

J. Read Papers

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CHAPTER 206.

An Act to confer certain powers upon the Governor  
in Council in the event of War, Invasion,  
or Insurrection.

SHORT TITLE.

1. This Act may be cited as the War Measures Act. Short title.  
1914 (2nd session), c. 2, s. 1.

EVIDENCE OF WAR.

2. The issue of a proclamation by His Majesty, or under the authority of the Governor in Council shall be conclusive evidence that war, invasion, or insurrection, real or apprehended, exists and has existed for any period of time therein stated, and of its continuance, until by the issue of a further proclamation it is declared that the war, invasion or insurrection no longer exists. 1914 (2nd session), c. 2, s. 4.

POWERS OF THE GOVERNOR IN COUNCIL.

3. The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:—

- (a) Censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
- (b) Arrest, detention, exclusion and deportation;
- (c) Control of the harbours, ports and territorial waters of Canada and the movements of vessels;
- (d) Transportation by land, air, or water and the control of the transport of persons and things;



(e) Trading, exportation, importation, production and manufacture;

(f) Appropriation, control, forfeiture and disposition of property and of the use thereof.

2. All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation. 1914 (2nd session), c. 2, s. 6.

Imposing  
penalties.

4. The Governor in Council may prescribe the penalties that may be imposed for violations of orders and regulations made under this Act, and may also prescribe whether such penalties shall be imposed upon summary conviction or upon indictment, but no such penalty shall exceed a fine of five thousand dollars or imprisonment for any term not exceeding five years, or both fine and imprisonment. 1914 (2nd session), c. 2, s. 10.

Release of  
arrested  
alien  
forbidden.

5. No person who is held for deportation under this Act or under any regulation made thereunder, or is under arrest or detention as an alien enemy, or upon suspicion that he is an alien enemy, or to prevent his departure from Canada, shall be released upon bail or otherwise discharged or tried, without the consent of the Minister of Justice. 1914 (2nd session), c. 2, s. 11.

Limitation.

6. The provisions of the three sections last preceding shall only be in force during war, invasion, or insurrection, real or apprehended. 1914 (2nd session), c. 2, s. 3.

#### PROCEDURE.

Fixing  
compensa-  
tion.

7. Whenever any property or the use thereof has been appropriated by His Majesty under the provisions of this Act, or any order in council, order or regulation made thereunder, and compensation is to be made therefor and has not been agreed upon, the claim shall be referred by the Minister of Justice to the Exchequer Court, or to a superior or county court of the province within which the claim arises, or to a judge of any such court. 1914 (2nd session), c. 2, s. 7.



8. Any ship or vessel used or moved, or any goods, <sup>Forfeitures.</sup> wares or merchandise dealt with, contrary to any order or regulation made under this Act, may be seized and detained and shall be liable to forfeiture, at the instance of the Minister of Justice, upon proceedings in the Exchequer Court of Canada or in any superior court. 1914 (2nd session), c. 2, s. 8.

9. Every court mentioned in the two sections last pre- <sup>Rules.</sup> ceding may make rules governing the procedure upon any reference made to, or proceedings taken before, such court or a judge thereof under the said sections. 1914 (2nd session), c. 2, s. 9.

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NOTE COMMENTING ON COLONEL POPE'S SUMMARY

I. War Measures Act:-

Could it be made  
clear what this  
means?

(a) In certain circumstances a Proclamation may not be necessary. The existence of the fact of apprehended war brings the necessary powers into being. It may not be desirable to issue a Proclamation until Parliament has met.

(b) Why is  
Ext. Aff. the  
Dept primarily  
concerned? Does not  
Justice arrange the  
Proclamation with  
Ext. Aff. in  
consultation?

II. Defence Measures:-

No observations.

Perhaps Proc. issued in advice of A.M.  
with draft held by Justice?  
P.M.

III. Air Raid Precautions:-

(a) The inadequacy of the precautions sticks out and could only be justified if there could be assurance that there would be no air raids. In view of the statements as to the possibility of raids in the Report, it is difficult to understand the lack of any preliminary preparation.

IV. Treatment of Ships and Aircraft:-

(A) Detention and Seizure.

(1) Enemy shipping. The function of External Affairs is not stated.

The question of the possibility of detention before outbreak of hostilities if referred to. This might be done by <sup>dilatatory</sup> military tactics in the issue of clearances by Collectors. Experience of September shows, however, that delay in clearance would not be effective unless reinforced by special police measures.



consideration by the Department of Finance.

(2) Enemy aircraft. No further observations.

(B) Control of Shipping.

(1) Within ports and territorial waters.--

VII. Defence No observations.

(2) Control outside.-- No observations.

(3) Restriction on transfer.-- No observations, but there seems to be much to be said for the suggestion as to incorporation of these matters in defence of Canada Order.

VIII. Control of Shipping (4) Requisitioning of ships.-- Ditto.

(C) Control of Civil Aviation. No observations.

IX. Enemy Aliens  
V. Censorship. No comment. *Why are the Orders called "Consolidated" at this stage?*

VI. Treatment of Enemy Aliens.

(1) Provision for internment. No comment except that it is most inconvenient to use the Roman numbering in this case.

(2) Establishment of internment camps. No comment.

(3) Registration of enemy aliens. No comment.

(4) Provision for appeal. No comment.

(5) Sequestration of enemy property. The statement seems to be inadequate. This is a matter of importance and it seems to me that it should be divided into proper headings to make it clear that the question of sequestration was under consideration by the Department of the Secretary of State of Canada, and that the questions of Trading with the Enemy and the Prohibition of Transmission of Money and Securities, were under



consideration by the Department of Finance.

The Report might well treat these aspects in approximately the same way as the matters that were being dealt with by actual Committees.

VII. Defence of Canada Order.

No comment other than very definite approval of the suggestions. There might be some consideration as to whether the Department of External Affairs should be regarded as the initiating Department.

Why not  
"Prime Minister"  
instead of  
"Dept. of Ext. Aff."?  
- and the draft held ready by Nat. Def. ? or Justice ?

VIII. Control of Communications.

No comment.

IX. Finance matters.

This special provision largely does away with my comment at an earlier stage with regard to trading with the enemy, etc. Perhaps there might be a notation on page 16 of a reference to page 20.

Why bring  
Ext. Aff.  
primarily  
into Proclamation  
to trading with  
Enemy or  
lending to  
enemy?

A consideration of the whole programme suggests the need for a very considerable explanation. It could very conveniently contain a summary of certain matters not actually dealt with by the Committees and also a notation with regard to obvious gaps. The following points might be considered:-

- (1) Prize. There might be a notation that special provisions with regard to Prize are under consideration and that there is in the hands of the Legal Adviser of the Department of External Affairs a Memorandum and the necessary documents based on two alternative courses of action.



(2) Treatment of Enemy Diplomatic or Consular Officers.

I. War Measures: This matter has been under consideration by the Department of External Affairs and a  
(a) In certain circumstances a Proclamation may not be necessary. The existence of the fact of apprehended

(3) Canadian Officers Abroad.

Consideration might be given to the position of Canadian officers abroad, including both those who possess and those who do not

II. Defence Measures:-  
possess diplomatic status.  
No observations.

(4) Provision for Canadian diplomatic representation

III. Air Raid Precautions:-  
in the event of hostilities with a country within  
(a) which there was a Canadian mission, sticks out and could only be justified if there could be assurance that there would be no air raids. In view of the statements as to the possibility of raids in the Report *cont* it is difficult to understand the lack of any preliminary preparation.

IV. Treatment of Ships and Aircraft:-

(A) Detention and Seizure.

(1) Enemy shipping. The question of External Affairs is not stated.

The question of the possibility of detention before outbreak of hostilities is referred to. This might be done by *delay* action in the issue of clearances by *collectors*. Experience of September shows, however, that delay in clearance would not be effective unless reinforced by special police measures.