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CONFIDENTIAL

SESSION 1942
HOUSE OF COMMONS

SPECIAL COMMITTEE
ON
DEFENSE OF CANADA REGULATIONS

MINUTES OF EVIDENCE

NO. 8

TUESDAY, JUNE 30, 1942

WITNESSES:

Dr. George S. Patterson;
Mr. Andrew Brewin;
Mr. B.K. Sandwell;
Mr. J.H. Osler; and
Mr. A.W. Roebuck, K.C., M.P.,
Counsel for the delegation.

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HON. J. E. MICHAUD,
CHAIRMAN.

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MINUTES OF EVIDENCE

House of Commons,
Room 368,
June 30, 1942.

The Special Committee on Defence of Canada Regulations met this day at 11 o'clock a.m. The Acting Chairman, Mr. H. B. McKinnon, presided.

THE ACTING CHAIRMAN: Gentlemen, if you will come to order we shall proceed.

Minutes of previous meeting read and adopted.

Correspondence dealt with.

THE ACTING CHAIRMAN: Now, gentlemen, we have representatives from the Civil Liberties Association of Toronto here with us to-day.

Who would like to be the first witness?

DR. PATTERSON: I am the president of the association, Mr. Chairman.

DR. G.S. PATTERSON, called:

WITNESS: I should like to introduce the delegation if I may. They are as follows:

Mr. A.W. Roebuck, M.P.,

Mr. J.W. Noseworthy, M.P.,

Mr. B.K. Sandwell,

Mr. J.H. Osler,

Mr. Andrew Brewin,

Mr. R.E.G. Davies.

We are all members of the council of the Civil Liberties Association of Toronto. There have been delegations before similar committees of the House of Commons.

MR. HAZEN: Might the speaker introduce himself?

WITNESS: My name is George Patterson, president of the Civil Liberties Association of Toronto. There have been

delegations in the past appear before committees similar to this, and we appreciate greatly your courtesy, Mr. Chairman, in receiving us this morning, particularly since you were good enough to postpone the date that you had originally set.

BY MR. MARTIN:

Q. You are connected with the Y.M.C.A.? A. I am general secretary of the Y.M.C.A. I do not know whether you want affiliations of the other gentlemen or not; perhaps they are known to you. The first two gentlemen are members of parliament; the next is the editor of Saturday Night, the next two are lawyers, and the next is secretary of the National Council of the Y.M.C.A.

MR. MARTIN: I thought Mr. Sandwell was editor of the Toronto Globe.

WITNESS: No, Saturday Night. We have been gratified at some of the changes that have been advocated by previous delegations which have been adopted by the committee. We have always made it clear not only here but in meetings of our association that we accept the necessity in war time of dealing firmly with suspected acts of sabotage and assistance to the enemy. That point, I think, is brought out at almost every meeting of our association. We recognize that certain traditional liberties will have to be restricted in war time probably, but at the same time it is of great concern to our association that beyond that point the civil liberties of the people should not be interfered with. I think the only point that I would like to make this morning is that, coming as we do from a representative association, we should like to impress upon the committee the importance of maintaining the morale of the people through developing a sense of confidence that liberties are not being interfered with beyond the point of absolute necessity.

Mr. Macdonald, I should have told you, Mr. Chairman, was

a member of this delegation but was not able to come this morning. I mention his name at this point to emphasize still further that we are a representative organization. Considerable time was taken when the association was formed to see that it was representative, and although it is restricted to Toronto we have all forms of political people represented in our membership. We have men who are known to be Liberals, and others known to be Conservatives, and others known to be members of the C.C.F., and others whose opinions probably are represented along the lines further left than that; but we do believe that we are representative, and even if we extended our membership by thousands the opinions represented would not differ very much from those which we represent here.

These representations which we are making to you this morning come from the membership, passed by the membership in full association and have been further edited by the delegation appearing before you.

A brief, at the request of Mr. Michaud, was sent in quantity, and it may be that members of the committee have read it before this meeting. I do not think you would want us to take up the time to read it this morning.

May I say it is divided into two sections. The first deals with the position of the Civil Liberties Association with respect to the desirability of removing the ban on the communist party, and the second section, beginning with page 7, deals with several revisions which we should like to propose to the present regulations and with the question of strengthening your reviewing tribunals and an increase in the number of tribunals.

We have arranged, Mr. Chairman, if it suits your pleasure to have these points presented by members of the delegation, and if it is in accord with your procedure I should like to

ask that Mr. Brewin speak first to the question of the revision of regulation No. 21 and 39A. Then Mr. Osler will take up the question of the strengthening of the tribunals and then Mr. Sandwell will present, supported by Mr. Roebuck, the question of the removal of the ban from the communist party. Does that meet with your approval?

THE ACTING CHAIRMAN: That will be very fine.

MR. BENCE: Before these gentlemen are called, I should like to ask you if you have considered the matter of the ban on the other organizations or associations or religious bodies besides the communist party?

WITNESS: Yes, and there is a representative of one of them here which, however, we felt was excluded because of supposed affiliation with the communist party. I think we should like to make specific reference this morning to the communist party.

BY MR. MARTIN:

Q. What about Jehovah's witnesses? A. We have not taken up their case in our association so far, I think.

BY MR. DUPUIS:

Q. What other organizations have you reference to?
A. The one referred to here is at the bottom of page 6, the Ukrainian Labour Temple Association. A representative of that organization appeared before our association and presented the case for their organization. This case will be referred to by Mr. Sandwell when he presents the case.

THE ACTING CHAIRMAN: That will be fine, Doctor. We shall now hear Mr. Brewin on the point that he wishes to raise.

MR. ANDREW BREWIN, called:

WITNESS: I think I will sit down, if I may; I do not want to make a speech particularly.

The point that I want to deal with relates to the following sections of the regulations. First of all I should like to deal with 39 and 39A, the sections which cover written and oral statements. No. 39 deals with oral statements which are an offence; 39A deals with written statements. We still feel what we emphasized before that the language of these sections is too vague and too broad. We urge that the general terminology be cut down and made more specific. Let me explain what we mean by that. The existing language as it is used is as follows:

"Intended or likely to cause disaffection, intended or likely to prejudice recruiting, training and discipline or administration of His Majesty's forces, intended or likely to be prejudicial to the safety of the state or the efficient prosecution of the war."

That is used in both 39 and 39A. Now, the formula which we suggest does strike, as we see it, at all sorts of incidental or chance remarks or criticism. What we suggest is that the type of remark which should be prohibited should be confined to systematic anti-war propaganda. We recognize the necessity of the state not allowing in time of war complete freedom of expression.

(B follows)

But the point at which we say that should be dealt with is the point where it becomes systematic anti-war propaganda. There is a phrase in the British regulations in another connection. It is "the systematic publication of matter calculated to foment opposition to the prosecution, to a successful issue, of any war in which His Majesty is engaged." We suggest that that language is the sort of language which should be substituted for the general terminology in 39 and 39A. In the brief time we have I think the best way I could illustrate to the committee just what we have in mind by that is to refer in general terms to two prosecutions which are pending at the present time, one in which our association has taken a definite point of view, and the other in which we have not studied the facts enough to be able to. There are two cases. One is the case of Colonel Drew for example. What we feel is that if the language had been narrowed to the point that we request, that it had to be a part of systematic propaganda to foment opposition to the successful prosecution of the war, it is highly unlikely that the charge would have been laid. Under our submission, for example, with the regulations as they are, in the very broad and general terminology there, perhaps it was likely that such charges will be laid and continue to be laid affecting public men making critical remarks about the conduct of the war. What we are particularly concerned with is that there should not be a fear or restriction upon the right of public men and others, in good faith, to criticize the conduct of the war. It is perfectly true that there is provided in 39 (2) I think it is -- 39 B (2) which says that merely to criticize in good faith is not covered by the regulations. But we conceive that that proviso is not a sufficient protection against prosecution for political remarks.

BY MR. BEICE:

Q. That being critical is in itself limited, is it not, to being critical with respect to certain things?

A. Yes, that is certainly true. That is one of the weaknesses of it.

BY MR. MARTIN:

Q. I should like to understand what you mean by "good faith" -- and I am not referring to the Drew case now at all. Take the Chaloult case. Would your remarks apply to that as well? A. Well, they apply in a general way. We have not studied that case and, therefore, I am naturally anxious about expressing an opinion on the application of the principle to those facts. What we say is if the Chaloult case was a case in which there was a reasonable ground for saying that Mr. Chaloult was making speeches as part of a systematic propaganda against the successful prosecution of the war, then that should come before the courts and they could decide whether he did make those remarks and whether they fell within that definition. We have not studied that case so therefore we cannot say whether the general terminology of the regulations as we would like to see them would or would not make it likely that there was a prosecution in that particular case. Actually, from what we do know of that particular case, we rather suspect that the prosecution has the effect of giving greater publicity to the remarks objected to and we doubt the wisdom or the validity of the particular prosecution. But that is a personal view. We have not analyzed that case, the circumstances under which the alleged remarks were made, so we can only throw out the general principle and leave it to the others to apply to the particular case in point.

Q. If a man acts in good faith, that is a defence, you say? A. If he is indulging in systematic propaganda, then he should be prosecuted; or if there is any doubt as to that, then he should be prosecuted and let the courts take

the responsibility of deciding.

Q. Where does your principle of good faith come in?

A. Well, it does not come in, as far as we are concerned.

Q. But you used it. A. I used it in referring to the wording in 39 B ; section 2 of 39 B. I think it is such a vague phrase that I doubt if it is a good enough phrase to use. Naturally questions of good faith would enter into the question of whether some one was in fact indulging in systematic anti-war propaganda. That is what we think the regulations should hit at, a consistent or systematic effort to defeat the successful prosecution of the war. If you get a case of that, prosecute by all means. But if you get something short of that, merely critical remarks, they should be allowed to take care of themselves in the good sense of public opinion.

BY MR. BENCE:

Q. You would go so far as to suggest that if a man in a very public position, capable of exerting influence, made a speech urging ^{the} people of Canada not to enlist, and only made the one speech, according to your proposition that man should not be prosecuted or punished in any way? A. I do not say for one. If it were part of a --

Q. I know. Suppose it was isolated, one main speech that he gave. A. Then it would be best to neglect that, yes. I think you only give publicity to his one remark. If he only makes it on one occasion, and without any background of endeavour to achieve a purpose with it, then you only give publicity to him by prosecuting for that remark.

BY MR. HAZEN:

Q. Suppose George Drew had got up and made a speech advocating the people not to enlist. Do you think that action should not have been taken against him under those circumstances -- a man in his position? A. I cannot conceive of a man getting up and advocating that people shall

not enlist voluntarily unless he is doing so as part of a systematic intention to defeat the war purposes.

Q. He might belong to an organization that had that intention, and he made the one speech. A. The one speech may be evidence of systematic intention. The point is that can you deduce from the surrounding circumstances, including the speech itself, that it was intended as part of a systematic approach? If he makes an isolated remark, under circumstances that show it was a chance off-hand remark, then we feel that prosecution only publicizes that remark and makes it more definite than the reverse. On the other hand, if you have some one -- George Drew or whoever else it may happen to be -- systematically going around and perhaps even on one occasion saying ^{that,} if the circumstances show that it was a considered part of a propaganda, then by all means prosecute. At any rate, that is our submission on that.

BY THE CHAIRMAN:

Q. How are you going to determine just what is systematic? According to what you have said just now, an individual might get up and make one wild-eyed speech and get away with it. There might be a dozen of these individuals that are banded together and each do exactly the same thing, to keep within the law. A. I have enough respect for the courts and the police to believe that when such a case as you imagine came up, it would be apparent that the one instance was a part of a general conspiracy to do this thing. The very example you give would be a good example of what I would call "systematic anti-war propaganda." If you get a group of people. who agree, "I will say one thing here, and you will say one thing there"--

using the phraseology of systematic anti-war propaganda, we do not need to apply that in a rigid sense that you must prove that it was done on five occasions or two

occasions or three occasions. Are the surrounding circumstances such as to show that this man or individual was using this as part of a concerted plan to defeat the war effort? That is the principle.

BY MR. MARTIN:

Q. Would you say, Mr. Brewin, that the circumstances under which the Communist party operated before June, 1941, would bring them within the administration of what you are now suggesting? A. Personally I think yes. I think there was definite evidence that any isolated remark they might have made at that time was part of a concerted plan. I think it is an excellent illustration of our point. There you had a group of people working out a particular policy, and their remarks were made as part of their policy, which was directed to preventing full assistance to the war. That is a very different proposition to some one getting up and making a critical remark in regard to some particular aspect of the prosecution of the war, although that particular remark, isolated, may have a tendency, in one sense, to prejudice recruiting or something of that sort.

BY MR. MacINNIS:

Q. I have heard it mentioned that persons have been arrested and possibly imprisoned for remarks made in beer parlours or such places as that. You have those in mind? A. At one stage we got newspaper clippings of a large number of cases under those regulations, and I would say 75 per cent of them were remarks made in beer parlours, very often by veterans of the last war, and disgruntled persons. We have felt that those prosecutions did no good to anybody, that they did not assist the prosecution of the war or assist public morale at all. If the regulations were revised in the sense that we suggest, it could be used to deal with those beer parlour remarks which are typical of the type of case that is dealt with now.

I think I told a committee previous to this of a case I acted in. There was a young lad of a very fine family who was prosecuted for telling an old lady that Hitler had cured unemployment. That was in a small town, and he spent ten days in the local jail for making that remark. The point is that if the wording of the regulation is so broad as to cover all sorts of remarks of that sort, you will get a large number of prosecutions of that type, and you will get a public that believes it is best to shut up and keep quiet. We think that that is an unfortunate situation, that the general public should feel that it is wisest not open their mouths. That is what you get if you get these prosecutions for chance remarks.

Mr. Chairman, I have finished on that subject, except that I would like to read in that connection a passage ^{from} which I found very interesting. It comes from Nelson's History of the War, and was written by the late Lord Tweedsmuir. I do not know whether the members of the committee have seen it. While it is not exactly applicable here, we think it is sufficiently applicable to be worth reading to you. He was dealing with the situation in 1915; and in volume 11, page 59 of Nelson's History of the War, Lord Tweedsmuir writing, says:

"Ministers, too, showed a disposition to shelter themselves behind censorship and claim immunity from criticism. The speeches of 'certain ministers in the House of Lords' seemed to demand for the actions of governments a protection from hostile comment which was manifestly inconsistent with our constitutional practice. Britain was not a bureaucracy. Her ministers were not experts but amateurs who had won their positions as exponents of popular opinion and held them on condition that the people could scrutinize their work and, if necessary, ask for their dismissal. Such a system was meaningless."

unless popular opinion had a chance of making itself felt. Stupid attacks upon ministers were highly objectionable; but even stupid attacks were better than compulsory silence. Our political system gave us no guarantee for administrative capacity in our ministers. They might possess it; but if so, it was by accident. They had reached their positions by being good politicians, by their skill in dealing with words, and formulas, and not with facts. It was the nation's business in a life and death struggle to make a zealous search for competence and for this, free criticism was essential. Ministers were responsible to the nation and the nation was responsible for ministers. Failure should be met by dismissal for the nation was partly to blame. The other way, the old way, was to send blundering statesmen to the scaffold. That was the logical culmination of suppressing criticism and disowning the nation's partnership responsibility."

As Dr. Patterson has explained, we are not a political organization and we do not apply those words to any particular government or ministers in the present situation.

BY MR. MARTIN:

Q. But you are not suggesting that you would not apply them? A. We are not suggesting that they would or would not apply.

BY MR. HAZEN:

Q. What is the page of that? A. That is volume 11, page 59.

Q. Page 59 of Nelson's History of the War? A. Nelson's History of the War. What we feel is that that exactly expresses what we have in mind. There must be a complete freedom of the population to criticize instead of suppression or fear of making criticism, even though that means stupid criticism at times or remarks which one might object to. That has a far more beneficial effect than

attempting to suppress them. Because we feel that it is part and parcel of the efficient operation of our system that there should be that freedom of criticism. In that connection I want to read one more thing. Then I am through with that angle of it. I have here an article from the Bill of Rights Review, which is a quarterly that the American Bar Association gets out. This is their spring 1942 number. It is an article by Arthur Garfield Hays, who is a well-known literary man, and I read it because I think it expresses our viewpoint rather better than I could. It says:

"It is a pure assumption to conclude that our war activities will be helped by suppression. Criticism and an honest public opinion are essential to promote the best efforts of our leaders. Lloyd George said that England was saved in the last war because of the right of the people to criticize the government. Not only this, but even as to the dissenters themselves, expression relieves emotion. Those who feel strongly in dissent are far less likely to act if they are permitted to talk. It is rare that those who express themselves are dangerous. Spies and saboteurs seldom come into the open. But the greatest harm that results from suppressing a small number of extremists is that you keep millions of reasonable men from expressing themselves. Further, it is better to have open than underground propaganda. Finally, when you let people alone, you do not have the fear, suspicion, hate and dissension that lead to amateur espionage in conversation over the dinner table and cause neighbor to watch neighbor, and even children to watch their parents."

And so forth. Then he goes on and deals with that. He says that in wartime we naturally feel that we must

sacrifice our liberties, but in order to achieve efficiency ^{that} in the war he says we interpret that to mean/a feeling amongst the people that they can express themselves freely and criticize freely leads to good morale than to the reverse, and to a more effective prosecution of the war. So we feel when we are making this recommendation to you, that you restrict the operation of these sections that deal with statements to systematic anti-war propoganda, we are asking you to do something that will improve morale and improve the prosecution of the war under our system. That is our view on it. To put it in another way, I would say frankly that there are very few people who have not made remarks which in some sense could be interpreted as coming under the phraseology of section 39. Once you start prosecuting people for remarks, there is no end to it. You prosecute one person for making a remark you do not approve of, and somebody else says immediately that someone else made a remark just as bad and you must prosecute him, and so you go on and on into the field of prosecuting for the expression of opinion or criticism. We have noticed plenty of statements, both public and private, that are made and come within the broad definition of the act as it stands at the present time, and we urge that the language be restricted.

BY MR. BENICE:

Q. Would it fairly well meet your purposes if the words "likely to" were deleted from the section? A. We would like to see those deleted. It would go part of the way, yes.

Q. All you would have left would be "intended to". A. We would much prefer that.

Q. That would pretty well cover what you are saying. A. Well, it would go part of the way. I feel even then that the language -- for instance, take the words about

prejudicing His Majesty's relations with foreign powers. Think of the variety of expressions that have been used during this war; for instance, take the Soviet Union as an example -- by all sorts of people. Should they be prosecuted? Even if you do so, that they were intended to prejudice, you would still leave the language so broad that we think it would be too broad. However, I must get on with our next point.

BY MR. HAZEN:

Q. You have not drafted any amendment to this which you suggest? A. Our suggestion is that in place of "statements or utterances intended or likely" you put in "statements or utterances in the more or less language of the British publication -- something like this -- involving systematic publication of matter calculated to foment opposition to the prosecution to a successful issue of the war."

BY MR. ROSS:

Q. Could there not be a number of chance remarks without having any system running through them at all? A. We feel that the chance remarks should be ignored, that a thing is only dangerous and desirous of suppression in the interests of the war effort when it is part of a plan and it will be dangerous.

Q. Suppose one person made a chance remark every month of the year that would be detrimental to the war effort. Could he do that every month without there being a system? A. I would think if a court found a person making a chance remark every month of the year it would soon come to the conclusion that there was a basic system about it, the same as in the case of where a man was found who had four or five wives who died in the bath. They came to the conclusion that the husband had a system of disposing of them by drowning them in the bath. In the

same way if you get a number of different instances, you deduce system from that. That is one of the ordinary laws of evidence.

BY MR. HAZEN:

Q. Have you the section of the British Act you were referring to? A. I was reading from -- the language appears in 2(c) and 2(d), although it is used in another connection. It is used in connection with newspapers there, 2(d) and 2(c) of the British regulations. It would have to be adapted to these other remarks. But we suggest that it could be adapted. That is a general formula for what we have in mind.

BY MR. DUPUIS:

Q. How do the British regulations read concerning the same subject? A. Well, it is hard to answer that briefly. In regard to newspapers --

Q. No, no; the same subject. A. They have three or four regulations covering it. A very wide field is covered. But corresponding with 39A are 2(c) and 2(d).

BY MR. HAZEN:

Q. By 39A do you mean 39a? A. I mean 39A. They correspond with that.

Q. 2(c)? A. 2(c) and 2(d). In addition to that, corresponding with 39 -- you have 39 in the British regulations, I think it is -- 39 and 39A. That is right. You have 39A, 39AA. I think that is right. And you have 39BA.

Q. AA and BA? A. There is quite a long code dealing with that. We do not recommend the adoption holus bolus of the British regulations. We just say that there are definitions that are useful to our local scene here. May I go on to the next point now?

THE CHAIRMAN: Yes.

BY MR. MARTIN:

Q. There is one point there with respect to the Drew case, Mr. Anderson. There was no preliminary hearing there. What is the authority for that? I wanted to ask Mr. Brewin a question.

MR. ANDERSON: I am not familiar with what is being done there.

MR. BENCE: It is on indictment.

MR. MARTIN: Yes. But it is taken on the authority of the attorney general, and there is no preliminary hearing.

MR. ANDERSON: They might proceed by way of indictment directly.

MR. MARTIN: Yes. I was wondering on what authority that was done.

MR. ANDERSON: Under 65 of the regulations the procedure may be either by summary conviction or indictment.

MR. BENCE: Has he no election?

MR. MARTIN: No. He has got election to a jury, but there is no preliminary hearing. Indictment is perfectly proper.

MR. HAZEN: He cannot elect to be tried summarily?

MR. ANDERSON: No. It is under indictment. That is the crown's privilege.

WITNESS: If the amendment we suggest were to be adopted, we would also suggest that they all be proceeded with by indictment. If the suggestion we make is adopted, we think the offence is an extremely serious one and should be dealt with seriously and not summarily; as to these chance remarks and beverage room prosecutions and all of the rest of them, 95 per cent of them have been prosecuted summarily. Our feeling is that this question is too important to be dealt with summarily.

And therefore we approve in a serious case -- we think you should only deal with serious cases by procedure by indictment which gives the accused options to proceed before a magistrate or if he prefers to have trial by jury and gives him a wider right of appeal than he is given under summary prosecution.

BY THE CHAIRMAN:

Q. Are not those beer-room cases practically a thing of the past? A. Well --

MR. BENCE: They can still prosecute them.

THE CHAIRMAN: Oh, yes. But I mean there has been no action taken for quite a long time; not that I know of, anyway.

WITNESS: One explanation of that is that everybody is becoming more mum now and they carefully do not say anything. I do not know. There has been less publicity in regard to them, at any rate. We have not seen very much reference lately to beer-room cases.

BY MR. MARTIN:

Q. Maybe that is due to the lower quality of the beer. A. That may have had something to do with it.

BY MR. BENCE:

Q. I was going to suggest that you might go on with your next point. A. I was trying to do that. The next point we make is in regard to internment under 21. The opening phrase in 21 is what I want to deal with. The opening phrase, as presently worded is:

"The Minister of Justice, if satisfied, that with a view to preventing any particular person from acting in any manner prejudicial to the public safety or the safety of the state, it is necessary so to do may, notwithstanding anything in these regulations, make an order"

directing detention and such other things as are mentioned.

We suggest the elaboration of the language in section 21, or regulation 21, to correspond more closely with the British regulations. I should like to refer you -- and I have it written down here -- to a debate in the British House of Commons on November 26, 1941, in which the administration of the corresponding British regulation was criticized. The debate is reported in British Hansard, volume 376, pages 847 and the following pages. At the end of that debate, Mr. Morrison, Secretary of State, who is responsible for administering it, got up and gave an account of his administration. He expressly emphasized that their regulations had been amended so as to classify the types of people who were supposed to be interned. By that he said that a certain group had been interned by reason of hostile association. He said those were people who were not technically enemy agents but were virtually enemy aliens, married to them or had lived there all their life and had just come to Britain shortly before the war or something like that. Out of 1,769 orders made in Britain, at the time this speech was made, 902 came under that classification of hostile origin. That points a finger at a class that should be interned. If they are the equivalent of enemy aliens, they should be treated as enemy aliens.

BY MR. BENCE:

Q. And necessarily interned? A. No. We do not say they should all be interned. Of course not. What we mean is that they should come under the same classification as enemy aliens. If through previous association -- if they have lived, for example, in Germany or Italy, or they are closely connected with that descent, that is the type of case that was dealt with there. We do not say that they should all be interned who come in this class. They also have to be

"likely to be dangerous to the safety of the state" if they are kept at large, certainly. But the first point is that the finger is pointed at the class dealt with.

Q. That is purely a class of offence? A. No.

Q. As to the likelihood of their doing something prejudicial to the state? A. I have not made myself clear. My point is that our regulations are so broad that they refer to anybody that the Minister of Justice may think as likely to do something prejudicial to the safety of the state. The British regulations are expressly restricted to certain classifications; and as a result of that, when the minister reports, he can say that people who have been detained have fallen within those classifications. We consider that to be extremely valuable, because it gives not only to the minister, to tribunals, to police officers and everybody an indication of who is struck at by this regulation. The second class which are dealt with under the British regulations are members of organizations which are under foreign control or in which persons in control are in sympathy or connected with a power at war with His Majesty.

C-1 follows

The second classes which are dealt with in the British regulations are members of organizations who are under foreign control or in which the persons under control are in sympathy with or connected with the power at war with His Majesty, and also there is danger of the organization being used for purposes prejudicial to the safety of the state.

Under that category the British Home Secretary has detained some 753 people altogether during the course of the war who were members of the British Union of Fascists, which had close connection with Germany. No other people have been detained in Britain by reason of their connection with organizations. Then in addition to that under the British regulations they may detain someone who has actually been concerned in things prejudicial to the safety of the state. Under that category only 114 have been detained in Britain during the course of the war. Seventy-one remained in detention at the time the speech was made, and the minister explained those were people who had been found prying out secret information or guilty of acts of sabotage or matters of that type, direct assistance to the enemy. Now our contention is that our regulations would be very much improved and strengthened if you recommended the adoption of a similar formula. There must of course be the discretion of the minister. We do not dispute that for a minute. The minister ^{must} have the overriding right, as the one responsible for the safety of the state, to deal with these cases. But we do say that nevertheless there should be a sign post directing the classes of cases to be dealt with.

BY MR. DUPUIS:

Q. In other words, you want the classes of people who are brought under the regulations to be specifically defined?

A. More or less. Our definition, of course, can never be so specific as to be absolute but it should be more specific than at present.

Q. You just mentioned two cases in Great Britain.

A. I mentioned only the cases which we believe are adequate.

Q. If we took your suggestion and found that in the course of a year another type of subversive element appeared in the country and the minister is not able to deal with that case because his hands are tied by the regulations, what would you do then?

A. We think that the formula we suggest would be broad enough to deal with any cases that might be made; but supposing we are wrong about that and some exceptional situation develops. These regulations are all passed by order in council. If some emergency should arise it could be dealt with by the power that exists. But if after three years with the threat of invasion and ^{with} many people in Britain who are of foreign extraction and one thing and another, if they have found it perfectly possible to get along with this more specific definition we do not understand why we should not be able to do the same thing; if you did that you would avoid the situation that we have found that people in practice have been interned because of their activity in connection with strikes and because of other things.

BY THE ACTING CHAIRMAN:

Q. Just on that point, you say people have been interned through their connections with strikes. A. Yes.

Q. Do you know that? A. Yes, definitely. In that connection alone I would say the Jackson case was a definite indication in which the particulars put before the minister expressly stated that his activities in organizing a strike and added to that the fact that he had nominated Tim Buck for election to the city council and that he had associated with certain communists some months before the war -- it was not suggested he was a communist himself -- and the statement given to the newspapers at the time the arrest was made and

the particulars perfectly bore out the contention that that was done because of his activities in connection with the Canadian General Electric strike.

BY MR. MARTIN:

Q. Mr. Brewin, we have been told in this committee and we have been told in parliament that no one has been interned on that account.

THE ACTING CHAIRMAN: You are the first person who has made that statement before us.

MR. MARTIN: I should certainly like to --

WITNESS: I am sorry, I have not got the record of the particulars stated by the department to Mr. Jackson's counsel in that particular case. He was detained shortly after the outbreak of this strike in the Canadian General Electric plant in Toronto. At the time the statement was given to the press by some representatives of the police it was said that the reason for his detention was his fomenting a strike. Subsequently he asked for particulars under regulation 22 and was informed and from the particulars that were set out it was said that he had advocated this strike knowing it to be illegal under the Industrial Disputes Investigation Act.

BY MR. MARTIN:

Q. That is a little different. A. I say that was the words used.

Q. You used the words "knowing it to be illegal."

A. That was the wording used in the regulation. I am saying that at that time several other people were prosecuted in the courts for taking part in this strike contrary to the Industrial Disputes Act. They were convicted and subsequently released on a stated case and whether the strike was illegal or not the fact was that it was a nice point of law. People might differ from that --

BY MR. DUPUIS:

Q. Was it the evidence that Jackson was not interned because of his activities in this strike but for some other reason? A. I think not. However, I can only --

BY MR. BENICE:

Q. What were the other particulars? A. One other particular given was in 1938, I think it was, he had associated with some communists, and the names of those given were Mr. Binder, if I recall it correctly, and Dick Steel, who had an office opposite his, and he was associated with him in the trade union movement. The other particular was that in 1938 he had nominated Tim Buck for the Toronto city council, signed his nomination papers along with other citizens who did the same. Now the point was these matters had been known before he was involved in the strike.

Q. Was there any general allegation that he was a communist? A. No; at no time was it alleged he was a communist.

BY MR. MARTIN:

Q. What was the date of that particular case? A. I think it was a year ago, was it not?

Q. April? A. I think it was last year; it was in the summer he was actually arrested, and the strike took place about July, I think.

Q. In July? A. 1941.

MR. MacINNIS: I think the strike took place in June before the house adjourned.

MR. MARTIN: Before Russia went to war.

MR. MacINNIS: Yes.

BY MR. BENICE:

Q. Was there an allegation he was indulging in communist activity? A. No. I do not know what was behind it. The only record I am going on is what was officially given as the reason.

BY MR. MacINNIS:

Q. Did the case come to trial? A. The case came to trial. Which case do you mean?

Q. Jackson's. A. Yes; Jackson was released subsequently.

Q. Was he not released because it had been found the strike was not illegal? A. I could not say why he was released.

Q. That was the finding. A. They found later that the strike was not illegal.

Q. And immediately that was the decision of the court Jackson was released? A. It may have been post hoc, ergo propter hoc.

Q. I am sorry, I will have to get my friend to translate that for me or give me the meaning of it. A. It happened; because it happened afterwards you cannot assume it happened for that reason.

BY MR. MARTIN:

Q. Nor can you assume the other way at all. A. No.

Q. I think you will agree that there is not much to be gained by discussing individual cases unless all the facts are before us. A. I may say I was challenged -- I was not challenged, but I was asked to justify my remarks and as I say I did so by the record put forward in the case. Now, I do not intend to go into that case any farther than that except to say it bolstered our argument to this effect: we say that had the regulations been defined in the phraseology we suggest there would not have been any question of applying it to all sorts of cases and the department would not put forward that as one of the particulars in the Sullivan case. I do not know whether Mr. Sullivan was or was not a communist. He may or may not have been a communist; that is beside the point. When the case came before the tribunal he was

questioned in regard to his activities, and particulars were delivered in regard to all sorts of activities in connection with organizing a union. Now, we are talking about the impression on public morale and all that. There may have been other good reasons but our point is --

Q. I think you are on sound ground now but you were not in discussing individual cases. A. Perhaps you know more about the case than I do.

Q. I am not talking about the case. Your presentation thus far has been, I think, responsible, and you have touched on issues that are important, but when you take an individual case and form a conclusion on that basis I do not think you are on sound ground. I have gone into two cases -- A. I have only gone into them superficially. We feel very strongly --

Q. I think you are right in saying the particulars as furnished do give an impression which is not desirable in that it does offer some encouragement to those who allege that they are interned because of their activity on behalf of labour. A. Not only --

Q. That should be dispelled, and this committee has been very insistent on that, all members of this committee. A. Not only the particulars, but the whole circumstances surrounding that particular detention. However, I pass from that just to say that we do urge that you look at the British regulations, 18B, I think it is, the main one which defines the cases in which the secretary --

BY MR. HAZEN:

Q. Is it your suggestion we should substitute 18B for 21? A. Yes, but there may be modifications necessary to apply it here.

MR. MacINNIS: To adapt it to the Canadian situation.

BY MR. HAZEN:

Q. What are the modifications? A. We have not purported to --

MR. MARTIN: I think it would be very helpful if you did.

MR. HAZEN: People come before this committee and make those suggestions and do not present anything formally. If you have something definite to present to this committee we have something to get down to work on.

MR. MARTIN: You are a good lawyer, why not spend a day making some amendments?

WITNESS: We did not like to go beyond our functions --

MR. MARTIN: You have the right to do that.

WITNESS: We did not like to go beyond our functions and give detailed amendments, but if the committee would like us to do that we shall be very glad to submit detailed suggestions. But particularly we do suggest the substitution of 18B for our present 21.

MR. MacINNIS: I think the committee will be glad to get a number of amendments.

WITNESS: We shall be very glad to submit draft amendments of two sections. I have mentioned 39, 39A and 21. I just have one more observation to make and then I am through. Mr. Sandwell is going to deal with the question of the illegality of the organizations generally. But we have this suggestion to make in regard to the general revision of the regulations. With regard to the regulation dealing with the illegality of parties -- I think it is 39C, is it not -- what we suggest is that there again the type of organization struck at be defined similarly to the British definition. Under the British regulations they deal with organizations under foreign control, organizations which are likely to be used in a manner prejudicial to the safety of

the state; therefore if you have your definition those responsible for administering have something to go on; and in addition to that we recommend that, as in censorship in 15C, a person of high judicial office is given the right of review subject to the minister, so in regard to the declaration of an organization as being illegal, that organization should have some right to go before an advisory tribunal and disclose the facts and answer the aspersions made at it. We would not deprive the minister of final jurisdiction to say that it does fall within this category of organizations that are under foreign control or are in touch with the enemy and whose continued existence would be detrimental to the safety of the state but with the power of the minister we think there should be a reviewing tribunal in regard to organizations just as much as there is in regard to censorship or in regard to internment; because by banning an organization not only do you create a whole series of new offences, you deal with property and you deal with very widespread rights, and we think there should be some form of review of that procedure of declaring a group illegal.

BY THE ACTING CHAIRMAN:

Q. Do you think, Mr. Brewin, that we have made many mistakes in regard to organizations that have been banned? You can check them over. Do you think a large number of those have not been definitely associated with foreign organizations?

A. Another member of our delegation is going to deal with the communist affiliated organizations.

BY MR. BENCE:

Q. Have they ever investigated all of them? A. We have investigated some.

Q. You are not in a very good position to say whether those organizations have been properly banned or not? A. No; we have not got the same facilities but we do suggest the

general touchstone should be the same as the British regulations. Are they under foreign control or are they in touch with the enemy or are they likely to be used in a manner prejudicial to the safety of the state.

Q. Are you suggesting section 39C should not be set out in the manner in which it is where it sets out the names of those different organizations that are banned? A. We would have preferred to do it as is done in Britain, a general regulation plus an order by the minister subject to review that these particular organizations fall within that category. That is the situation under the British regulations. They set out the type of organization which is to be banned by saying the British Union of Fascists, in sympathy with the enemy or with the system advocated by somebody at war with His Majesty. If it is then the minister, the Secretary of State in Britain -- here it would be the Minister of Justice -- bans it. We say that should be adopted here plus a review in order that the minister may have the advice of some high judicial officer reviewing the circumstances and the organization may have the same right to state its case.

BY MR. DUPUIS:

Q. In the argument you are making now are you not contradicting yourself absolutely from what you said a minute ago? A. I hope not.

Q. You gave a specific definition of cases which would be dealt with by the regulations. Now, in 39C we have specified and defined them very definitely by mentioning the names of those that should be banned. A. I think not, sir. The parallel would be if we had said how and set out in 21 the names of all persons interned. We do not recommend that, but we do recommend that the principle be made more specific.

Q. I quite realize the difference but nevertheless if the minister decides to ban an association it is after due

consideration, and it is there in the regulation -- A. We have no objection to his naming the association but the point is that we would prefer to see it based upon a general principle so that those concerned with it shall know in the minister's opinion this organization or that organization falls within a certain definition of what in war time is an objectionable organization.

BY MR. BENCE:

Q. You are just repeating what you say with respect to individuals? A. That is right.

Q. You first of all admit you have not considered any of those other organizations that are listed in this regulation except the case of the Ukrainian Labour Temple Association? A. Yes.

Q. Some of those other organizations and religious organizations have been banned because of their activities although they were not associated with foreign powers or sympathetic towards foreign powers or sympathetic with the enemy. It was said their activities have been such that if they were allowed to carry on they would discourage recruiting and discourage the spirit that necessarily we must engender in this country in times of war. I am telling you why some of these have been banned. If we follow out your suggestion that type of organization would not be banned. A. We are inclined to think that type of organization would be best not banned because of the advertising they receive through being banned. We believe you have discussed the witnesses of Jehovah here. We believe their tenets and philosophy have been more advertised by the moderate persecution they have got than they would have got if they had been ignored.

Q. They have been made martyrs? A. Yes.

MR. PATTERSON: Because of the course the discussion has taken just now I would suggest you call Mr. Sandwell.

MR. B.K. SANDWELL, called:

WITNESS: Mr. Chairman, our president has informed you that we represent all kinds of political affiliations in this society. I am probably the one member of the delegation whose political affiliations have been kept completely secret. I have appeared, as some of you probably remember, several times before previous committees of this kind, and on these occasions we have never dealt with the subject of the communist party. I do not think we made any representation especially regarding the list of banned societies. It was not until after the attack upon Russia that the question of whether the communists and communist affiliated societies ought to be banned began to be discussed in our association; and to be quite frank, for some time there was a strong element in our association which considered they still should be banned.

We have discussed the matter at very great length from a very great many points of view and I think I am right in saying our membership is now unanimous in the belief that the communist party and the organizations affiliated with it should no longer be banned.

We should always have preferred, as Mr. Brewin has just suggested, that the foundation for banning any society should have been set forth in the regulations instead of the regulations containing merely a list of societies which are declared to be banned. We feel that public opinion would be more favourably impressed if it were made acquainted with the reasons by which the Minister of Justice is expected to act when he decides to ban a society.

We also feel that if the list were not incorporated in the regulation but if merely the general principle were laid down -- and we are pretty well satisfied with the general principle laid down in the British regulation which does not include a list -- that if the list were not incorporated

in the regulation it would obviously be much easier to change it in response to changing conditions.

The list came into existence as a war measure; it was obviously intended to function for the purpose of the war; it is not a part of the ordinary process of government of this country. At the time when it came into effect and up to last June the societies who were enumerated were, so far as we could satisfy ourselves, reasonably subject to banning. We had some doubt about the Ukrainian Farmer Labour Temple Association because there appeared to be a good deal of difference of character in the various branches, the various temples or whatever they call themselves in the association; and some of them, particularly in eastern Canada seemed to us to be quite innocent. But we were not prepared to go so far as to make any representations on their behalf before you prior to the entry of Russia into the war. We now feel that we must make representations before you on behalf of the communist party, and if your committee continues to feel satisfied that the communist party should not be removed from the banned then we would suggest to you that perhaps some of the affiliated societies or supposed affiliated societies, the societies which are on your list, because they are supposed to be under some measure of communist influence, might well be looked into again and it would probably be found that some of them are not now functioning in any way which is hostile to the prosecution of the war.

We feel that the setting forth of a general principle upon which societies are to be banned, the discretion being left to the Minister of Justice -- I should qualify that remark. We should very much like to see a provision of appeal from the action of the Minister of Justice in regard to the banning of a society just as there is an appeal from the order

of internment in the case of an individual.

BY THE ACTING CHAIRMAN:

Q. Appeal to whom? A. To a similar authority. I do not think it could be handled probably by the internment tribunal, but I should say a similar authority to that provided in the British regulations which I think is a High Court Justice. I am not familiar enough with this to be able to find it immediately but probably Mr. Osler can direct you.

BY MR. DUPUIS:

Q. You claim when the Secretary of State in Great Britain has decided upon a case there is an appeal? A. Yes.

BY MR. ANDERSON:

Q. As a matter of fact, is there any banning of organizations in the United Kingdom? A. There is a provision for it.

Q. Do you know where it is? A. The term "ban" may be a little excessive. All you can do is stop their meetings and take control of their property. Section 18AA refers to it. Subsection 3 and subsection 4 deal with the order by the court "to prevent any disposition without the leave of the court of property held by or for the organization, and may direct an inquiry and report to be made as to any such property as aforesaid, and as to the affairs of the organization, and make such further orders as appear to the court to be just and equitable for the winding up and dissolving of the organization and for the application of any such property as aforesaid in or towards any costs incurred in connection with any such inquiry and report and the winding up and dissolving of the organization, in or towards the discharge of the liabilities of the organization lawfully incurred before the date of the application or since that date with the approval of the court, and in or towards the repayment of moneys to persons who contributed to funds held

by or for the organization before this regulation applied thereto, and may order that any such property which is not directed by the court to be so applied as aforesaid shall be forfeited to the Crown." Possibly that may not mean the banning of it, but it seems to me fairly close to it.

BY MR. DUPUIS:

Q. Is there an appeal there? A. That can only be done by order of the High Court; that could not be done under the executive authority.

BY MR. ANDERSON:

Q. The winding up of the property? A. Yes. I think that is about all. Mr. Brewin has already touched on the question of the desirability of a statement of principle on which societies are banned. We feel that there is a very general feeling among a portion of the Canadian public, not the most influential portion, perhaps, that some of these societies are banned entirely on account of their views as to what is a desirable economic and social structure in the country. We have felt all along, and we feel more strongly than ever since Sir Norman Birkett was amongst us that things of that kind not associated with any other activity towards the upsetting of the state should not be made a reason for the banning of a society or the internment of individuals.

Leaving that subject, but before I leave the room, may I suggest to the committee that the case of Jackson, which has been already referred to, is too interesting a case to be disposed of as rapidly as we disposed of it this morning. I should like to suggest that the committee secure a copy of the statement of the cause for internment of Jackson and some further particulars about his case. I think there was a very considerable lapse of time between the decision of the appeal court that the strike in which he was engaged was not illegal and his actual release. I cannot give you the dates, but it

is my impression the statement of charges made a very profound impression upon our association when we examined into it. It was the first such statement of charges purporting to be complete that we had ever been able to obtain in connection with an internment case. It was obtained only as a result of the changes in the regulations which your predecessor committee was good enough to make, I think largely as a result of representations by our association. And having obtained that, as Mr. Brewin has already suggested, we were very profoundly impressed with the conviction that the charge could only be described as being one of labour activity.

Q. May I ask the witness where he got his information as to the details of this case? A. From the counsel, from Mr. Jackson's counsel who, as I understand it, succeeded in having them drawn up by an agreement between the chairman of the internment tribunal, the prosecuting authority, if there is such, and himself.

Q. Thank you.

BY MR. MacINNIS:

Q. Mr. Sandwell, at the beginning of your brief in the third paragraph on page 3 you say:

"Perhaps the most important topic at the present time is the illegality of the communist party."

Your brief sets out reasons why the ban on the party should be removed. I think that is important. Possibly the members of the committee who are very busy have not had the opportunity to read your brief, although it is very short and very concise, and I think it would be worth while if you went over it.

MR. BENCE: I just got my copy this morning.

MR. MacINNIS: It has been here for several days.

BY MR. MacINNIS:

Q. Would you go over these points and emphasize those that you feel it is desirable to emphasize? A. I shall be

very glad indeed to do that. I was assuming members of the committee must have had copies of this document. I was trying to save their time.

BY MR. BENCE:

Q. Before you go on with that point I should like to ask you this. Up to a certain time you were more or less satisfied with respect to the list? A. Yes.

Q. But you have said you have not examined into all these associations. How could you be satisfied if you did not examine them? A. Perhaps I should have said we had no objection to them.

Q. The thing I am concerned about is not only the communist party but the various other organizations on that list. Your association does not purport to have made any study of them, and therefore I am going to put a question to you in this way. You probably did not express your thought when you said you were satisfied. A. I should have put it in the negative form; I had no reason to object to it.

Q. The same objection that applied at that time applies now except the general objections that you have made before this committee this morning? A. Not in regard to the communist party.

Q. In regard to the others? A. We have paid very little attention to the others; no representations on behalf of them have been made to us; so far as I know there is very little interest in them in Toronto and we do not profess to have --

Q. I am quite satisfied as long as I understand you. I am quite satisfied as long as I understand that your association are not satisfied in respect to the ban on the other organizations. I would not want your statement to be used, for example, as an argument that the other associations should not have the ban removed from them. A. I thank you

for that correction, because that would be going much farther than I intended to go.

BY THE ACTING CHAIRMAN:

Q. You have investigated the communist party and its supposed affiliated organizations quite thoroughly? A. No; our position with regard to the communist party is simply based on the assumption that it was banned because it was affiliated, obtained its orders from a foreign source which was at that time in enmity or allied with the enemies of the Crown. That situation has changed and we feel that the reasons for that ban have therefore disappeared.

THE ACTING CHAIRMAN: Are there any more questions to ask Mr. Sandwell?

BY MR. BENCE:

Q. I just want to make this clear. I may not have followed you as closely as I should. Were you satisfied with the ban on the communist party before Russia went into the war? A. May I put that on the negative ground; we saw no reason to object to it.

Q. After Russia went into the war the communist party and the members of it took a decidedly different position with regard to Canada's participation? A. Right.

Q. Is that the main reason why you believe the ban should be removed? A. Absolutely.

BY MR. DUPUIS:

Q. Have you studied the policy of the doctrine of the communist party yourself? A. I have a good deal, yes.

Q. Have you seen the various programmes and agenda issued to the public and issued to the intimate membership? A. I have seen some of the documents supposed to be issued for the intimate members, yes.

Q. Do you find anything -- A. That organization was not illegal before the war.

Q. You did not answer my question. I should like you to answer this: Did you find anything subversive in the intimate literature which was issued to the inner circle of the communist party? Did you find anything subversive in that?

A. Any literature of that kind I have seen would not be recent literature. There certainly were things in it that could be described as subversive.

BY THE ACTING CHAIRMAN:

Q. That is prior to Russia's entry into the war? A. Yes.

Q. But Canada was at war unfortunately. A. Yes.

BY MR. ANDERSON:

Q. I wonder, Mr. Chairman, if I might ask Mr. Sandwell a question with respect to an editorial appearing in Toronto Saturday Night on the 28th of February, 1942.

BY MR. BENCE:

Q. In respect to what? A. The communist party.

BY MR. ANDERSON:

Q. In respect to the communist party. I won't read the whole article, I will just read the last two or three lines: "Until June, 1941, it functioned in our politics with all the vigour it could command to impede and paralyze our military effort against Germany. Then in the non-aggression pact with Russia the day Germany attacked Russia the communist party in Canada and all its fellow travellers became ardent supporters of our war. The interests of Canada had nothing to do with their change of front and will have nothing to do with their next change of front whenever and for whatever reason it occurs."

Is that right? A. That was my view at the time, and if I saw much prospect of any future change of front on the part of Russia I should be still maintaining that position. The

situation has moved a good deal since then.

BY MR. BENCE:

Q. That is a point I was going to ask you about. The communist party before Russia went into the war was against Canada's war effort; after Russia went into the war it was for the war effort, and the argument that the communist party used was that it was then a people's war and not a capitalistic war. I think that is what they say. Supposing Russia was subjugated to-morrow; suppose there was a possibility of Russia being subjugated to-morrow, would you suggest immediately the ban should be put on the communist party because of the evidence that in the past they were not necessarily for Canada when Russia was not in the war?

A. I suggest it might be advisable to wait a few days to see what line they were going to take. It is very difficult to decide what their line would be if Russia was conquered; but certainly on the suggestion we are making that there should be a definitely laid down principle upon which societies are banned there would be nothing to prevent their being immediately rebanned under those circumstances.

BY THE ACTING CHAIRMAN:

Q. The fact remains, Mr. Sandwell, that whatever action they took or did not take they have no interest in Canada as Canada whatsoever. I think that is a fair statement.

A. There is a good deal of truth in that statement, yes.

MR. BENCE: They do not say that.

THE ACTING CHAIRMAN: No, but the facts are obvious.

BY MR. MacINNIS:

Q. Is not this our position at the present time, Mr. Sandwell, that the communist party was banned nine or ten months after the war began. It had been legal in Canada before that time and when it was banned it was not banned

because it was the communist party or because of its programme or anything which we did not like, it was banned because it retarded or interfered with Canada's war effort.

A. Yes.

Q. Now the situation has altogether changed; the communist party is not now opposed to the war effort; as a matter of fact it is extremely active in supporting it.

A. Yes.

Q. Is there any good purpose to be served by continuing the ban or can we use the assumption that if Russia had done something that may be within the realm of possibility but not within the realm of probability; is there any reason for keeping a party banned or are we aiding our war effort in any way by continuing the ban? A. That is a very accurate description of our position.

BY MR. BENCE:

Q. You started to say something about the fact the communists were not banned before the war. Would you care to complete the statement you were going to make at that time, because I am interested in the question as to whether or not the underlying principle of communism should affect us in considering the question as to whether it should be banned or not?

A. If I did not complete the statement I was leading up to the point that the reason for their banning was entirely their activity in connection with the war at the time that Russia was allied with Germany, and not their social principles.

Q. Let me put it this way. At that time they advocated as a communist party the overthrow of our governmental system by a certain method. A. Yes.

MR. BLACK: By force.

BY MR. BENCE:

Q. That existed even before Canada went to war, of

course. A. Yes.

Q. And consequently their principles and their method of changing the system was perfectly all right before the war. Is not that so? I take it from what you say we should not consider that part of it at all unless we can tie it directly to something that will be subversive towards Canada's war effort? A. That is our position.

BY MR. MARTIN:

Q. I have been personally concerned about this for some time. I had no difficulties up until June '41. Up to June '41 I do not think anybody who had gone into the matter carefully could have ^{had} any difficulties as to what should have been done. Up to that time I had no great difficulty. However, dealing with this problem in terms of the period from June 1941 to the present time I am in a little difficulty and I should like to get your assistance on this situation. I have before me some information that I do not want to identify and you may have some complaint with it on that ground. However, I am using it only for the purpose of illustrating some of the difficulties.

Here is a question that is put to an individual, let us say, who is interned and who is alleged to be a communist.

"You know the aim and objects of the Communist International. Here is a quotation from its theses and statute: 'The Communist International makes its aims to put an armed struggle for the overthrow of the international bourgeoisie and to create an international Soviet Republic . . . only a violent defeat of the bourgeoisie and confiscation of its property, annihilation of the entire bourgeois governmental apparatus, parliamentary, judicial, military, administrative, etc. . . . will be able to guarantee the complete submission

of the whole class of exploiters.'"

Now, a question was put and the question was:

"The hatred exists -- it is not mollified any by those theses:

'In order to overthrow the international bourgeoisie and to create an international Soviet Republic as a transition stage to the complete abolition of the state, the Communist International will use all means at its disposal, including force of arms.'

Let me preface this. I must say that speaking of the situation ^{as} of June 1941 I find it difficult not to take the view that you are taking now; and I want to remove certain things from my mind and that is why I am asking you these questions. Let me go back and read this question again:

"In order to overthrow the international bourgeoisie and to create an international Soviet Republic as a transition stage to the complete abolition of the state, the Communist International will use all means at its disposal, including force of arms.

Q. What do you say as to that? Is that right? A. That is what they state.

Q. Do you adopt that principle? A. Yes.

Q. It goes on further:

'The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus which at the decisive moment should be of assistance to the party to do its duty towards the revolution.'

Q. Do you agree with that principle? A. Yes.

Q. 'Persistent and systematic propaganda --'

And it seems to be the principle you followed.

'-- and agitation must be carried on in the army

where Communist groups should be formed in every military organization. Wherever, owing to repressive legislation, agitation becomes impossible, it is necessary to carry on such agitation illegally. But refusal to carry on or to participate in such work should be considered equal to treason to the revolutionary cause and incompatible with affiliation to the Third International.'

That is a clear warning to members of the Communist party how they must follow those principles or run the risk of being called traitors? A. What did the Christians do? Didn't they struggle this way? Anybody that seriously believes something has to fight for it -- must fight for his opinions, otherwise he is not an honest man. All the resolutions of the congress of the Communist International as well as the resolutions of the executive committee are binding for all parties joining the Communist International -- the working class cannot achieve a victory over the bourgeoisie by means of the general strike alone and by the policy of folded arms. The proletariat must resort to armed uprising. Having understood this one realizes that an organized political party is absolutely essential and that shapeless labour organization will not suffice.

Do you agree with that principle? A. Yes."

MR. DUPUIS: Excuse me; what was the date of that case?

MR. MARTIN: I do not know that I should give that just now. The committee is entitled to have it.

MR. BLACK: What date was that?

MR. BENCE: After June 1941.

MR. MARTIN: Well, in February 1942.

BY MR. MARTIN:

Q. Now, the point that faces me as an individual of this

committee, and I address myself to you because I have respect for your judgment in these things. Now, taking into consideration the character of the war that Russia is in and so on, I find it very difficult to say that the wisest course to follow in dealing with the communists is to continue their illegality; but when a man is confronted with a situation like this by a man who is still interned it does place great difficulty in the way of coming to a conclusion as to the attitude a person should take. What are your reactions to that? A. I find the same difficulty, sir; but it seems to me that by banning the party you are banning the belief. That is a statement of belief. It urges, it is true, too, a number of illegal acts. These acts remain illegal. We are not suggesting for a minute that the law should cease to declare these things illegal. But our feeling, I think, would be that the state can adequately protect itself as soon as the belief begins to take the form of action.

MR. DUPUIS: Wait until then.

BY MR. MARTIN:

Q. I think I am right in saying we have had this evidence before us. While this evidence was produced by a gentleman who represented himself as speaking of the knowledge of the communist party, it has been alleged that it was not strict contemporary communistic thinking.

MR. BENCE: As far as the Canadian party is concerned.

MR. MARTIN: As far as the Canadian party is concerned. These are questions put to an individual who is denied his freedom.

WITNESS: I am not prepared to say he should not be denied his freedom on the ground he looks as if he would be very prejudicial to the safety of the state.

BY MR. MARTIN:

Q. You would treat each case individually? A. Yes.

BY MR. BENICE:

Q. In respect to that you would have to be convinced even in the individual case that the individual would be likely to do some overt act that would be detrimental to Canada's war effort. He held those views before Canada went to war and was not banned. He might hold them to-day. We should not necessarily conclude he would be harmful to the war effort because of his beliefs in the past. A. In all probability he would suspend his subversive activities until the Germans are defeated.

MR. DUPUIS: Tim Buck published a kind of pamphlet lately, did he not, in which he advised all the members of the communist party that their activities in the present war did not mean anything at all in so far as stopping their activities as communists are concerned?

WITNESS: Quite.

BY MR. MARTIN:

Q. Then your contention would be this, / without stating for a moment that you agree with the Canadian communist theses: that you regard the best treatment of that problem is to give them their freedom and the problem itself would take care of the situation? A. There is of course still a law against conspiracy which I should think could be invoked at any time where their activities began to -- where their ideas began to emerge towards activity.

BY MR. BLACK:

Q. Until Russia came into the war is it not correct to say that the communist party in Canada was opposed to Canada's war against nazism? A. Absolutely.

Q. And they did not come in because of Canada's interest?
A. No.

Q. Because of Russia's interest? A. Quite.

Q. Did they thereby change their ideals and policy?

A. I am afraid not.

Q. A leopard cannot change its spots.

MR. MacINNIS: Does not the same thing hold true with regard to Russia herself? She did not come in until she was invaded, but that did not prevent Churchill from, immediately Russia was invaded, welcoming Russia into the struggle against nazism; that did not prevent Canada from doing the same thing; it does not prevent any of us from praising Russia's effort and helping her to resist, because her resistance is ours. Surely if we can do that with Russia it is common sense to do it with the communist party.

THE ACTING CHAIRMAN: If somebody will just distinguish that point between the Comintern and the Russian people --

MR. BENCE: We are entering into a debate between members of this committee and we have another witness to hear from. This is a point on which I think we could very well argue when we have no witness present.

MR. MacINNIS: I think Mr. Bence's point is well taken.

---Witness withdraws.

MR. ARTHUR W. ROEBUCK, M.P., called:

WITNESS: I will only take a moment. I should like to make my position clear. I am not a member of this organization.

BY MR. MARTIN:

Q. You are a member of the Liberal party? A. I am, sir.

BY MR. MacINNIS:

Q. Nothing to do with Civil Liberties at all? A. I am not a member of the organization. I have not had the opportunity of the prepared study which these gentlemen gave to this matter, and above all I am not, nor are they, helping the members of the communist party, a long way from it.

Whatever I say has two things with regard to it and should be so regarded. My interest is in Canada and her people and not in an organization of this kind, the principles of which are obnoxious to me. I think the principles of the society should be put before this committee by reading to you two or three sentences from the formal brief which was adopted by the organization itself less chance remarks made by anyone throws it into the wrong light. These are the considered statements:

"It is the considered opinion of this Association that the prohibition which has for many months been enforced against the Communist Party can no longer be justified by the need to safeguard the state from subversive influences, which might undermine the war effort. Indeed, we submit that the position has now become reversed, and that national morale and the efficiency of the war effort may well be adversely affected by the continued enforcement of this policy."

That, you will notice, is a carefully guarded and very moderate statement and by no means an endorsement of the things for which the communist party stand. The brief continues:

:"Under the circumstances, we have found from the collective experience of our membership, which is drawn from all walks of life, that the general public is acutely aware of the anomalous situation which has resulted from the continuation of the ban."

That is on broad lines of public policy; and further:

"To hold that under present circumstances the Communist Party is such a 'clear and present danger' is to ignore the facts entirely."

Now, I did not come here for the purpose of leading the communist cause, a long way from it; and the position in which I am at the present moment in this debate on the

question arose only within the last few months. I came here because I sympathise and approve very highly the general purposes of the Civil Liberties League, and I wish to give them all the assistance that I can.

I am very much more comfortable when I talk on general principles than when I endeavour in a few moments to pass upon an association which if it was placed on trial in conformity with some general principle of what is right and what is wrong, what is banned and what is prohibited, would take days, gentlemen, to accomplish. A trial of the communist party would be a long matter on any formula that you like to put it, and I am not in a position to pass upon it for one moment; but I think I am in a position to apply some general principles and in a general way to endorse what has been said in this brief. I think it is of the utmost importance that we who fight for freedom should avoid the very appearance of intolerance and that we should hold our hands whenever we are not sure and that we should rely on freedom and liberty whenever it is possible to do it and only reverse the process and depend upon suppression when it is clearly proven to us it is necessitated. You all agree with that, do you not?

BY MR. DUPUIS:

Q. I am sure, Mr. Roebuck, you would make a big difference between liberty and licence? A. Absolutely.

Q. The gentleman who gave those answers that Mr. Martin read clearly demonstrated his willingness to have, or his intention to stir up a revolution in this country. That is one thing that we cannot stand for, but I should like to say --

MR. BENCE: In war time.

WITNESS: Any time. That was illegal before these regulations were passed and it will remain illegal long after these regulations are at an end.

BY MR. DUPUIS:

Q. An individual should be judged by his belief?

A. Of course.

Q. Don't you think that such a doctrine spread all over the community is bound to convert many people and if they become a large number ^{and} put their belief into practice they would be overthrowing the government by force? A. If it is that doctrine, yes; but, gentlemen, have you had it proven to you that that is the doctrine of the membership of the communist party, actively held in their minds; I do not --

BY MR. MARTIN:

Q. That is an individual -- A. I do not like that form of question.

BY MR. BLACK:

Q. It is a fair sample, probably. A. If I were defending any trial I would object very strongly to their use in that way.

(D follows)

The questioner has taken what is represented to the witness to be the principle of the third international, is it not, or the Russian organization?

BY MR. MacINNIS:

Q. The third international, yes. A. Yes. And he has put the witness in the position of repudiating the organization to which he belongs, by stating that he does not agree with those statements, and he was not going to do that.

BY MR. BENCE:

Q. It is perfectly legitimate cross-examination, is it not? A. I would object very strongly to it if I were defending.

Q. In cross-examination? A. I certainly would, on the ground of it being unfair and misleading.

BY MR. BLACK:

Q. That examination was proper enough. It is a very serious situation in which a man was interned. These questions are perfectly proper in cross-examination. No doubt his counsel would object. I would, if I were counsel.
A. You certainly would. And you would make this point: We must not get off into an argument on this sort of thing, but you would make this point, that there is no objection to reading some statements. He was not a member, by the way, of that organization. He was a member of the Canadian Communist party.

BY MR. DUPUIS:

Q. What is the difference? A. There is a vast difference. There was a vast difference. The same objection, of course, to the Canadian Communist Party was the influence from abroad. We Canadians will not stand interference from Downing Street or from Westminster in our public affairs and we are certainly not going to stand it from Russia or any place else. We run our own affairs. I think that last question was unfortunate.

BY MR. MARTIN:

Q. You made a general statement with which I do not quarrel at all, commenting upon the Civil Liberties League. I should like you, if you would not mind, to be a little more specific. Here we are faced with a definite problem. Do you feel that we should treat the Communist party in a general way as they are treated in England? A. Yes, I do. I think that as a matter of public policy, and not because I like them, because I do not, I think it would be wise to be much more lenient than we have been.

Q. It is what any particular individual may like or dislike? A. But I do not think the Communist party is engaged in the activities which that question and answer describe. I know a little about them, gentlemen. I come from a poor district. You know I represent a poor district.

Q. Do not discredit your constituency. A. No. I am discrediting my constituency. It is not a wealthy district. That is what I should say. I have been associated with labour and labour organizations for many years, and I have met a great many communists and have talked very freely to them. I do not believe that the rank and file of the Communist party has any idea of revolution in Canada.

BY MR. BENICE:

Q. Do you think it was a mistake to ban the Communist Party? A. Was it a mistake in the past?

Q. Yes. A. Oh, but there was a difference.

Q. You say you believe we should follow the same policies they do in England? A. Yes.

Q. It has never been banned in England? A. No.

Q. I asked you do you believe it was a mistake that the Communist Party was banned? A. But wait. Mr. Martin asked me if now I thought we should follow that policy

MR. MARTIN: Yes.

WITNESS: I was not going back to the time when the Communists were controlled by Russia and were opposing our war effort.

BY MR. MARTIN:

Q. I was speaking after June, 1941. A. Yes. So whether they were properly banned in the past is not of very much interest now. Probably they were properly banned.

BY MR. BENCE:

Q. As a matter of principle, then? A. As a matter of principle?

Q. Yes. A. Well, on this principle, that you may have found that the Communist party at that time prior to the war was opposed to the war, was controlled by an outside power, which was certainly not in sympathy with us, by their public acts. Yes, on any general principle of that kind, they were properly banned.

Q. As I understand the British principle, it was that no organization would be banned or people interned for expressions of opinion. A. Is that not too wide a statement of it? I think it is, from what little I know of their regulations from reading them.

Q. Evidence was given to us to that effect. A. That is not sustained by the reading that we have had of the regulations, the English regulations, because they can do the same thing as ban an organization. They can dissolve it. It is about the same thing.

BY MR. DUPUIS:

Q. Here is the picture of our attitude towards the Communist party which was banned only after June, 1941. There are, you think, many people today in that association who are friendly, and you think they should be taken from this list in 39C because of their activities in favour of the United Nations. May I give you a specific example as a lawyer? A. Yes.

Q. To show, as far as I am concerned, what should be

the attitude of this committee towards the Communists. Let us suppose that a man driving a car hit our good friend Mr. Sandwell and ran away, and the R.C.M.P. catch him after a long run. They take his license and address, and go to his place. He has already committed a crime, having hit a citizen and run off. But they go to his address and discover in his residence a whole plan to kill every member of the Saturday Night newspaper and burn the whole thing. Do you think, Mr. Roebuck, that we should be satisfied to prosecute that hit-and-run driver only for having hit and having run off.

MR. MARTIN: Mr. Roebuck denies that.

E-1 follows

WITNESS: You are taking a criminal case by way of illustration under Defence of Canada Regulations. Of course, you would prosecute a man that struck Mr. Sandwell or anybody else, and if you found he was engaged in such an intent for any purpose you would put him in jail for a long long time. That is criminal law.

BY MR. DUPUIS:

Q. But there is the small offence leading to the larger one or by which the larger one was discovered. A. Yes.

Q. I understand that in 1939 this committee decided that the Minister of Justice should ban the communist party because of their subversive activities against the war effort, and this led the R.C.M.P. to discover something worse in their literature, their secret programmes and agenda, and because they have discovered that, according to your views, we should pass over that and just consider their past activities in the war effort which have changed since 1941?

A. Well, all I can say is it is a mistake in my judgment to confuse criminal law with these regulations. There is a prohibition in the code against conspiracy, to overthrow the state by force, and so on, and I am not asking that you change that or that anybody who is found guilty of that be not sent to jail. I say decidedly he should be sent to jail and given a long term. These men are dangerous. You have not done that.

Q. That means we should have to wait until the crime has been committed. A. I do not think so.

THE ACTING CHAIRMAN: Gentlemen, we are long past our adjournment hour. I think we should let Mr. Roebuck finish as there is another gentleman who wants to come on and give some evidence, and if we are going to complete this case this morning we shall have to get along. It is impossible to sit this afternoon.

WITNESS: I expected only to say a word. I want to put myself straight so far as those communists are concerned. If I advise their release or the withdrawing of the ban it would not be because of any friendship towards them or any approval of them, but purely on general principles. Let me complete my remarks with this last sentence. Remember that the nation which suppressed the communist party in particular and all such people most vigorously in the past was Russia. The czarist's regime sent thousands of men to Siberia; it executed them ruthlessly, it suppressed all their thoughts, and to-day, gentlemen, Russia is communist. Now, I do not want to sow the communist party belief in this country upon prosecution or severe dealing of any kind. Remember that the blood of the martyrs was the seed of the church. Nothing promoted christianity more than the opposition to it in its early days.

BY MR. DUPUIS:

Q. Did they advise the overthrow of the Roman empire by force and violence? A. Yes.

Q. Did they? A. Yes, just read some of their stuff with a little enlightenment.

Q. I have read Gibbon's -- A. And Gibbon himself said they were revolutionary.

Q. He is not partial at all; he is impartial.

MR. MARTIN: I think we will have to take our history from neither one nor the other.

---Witness retires.

MR. J.H. OSLER, called:

WITNESS: There is one point that has not been brought out and that is the point concerning the machinery for dealing with individual cases. This may not be strictly accurate but in outline the history of the matter has been this: that persons have been interned or held in custody on

the order of the minister. First of all a single tribunal, I believe, composed of one man was provided for an appeal which was not binding on the minister. Some form of appeal has been gradually broadened out on the recommendation of this committee which I think perhaps followed our recommendations to some extent until to-day there are three reviewing committees, each composed of three men. Now, with that general progress we are completely in accord, but we do submit that it has not yet gone far enough, and the chief criticism we have to bring -- mind you, I am not criticizing any individuals as such, nor does the association criticize any individuals as such, but the personnel of those reviewing tribunals is not we think of the highest calibre, and we believe that it is a matter of such importance that every effort should be made to obtain such personnel.

(F follows)

This committee has had the benefit of hearing Mr. Justice Birkett, formerly Sir Norman Birkett, who has been intimately concerned with this sort of procedure in England. I do not believe that any of the personnel on our reviewing tribunals now can stand comparison with a man of that calibre.

BY MR. MARTIN:

Q. We have not got many Norman Birketts in the country.

A. That may be. But we have men with high court experience. We have got high court judges that have not enough to do, I understand, outside some of the western provinces particularly.

Q. Would you suggest taking certain members of the Ontario Court of Appeal who have passed the age of 100.

BY MR. BENCE:

Q. Do you suggest that necessarily a superior court judge is intellectually the superior of a county court judge? A. I do not say that holds true in every specific case, no. But I do suggest that when a man is appointed to a high court, theoretically it is because he has got the best capacity and is a man of the first calibre.

Q. He had the political breaks at the right time.

A. Well, is that not equally true of the lower courts sometimes? We do feel that the structure of the personnel could be strengthened. Then there is one other matter in that connection. On only one of these committees is there a representative of labour. We do not know who he is. I expect it could be discovered, but there has been no publicity given to it. There is not one labour man in one hundred thousand, I do not believe, who knows who that man is. He is supposed to be acceptable to labour. We take the word of the minister for that. But we do submit that on each committee there should be a man particularly representative of labour. Then there is one other idea I want to express. In the days when those various steps

were taken in what I call a more liberal direction, there was very little publicity given to them. The general public has not realized the importance of such steps as have been taken. For example, the appointment of this labour man to the committee occupies a space about that thick, half an inch or so, in the newspaper; and that is the only notice I ever saw of it. I have never seen anyone who was aware of it until I brought it to their attention.

BY MR. BLACK:

Q. It is poor politics not to advertise. Is that the idea? A. Yes.

Q. We are not here for that purpose. A. One of the chief aims that we have in mind is to increase public confidence in the regulations and, if you like, to boost morale. Our argument is that whenever steps are taken to make sure that various objections are met those steps should be adequately publicized.

BY MR. BENCE:

Q. Will you agree that sometimes it is a mistake on that type of tribunal to appoint individuals from various sections or classes of the community? A. That may be so. But a very large proportion of these cases of Communists and others have been concerned with working-class people. Are you not helping to instill confidence if you have a person broadly representative of the working-class who will be one of the people dealing with those cases?

MR. MARTIN: Most certainly.

BY MR. DUPUIS:

Q. That would be the idea, to have each class represented in a trial. A. I submit that labour is an outstanding class that has to be represented.

BY MR. MARTIN:

Q. You are a lawyer? A. Yes.

Q. Have you had any of these cases? A. No, I have not, personally.

Q. You seem, at least by inference, to criticize the personnel of these committees now. That would be, I think, a serious matter, particularly if any of the judges now sitting you thought were not competent. A. Well, one of the chief reasons I make that statement is that I have seen some of the records and I have heard others described. It has seemed to me and to the association that there is a very great deal of irrelevant matter brought up sometimes by the members of the tribunal or at least tolerated by the tribunal; and that with persons accustomed to dealing, if you like, with intellectual concepts, which is what they are, they would see at once that a great deal of the matter was irrelevant and they would speed up the process and would confine it to the proper issues.

BY MR. ANDERSON:

Q. The question of relevancy depends on having a knowledge of the whole case and not just from some individual questions.

A. That is true to some extent. But on the other hand, there have been instances brought to our attention -- I do not like to go back to the Jackson case over and over again -- of matters which have seemed to us entirely apart from the purpose of the Defence of Canada Regulations.

Q. You have realized that the pamphlets issued by the Communist party advocated strikes? A. Oh, yes.

Q. That that is one of their policies, to get into labour unions and cause strikes? A. Yes.

Q. Would that not have some relevancy, possibly?
A. Not in the way it has been handled in some cases.

BY MR. DUPUIS:

Q. You judge the tribunals because, in your mind, one specific case was badly judged? A. No, I do not.

Q. I hope that you will go more deeply into the matter, and I am sure you will be convinced that after all the personnel of our tribunals is quite good and should not be criticized in that way.

MR. MARTIN: I doubt if you would find any supreme court judge would do a better job than some of them are doing.

MR. DUPUIS: Supreme court judges make mistakes at times. That is the reason we have appeals to the Privy Council.

WITNESS: Quite frankly, gentlemen, I think the chief basis of our submission/ⁱⁿthis regard is information given to us by various men who have acted as counsel for people.

MR. DUPUIS: You have not the full details.

BY MR. BENICE:

Q. You have the same complaint when the superior court judges were sitting as a committee of one. You had a tremendous number of complaints about the way that the evidence was handled and the conclusions that were arrived at, had you not? At least I heard them, anyway.

THE CHAIRMAN: We got them here.

BY MR. BENICE:

Q. Complaints were made before this committee. No matter whom you might have, there will always be people who will complain because of the fact that the decision was not along the lines they thought it should have been. A. That may be so.

Q. I take it from what you are saying, and I think it is the best point you are making, that you believe it would inspire public confidence? A. Quite so.

Q. If they were superior court judges and if they had a labour man on the committee? A. Quite so.

THE CHAIRMAN: Well, we are long overdue to adjourn.

DR. PATTERSON: May I say that what Mr. Osler was just saying is concerned with the issue which is presented in this brief on pages 7 and 8.

The committee adjourned at 1.25 p. m. to meet again on Thursday, July 2, at 11 a. m.

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