

standing that the Charter provisions in any case, if they are included in the preamble to a bill, simply serve as a guidepost, whereas, if they are incorporated into the bill itself as part of a definition—for instance, of “national emergency” or whatever the case may be—they then become an essential ingredient of the definition.

**Mr. Beatty:** Senator, in the case of the Charter of Rights, it specifically states within the Charter itself that it applies to other statutes. The power of the Charter of Rights to apply to this particular bill stems from the provisions in the Charter itself. You say that there are provisions under which one could suspend, if you like, the powers of the Charter. I understand that it would make no difference whether or not we made specific reference to the Charter in a separate clause of the bill. The ability to suspend the powers of the Charter, or to circumscribe the powers of the Charter, is provided for in the Charter itself.

The same applies here. The best legal advice that I can get from the Department of Justice—and I, as a non-lawyer, transmit it to you—is that it would have been, at best, redundant to include those provisions and in any event totally unnecessary. The provisions apply unless it is specifically stated that they do not apply.

**Senator Neiman:** Very well. That, in itself, is reassuring, Mr. Minister. If I may conclude by perhaps supporting an observation of Senator Stewart's with respect to clause 62 regarding the composition of the parliamentary review committee, I would certainly much prefer to see that clause stipulate that all parties—and even independent members, as you yourself suggested—be represented from both houses, because, on the one hand, I see that you have said that in the House of Commons the membership will be drawn from a party having at least 12 members, whereas you made the comment yourself that within the Senate you might choose an independent member. I have no problem with that whatsoever, but I do think that, in both houses, whatever parties there are—or independent members as the case may be—should be represented on such a committee.

**Mr. Beatty:** Senator, in the past you and I have served on joint committees together and certainly the experience has been an edifying one for me. As a member of the House of Commons, I felt that it was a useful experience to serve on a joint committee. Certainly, the reason that, over opposition from some quarters in the House of Commons, I wanted to build in the double veto, for example, to give the Senate the power to nullify a decision of the House of Commons to allow us to invoke this legislation was that I am convinced that the integrity of this place should be maintained and that it has an important role in terms of protecting the civil liberties of Canadians.

The real issue here, I suppose, is whether it is necessary to write down in minute detail all of the structures of the committee or whether we should expect that, as Senator Stewart was saying, good will and common sense should apply.

[Senator Neiman.]

During my years in Parliament I suppose there have been instances when I may have questioned whether or not good will and common sense applied in all cases. However, for the most part, I think the two houses have worked well and in close collaboration, and I would expect that any other member of the House of Commons who assumed my responsibility at a different time as Minister responsible for Emergency Preparedness would also feel that the Senate had something to offer on this committee and would draw on the resources available to it.

Senator, the legitimacy of the process—the fact that we are asking Canadians to entrust us with extraordinary powers which affect their civil liberties—requires that we demonstrate to them that we are operating in a way that is open, above-board and proper. Therefore, a procedure which was clearly designed to circumvent the spirit of the legislation itself, which was designed to ensure a joint parliamentary committee, would, by its very nature, damage public support for anything the government was doing. I think it would be self-defeating if the government attempted to do that.

By the same token, however, it would be possible for the Senate, acting irresponsibly, to strike down the will of the majority of the elected representatives in the House of Commons. The best protection against that would have been to exclude the Senate, and that was argued to me by members of the NDP. I do not believe that senators will act irresponsibly. I believe that we have a responsibility to show goodwill to one another, and I am confident that, if such a committee were set up, both houses would consult with one another and would set up a committee that was fully representative of both bodies.

Certainly, I am quite prepared to leave on the parliamentary record that that was my intention at the time the bill was passed.

**Senator Neiman:** Thank you, Mr. Chairman.

● (1940)

**The Chairman:** At the moment there are no other questioners on my list, but Senator Stewart has indicated that on the second round he would have a question.

**Senator Stewart (Antigonish-Guysborough):** Mr. Chairman, it develops now that I have one question more than I anticipated. But first I wonder if I could have the assurance from the minister that he would check the blues and correct what I am sure he did not intend to say, that I was advocating that it was sufficient to rely on reasonableness and goodwill when delegating these enormous powers. I think he said exactly the opposite of what he intended to say. I am sure he will want to correct that remark.

I would like clarification on two points. First, when talking earlier about conscription the minister told us that it would be legally possible under this act to introduce conscription by order in council. As I understood the minister, he said that it would not be possible under an order made under this act to send conscripted persons outside Canada to Norway or Alaska, for example, because of section 6(1) of the Charter, which