

*Adjournment Debate*

the matter. I must say I find his assessment of the number of taxpayers involved at 200,000 a little bold in view of the fact that it has no valid basis. I think he should start dealing with facts and stop worrying and causing concern. Here are the facts: No tax refund will be delayed because of the budget. None whatsoever, Mr. Speaker. Actually, the mailing of income tax refunds is moving along pretty well. To this date, there has been a greater number of refunds than last year. Those taxpayers who would be affected by the November 1981 budget are urged to fill out their tax returns according to the changes relating to 1981. They should attach to their income tax return a letter specifying the budgetary proposals which affect them. As I said earlier, it is explained in the information material published before—and today it is confirmed by facts—that the changes affect a mere handful of taxpayers as far as the 1981 tax returns are concerned. Where budgetary proposals impose new limitations to certain deductions the department will consider them according to the proposed legislation.

On the other hand, where budgetary proposals are more lenient, the returns will be subject to the provisions of the existing legislation. Those returns will be identified and treated in the same manner. Once the budget is adopted by Parliament, the Department will make all the necessary adjustments for all those returns.

The normal procedure will be followed and, as far as possible, we will try to keep to a minimum any delay in the mailing of refunds to Canadian taxpayers. This information is clear and it defines a course of action which all Canadians, including the hon. member, can and must understand.

● (2220)

[English]

EMERGENCY MEASURES—LIMITS OF CROWN PREROGATIVE (B)  
AVENUES OF REDRESS

**Mr. Benno Friesen (Surrey-White Rock-North Delta):** Mr. Speaker, Order in Council 1981—1305 is the order in council which empowers the government under the emergency planning legislation, or council order to establish internment camps. The order is dangerous and Draconian, not because of the subject matter or that it is not necessary to plan for emergencies, but because that particular order in council, and its provisions, is so open-ended in its scope of powers and so subtle and devious in its terms of reference. It is dangerous and Draconian.

Let me just illustrate by reading the heading at the beginning of the order in council. It reads, "Other than statutory authority". What does that mean to a layman? Does that mean a power or authority other than law? That means nothing to a layman. One must turn to other sources to derive the meaning.

In this case, we can turn to a letter from the President of the Privy Council (Mr. Pinard) to the Standing Joint Committee on Regulations and other Statutory Instruments. There we find that the power comes from Crown prerogative, or what

Mr. Nixon used to call "executive privilege". In a letter to that committee, the President of the Privy Council said:

The Civil Emergency Measures Planning Order C.R.C. c. 1334, was made pursuant to the Crown prerogative—

Crown Prerogative simply means that it is the power by which the Prime Minister can do what he thinks necessary in what is deemed to be an emergency. I realize that the customs and statutes have somewhat limited those particular powers of the Crown prerogative, but it is a very loose and easily misunderstood term. That is why I rose in my place in the House on March 31 to ask the Prime Minister, as reported in *Hansard* on page 16005:

—what the limits of Crown prerogatives are in this context. Does he have a legal opinion regarding the limits of this power under the new constitution?

The Prime Minister said, among other things:

Certainly I am on sound ground in saying that any prerogative, royal or otherwise, can be limited by statute. That would be the position I would take.

He said, "can be limited by statute". At the outset, it is ominous for him to say, "can be limited by statute". I have to ask why he did not say, "will be, should be" or even "may be".

The letter from the President of the Privy Council is much more specific. That letter, dated March 19, reads as follows:

If Parliament were dissolved, or if the pace of the prices at hand did not allow the time to assemble Parliament, the government would be forced to act in reliance on the Crown prerogative to the extent that it provided a legal basis for authority to act.

What is the legal basis for the power to act? I was concerned about that particular provision and, therefore, went to the government research branch of the Library of Parliament to ask them to conduct a study of that provision. I would like to read a short segment of that study. Page four of the study indicates:

● (2225)

By far the majority of crises in British history were met by parliamentary action; with strong cabinet and a majority government, necessary legislation to delegate powers can be quickly passed without resort to arbitrary action without the authority of Parliament. However, the possibility of independent executive action always exists. As noted, such actions may be found to be legal as an exercise of the royal prerogative or by virtue of a common law duty to protect the realm. The courts would determine the legality of such actions.

In other circumstances, there may be no legal basis for executive action, and yet the courts may be prevented from considering the issue. Under the British constitutional system in which Parliament is supreme, executive acts can be rendered legal *ex post facto*, by passage of an indemnity act. Such a statute protects officials from prosecution or civil proceedings, and this precludes judicial determination of the legality of the actions.

It then refers to invocation of the law of necessity. I know that this Prime Minister (Mr. Trudeau) loves to invoke the law of necessity; but the point is that in such circumstances the courts may be prevented from considering the issue.

That led me to the supplementary question I asked the Prime Minister at that time. He has repeatedly said that the new charter would always contain provision for resort to the courts. However, the Parliamentary Secretary to the President of the Privy Council (Mr. Smith) has indicated in this House that the procedure in relation to this emergency planning order