

Adjournment Debate

eliminates due process in the court, because the government has already worked out a five-step process which does not include court procedure. That bothers me.

Then I find that, according to the tradition or the convention of the Royal prerogative, it is possible to provide retroactive legality to hitherto illegal action, and that by invocation of the law of necessity the courts can be prevented from looking into a matter which would otherwise be considered illegal. This is what worries me about the Crown prerogative. I think the people of Canada deserve a clear indication as to what the limits of the Crown prerogative would be if the government invoked these emergency planning measures.

Mr. David Smith (Parliamentary Secretary to President of the Privy Council): First of all, Mr. Speaker, I would point out to the hon. member that in his opening statement he again misstated the facts, although unintentionally, I am sure. He said that Planning Order 1981-1305 empowered the government to establish civilian internment camps. That is not correct. If the government has this authority, and it would only use it in wartime, it is certainly not because of this planning order. It may be as a result of the War Measures Act which would come into play in a wartime situation.

However, what this planning order does is to allocate to various ministers the responsibility for drawing up plans. It does not give the government any authority it does not already possess. It could well be that after drawing up those plans the ministers may come to the conclusion that legislation is required and would have to be passed. However, the government is not given any authority by this order in council it did not have before.

The hon. member noted that the emergency planning order was made pursuant to the Crown prerogative. He asked the Prime Minister (Mr. Trudeau) what the limits of the Crown prerogative are in this context. The Prime Minister replied that he would have to examine the order to determine the prerogative which is involved.

We have reviewed this matter and I can inform hon. members that the prerogative authority for the emergency planning order is that which is commonly known as the prime ministerial prerogative. It is a settled convention of government that the Prime Minister may from time to time allocate, amend or clarify working responsibilities of ministers of the Crown by

virtue of this prerogative. This same principle underlies the Public Service Rearrangement and Transfer of Duties Act, the act on whose authority the previous civil emergency measures Planning Order PC-1965-1041 was revoked.

I might also say that I requested the research branch of the Library of Parliament to compile a paper on the validity of the emergency planning order. I would be happy to show my friend a copy if he has not already seen it. It quite clearly confirmed that this was a legitimate order within that prerogative.

The hon. member went on to ask the Prime Minister about the recourse to the courts of those who may be interned in wartime. He noted that the anticipated internal safeguards and procedures I outlined in my statement to this House on December 17 did not make explicit reference to the right to appeal to the courts. I did not include this right because it goes, almost without saying, that an individual in such circumstances may make representations to the appropriate judicial tribunal. Since I spoke on that occasion, the Canadian Charter of Rights and Freedoms has been approved to give constitutional expression to this right.

• (2230)

The Prime Minister has himself undertaken to reassure the hon. member of the primacy of the charter in relation to any emergency act, regulation, or order. I know of no broader guarantee that anyone could offer on this subject.

The charter takes precedence not only over statutory authority but also over the emergency authority remaining in the prerogative of the Crown. I hope the hon. member will be reassured to know that this government is not in the business of planning to undertake measures plainly inconsistent with the charter. As I indicated earlier, the government intends that the security of the state be preserved by measures that also allow the maximum possible liberty of individual Canadians.

The Acting Speaker (Mr. Blaker): The motion to adjourn the House is now deemed to have been adopted. Accordingly, this House stands adjourned until tomorrow at two o'clock.

At 10.32 p.m., the House adjourned, without question put, pursuant to Standing Order.