Mr. Beatty: Senator, we could write all sorts of additional rules for the committee and constrain the committee much more than we have done. We have tried to stick to the essentials here. I believe we have struck a formula which ensures proper parliamentary scrutiny and involvement, but also gives sufficient flexibility to deal with the specific circumstances of the day.

Senator Stewart (Antigonish-Guysborough): Our differences have been adequately recorded. Therefore, Mr. Chairman, I will not pursue this point.

The Chairman: The next senator on my list is Senator Marsden, followed by Senator Neiman.

Senator Marsden: I would like to deal with the public welfare emergency sections. I do not bring to the question the kind of knowledge or parliamentary experience that Senator Stewart does. However, I am interested in how this might apply to a number of situations. As I am sure you know, one has to imagine what might occur in order to understand how this will apply.

In responding to Senator Stewart about the internment situation, you referred specifically to subclause 4(b) and the basis on which people can no longer be interned—race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. I believe those items cover all grounds in the Charter.

There are a number of grounds that are not covered in the Charter. How do you think this bill would apply in a situation which is currently facing the country in relation to disease in human beings, and that is the current ferment on the subject of AIDS? There are people who take very extreme positions about what ought to be the situation of those who are HIV positive or, in fact, have the disease. Would it be a correct interpretation of this section to suggest that, should a government accept that kind of argument, people might be interned, and, given that AIDS affects all kinds of people from all classes, but is heavily concentrated at the moment in homosexual people—and sexual orientation is not a protected ground under the Charter, nor is it in this bill—that such people might be detained or interned? Paragraph 8(1)(g), for example, would allow the government to establish emergency shelters and hospitals. We are not necessarily talking about internment camps. Would detainment in that case be possible as a public welfare emergency?

Mr. Beatty: Senator, you are referring to the public welfare provisions. There is no power of internment whatsoever, and that sort of situation would not apply. You would indeed have the ability to establish emergency shelters or hospitals.

In a case where a natural disaster destroyed the housing of hundreds of thousands of people—because of an earthquake, for example—you would be required to set up immediately provisions to provide for shelter, for hospitals and so on for the people who are affected. That is what this provision is designed to deal with.

Senator Marsden: Does not paragraph 8(1)(a) say that the Governor in Council might regulate or prohibit travel to or from a specified area where necessary for the protection of the health or safety of individuals? As I said, we are not talking about internment camps, but this would allow the government, I assume, to confine people to these hospitals or emergency shelters when it considered the situation to be a public welfare emergency, or am I misinterpreting that? In other words, could the unprotected grounds in the Charter be the basis for this kind of action on the part of the government?

Mr. Beatty: Paragraph 8(1)(a) is designed to deal with a situation where, for example, a natural disaster took place, where public safety would be jeopardized by people moving into the area which was struck by the event, and we would be able to proscribe travel into that area.

Senator Marsden: I understand that. The whole point of this discussion is to think of situations to which it might apply. Clause 5 clearly says that a public welfare emergency means an emergency that is caused by a real or imminent disease in human beings, animals or plants. AIDS could be an imminent disease in human beings.

One examines the failure of other nations to protect the civil liberties of people who are affected, and, in fact, to cause them a great deal of harm. One wants to be sure that nothing of that nature would be possible in this country.

Mr. Beatty: Indeed, and I fully share your concern. The courts would find that such a stretching of those provisions would go well beyond the intent of Parliament. Even if you attempted to claim that you were setting up a quarantine of some sort for people smitten by disease, if you were able to get around the provisions that specifically proscribe internment based on mental or physical disability, you would still collide with the provisions of the Charter—section 1 of the Charter and the mobility provisions in the Charter.

Senator Marsden: Are you telling me that sexual orientation, for example, is protected under the Charter?

Mr. Beatty: I did not think the argument you were making was that a government would attempt to claim that sexual orientation is *ipso facto* a threat to public health in some way. If you were claiming that you were trying to maintain a quarantine of some sort and trying to stretch the provisions of a law to provide for that, it would be more likely you would be trying to apply it in cases where somebody had been demonstrated to be infected. Even in that case I do not believe that would be permitted.

Senator Marsden: In fact, the argument you say I was not making is the one I was making. If someone was clearly infected and a danger to the public, that is covered under existing law, provincially and federally.

Who would have thought that Canadians would intern other Canadian citizens of Japanese origin? I am trying to think of a situation we would not anticipate. Suppose a government decided that there was an imminent problem because of the spread of a terrible disease, and it decided that certain categories of people should be detained. Then let us suppose that those categories were so classified on grounds that you have