eral government to fulfil its responsibility to deal effectively with national emergencies.

Under Bill C-77, the provinces must be consulted before a national emergency is declared. Subsequently, the federal government must exercise its emergency powers with a view to achieving concerted action with the provinces. In the case of a public welfare or public order emergency in which the effects of the emergency are confined to a single province, the federal government may declare an emergency only after the province concerned has indicated that its capacity to cope has been exceeded.

In response to a point raised by Senator Hicks, let me reassure honourable senators that the consultation provisions will not impede the federal government in responding in a timely manner to emergencies requiring a national response. For international or war emergencies, areas which are of clear federal jurisdiction, the bill calls for consultation only "to the extent that is appropriate and practicable to do so in the circumstances." Even for peacetime emergencies there is nothing resembling a provincial veto, except where the emergency is confined to a single province and where the sole ground for federal intervention is the inability of the province to cope with the situation. In these circumstances, the act defers to the judgment of the province as to its capabilities. Even here, however, if the effects of the emergency have national implications, the federal government could intervene in spite of provincial objections.

Perhaps even more important than the federal-provincial dimension of emergencies legislation is the question of the balance between adequate authorities, on the one hand and the preservation of fundamental rights and freedoms, on the other. A large portion of Bill C-77 is devoted to provisions that construct a comprehensive regime of both judicial and parliamentary safeguards against the misapplication or abuse of emergency powers. The act will be subject to both the Canadian Charter of Rights and the Bill of Rights and must have regard to the International Covenant on Civil and Political Rights. The balance between authorities and safeguards which has been struck in Bill C-77 represents the product of extensive public consultation and thoughtful recommendations from public interest organizations. In particular, I might mention the contribution made by the Canadian Bar Association, the Canadian Civil Liberties Association, the National Association of Japanese Canadians and the Ukrainian-Canadian Committee.

● (1820)

Several of the organizations which presented briefs expressed their satisfaction with the process that permitted their views to be heard and, in very many cases, to be acted upon favourably.

[*Translation*]

The mainstay of the protection of fundamental rights and freedoms is the Charter, and under C-77 the normal mechanisms for applying Charter protections will be upheld.

Section 33, the notwithstanding clause of the charter, has not been used in the bill and cannot be invoked by Order-in-Council. The added protection of the Bill of Rights is of particular significance since some provisions of the bill are not duplicated by the Charter, for example the protection of the right to the enjoyment of property and the provision for a fair hearing for the determination of rights and oblilgations.

[*English*]

Bill C-77 is subject to both judicial and parliamentary sanctions. Any limitation of Charter rights which a government might consider necessary in a national emergency would be subject to at least two channels of judicial review. In the first place, the Governor in Council could be challenged in court to demonstrate that there were reasonable grounds for declaring an emergency, as well as reasonable grounds for each of the orders or regulations made pursuant to the declaration.

Second, under section 1 of the Charter, the government could be challenged to demonstrate that Charter limitations imposed were "reasonable and demonstrably justifiable in a free and democratic society". It is difficult to imagine a government going ahead with measures if there were any doubts about its ability to justify its actions in court.

There are many features of this emergencies legislation that will ensure that the government will be accountable to Parliament and, through Parliament, to the people of Canada for its use of emergency powers. The list is long, but if you will bear with me I would like to summarize the key ones *ad seriatem*:

—application is confined to "national emergencies" which are precisely defined in the bill;

—specific powers are set out for four types of national emergency, each of which is also precisely defined;

—following invocation of the legislation, the government must come before Parliament without delay, with an explanation of the basis for its action and with a report of its consultations with the provinces, and seek Parliament's confirmation of the declaration of emergency;

—if Parliament is not in session, it must be recalled, and, if dissolved, must be called at the earliest opportunity to consider the government's emergency actions;

—both houses must approve the declaration;

I might just depart from my text here, honourable senators, to say that it was a matter of some contention when this bill was before the House of Commons committee as to whether or not we should include a veto on the invocation of the legislation for the Senate. One can easily see circumstances where a majority in the House of Commons would be in favour of proceeding and the Senate might not. We took the decision that we were protecting civil liberties of Canadians; that this double veto was defensible and necessary and that the refusal by either house—either the Senate or the House of Commons—to approve the declaration would result in its being struck down. It is a double parliamentary protection for the rights of Canadians.