

*Defence of Canada Regulations*

but could not agree that at present these subversives were being dealt with adequately. No man is in a better position to speak with authority on the problem than the attorney general of a province, charged as he is with the responsibility of administering the law; and Mr. Conant pointed out that the remedy is in the minister's own hands, readily available and not difficult to apply. The minister has the power to intern all suspects subject to their right of appeal. That, says Mr. Conant, is the only proper and effective way to meet the present very serious emergency. The minister has already taken such action in certain cases, and it is simply a matter of extending the exercise of his powers. Mr. Conant made it clear that he did not suggest interning everybody concerning whom there is rumour or gossip. So far as Ontario is concerned, there is ample evidence on file in various police departments regarding persons engaged in subversive activities and he would gladly furnish the Department of Justice with the relevant facts.

He commended and congratulated the minister on having advised the government to declare illegal a number of subversive organizations, but appeals to him to go a step further. As matters now stand it would be very difficult to prove that an individual was a member of an unlawful organization on or after June 6, when the proscription came into effect. Persons bold enough to commit overt acts can be easily detected; but there remain the secret meetings and the insidious propaganda which must be dealt with in another way. The minister, he said, had power to deal with the matter by interning all persons, who, after proper investigation and on reasonable grounds, are believed to be members of subversive organizations; subject always to the right of appeal.

The province of Ontario is making an effort to provide protection against fifth column activities by the organization of volunteer civil guards, and it is hoped that it will help to meet the situation. But it would be far better if this were undertaken by the federal government, which, under the constitution, is vested with control of all matters having to do with militia and defence. It is contrary to our scheme of confederation that an army should be developed in any province at the command or under the jurisdiction of any official of that province. I think this house will agree with the attorney general of Ontario that it would be more in keeping with the continuance of our national structure if the organization of civil guards, aimed at protection against subversive activities, were taken over by the federal government.

[Mr. Bruce.]

For the purpose of clarity may I say that subversive elements may be divided broadly into two classes—namely, first, enemy aliens, and second, all others. "All others" include British subjects and nationals of any country with which we are not at present at war. Under the defence of Canada regulations, the Minister of Justice deals with all enemy aliens by interning them, or by leaving them at large on terms that they report, et cetera. Up to the present, and subject to the exception arising out of the arrests in Toronto on or about May 28, when two persons were taken into custody and interned under regulation 21 without any court procedure or trial, or anything else, it has been left for the attorney general of a province to deal with all subversive elements other than enemy aliens, although the Minister of Justice has ample power to deal with these people under regulation 21, by interning them the same as enemy aliens. Leaving it for the attorney general of a province to deal with these subversive elements—other than enemy aliens—has the following result:

(a) The attorney general can only act after an overt act has been committed, that is, when the person has actually done or said something that constitutes a violation of the regulations.

On the other hand, under regulation 21, the Minister of Justice could intern on reasonable grounds and before an overt act has been committed.

(b) The attorney general can only proceed in the regular course of law, subject to all the procedure and rules of evidence.

This involves strict proof "beyond a reasonable doubt". The general principle of law applies in the defence of Canada regulations, namely, that the crown must prove its case beyond a "reasonable doubt".

In the order in council dated June 6, 1940, regulation 39(c) was added to the defence of Canada regulations, declaring certain organizations to be illegal organizations. Under regulation 39(c), subsection 3, if a person is charged with continuing to be a member of an illegal organization, as evidenced by attendance, public advocacy and distribution of literature, it shall be presumed in the absence of proof to the contrary, that he is a member of such illegal organization. This, in fact, throws the onus on the accused person to prove that he is not a member of such illegal organization. In this sense, the expression "proof beyond reasonable doubt" is qualified; but when one remembers that proof must still be obtained of "attending at, publicly advocating, or distributing literature", there is a heavy onus of proof still remaining. Evidence