

the War Measures Act. For example, under the War Measures Act, it was legally possible to incarcerate Japanese Canadians based on their racial origin.

Senator Stewart (Antigonish-Guysborough): I have already set that aside. I accept that point; indeed, I mentioned it in my speech on the motion for second reading.

Mr. Beatty: That is specifically excluded in this bill.

Senator Stewart (Antigonish-Guysborough): What I am asking is: Aside from those exclusions, how do the powers differ?

Mr. Beatty: It would differ as well because of the application of the Bill of Rights, which does not apply in the case of the War Measures Act.

Senator Stewart (Antigonish-Guysborough): In other words, what you are saying is that simply by enacting that the Bill of Rights and the Covenant would apply as limitations on the War Measures Act you could have achieved virtually the same result.

Mr. Beatty: Not at all. The most disgraceful application ever of the War Measures Act was the incarceration of, for example, Japanese Canadians. Simply applying the Charter of Rights and—

Senator Stewart (Antigonish-Guysborough): The Covenant.

Mr. Beatty: —the Bill of Rights—

Senator Stewart (Antigonish-Guysborough): And the Covenant.

Mr. Beatty: —and the Covenant would not necessarily guarantee that that sort of incarceration based on ethnic heritage could not take place.

● (1840)

Senator Stewart (Antigonish-Guysborough): But you can incarcerate Canadian citizens on any ground other than those specified in clause 4(b).

Mr. Beatty: Could you repeat the question?

Senator Stewart (Antigonish-Guysborough): Incarceration on grounds other than those specifically excluded in clause 4(b) would be permissible under the proposed legislation, is that correct?

Mr. Beatty: Yes.

Senator Stewart (Antigonish-Guysborough): Does that include internment?

Mr. Beatty: Yes, for example, internment of prisoners of war.

Senator Stewart (Antigonish-Guysborough): What about Canadians suspected by the Governor in Council or, perhaps, the Minister of Justice—as during the Second World War—of being security risks?

Mr. Beatty: It would depend, obviously, on how it was defined. In the case of the Second World War, the security risk was based on the individual's ethnic heritage.

[Mr. Beatty.]

Senator Stewart (Antigonish-Guysborough): I am not talking about that. I am talking about Canadian citizens who are not Japanese but ordinary Canadian citizens born in this country, such as the Mayor of Montreal. Could the Mayor of Montreal have been interned under this proposed legislation?

Mr. Beatty: You would have to, Mr. Chairman, establish reasonable cause and it would be testable as well under the Charter in the courts.

Senator Stewart (Antigonish-Guysborough): You are saying seriously that, under this provision, all those persons interned, incarcerated or detained—whatever term one wishes—could bring their cases to trial in court on the facts of their particular cases.

Mr. Beatty: Absolutely, and that is the least they have the right to expect.

Senator Stewart (Antigonish-Guysborough): I am not arguing the point, I am just trying to contemplate the situation in the courts.

Mr. Beatty: When you look on the deprivation of an individual's liberty as incarceration in an internment camp, we, as parliamentarians, must bend over backwards to ensure that the rights of the subject are protected.

Senator Stewart (Antigonish-Guysborough): I do not think you are confronting my question directly. As I see what would happen, there would be the declaration of an emergency and then an order in council would be made authorizing defence-of-Canada regulations, or whatever the term would be, and under those regulations, in turn, there would be other regulations. One of those other subordinate regulations might say that the Minister of Justice or his deputy could utter an order authorizing the internment of a particular person on security grounds. The interned person then would have a right to a writ of *Habeas Corpus*. He would get that writ and go into court. At that point the agent of the Minister of Justice would appear and display the order. The question is: Will the person who is challenging his own detention be able to require the government to disclose the facts on the basis of which the detention order against him had been made?

Mr. Beatty: To the court, yes. What is more, if you had a sweeping regulation of some sort that purported to allow classes of individuals to be swept up, as opposed to one individual, that very regulation itself could be tested before the courts.

Senator Stewart (Antigonish-Guysborough): I should like to ask the minister if he has asked his officials specifically about the kind of situation to which I am now referring, or is he just answering out of what seems to be common sense?

Mr. Beatty: In the preparation of the bill, we have gone over every single clause of the bill. I have pursued the question of how we can build in protections for individual Canadians throughout, and what we have in the legislation before the Senate today is the most comprehensive set of protections for civil liberties that has ever existed in this sort of legislation.