

The powers of the Governor in Council are set out in sections 3, 4 and 5 of the War Measures Act. Section 5 is not applicable to the case because it refers to the deportation of enemy aliens, and regrettably our enemies in this case are not aliens.

Mr. Forrestall: Are you sure of that?

Mr. Mahoney: However, section 4 provides the penalties and sets the limits on them, a maximum of \$5,000 and or five years in prison, and the government in drafting its regulations has chosen to go to the maximum in that respect.

So, we are concerned with the various items enumerated in section 3 of the War Measures Act which allows the government to pass regulations dealing with censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication. The government has chosen to deal in its regulations with communications and means of communication. The government has not chosen to attempt to deal with censorship, in the broadest sense of the word, or with the suppression of publications, etc.

Subsection (b) deals with arrest, detention, exclusion and deportation. The government in its regulations has dealt with arrest and detention; it has not exercised any power of exclusion or deportation. Subsection (c) deals with the control of the harbours, ports and territorial waters of Canada and the movements of vessels. The regulations are silent on that one. Subsection (d) deals with transportation by land, air or water and the control of the transport of persons and things. The regulations are silent on that one. Subsection (e) deals with trading, exportation, importation, production and manufacture. The regulations are silent on that. Subsection (f) deals with appropriation, control, forfeiture and disposition of property and of the use thereof. To the extent that this relates to the people in the FLQ or any other association advocating the use of force and the commission of crime as a means or as an aid in accomplishing a governmental change in Canada, the government has applied it. Certainly there are some provisions therein regarding forfeiture and the disposition of property, but it has to be property which can be used as evidence.

So, really, the government has shown, I think, a very vigorous restraint and a great discretion in the application of the items under the War Measures Act which it felt were necessary to deal with the situation. This was dealt with at some length by the hon. member for Windsor-Walkerville (Mr. MacGuigan), but I think it bears repetition.

Under the regulations themselves, section 1 is the short title and section 2 is the definitions. I have not heard anyone complaining about them. Section 3 designates the FLQ as an unlawful association, and also designates any group of persons or association that advocates use of force or the commission of crime as a means of or as an aid in accomplishing governmental change within Canada as an unlawful association. Does anyone in this chamber take exception to that in the circumstances?

Invoking of War Measures Act

Section 4 (a) to (f) of the regulations defines various criminal activities of overt members or supporters of the FLQ, the unlawful association. Does anyone in this chamber take exception to that? Section 4 (g) is not exclusive to the FLQ. It deals with a person who advocates, promotes, or engages in the use of force or the commission of criminal offences as a means of accomplishing a governmental change within Canada, and it provides that such a person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years. Does anyone take exception to that?

Section 5 deals with accessories after the fact, people who, knowing or having reasonable cause to believe that another person is guilty of an offence under these regulations, or under Section 4 to which I have just alluded, and 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 subject to the same penalty. Does anyone take exception to that?

Section 6 creates a like offence with a like penalty for any person who knowingly permits the unlawful association of the FLQ or any branch or combination or any assemblage of persons who are gathered to advance their idea of overthrowing the government of Canada by violence or the commission of crime. Anyone who permits them to have a meeting and to congregate in a building which he controls is also guilty of the offence. Does anyone here take exception to that?

Section 7 provides that a person taken into custody for this type of offence can be held without bail pending trial unless the attorney general of the province consents to his release on bail. It further provides that once that person has been held for 90 days from the time he was first detained, he must be brought before a judge. This has been the subject of some comment and I would not, myself, be disposed, on the basis of what I know, to either strongly urge that the 90 days be maintained or that they be reduced. It seems to me that a shorter period of time might reasonably be expected in this case. However, again I do not know, and none of us here, except those on the Treasury benches know for sure, the basis on which these substantive decisions have been taken.

In section 8, again we are faced with a provision that shifts the onus of proof from the Crown to the accused. I think this provision gave the hon. member for Windsor-Walkerville some trouble. Frankly, it does not give me that much trouble. People who have openly consorted with the FLQ and openly acted as their representatives, in the absence of any evidence to the contrary, are deemed to be members of the FLQ. I think that Mr. Lemieux, if that is all he has done, is all right. He was retained in a professional capacity and with the full knowledge of the lawful authorities. I do not think this provision was designed to catch him or anyone whose relations with the FLQ have been lawful. But surely evidence in these cases is in the possession of the person who is charged. The reasons for his consorting or communicating with them is something that he can readily put forward and thus shift the onus of proof back to the Crown.