

Senator Stewart (Antigonish-Guysborough): You can say that, but I am trying to find out just what the protections really are.

Mr. Beatty: Absolutely, and that is why, senator, I went to considerable pains in my opening remarks to respond to some of the misapprehensions you have.

Senator Stewart (Antigonish-Guysborough): Perhaps we are getting too defensive. You have told us that conscription could be introduced without a decision by the Parliament of Canada, but you question whether conscripted persons could be sent outside Canada. Is that correct?

Mr. Beatty: That is right. Of course, a decision based on any regulation which the Governor in Council makes under the bill is testable on a number of grounds before the courts and also in both houses of Parliament. If there were an attempt to use this legislation to avoid putting in an ordinary bill dealing with conscription, members of either house, the House of Commons or the Senate, could put a motion to nullify the order.

Senator Stewart (Antigonish-Guysborough): But the presumption is reversed. In the situation your bill will create, the Governor in Council will bring in conscription. Later, perhaps many weeks later if Parliament is dissolved, Parliament will have a chance to review what the government has already done, but by then the boys and girls will already be in uniform in camps. It is going to be difficult to unscramble that situation.

Mr. Beatty: As a former joint chairman of the Standing Joint Committee on Regulations and Other Statutory Instruments, I have some considerable sensitivity to the abuse by government of delegated legislation. Having had a good deal of experience over the years, I can tell the honourable senator that I am not aware of a single instance which came before the committee while I was joint chairman in which the protections were as sweeping as they are here, and, indeed, if one looks at the powers we have today under the War Measures Act, the powers that are here are considerably more circumscribed or restrained. In the case of the War Measures Act, one might ask oneself why governments would not have used the old War Measures Act for conscription.

Senator Stewart (Antigonish-Guysborough): We are not here to defend the War Measures Act; rather, we are trying to do what was not done in the case of the War Measures Act in 1914 or in 1939.

Mr. Beatty: Absolutely.

Senator Stewart (Antigonish-Guysborough): That is why I suggest we should not be defensive. Would you repeat the grounds on which you asserted that military personnel could not be sent overseas.

Mr. Beatty: It is because of the provisions of the Charter.

Senator Stewart (Antigonish-Guysborough): Specifically what section?

Mr. Beatty: Section 6(1).

Senator Stewart (Antigonish-Guysborough): What does that state?

Mr. Beatty: It states:

Every citizen of Canada has the right to enter, remain in and leave Canada.

The emphasis, as is pointed out to me, would be on the word "remain."

Senator Stewart (Antigonish-Guysborough): You have legal advice that section 6(1) does not mean, simply, that ordinary Canadians—those who are not in the special status of members of the armed forces—have the right to remain in Canada? Does section 6(1) refer to members of the Canadian Armed Forces?

Mr. Beatty: It is absolutely inclusive. That is the advice I have received.

Senator Stewart (Antigonish-Guysborough): You say that new taxes could not be imposed, but, of course, the government has a continuing right to tax, not to impose new taxes, so new money will be going annually into the Consolidated Revenue Fund. That would not be the case in the United Kingdom where they have to re-enact their finance bill each year.

Let us turn to appropriations. Under what situations could the Governor in Council authorize appropriation from the Consolidated Revenue Fund, without prior resort to Parliament, if this bill were to become law?

Mr. Beatty: That would occur in reasonable circumstances which would have been provided for by Parliament.

Senator Stewart (Antigonish-Guysborough): When you say "reasonable circumstances," do you mean there has to be a *prima facie* case.

Mr. Beatty: Yes. The government has the power now to reallocate funds within the funds provided for by Parliament.

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Senator Stewart (Antigonish-Guysborough): Yes, I understand that.

Mr. Beatty: But you could not simply divert the funds from one particular vote of Parliament to something that was totally unrelated to it without violating the law.

Senator Stewart (Antigonish-Guysborough): We know that; but what you seem to be saying now is that under this proposed act there could be major new appropriations without specific parliamentary authorization and quite aside from the provisions of the Financial Administration Act.

Mr. Beatty: Let us take a look at what in fact we are saying. Senator, you suggested that we would be able to impose the right to tax by order in council. That is wrong.

Senator Stewart (Antigonish-Guysborough): I am not asserting that.

Mr. Beatty: You did previously.