Internment Operations in Canada: A Functional Analysis

By C. F. Fraser

INTERNMENT might be discussed from the purely political point of view. It could also be dealt with on a conceptual basis, giving consideration to the manner in which internment operations should be conducted and pointing out the sins of error and omission, sociological, psychological and bureaucratic, into which those responsible for internment had fallen. Either approach would of necessity contain much that would be mere opinion. Opinion on the matter of internment in Canada, at this stage of the war, could scarcely be as objective as one might wish. In any event, before opinions are formed the facts must first be known. It is the purpose of this survey to set forth those facts in language unembellished or unmarred by opinion. The following paragraphs contain nothing more nor less than a brief functional survey of internment procedure, in an attempt to show what "makes the wheels go round" and to enable the reader to get some idea of the legal framework within which internment operations are conducted.

Ministerial Responsibility

Responsibility for the conduct of internment operations in Canada does not rest with any one Minister of the Crown. In the early months of the war responsibility was divided between the Minister of Justice and the Secretary of State of Canada. The former, through the legislative machinery administered by his Department, was charged with making decisions as to who should be interned and for what reasons. The Secretary of State, on the other hand, was in no way concerned with questions of how and why particular individuals were placed in internment camps. Rather, through the Internment Operations Branch set up under Order-in-Council P.C. 2521 of September 4, 1939, the Secretary of State was responsible for the custody of those persons placed under detention at the discretion of the Minister of Justice. Later, that responsibility was extended to include prisoners of war and other persons sent from the United Kingdom for detention in Canada.

In the early summer of 1941, faced with a large influx of internees from the United Kingdom, and with many hundreds of persons detained by the Minister of Justice requiring to be cared for, the Government decided to reorganize the whole administrative procedure in internment matters. Accordingly, an Order-in-Council, P.C. 4568, was passed on June 25th last, revoking the previous Order providing for the establishment of an Internment Operations Branch, and substituting therefor certain other administrative provisions and regulations.

As things stand at present, the Minister of Justice still shoulders responsibility for ordering the internment or release from internment of any individual in Canada. The Secretary of State, under authority of the latest Order-in-Council, has appointed a Commissioner of Internment Operations and a Commissioner of Refugee Camps. Both appointments first must have received the approval of the Minister of National Defence. The Department of National Defence is responsible for the establishment, maintenance and administration of both internment and refugee camps. Courts of Inquiry and Courts Martial in connection with escapes and attempted escapes of prisoners of war and internees are also

---

EDITOR'S NOTE: C. F. Fraser, a graduate of Dalhousie Law School, is editor of *The Halifax Chronicle*. He had previously been teaching at the North Eastern Law School at Boston and was on the staff of the Canadian Department for External Affairs in Ottawa.

the responsibility of the Department of National Defence.

Supervision includes all matters dealing with visits by representatives of the Protective Powers and with complaints submitted in that connection, arrangements for welfare and educational works including religious services, censorship, postal arrangements and intelligence works, regulations relating to punishment and all questions relating to work performed by prisoners of war and internees and problems of a similar character.

Prisoners of War

The popular conception is to think of interned persons as prisoners of war in the true sense of the term. Because of the fact that Canadian troops have not yet been engaged in any large scale military operations, there are few if any prisoners of war in Canada who owe their capture to Canadian military, naval or air operations. There are, however, a very considerable number of real prisoners of war at present detained in this country. This group is composed almost entirely of Germans captured by British forces in various campaigns in France, Belgium, and Norway, as well as in air operations over England. Canada is not directly interested in these German prisoners, and is acting simply in the capacity of jailor for the British Government, who in turn is answerable to the German Government under international law for the manner in which the prisoners are treated.

What rights, legal and political, do these prisoners of war now detained in Canadian internment camps, enjoy? The whole question of the treatment of prisoners of war is comprehensively dealt with by the International Convention relative to the Treatment of Prisoners of War, otherwise known as the Geneva Convention, signed at Geneva on the 27th of July, 1929. This Convention, to which some forty-seven countries were signatories, treats in considerable detail all the problems that would ordinarily arise in connection with prisoners of war. The Convention is binding upon Canada, as well as upon Great Britain and Germany.

It is interesting to note that under the Convention prisoners of war who are required to work for the detaining power are entitled to all the benefits of workmen's compensation or similar legislation applicable to nationals of the detaining power. Thus, if a German private, taken as a prisoner of war, is placed upon some work project in Ontario, it would seem that he must be entitled to all the operative provisions of the Ontario Workmen's Compensation Act. Some doubt has existed as to just what workmen's compensation laws, the British, or the Ontario legislation, would be applicable in this case, where the United Kingdom is the detaining power and the Canadian Government is acting merely as agent or jailor. So far as the writer is aware, no case has actually arisen as yet requiring a final decision on this point.

Section V of the Convention is important as it deals with the relations between Prisoners of War and the authorities. The Convention confers upon Prisoners the right to transmit complaints to the representatives of the protecting power. In the case of German Prisoners now detained in Canada, this representative is the Swiss Consul-General. It should be noted that the only type of communications which the internment authorities are required to transmit to the Swiss Consul-General are those which deal with "conditions of captivity." Other types of complaints may, and indeed often are, transmitted to the representative of the protecting power, who in turn may forward it to his government for transmission to Berlin. But the limitation of complaints which are required to be forwarded, to those which deal with "conditions of captivity" opens the door to possible abuse.

Prisoners of war, like anybody else, can be subjected to ordinary judicial proceedings, and can be subjected to penal measures for violations of the laws of the country in which they find themselves. It will be recalled that in connection with an escape to the United States

from an internment camp in Canada last winter, two prisoners of war took a rowboat from the shores of the St. Lawrence, and in it crossed over into United States territory. Canadian authorities sought to have them returned to this country not as escaped prisoners of war, but as two criminals who had stolen a boat to which they had no right. Once back within Canadian territory it would be a simple matter for the police to withdraw the criminal charges and turn the Germans over to the internment authorities once more. But while the courts might have subjected these prisoners of war to penal measures for stealing the rowboat, the worst that they could expect to suffer at the hands of the internment officials would be thirty days' confinement. In the event of judicial proceedings against any prisoner of war, the representative of the protecting power, in this instance the Swiss Consul-General, must be informed, and an opportunity must be given to secure defense counsel.

The remaining provisions of the Convention deal with liberation and repatriation at the end of hostilities, the collection and dissemination of information regarding prisoners of war by humanitarian agencies, the sending of relief parcels of food and clothing, and so forth. The principal agency in this connection is the International Committee of the Red Cross at Geneva.

Prisoners of War Regulations

In the foregoing discussion, it should be remembered that the Convention itself must be implemented by appropriate national legislation before its operative provisions may be enjoyed by the persons falling within its scope.

In Canada, the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, provides, *inter alia*, that the Governor in Council "May do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of real or apprehended war, invasion, or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada." Acting under the authority of this sweeping legislative authority, on December 13, 1939, the Governor in Council approved an order-in-council, P.C. 4121, putting into operation as from December 1st of that year certain Regulations governing the maintenance of discipline among and treatment of Prisoners of War. These Regulations, which are based directly upon the International Convention discussed above, are designed to govern the treatment not only of prisoners of war in the true sense of the term, but also those civilians who, for one reason or another, have been detained in internment camps in Canada.

For purpose of convenience, captured members of the armed forces of the enemy, true prisoners of war under the terms of the Convention, are referred to in the Regulations as "Prisoners of War Class 1." Civilian enemy aliens, as well as Canadians or persons of other nationalities who have been interned under the Defence of Canada Regulations are described in the Regulations under P.C. 4121 as "Prisoners of War Class II." Certain articles of the Convention have been declared as non applicable to these civilian internees (Schedule A of Section 1 of Article 1 of the Prisoners of War Regulations).

To sum up, the rights and duties of true prisoners of war are set forth in two main documents, (1) the International Convention Relative to the Treatment of Prisoners of War, and (2) Regulations Governing the maintenance of Discipline among and Treatment of Prisoners of War. That German and Italian prisoners of war interned in Canada have certain definite and well-defined rights in international law cannot be denied. That the Canadian Government, in accordance with the duties imposed upon it by reason of the Convention, has conferred upon these prisoners of war certain definite and well-defined rights in Canadian law is equally apparent.

Civilian Internees

Let us turn now to a consideration of the civilian internees. Civilian in-

ternees fall into several distinct categories. First, there are those persons detained by the Canadian Government under authority of the Defence of Canada Regulations. These Regulations, passed under the authority of the War Measures Act, bestow sweeping powers upon the Minister of Justice, and certain high ranking officers of the Royal Canadian Mounted Police, to restrict the movements of individuals and to place them under actual detention if it is deemed prejudicial to the safety of the state to allow them to remain at large.

Article 21 of the Defence of Canada Regulations has received more unfavorable publicity than any other single provision. This Article provides that

> (1) 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 to do so, may, notwithstanding anything in these Regulations, make an order:— . . . . (c) directing that he be detained in such place, and under such conditions, as the Minister of Justice may from time to time determine.

Until June 25th last, the only recourse open to a person detained or interned under the provisions of Article 21 was to protest to an Advisory Committee consisting of persons appointed by the Minister of Justice. The only requirement made of the Minister in appointing such a committee was that its chairman should be a person who held, or had held, high judicial office. The functions of the Committee were, as the title implies, purely advisory, and the Minister was under no obligation whatsoever to act upon the Committee's advice.

Article 22, providing for the appointment of these Advisory Committees, was revoked and new Regulations substituted by Order in Council, P.C. 4651, of the 25th of June, 1941. Under the new Regulations the scope of investigatory authority bestowed upon Advisory Committees has been considerably widened. Provision is made for the prompt hearing by an Advisory Committee of the complaint of any detained person. Detained persons are required to be informed of the grounds for their detention, and, where it is not deemed contrary to the public interest, the families of detained persons shall be informed of the fact of such detention and the reasons therefor. But despite the wider publicity which the new Regulations confer upon detention proceedings under Article 21, the discretion of the Minister of Justice remains final and absolute.

While in theory the Minister is responsible to Parliament for his actions, in the natural course of departmental procedure, decision to intern or to release a detained person must be made by the Deputy Minister and his assistants. Thus, in actual practice, individuals may be deprived of their liberty and interned in Canada, irrespective of whether they are Canadian by birth or naturalization, and have no recourse open to them except to lay a complaint before an Advisory Committee. The discretion of the Minister of Justice is as arbitrary and absolute as it was before Article 22 in its original form was repealed. The new Regulations under Article 22 do little more than to give a certain added publicity to the proceedings.

Articles 24, 25 and 26 of the Defence of Canada Regulations deal with the control over movements of enemy aliens. An enemy alien may, of course, be detained and interned under Article 21, in just the same manner as any British subject or friendly alien. The procedure with regard to appeals against internment of enemy aliens is, however, slightly different from that followed by other detained persons. Article 26 provides that any enemy alien may appeal against his internment to a person designated by the Minister of Justice as a "Tribunal." Such an appeal must be taken within 30 days of the date of internment. But the only authority granted to the Tribunal is to recommend the release of the interned enemy alien. It is left in the absolute discretion of the Minister of Justice to decide whether or not he wishes to act upon the recommendation of the

Tribunal. In actual practice, the decision as to whether or not any particular enemy alien shall remain in custody or be set at liberty, rests upon some official or officials of the Department of Justice. The chief merit of holding appeal proceedings before a tribunal would seem to rest in the natural reluctance which the Minister and offices of his Department would have to detain an individual in the face of recommendation by a Tribunal that that individual be released. The Tribunal's function, in the final analysis, is to act as a deterrent against arbitrariness rather than as an actual barrier against possible injustice.

The foregoing is an outline in most summary form, of the procedure whereby individuals may be removed from the community and placed in internment camps operated by the Canadian Government. The whole proceeding, from the moment of arrest until the detained person has been placed in an internment camp, is carried out at the discretion of the Minister of Justice. The conditions of an individual's detention, however, as distinct from the detention itself, fall under the jurisdiction of the Secretary of State of Canada and the Minister of National Defence.

Alien civilian internees have no rights whatsoever in international law. While a convention was at one time drawn up to cover the position of enemy alien civilians who might be interned, it never progressed beyond the draft stage. It would not be expected that Canadian nationals interned by their own Government could claim any rights under international law. Aliens of a neutral or allied power may also be interned, and have no recourse open to them under international law. But upon all three classes of civilian internees, whether they be enemy aliens, friendly aliens, or our own nationals, the Government has conferred certain definite legal rights, corresponding pretty generally to the rights and privileges enjoyed under the Geneva Convention by combatant prisoners of war. Germany and Italy have conferred similar rights upon Canadian civilians detained in those countries. The treatment, then, of persons detained under the Defence of Canada Regulations, will be in accordance with the provisions of the Regulations Governing Maintenance of Discipline Among and Treatment of Prisoners of War, excepting only as these latter Regulations are modified by the Regulations. The modifications are designed chiefly to cover those circumstances where the civilian status of the internee would make it impossible to apply directly and without change the terms of the Geneva Convention itself. So slight is the general effect of these modifications that it would be fruitless to discuss them in detail here.

Segregation of Internees

Actual prisoners of war are detained in camps entirely separate from those used for the detention of civilians. It should also be pointed out that civilians sent from the United Kingdom for internment in Canada are also detained in camps entirely separate from those containing persons detained under the Defence of Canada Regulations. Finally, certain persons classed as Refugees are kept in still other places of detention, entirely separate and apart from the groups above mentioned. In short, there are five classes of internment camps at present operated in Canada:—

(1) Camps for detention of actual prisoners of war.

(2) Camps for detention of persons apprehended under the Defence of Canada Regulations.

(3) Camps for detention of civilian internees from the United Kingdom.

(4) Camps for the detention of persons of "B" and "C" category sent from the United Kingdom and classed as "refugees."

(5) Camps for the detention of persons apprehended under the Defence of Canada Regulations, who have subsequently been classed as "Refugees" in accordance with the provisions of Order-in-Council, P.C. 5246, of the 15th of July, 1941.

A mass evacuation to Canada of civilian internees of "A", "B", and "C" categories from the United Kingdom was carried out at the instigation of the British Government during the summer of 1940. The great majority of these internees were sent to Canada for continued detention. A representative of the Home Office was in Canada from November, 1940, until July, 1941, and made a thorough investigation of these civilian internees. As a result of his study of the question, some 800 or 900 of the civilian internees have been returned to the United Kingdom, where many of them are now engaged in war work. There still remain in this country many hundreds of others who have been classified, after investigation, as coming within the category of refugees.

On July 1st last the Canadian Government set up separate refugee camps for those persons who, while not regarded as dangerous, were not returned to the United Kingdom. While these camps are operated entirely separate from those under control of the Internment Operations Branch of the Department of the Secretary of State of Canada, the regulations affecting the conditions of detention of these "refugees" are the same as those which apply to persons detained under the Defence of Canada Regulations who have been given "refugee" classification by the Canadian authorities.

Refugee Camps

Authority to classify internment camps in Canada as "Refugee Camps" was first given under Order-in-Council, P.C. 4568 of the 25th of June, 1941. Persons receiving "refugee" classification are governed not by the Prisoners of War Regulations, but by a special body of rules put into operation on the 15th of July, 1941, under Order-in-Council, P.C. 5246. These rules, described as "Orders for Refugees," deal in an extremely sketchy manner with the treatment of and discipline among "refugee" internees. These rules or orders provide the interned refugee with considerably more freedom of action than is accorded to other classes of internees. Refugees employed upon work other than that connected with the maintenance and administration of the camp, are paid for their labor at the rate of 20 cents per day. Refugees are permitted considerable freedom in the matter of visitors, as well as in receiving parcels and sending and receiving letters. The Commandant of a Refugee Camp is permitted wide discretion in disposing of cases of insubordination and other forms of misconduct on the part of refugees. But in all cases the summary punishment which he may impose is limited to a brief period of detention in barracks. In more serious offences the Camp Commandant may request the Commissioner of Refugees to bring the case to the attention of the civil authorities for trial in ordinary criminal proceedings.

Conclusion

Such is the procedural history of internment operations in Canada since the outbreak of war in September, 1939. Most of the Orders-in-Council, rules and regulations affecting the treatment of interned persons are of an "ex post facto" nature. The Defence of Canada Regulations, from which authority is derived to detain and intern, were prepared far in advance of their operative date. Between the two, gaps still remain to be filled in. The administrative machinery has been and will continue to be altered to meet changing needs and circumstances. The patience, forbearance and goodwill not only of the departmental officials but of the general public is essential if the internment question is to be handled in an humane, intelligent and efficient manner.