked the fact that these powers are not absolute. The impression I have received from the discussion so far is that these powers are absolute. Honourable senators, I do not think they are, because there is a provision in this bill for parliamentary supervision. In other words, within a short time—I think it is seven days after the declaration of a war emergency—Parliament must be convened to deal with the matter. Surely, if there has been any excess of zeal or excess of authority, or even ill-advised policy on the part of the government at the moment the emergency is declared and measures are taken unto it, the Parliament has an opportunity—and in fact a duty—within a very short period of time to confirm or not to confirm the actions taken by the executive in respect of this matter.

I have to advise the committee at once that I do not pose as an expert on this bill. It may be that I have misinterpreted it. I do not think I have, but it is quite possible I have not given it a correct reading. However, if I have given it a correct reading, it makes me feel a lot better, because it means that the unauthorized or the extra-parliamentary activities of the executive are not free. There is a constraint upon them, and that constraint is the right and duty of Parliament to supervise what is being done.

This bill specifically states—and I think it is a distinct improvement over what we had before—that if a state of emergency is declared then the provision for Parliament to exercise its role as the arbiter of policy in the nation is clearly set out within what I think is a reasonable space of time. So I do not feel so bad about the fact that the clause is sweeping in its mandate. In fact, it seems to me that such a proposal is probably appropriate, particularly if you have this restraint of parliamentary supervision that is provided.

• (1620)

If any government was so ill-advised as to tax somebody, as I think they could under this section, or so ill-advised as to conscript somebody, as I think they could do under this section, they would not be immune from parliamentary supervision or from parliamentary approval or disapproval of what they had done—and that in short order; it is not a lengthy period of time. So I would be reluctant to upset the wording of this legislation on the argument we have received.

While in theory the power of the Crown may be as set out here—indeed, as it has been in all legislation of this type that I am aware of, first, that does not mean that the Crown will automatically do these things, and, second, even if the Crown were so ill-advised as to use this clause to justify a policy of the kind I am talking about here, Parliament would have its say. That is the sanction that really counts. So it seems to me that, while the point is interesting, it is not one we should accept without further consideration at this moment.

Senator Frith: Honourable senators, I think the points raised by Senators Flynn and Roblin are well taken, and I think it is important that they were raised. I part company with them only on using those points to support resistance to the adoption of this amendment. On Senator Flynn's point, there may very well be other areas that would merit amendment, but that does not diminish my support for this one. As to the point raised by Senator Roblin, he is right that this bill does not throw parliamentary review out the window. The difficulty is that parliamentary review only applies after the fact. In the context of political reality, there is quite a difference between requiring the executive, no matter which party may dominate it, to go to Parliament and ask it to do something as important as has been described and requiring the executive to go to Parliament to ask for its imprimatur after the act is done.

For those reasons I do not cross swords with Senators Flynn and Roblin on the points they have raised, but I argue that they do not diminish my support for this amendment. I think we should carry it anyway.

Senator Roblin: Mr. Chairman, I cannot really see the force of my friend's argument that to ask for approval after the fact is different from having to initiate it in the first place. The fact is Parliament will debate the issue, if it wishes to, under either circumstance, and Parliament will get its way under either circumstance. I feel comfortable with that view of parliamentary procedure and, while not having had to exercise such responsibility in the federal legislature, I recognize the weight that rests on the executive to get approval of this measure. Whether it seeks that approval through a review procedure or in advance, it will be the same tough proposition and will have to be well substantiated to be accepted by the people of the nation.

Senator Frith: Perhaps I did not express my point very well. Let me express it in this way: To me there is a great difference between saying to someone, "Come and convince me that I should do something" and coming to me and saying, "Please convince me why I should not have done it." The burden is quite different.

Senator Roblin: But you do not have to convince just anybody; you have to convince members of Parliament.

Senator Frith: If we pass this amendment, it will put the government in the position that they are normally in; namely, that of having to go to Parliament and say, "This is what we propose, and we ask for your support." If they go to Parliament after the fact, then they say, "We've done it. Now, you review it and tell us why we shouldn't have." There is a big difference.

Senator Roblin: You still have to convince the individual members of Parliament that it is a good thing.

Senator Flynn: They could expropriate and do all sorts of things that are not contemplated.

Senator Lang: Mr. Chairman, with respect to the other opinions, I think this discussion is quite academic. In fact, if any executive or cabinet brought in conscription without prior parliamentary consent, it would be doing so under circumstances when our parliamentary institutions had disappeared either through internal revolution or through an external atomic attack, say, on Ottawa. Therefore, I am not concerned about this problem. In fact, if honourable senators look at the history of Germany, they will see that the absolute power of the Nazis was accomplished with prior Reichstag approval. In our system of government, nothing like a unilateral declaration by the cabinet proposing conscription could possibly come about unless our parliamentary institutions had been completely disabled.

Senator Neiman: Honourable senators, I wonder if Senator Roblin would clarify for me a point he just made. I believe he stated that Parliament would have to ratify such a decision within seven days. I am looking at clause 58 and, as I read it, it applies only upon the declaration of a war emergency. Unless I have missed the pertinent part, it does not apply to any order made under the war emergency.

Senator Roblin: I take a broad view of the expression "war emergency". I take the expression to mean what is being done under that particular heading. If a war emergency was declared and conscription was involved, to suggest that Parliament would meet without discussing the issue, I think, is unrealistic.

Senator Neiman: I quite agree, but I would think that the only requirment is to ratify the declaration of war emergency. Parliament may very well choose to do so, but the Governor in Council is then no longer required, at least as I read the legislation, to consult with respect to any order made once that declaration has been ratified.

Senator Roblin: Without being able to put my finger on the exact clause, certain other portions of this bill refer to parliamentary supervision and it may be that they are relevant to this issue; I really cannot say. I take the view, however, that anything done under war emergencies legislation would certainly be grist to the parliamentary mill when it was asked to approve these items. And to think for one moment that, for example, taxation by order in council or conscription by order in council would escape the scrutiny of Parliament in that connection seems to me to be unrealistic. I guess the only case where it would not be unrealistic would be the case described by Senator Lang, who says, "Well, if our parliamentary institutions are not here . . ." If they are not here, there is nothing here.

• (1630)

Senator Neiman: I agree with Senator Roblin's observations, but for greater certainty why should we not adopt this type of amendment?

Senator Roblin: I have given my reasons for that.

Senator Frith: I do not think we are now going to persuade each other. To me, the argument comes down to saying that they probably will not do it; it is unrealistic to think they will do it, therefore, we might as well let them have the power to do it. That is only my opinion. It is not the opinion of Senator Roblin and it is not the opinion of Senator Flynn. I think our different views have been expressed and that the question should be put.

Senator Roblin: I would not like Senator Frith's interpretation of my views to stand, because that is not my interpretation. I do not think one should pass a law because no one is going to use it. One always has to assume that it will be used, otherwise why pass the law? Then one has to look at the fail-safe mechanism, and the fail-safe mechanism here is that, if they do something damn silly—if I might use that unparliamentary adjective—we have the supervisory power of Parliament to put things right, and I rely on that.

Senator Hicks: There is one point which perhaps Senators Roblin and Neiman might take into consideration, and in a sense it supports the position that each of them has taken.

Source: Nikkei National Museum, 2018-16-4-1-1-256
www.nikkeimuseum.org

The review provided under clause 58 does, indeed, apply to the declaration of the war emergency only, but the war emergency could be declared in January, let us say, and would be in effect for a stipulated time. Then, in the June following, the actions of the executive to impose conscription could be taken. The review envisaged by clause 58 of the declaration of the war emergency would not apply to that.

I also have to agree with Senator Roblin that it is inconceivable that Parliament would not have, and would not seize, the opportunity to review, comment upon and, if necessary, revise the executive action that displeased them.

The Chairman: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

An Hon. Senator: On division.

The Chairman: We will have to have a division, in that case. The division provides for senators to stand and be counted. Once that begins, there can be no further entry into the chamber. I will now call for the vote and there will be no further entry into the chamber.

Honourable senators, those in favour of the motion in amendment please stand.

Those opposed to the amendment please stand.

Yeas: 25; Nays: 14.

I declare the motion in amendment carried.

Shall clause 40, as amended, carry?

Senator Flynn: Mr. Chairman, I move that the clause be further amended by adding right after the last amendment just adopted "... nor for appropriating any part of the public revenue or for imposing any tax or impost."

The Chairman: It is moved by the Honourable Senator Flynn, seconded by the Honourable Senator Roblin, that clause 40 of Bill C-77, page 20, be further amended by adding immediately after subclause (1.1) the following words: "... nor for appropriating any part of the public revenue or for imposing any tax or impost."

Senator Olson: May we have an explanation? Does this mean the government may not use any of the moneys in the treasury for any of these purposes?

Senator Flynn: If you want to restrict the powers with respect to conscription, you may as well restrict them for these and any other purposes that may come to mind eventually.

Senator Frith: That is not part of the formal amendment "... any others that may come to mind"?

Senator Olson: I do not have a copy of the proposd amendment in front of me, but I hope I misunderstand what Senator Flynn's intentions are.

Senator Flynn: For Senator Olson's benefit I will say this. Since the Senate has decided that it should restrict the powers provided in section 40, I want it to go further. If an amendment is necessary to deal with the problem of conscription, one should also be necessary to prevent the Governor in Council from appropriating any part of the public revenue or imposing any tax or impost by order in council, in the same way that you say conscription could be imposed.

Senator Olson: Honourable senators, I was prepared to support Senator Flynn's amendment if it was only to deal with the imposition of taxes by Governor in Council, but the wording—and I do not have it in front of me—seems to imply that the Governor in Council would not have the authority to use the revenue from whatever taxation already exists for the pursuit of some of these measures.

Senator Flynn: No.

Senator Olson: That is what he appears to say.

Senator Hicks: Perhaps it should be read again.

Senator Flynn: Section 53 of the British North America Act, 1867 states:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

This is a privilege of the House and it is also a privilege of Parliament.

What I am saying is, if you cannot use the wide powers provided in clause 40, I do not want the government to use these powers to avoid presenting Parliament with appropriation bills or with bills for imposing any tax or impost. If we have to restrict the powers of the government, I want to be clear that this does not grant the government these powers.

Senator Olson: Honourable senators, I am having difficulty, because Senator Flynn says he does not want the government to use an emergency for the purpose of presenting an appropriation bill even to Parliament.

Senator Flynn: No, no, no!

Senator Olson: That is ridiculous.

Senator Flynn: Read clause 40.

The Chairman: It is proposed that the following words be added to the amendment we have already passed

> "... nor for appropriating any part of the public revenue or for imposing any tax or impost."

Senator Flynn: How would the whole subclause read?

The Chairman: The new clause would read

> "... to make orders and regulations may not be exercised for the purpose of requiring persons to serve in the Canadian Forces nor for appropriating any part of the public revenue or for imposing any tax or impost.

Senator Stewart (Antigonish-Guysborough): Mr. Chairman, there is much about Senator Flynn's proposed amendment that is highly attractive, however, I want to make two comments about his amendment.

We know that it is impossible for a government to appropriate by order in council—that is a parliamentary function. However, we were told by the spokesmen of the government that they already have the power to withdraw money from the Consolidated Revenue Fund by Governor General's warrants. That is not appropriation. Therefore, as long as that provision remains there, the first part of Senator Flynn's proposed amendment does not accomplish anything. The government already can withdraw money from the Consolidated Revenue Fund under the provisions of another statute.

• (1640)

Senator Flynn: Sure, sure, but under the other statute; under this clause they would not.

Senator Stewart (Antigonish-Guysborough): That is correct. They said that they did not interpret this bill as conferring upon them the power to appropriate, and that they did not need to acquire new power because they already had power to obtain money under another statute.

Senator Flynn: In certain circumstances.

Senator Stewart (Antigonish-Guysborough): That is what they said in regard to my question on appropriation.

Now we come to the other point, namely, the imposition of a tax or impost. Senator Flynn here is disagreeing with the government. On May 31, at page 3531 of *Hansard*, the minister said:

> Finally, with regard to taxation, I am pleased to say that I can give a short, unequivocal answer. Taxes cannot be imposed by order in council. The Constitution sets out quite specific procedures for levying taxes and a bill is always required.

Hon. Senators: Hear, hear!

Senator Stewart (Antigonish-Guysborough): Consequently, the second part of Senator Flynn's proposed amendment runs contrary to the government's interpretation of the Constitution and, therefore, would seem to accomplish nothing. The minister is saying, "Even if we ask for this power, you could not give it to us, because this cannot be delegated." Consequently, to reduce the delegation in the way proposed by Senator Flynn, according to the minister, would be to reduce a delegation which had not been made in the first place. Therefore, from the viewpoint of the government, Senator Flynn's proposed amendment really would accomplish nothing.

The Chairman: Is there anything further?

Senator Flynn: I wanted you to change your mind, but you do not when it does not meet your purposes.

Senator Stewart (Antigonish-Guysborough): Senator Flynn, I happen to think that the minister probably is wrong and that you are right. All I am saying is that you are proposing—I suppose with the support of government senators—

Senator Flynn: No, no.

Senator Stewart (Antigonish-Guysborough): —an amendment which is contrary to the interpretation set forth by the minister speaking for the government.

(Senator Stewart (Antigonish-Guysborough))

The Chairman: Is it your wish, honourable senators, to adopt the motion in amendment?

Senator Frith: The further one, no.

Some Hon. Senators: No.

The Chairman: I have not heard any "yeas".

Senator Flynn: Yea.

Senator Frith: Atta boy, Jacques! Not so fast!

The Chairman: In that case, shall we have a division by the same process?

Senator Roblin: You can call the result, Mr. Chairman.

The Chairman: You are satisfied that I call the result? In my opinion, then, the amendment does not carry. Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Chairman: All right, shall clause 40, as amended, carry?

Hon. Senators: Carried.

The Chairman: Shall clause 41 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 42 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 43 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 44 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 45 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 46 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 47 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 48 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 49 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 50 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 51 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 52 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 53 carry?

Hon. Senators: Carried.

Source: Nikkei National Museum, 2018-16-4-1-1-257
www.nikkeimuseum.org

The Chairman: Shall clause 54 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 55 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 56 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 57 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 58 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 59 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 60 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 61 carry?

Hon. Senators: Carried.

The Chairman: Clause 62?

Senator Stewart (Antigonish-Guysborough): Clause 62 provides for a Parliamentary Review Committee, the purpose of which is to examine what we might call secret orders in council, those which, in the national interest, would not be made public. This Parliamentary Review Committee is to be a committee of both houses of Parliament.

• (1650)

The clause, as it now reads, states:

> The Parliamentary Review Committee shall include at least one member from each party that has a recognized membership of twelve or more persons in the House of Commons.

There is no provision for party representation from the Senate.

Here is what might happen: Let us say that we had a Liberal government—

An Hon. Senator: Hear, hear!

Senator Stewart (Antigonish-Guysborough): That was the situation during the Second World War. Let us say a joint committee was to be set up. The joint committee would have to have at least one senator on it for it to be a joint committee. However, the Liberal majority in the Senate might well say, "That one senator will be a Liberal senator," with the result that there would be no Progressive Conservative senator on the joint committee. Therefore, it seems to me that it would be proper to eliminate that possibility by an amendment. Consequently, I move:

> That clause 62 of Bill C-77, on page 32, be amended by striking out lines 3 to 7 and substituting the following:
>
> (2) The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons.

The effect would be that a joint committee set up with the present Senate would have at least one Progressive Conservative senator on it and at least one Liberal senator on it.

Let us say that we had in the Senate one member of the New Democratic Party. The Parliamentary Review Committee would have one member from the New Democratic Party from the House of Commons and one senator from the New Democratic Party. That senator would be eligible to sit on that committee as a representative of the Senate.

If, however, we had senators from parties that did not have at least 12 members in the House of Commons, those senators would not be eligible to sit on that committee.

The amendment is drawn so as to produce a balance between the representation of the parties in the House of Commons and the Senate on the Parliamentary Review Committee. I have reason to believe that this amendment might be acceptable to the government.

The Chairman: Honourable senators, it is moved by the Honourable Senator Stewart (Antigonish-Guysborough), seconded by the Honourable Senator Marsden:

> That clause 62 of Bill C-77, on page 32, be amended by striking out lines 3 to 7 and substituting the following:
>
> (2) The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons.

Is it your pleasure, honourable senators, to adopt the motion?

Senator Barootes: Mr. Chairman, the way Senator Stewart's amendment reads, if the New Democratic Party has no representatives in the Senate, bearing in mind that last line, we are in a bit of trouble, are we not, in assuming that every party in the House of Commons shall have a representative in the Senate? That is the way I read it.

Senator Stewart (Antigonish-Guysborough): It says "at least one senator from each party in the Senate", but that provision is limited by the words, "that is represented on the committee by a member of the House of Commons." It does not say that each party that is represented on the committee from the House of Commons shall be represented by a senator.

The Chairman: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Hon. Senators: Agreed.

The Chairman: Shall Clause 62, as amended, carry?

Hon. Senators: Carried.

The Chairman: Shall clause 63 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 64 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 65 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 66 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 67 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 68 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 69 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 70 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 71 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 72 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 73 carry?

Hon. Senators: Carried.

The Chairman Shall clause 74 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 75 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 76 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 77 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 78 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 79 carry?

Hon. Senators: Carried.

The Chairman: Shall clause 80 carry?

Hon. Senators: Carried.

The Chairman: Shall the schedule carry?

Hon. Senators: Carried.

The Chairman: Shall the title carry?

Hon. Senators: Carried.

The Chairman: Shall clause 1, the short title, carry?

Hon. Senators: Carried.

[The Hon. the Speaker.]

The Chairman: Shall I report the bill, as amended?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting is resumed.

REPORT OF COMMITTEE OF THE WHOLE ADOPTED

Hon. Gildas L. Molgat: Honourable senators, the Committee of the Whole, to which was referred Bill C-77, to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof, has examined the said bill and has directed me to report the same to the Senate with two amendments.

A Clerk at the Table: The first amendment reads as follows:

> That clause 40 of Bill C-77, on page 20, be amended by adding, immediately after subclause (1) thereof, the following subclause:
>
> (1.1) The power under subsection (1) to make orders and regulations may not be exercised for the purpose of requiring persons to serve in the Canadian Forces."

[Translation]

The second amendment reads as follows:

> That clause 62 of Bill C-77, on page 32, be amended by striking out lines 3 to 7 and substituting the following:
>
> "(2) The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons.'

[English]

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Senator Molgat: With leave, now.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

THIRD READING

The Hon. the Speaker: Honourable senators, when shall this bill, as amended, be read the third time?

Hon. C. William Doody (Deputy Leader of the Government): With leave, now.

The Hon. the Speaker: Is leave granted, honourable senators?

Source: Nikkei National Museum, 2018-16-4-1-1-258
www.nikkeimuseum.org

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, this time we are abridging the one day's notice requirement, but for another reason—because there is a chance that without other work for the Senate itself, apart from the committees, the Senate might not sit the rest of this week. So why not send it back to the House of Commons while we are not sitting?

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Doody, seconded by the Honourable Senator Roblin, with leave of the Senate and notwithstanding rule 45(1)(*b*), that this bill, as amended, be read the third time now.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill, as amended, read third time and passed.

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

First reading, April 27, 1988. Second reading, May 18. Referral to Committee of the Whole, May 24. In the Committee, May 31; June 8; June 28. Report from Committee (with certain amendments), adoption of Report and third reading, June 28.

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ADDED SEARCH TERMS:
GEOGRAPHIC NAME: Canada
SUBJECT TERM: emergencies; legislation; war; emergency measures;*War*Measures*Act;*Bill C-77;*Emergencies*Act*
ORGANIZATION NAME: House of Commons

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881520038 TUE MAY.31,1988 PAGE: A7 (ILLUS)
BYLINE: KENNETH JULL and BARRY WRIGHT
CLASS: Features
DATELINE: Ottawa ONT WORDS: 1097

** From bad to not so good **
** Granted, it's better than the*War*Measures*Act*but the new **
** emergencies law still goes too far **

BY KENNETH JULL and BARRY WRIGHT
Mr. Jull is an Ontario lawyer and sessional lecturer in law at Carleton University. Prof. Wright teaches law at Carleton.
OTTAWA
DID YOU know that Canada will soon have a minister responsible for emergency preparedness? It sounds like something out of a spy thriller, but this and other extraordinary emergency provisions may soon be a reality now that Bill C-77 has been passed by the House of Commons and goes before the Senate.

Few would deny that the War Measures Act needs replacement because of its sweeping provisions threatening basic civil liberties in times of real or apprehended insurrection. Under the act, 465 people were arrested and detained without being allowed to consult a lawyer during the FLQ crisis of October, 1970.

But if such as crisis happened again, the new Emergencies Act would at least afford the right to counsel to anyone arrested or detained. The new act is clearly an improvement over the War Measures Act in drawing the fine line between organized response to emergencies and the protection of individual rights.

However, despite assurances from Defence Minister (and designated minister responsible for preparedness) Perrin Beatty, Bill C-77 still contains disturbing elements. It has a darker side that should concern all Canadians who value civil liberties.

First, the new Emergencies Act actually encompasses a larger number of situations than the War Measures Act. Four categories of national emergency are contemplated:

1. "Public welfare" emergencies caused by such things as floods or accidents.

Source: Nikkei National Museum, 2018-16-4-1-1-259
www.nikkeimuseum.org

2. "Public order" emergencies arising from threats to the security of Canada so serious as to constitute a national emergency (the FLQ crisis would fit into this category).
3. "International emergencies," a provision that appears to recognize the modern realities of terrorism. The legislative committee recently tightened the definition of this category, although it still leaves much to be desired.

"International emergency" involves Canada and one or more other countries and arises from acts of intimidation or coercion or the real or imminent use of force or violence so serious as to be a national emergency. (Some may argue tongue in cheek that a violation of the energy provisions in the free-trade agreement would qualify as an international emergency.)

4. Finally, the fourth category of "war emergency" can include a war involving any of our allies that is so serious it constitutes a national emergency.

Beyond the definitions, a second dark side relates to the wide powers the Government will have during an emergency. If faced with the FLQ crisis in 1988, the Government could regulate assemblies that it predicts may reasonably be expected to lead to a breach of the peace. This is a type of prior restraint that operates before any breach of the peace has actually happened.

In addition, any person could be forced by law to render essential services for "reasonable compensation." Are these wide powers really necessary to force Canadians to act co-operatively, if in fact there really is an emerency?

A third concern relates to the protection of the rights of minority groups during an emergency. If the governing party has a large majority in the House of Commons (as it now does), confirmation of the declaration of an emergency will likely be automatic. Yet, majorities are not always fair in times of crisis; ask any Japanese Canadian who lived through the Second World War.

There are four routes by which a minority group can seek redress, none of them ideal:

1. Persuade the Senate to revoke the declaration, although the Senate is not traditionally known as a body that represents minorities.
2. Refer the matter to the Parliamentary Review Committee. The efficacy of this route will depend on the composition of the committee. The only requirement spelled out in the bill is that the committee will include at least one member from each party that has 12 or more MPs.
3. Rely upon a post-event inquiry. The experience of Japanese Canadians who are still seeking compensation 40 years after the event throws doubt on this method.
4. Challenge the declaration of emergency in the courts by arguing that the government lacked the necessary "reasonable grounds" to believe that a national emergency existed or that certain measures were necessary. This last safeguard was the result of amendments to the bill, but it is a somewhat illusory protection.

The courts themselves may be subject to extreme political pressures that could undermine public perceptions of their impartiality.

Moreover, there are several hurdles an applicant must jump to make this an effective check. The applicant likely will have to meet an initial onus to raise doubt about the cabinet's grounds, and yet much of the information necessary to make such a case will probably not be accessible because of cabinet secrecy.

Only now, 18 years later, are we beginning to get a glimpse of what occurred in cabinet during October, 1970. Delay is another problem; anyone who has encountered the legal process knows how slow it can be.

Perhaps most important, as admitted by the minister himself, "the courts have been very reluctant to second-guess the government's judgment about whether an emergency exists, even under statutes where the power of judicial review was broader than it is under this bill in its present form."

As legal historians have pointed out, the trial of Louis Riel, the proceedings surrounding the Winnipeg General Strike and other cases with political overtones reflect a rather unreasonable apprehension of insurrection that has been shared by authorities whether in court or in cabinet.

OBVIOUSLY, it is easier to criticize such legislation than to propose alternatives. Terrorism will be effective if it can make a government look weak but it can be equally effective if makes the government look repressive. The bill extends to areas and confers powers that probably are not necessary. As a result of this overreach, safeguards such as court review become necessary.

The role of the courts should be confined as much as possible to matters of procedure and compensation. If public-order matters do come to court, they should be dealt with through regular criminal proceedings based on carefully drafted legislation in the Criminal Code. As for urgent political matters, as much as possible should be resolved in the democratic forum of Parliament, and serious attention should be given to the appointment process for the Parliamentary Review Committee.

It has often been observed that Canadians love order and tend to defer to authority. Perhaps we need to overcome this cultural tendency. The darker side of Bill C-77 demands further public attention and criticism.

Source: Nikkei National Museum, 2018-16-4-1-1-260
www.nikkeimuseum.org

FINAL PASSAGE

Source: Nikkei National Museum, 2018-16-4-1-1-261
www.nikkeimuseum.org

This will be a very short intervention because Parliament has had the opportunity already both in the Senate and in the House of Commons to debate this legislation. I will say that this is a very momentous day for Canada. With the acceptance of these amendments and the passage of this Bill from the House of Commons, we will see the abolition of the War Measures Act in Canada. Never again will we have a situation, as was the case in World War II, where Canadian citizens were interned on the basis of their racial ancestry. What we will have is a situation where there will be guarantees. Never again, for example, will there be the ability to use the War Measures Act to knock on the door in the dark of night, to sweep up our citizens, to hold them without charge and without the right of habeas corpus. What we will have, Madam Speaker, is a new and modern piece of legislation, one that is adequately safeguarded, one which protects the rights of all Canadians and one which gives to the Government the ability to protect the lives of Canadians, to keep them safe and to ensure that every Canadian has adequate protection in times of crisis.

As the House will know, Canada is virtually alone among modern western jurisdictions in not having this sort of flexible legislation. As a consequence, acceptance of these amendments and passage of this legislation will bring Canada into the 20th century. It will prepare us for the future in terms of the needs of this country.

I might simply mention that the Government is prepared to accept the two amendments which have been proposed by the Senate. One deals with the issue of conscription. While the Bill as it was passed unanimously on third reading in the House of Commons would have allowed conscription to take place by Order in Council, it would have simply maintained the *status quo* which existed under the old War Measures Act.

In the two instances where we have had conscription in the past, even though it would have been possible to do so by Order in Council under the old War Measures Act, the Government of the day felt it was appropriate to introduce special legislation. I would prefer in safeguarding the interests of all Canadians in times of emergency that that power still remain. The very nature of an emergency is such that it is impossible to predict the very dire circumstances which could take place. But I am satisfied that if a balance has to be struck that it is likely it would be possible in times of crisis, if Canada had to go to war, that there would be enough time for us to reconvene Parliament and for us to pass special legislation, if there was consent of the House.

Additionally, there is another minor change made by these amendments, namely, to change the structure of the joint parliamentary committee to ensure representation from both sides of the Senate. We are prepared to accept that as well. It does not go to the heart of the Bill and is something which obviously will reflect better the views of some of the members of the Senate.

GOVERNMENT ORDERS

[*English*] JULY 12, 1988

EMERGENCIES ACT

MEASURE TO ENACT

Hon. Perrin Beatty (Minister of National Defence) moved the second reading of, and concurrence in, amendments made by the Senate to Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

He said: Madam Speaker, let me just thank the Hon. Member for Brant (Mr. Blackburn). It had been my intention to allow him to speak first and then to respond but it is probably more appropriate for me in moving the motion to speak now.

I think it is appropriate simply to recall to the House the process that was used with this Bill. It was first indicated to Canadians that the Government intended to act in this area in the White Paper on National Defence which was tabled over a year ago. I tabled the Bill in June of last year prior to Parliament rising for the summer recess with the assurance that the Bill would sit on the Order Paper without being called over the course of the summer and that we would solicit from Canadians, from groups and individuals and from Members of Parliament their views, their responses about the Bill, their concerns and their suggestions about what improvements could be made to ensure that the Bill struck that appropriate balance between the rights of Canadians, the need of the state to protect its very survival and to protect the lives and safety of individual Canadians. I think it is a process which has worked well.

I want to thank members of the legislative committee and Members on all sides of the House for the co-operation which they have shown. We have the Bill which has been substantially amended over the course of the time in which it has been in Parliament. The vast majority of these amendments, in my view, make it a better Bill and better strike the balance between the rights of Canadians, the needs of the Government to provide for the safety of Canadians and for the integrity and survival of the state itself. It has been a process which has demonstrated that Parliament can work if goodwill is shown on both sides of the House.

[*Translation*]

I would simply like to thank all Members for their spirit of co-operation. That positive, constructive spirit has produced excellent results for all Canadians. Because of those efforts, we will have a more effective law that will better protect the rights of all our fellow citizens.

[*English*]

It is an example of Parliament working as Parliament was intended to work and, again, I thank all Members of Parliament for their efforts and co-operation.

I would conclude simply by saying that it is a very proud day for me to see this legislation passed into law. I think it should be a proud day for every Member of Parliament that Parliament is acting now to keep faith with Canadians with the commitment that was made some 18 years ago in the October, 1970 crisis that we would scrap the old War Measures Act and bring in properly balanced and safeguarding legislation to ensure that Canadians in the future would have a piece of flexible legislation with a range of capacities enabling us to deal with emergencies starting on the one hand with natural disasters and going all the way through to war emergencies. We will now have that legislation. I think it is a credit to this Parliament. It is probably a matter which is of great satisfaction and great pleasure for all Canadians that Parliament has acted in such a timely way and that before we rise for our summer recess we will have this sort of legislation.

Source: Nikkei National Museum, 2018-16-4-1-1-262
www.nikkeimuseum.org

THE SENATE

Tuesday, July 12, 1988

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

[Translation]

EMERGENCIES BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons to acquaint the Senate that they had agreed, without further amendments, to the amendments made by the Senate to Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

[Translation]

• (1720)

THE ROYAL ASSENT

[Translation]

A message was delivered by the Gentleman Usher of the Black Rod as follows:

Mr. Speaker, the Honourable Deputy to the Governor General desires the immediate attendance of this honourable House in the chamber of the honourable Senate.

Accordingly, Mr. Deputy Speaker with the House went up to the Senate Chamber. and being returned:

Mr. Deputy Speaker: I have the honour to inform the House that when the House went up to the Senate Chamber the Deputy Governor General was pleased to give, in Her Majesty's name, the Royal Assent to the following Bills:

Bill C-77, an Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof—Chapter 29, 1988.

260

881940241 TUE JUL.12,1988 PAGE: A4 (ILLUS)
BYLINE: GRAHAM FRASER
CLASS: News
DATELINE: Ottawa ONT WORDS: 384

** New law replaces*War*Measures*Act***

BY GRAHAM FRASER
The Globe and Mail
OTTAWA

The House of Commons yesterday unanimously passed legislation to replace the federal*War*Measures*Act*.

"This is a very momentous day for Canada," Defence Minister Perrin Beatty told the Commons, saying that never again will the country have a situation where Canadian citizens were interned on the basis of their racial ancestry as happened during the Second World War.

"Never again . . . will there be the ability to use the War Measures Act to knock on the door in the dark of night, to sweep up our citizens, to hold them without charge and without the right of habeas corpus."

The House concurred with amendments recommended by the Senate to Bill C-77 , an act to authorize the taking of special temporary measures to ensure safety and security during national emergencies.

Royal assent is expected on Thursday.

Liberal MP Robert Kaplan praised the Senate for making "a very effective contribution" by raising the question of conscription, so that it would not be introduced by Government regulation - a power that existed in the old War Measures Act. Instead, conscription would be introduced by parliamentary legislation.

Unlike the old law, the new Emergencies Act is subject to the Charter of Rights and Freedoms. There would be provisions to compensate Canadians who suffer loss, injury or damage because of its implementation.

Under the bill, emergencies are divided into four categories:

. Public welfare emergencies would cover floods, diseases, accidents or pollution. Authorities could order the evacuation of areas, restrict travel and requisition property.

. Public order emergencies. Faced with threats to the security of Canada "so serious as to be a national emergency," the Cabinet could prohibit public assembly or travel within a specified area.

. International emergencies. The Cabinet could control industries, prevent citizens from leaving Canada, appropriate property and authorize searches and seizures without warrants.

INFGL/INF34 JULY 13, 1988 10:03 PAGE

. War emergencies. This declaration would be triggered by a war or imminent armed conflict involving Canada or an ally "that is so serious as to be a national emergency." The Cabinet could give any orders it believed on reasonable grounds to be "necessary or advisable," and its use of the act, as in the other cases, would be subject to a later revocation by either house of Parliament.

Source: Nikkei National Museum, 2018-16-4-1-1-263
www.nikkeimuseum.org

881950225 WED JUL.13,1988 PAGE: A6
CLASS: Editorial
DATELINE: THE GLOBE + MAIL WORDS: 418

** Waving goodbye to a Draconian law **

Just over a year after its introduction in the Commons by Defence Minister Perrin Beatty, the*Emergencies*Act*is ready to stand on guard for us. It is intended to allow the state to move quickly in an emergency, whether this be to deal with floods, disease, public order disturbance serious enough to be a national emergency, international crisis or war.

Canada has arrived at this piece of legislation with a degree of caution that might seem curious to the outsider. It may be one of the few laws of its kind in which the powers to be conferred on authority have generated as much fear and concern as the emergencies they are intended to meet.

No apology need be made. The Emergencies Act displaces the clumsy old War Measures Act - a double-edged sword on which we have wounded ourselves more than once. If we seem to have spent a long time honing the new law, it is because we have much to be cautious about.

We know this to be the instrument that was hauled out to put thousands of Canadians in internment camps and to seize their belongings solely because they were of Japanese ancestry. Not even the unnatural passions unleashed by wartime adrenalin could excuse this abominable use of the War Measures Act in the early forties. If it came to shock us in retrospect, however, it was not soon enough to prevent invocation of the same law in 1970, ostensibly to deal with political activists in Quebec. Hundreds were thrown in jail without being charged or allowed bail.

The protracted gestation of the Emergencies Act reflects a deliberate effort - by all parties - to find a measure that would spare us this kind of shame in the future, but which would not render authorities toothless in the presence of crisis. It is to Mr. Beatty's credit that he has listened to suggestions for amendment and incorporated the best of them. "Never again," he says, "will there be the ability to use the War Measures Act to knock on the door in the dark of night, to sweep up our citizens, to hold them without charge and without the right of habeas corpus."

We now have an act that permits graduated response to dire situations, according to their severity. It makes provision for compensating those who are injured by its application, and it looks upon civil rights as something more than a privilege to be rudely elbowed aside on slim pretext.

Source: Nikkei National Museum, 2018-16-4-1-1-264
www.nikkeimuseum.org