

Emergency Powers Act

has not been tabled, I do not think it is satisfactory just to give information about it to a limited few, no matter whether those few are leaders or no matter how highly they are respected in this house. Such action is not laying the order before the house.

Mr. Drew: I want to make it quite clear that I was not suggesting that it was necessary for the government to consult the Leader of the Opposition or anyone else in the house. That is the very point I wish to make. I say that because I certainly accept no responsibility for a system of this kind. I also agree with what has just been said, namely that it is not sufficient that the contents of an order be indicated to a few.

We are seeking to carry on the parliament of Canada under parliamentary rules. Unless the nature of the order is most clearly defined by legislation, I submit that at no time should there be passed by this or any other government any order which limits the freedom of any individual or the rights of any of our people. I am satisfied that without any breach of security or without in any way weakening the efforts of the government to maintain security, the field within which any action of the government may be taken in relation to the freedom of any individual can be clearly and explicitly defined; and I believe that it should be defined. That is what I was seeking to point out previously.

While we may object strenuously to administrative law, the least those of us who believe in our federal parliamentary system should ask for is a clear definition of the terms under which the government may pass regulations and the field in which they may be passed. Otherwise we simply abandon to the government all the rights of this parliament; we are merely a parliament by tolerance of the government, and nothing more. This is, in effect, the passing of parliament. Except for such authority as the government chooses to leave with us by its restraint, now that we have the wide-open interpretation of the Nolan case, the passing of the Emergency Powers Act is in fact the passing of the Canadian parliament as a federal democratic institution.

Mr. Diefenbaker: I do not want to enter into a controversy with regard to this secret order; but what is the justification for it under law? Where, under the emergency legislation, does the government secure the power to permit of that? I am not going into any of the particulars. I have my own views on that matter, but I am not placing them before the house. However, where in the legislation passed by the house in 1951 was there any provision for the government

to arrogate to itself the right to determine that those powers exercised under the statute could in fact be exercised under secret order? Is it a matter of regulations?

Mr. Garson: When this subject came up for discussion this evening I sent out for the statute under which I think the matter comes. I am speaking now from memory, but I think my hon. friend will recall that when we passed the Regulations Act which requires the tabling of orders in council generally, a provision was put in it to the effect that we might have an order in council which was not tabled—which was secret—provided we tabled the order in council relating to it and making it secret. I expect to get the Regulations Act.

Mr. St. Laurent: The Leader of the Opposition read it a few minutes ago.

Mr. Diefenbaker: I was under the impression that that power was conferred only with respect to the Defence Production Act.

Mr. St. Laurent: It is in the general Regulations Act. The hon. member will recall that I agreed with him a couple of years ago that all the regulations having the force of law and imposing any obligation should be published in the statutory orders and regulations and should be tabled regularly but that there were certain classes that might be exempted. I think the Leader of the Opposition a few moments ago read the provision which applies to an order that is exempted from publication in accordance with the general rule of the Regulations Act.

Mr. Diefenbaker: Oh, yes. We found ourselves in a rather bad position some years ago when I referred to a secret order on one occasion. I was just looking it up a moment ago. It was on December 6, 1945. I then referred to the existence of a secret order in council and I found myself challenged with the statement that there was no such thing. Then three or four months later it was recalled that there was such a thing. For that reason, to put the matter in the mildest possible way, I think secret orders in council are dangerous in their import and certainly go a long way toward the adoption of principles that are the negation of parliamentary government. I will say no more about that matter at the moment.

However, I come back to some questions that I was asking just about five o'clock. I know the minister has been waiting for the opportunity of answering them. Perhaps I might restate them in summary form. The questions were generally to the following effect.