or 1915 has become something which today probably not more than a dozen people in Canada readily understand.

This small beginning, this small entry to the Criminal Code through the use of orders in council and regulations which the Minister of Justice talks about, would, I suggest, if allowed to go unchecked, ten years from now amount to something which, as my hon. friend from Calgary North said, would mean we are legislating by order in council and by delegated authority a large part of our criminal law. As a matter of fact, with the powers the government now has in using governor general's warrants, orders in council, the War Measures Act if necessary, the Anti-Inflation Board, this parliament would not need to meet at all were it not for the fact that the constitution says parliament has to meet. So I am concerned about this trend.

Having said that, I suggest to the Minister of Justice that he examine the recent testimony which was given in the last two or three days by Sir Robert Speed, the very learned, eloquent and able member of what I might call the establishment of the House of Commons at Westminster, who has had great experience of this whole question of orders in council. The Minister of Justice will be derelict in his duty if he does not read that evidence in the very near future. I see the minister is not listening to me, so I will just continue my remarks and put them on record.

I had the pleasure of meeting Sir Robert Speed some ten years ago when this whole process of statutory instruments was being initiated here. I met him following discussions with the then Prime Minister, the late Mr. Pearson, having had an indication that Mr. Pearson was at least willing to consider some amendments to the statute law of this land to permit the House to take cognizance of the serious problem created by the undue use of orders in council. I was present at two or three meetings of the scrutiny committee in the United Kingdom and observed the very reasonable way in which they dealt with this whole question.

There had developed in the bureaucracy in the United Kingdom an equally reasonable response; in a great many instances all that was necessary was for Sir Robert Speed, who was counsel to the scrutiny committee, to pick up the telephone and to say, "Look, Mr. Parliamentary Secretary, I have just seen a number of orders in council that you are proposing to pass, and I want to point out some mistakes in them." For example, they had an unusual or unexpected impact, or were contrary to natural justice, or they had a retroactive effect, or they were not consistent with the enabling powers in the statute. In 90 per cent of the cases, after reasonable discussion those orders in council were brought into conformity with the enabling statute. When the scrutiny committee of the House of Commons—which is now a joint committee, by the way—was advised of the real facts, an arrangement was made.

I was also very fascinated by what Sir Robert Speed told us just two days ago, namely, that in most instances the right to enact orders in council for subordinate legislative purposes is usually accompanied by the introduction into the bill of the negative or affirmative resolution principle. The Minister of Justice knows that this proposal is contained in the second report of the statutory instruments committee, and I think it would have a very salutary effect. Indeed, the House is indebted to the hon. member for Calgary North for putting forward this idea at the present time.

Our distinguished visitor from Britain also mentioned that in the majority of cases, I think he said, statutory instruments are subject either to an affirmative or a negative resolution. Consequently, a great deal more care is taken by those who draft orders in council to ensure that they meet the purposes which the act designated for them, that they are consistent with the principles of natural justice, and that they do not give greater authority to the executive and the bureaucrats than they should.

After all, Mr. Speaker, if a bureaucrat who is designated to draft an order in council under a statute is aware that within two or three months the order in council would be subject to very searching scrutiny by men and women of the House of Commons and House of Lords who have been engaged upon the task for some time, he will attempt to see to it that the order in council meets the proper criteria. Because of this, counsel for Mr. Speaker in the United Kingdom told us there are fewer and fewer cases of statutory instruments being made subject to motions to set them aside or change them—what they call in England "prayers".

This is all my hon. friend from Calgary North is asking. Since the government is determined to incorporate into the criminal law the right to change, alter or add criminal law by means of order in council, then for heaven's sake this essential safeguard must be included in the law so that a committee of the House of Commons and the Senate have the right to scrutinize the order in council before it becomes law by way of an affirmative resolution of the House.

There are a number of cases where it would be exceedingly dangerous to change the criminal law before a committee of the House, and then finally parliament itself, had been given the chance to express approval or disapproval. This parliament has never shown itself to be unnecessarily vigilant in this regard, but as a member of parliament and as a member of the bar for many years I would be most unhappy about giving public servants of any government the right to make substantive law or to vary law having to do with criminal proceedings by order in council unless that process were first checked either by committee or by the House.

● (1240)

The minister should take the time to read the evidence which was presented before the Standing Committee on Regulations and Other Statutory Instruments last week. He should examine also what Sir Robert Speed said as to the practice, situation and circumstances in England. Surely we would be foolish not to follow the course adopted there, particularly when one considers the number of years this subject has been dealt with in England.

Mr. Stuart Leggatt (New Westminster): Mr. Speaker, I rise in support of the amendment before us. I have a couple of