

says, "Every citizen of Canada has the right to enter, remain in and leave Canada." Did I understand that point correctly?

**Mr. Beatty:** Section 6, yes.

**Senator Stewart (Antigonish-Guysborough):** Does that mean that Parliament itself by statute cannot authorize that conscripted persons or persons in the armed forces be sent outside Canada?

**Mr. Beatty:** Parliament would have to demonstrate that the conditions of section 1 of the Charter were being met.

**Senator Stewart (Antigonish-Guysborough):** Then why couldn't the same demonstration be made in the case of persons being sent outside Canada by order in council under this statute?

**Mr. Beatty:** One would have to demonstrate that the conditions were being met. If one could demonstrate that the conditions were—

**Senator Stewart (Antigonish-Guysborough):** Then you are saying that by law there would be no difference, that provided the demonstration was made in each case, an order under this statute would have the same effect as a statute explicitly and directly authorizing the government to send armed forces personnel overseas.

**Mr. Beatty:** You would be required in either case to meet the provisions of section 1 of the Charter. I believe that during World War I we used the powers of the War Measures Act in order to conscript. Of course, the provisions of the Charter did not exist at that time, but, if it had applied, you would have had to meet the provisions of section 1. Under Bill C-77, there is the additional requirement of reasonable grounds.

**Senator Stewart (Antigonish-Guysborough):** So what you are saying is that, when this bill becomes law, the power of the Governor in Council will be the same as the power of Parliament with regard to sending persons outside Canada. In other words, the test is the same in both cases.

**Mr. Beatty:** If the provisions of the Charter are met, yes.

**Senator Stewart (Antigonish-Guysborough):** So we are giving to the Governor in Council all the power that the Parliament of Canada itself has, both with regard to conscription and to sending persons outside Canada?

**Mr. Beatty:** Provided that reasonable grounds can be demonstrated by the Governor in Council for doing so.

**Senator Stewart (Antigonish-Guysborough):** The answer is that the powers are the same because the limitation is the same in both instances.

**Mr. Beatty:** Except that there is the additional constraint under the provisions of Bill C-77 of demonstrating the necessity. That constraint on Parliament would not exist if it were passing a conscription bill.

**Senator Stewart (Antigonish-Guysborough):** You say "demonstrate the necessity." Where is that explicitly required in this bill?

**Mr. Beatty:** It is required under subclause 40(1), where it says, "... believes, on reasonable grounds, are necessary or advisable for dealing with the emergency."

**Senator Stewart (Antigonish-Guysborough):** In other words, that subclause applies if there is a *prima facie* case, but that is quite a different thing from what you are talking about. It does not mean that a court must find that it is necessary. It means simply that if the minister of the day believes that he has reasonable grounds—

**Mr. Beatty:** There must be an objective test with the very invocation of the statute in the first place. The invocation of Bill C-77 itself is contestable in the courts.

**Senator Stewart (Antigonish-Guysborough):** Mr. Chairman, we can go on digging this well for a long time, but I do not know that we will get much more water. I want to turn to another question. It is one that I raised when I spoke on second reading of the bill. Bill C-77 provides that an order in council made under it could not be used to change the terms of Bill C-77. We know that it was decided by the Supreme Court of Canada during World War I that an order in council made under the War Measures Act could be used to set aside the provisions of statutes, not just orders or regulations but statutes made by Parliament itself. According to subclause 4(a), an order or regulation may not be used to set aside part of this statute. However, that subclause implies that an order or regulation could be made to set aside the provisions of other statutes. Is that a correct deduction?

**Mr. Beatty:** I am told that it might be possible in instances where it was directly relevant and necessary to deal with the emergency provided for under this statute.

**Senator Stewart (Antigonish-Guysborough):** So your answer is yes, by an order in council or a regulation made under this act, statutes enacted by Parliament could be set aside. You are asking for that power?

**Mr. Beatty:** The advice I have received is that there was during World War I an instance in which the courts found it appropriate under the War Measures Act to extend powers and to alter the provisions of the statute law using an order under that act. Under this proposed statute, anything done would have to be directly relevant to the purposes of the statute, would be contestable in terms of the various checks and balances provided in the statute, and would be subject to scrutiny by Parliament and could be nullified by Parliament at any time. I am advised that it is far from certain that even under those circumstances the courts would, today, with the provisions of the Charter and the other provisions that have been put in place since World War I, find that such an action would be possible.

● (1950)

**Senator Stewart (Antigonish-Guysborough):** I do not think anyone would argue that what was done during World War I with regard to military exemptions was not relevant. Your answer seems to imply that you would be content to accept, for greater certainty, an amendment to clause 4(a) so that it