

Emergencies Act

What is the *Emergencies Act*?

The *Emergencies Act* is a piece of legislation that gives Canada's federal government power to take "special temporary measures to ensure safety and security during national emergencies."^[1] The key requirement to invoke this *Act* is a national emergency — the "special temporary measures"^[2] can only be taken when there is a transient emergency that "seriously endangers the health, lives or safety of Canadians" or seriously threatens the government's "ability ... to preserve the sovereignty" of Canada.^[3]

The History of the *Act*

The *Emergencies Act* replaced its predecessor, the *War Measures Act*, in 1988. The *War Measures Act* was created during World War I to give Parliament broad powers to ensure national security in war times.^[4] It allowed the government to severely restrict civil liberties, including by censoring communications, and by arresting, detaining, and deporting people without trial.^[5] During the Second World War, for example, over 20,000 Japanese Canadians were interned and stripped of their property under the authority of the *War Measures Act* (many of these people were also deported).^[6]

The *War Measures Act* was then invoked again during the October Crisis, when the Front de Libération du Québec (FLQ) kidnapped the British trade commissioner James Cross and Quebec's labour minister, Pierre Laporte.^[7] Invoking the *Act* allowed the government to criminalize membership in the FLQ, and allowed police to detain people without charge.^[8]

Although many Canadians agreed with this invocation of the *Act*, some believed the suspension of civil liberties was excessive.^[9] As a result of these concerns, the *War Measures Act* was repealed in 1988 and the *Emergencies Act* was passed as a replacement.^[10] Crucially, under the *Emergencies Act*, the Cabinet could no longer make decisions on its own, but would need to have its orders reviewed by Parliament.^[11] Furthermore, government actions taken under the *Act* must still comply with the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights*.^[12]

What Triggers the *Emergencies Act*?

According to the *Emergencies Act*, there are four types of emergency that can constitute a "national emergency" sufficient to invoke the *Act*.^[13] They are:

1. A public welfare emergency
2. A public order emergency
3. An international emergency
4. A war emergency

Under the *Act*, a “national emergency” is defined as follows:

For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security, and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.[\[14\]](#)

Section 3 of the *Emergencies Act* makes it clear that a national emergency can only be declared when regular, existing laws are insufficient for addressing the crisis at hand.[\[15\]](#)

Types of Emergency

Type 1: Public Welfare Emergencies

Public welfare emergencies can be caused by natural disasters, such as floods, drought, and earthquakes.[\[16\]](#) They can also be caused by diseases — whether in humans, animals, or plants[\[17\]](#) — and by accidents or pollution.[\[18\]](#) To constitute such an emergency, the situation must pose a danger to life or property, or cause “social disruption or a breakdown in the flow of essential goods, services or resources.”[\[19\]](#)

A public welfare emergency declaration ends after 90 days.[\[20\]](#) However, the declaration can be revoked before the end of this time limit, or it can be extended if the government “believes, on reasonable grounds, that the emergency will continue to exist” beyond the 90-day limit.[\[21\]](#) These rules on revocation and extension also apply to the other types of emergency listed under the *Act*.

During a public welfare emergency, the government can make orders and regulations related to travel, evacuation, removal of personal property, the use of property, distribution of goods and essential services, and more.[\[22\]](#)

Type 2: Public Order Emergencies

A public order emergency is defined as “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency.”[\[23\]](#) The *Emergencies Act* points to the definition of “threats to the security of Canada” found in the *Canadian Security Intelligence Service Act*. In this *Act*, these threats include espionage; activities with foreign influence that involve threats to people; activities involving the threat or use of violence to achieve a political, religious, or ideological goal within Canada or a foreign state; and illegal activity intended to overthrow Canada’s government.[\[24\]](#)

A declaration of public order emergency automatically ends after 30 days unless it is revoked early or extended (see above).[\[25\]](#) During a public order emergency, the

government can regulate or prohibit 1) public assemblies that can be expected to “breach the peace,” 2) travel within any specified area, and 3) the use of specified property.[26] It can also assume control of public utilities and services, and can impose fines or prison sentences for breaching any order or regulation made under the powers granted by the Act.[27]

Type 3: International Emergencies

The *Emergencies Act* defines an “international emergency” as “an emergency involving Canada and one or more other countries that arises from acts of intimidation or coercion or the real or imminent use of serious force or violence and that is so serious as to be a national emergency.”[28]

By default, a declaration of an international emergency expires after 60 days (unless revoked early or extended).[29] An international emergency gives the government broad authority to make orders and regulations. These can involve the regulation of industries, control of property and services, authorization of searches and seizures, and the direction of people to provide essential services.[30] The government can also order the deportation of people who are not Canadian citizens, permanent residents, or protected persons under subsection 95(2) of the *Immigration and Refugee Protection Act*. [31]

Type 4: War Emergencies

A war emergency, finally, is defined by the *Emergencies Act* as a situation in which a “war or armed conflict, real or imminent, involving Canada or any of its allies ... is so serious as to be a national emergency.”[32] A war emergency lasts the longest out of the four types of national emergency, ending in 120 days (although the declaration can once again be revoked early or extended).[33] A war emergency gives the government power to make any orders and regulations that are necessary for dealing with the emergency.[34] An exception is that the government cannot make an order conscripting people to serve in the Canadian Armed Forces.[35]

[1] *Emergencies Act*, RSC 1985, c 22, (4th Supp) [*Emergencies Act*].

[2] *Ibid* at s 6.

[3] *Ibid* at s 3.

[4] Denis Smith, *War Measures Act* (July 25, 2013), online: *Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/war-measures-act>>.

[5] *Ibid*.

[6] *Ibid*.

[7] *Ibid*.

- [8] Andrew McIntosh & Celine Cooper, *October Crisis* (August 13, 2013), online: *Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/october-crisis>>.
- [9] *Ibid.*
- [10] Denis Smith, Richard Foot, Eli Yarhi & Andrew McIntosh, *Emergencies Act* (March 18, 2020), online: *Canadian Encyclopedia* <<https://www.thecanadianencyclopedia.ca/en/article/emergencies-act>>.
- [11] *Ibid.*
- [12] *Ibid.*
- [13] *Emergencies Act*, *supra* note 1.
- [14] *Ibid.*, s 3.
- [15] *Ibid.*, s 3.
- [16] *Ibid.*, s 5(a).
- [17] *Ibid.*, s 5(b).
- [18] *Ibid.*, s 5(c).
- [19] *Ibid.*, s 5.
- [20] *Ibid.*, s 7(2).
- [21] *Ibid.*, ss 10-12.
- [22] *Ibid.*, s 8(1).
- [23] *Ibid.*, s 16.
- [24] *Canadian Security Intelligence Service Act*, RSC 1985 c C-23, s 2.
- [25] *Emergencies Act*, *supra* note 1, s 18(2).
- [26] *Ibid.*, s 19(1)(a).
- [27] *Ibid.*, ss 19(1)(b)-(e).
- [28] *Ibid.*, s 27.
- [29] *Ibid.*, s 29(2).
- [30] *Ibid.*, ss 30(1)(a), 30(1)(b), 30(1)(e).
- [31] *Ibid.*, ss 30(1)(d), 30(1)(g), 30(1)(h).

[\[32\]](#) *Ibid*, s 37.

[\[33\]](#) *Ibid*, s 39(2).

[\[34\]](#) *Ibid*, s 40(1).

[\[35\]](#) *Ibid*, s 40(2).