Emergency Preparedness Canada
Protection civile Canada

BILL C-77: AN ACT TO PROVIDE FOR SAFETY AND SECURITY IN EMERGENCIES

Working Paper

C-77

Second Session, Thirty-third Parliament,
35-36 Elizabeth II, 1986-87

THE HOUSE OF COMMONS OF CANADA

BILL C-77

An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof

First reading, June 26, 1987

...ISTER OF NATIONAL DEFENCE

C-77

Deuxième session, trente-troisième législature,
35-36 Elizabeth II, 1986-87

CHAMBRE DES COMMUNES DU CANADA

PROJET DE LOI C-77

Loi visant à autoriser à titre temporaire des mesures extraordinaires de sécurité en situation de crise nationale et à modifier d'autres lois en conséquence

Première lecture le 26 juin 1987

LE MINISTRE DE LA DÉFENSE NATIONALE

Canada

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BILL C-77: AN ACT TO PROVIDE FOR SAFETY AND SECURITY IN EMERGENCIES

Working Paper

The purpose of this paper is to review the policy, constitutional and legal basis for the Emergencies Act, Bill C-77. It is also intended as a stimulus and aid to discussion of the many complex and fundamental issues associated with the formulation of emergencies legislation. Those readers interested in a quick review of Bill C-77 may want to turn directly to Section VIII, page 49.

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I. INTRODUCTION

"SALUS POPULI SUPREMA EST LEX," "the safety of the people is the supreme law," is perhaps the most lasting and fundamental of the basic laws of state. It comes to us from the Roman tables of law. Since that time governments have recognized that they have a fundamental obligation to provide for the safety and security of their people in times of catastrophe.

The federal government recognizes this fundamental obligation and is committed to improving the national standard of emergency preparedness and developing the national capacity to provide for the safety and security of Canadians in emergencies, whether peacetime or war-related. This is done on the basis of partnership with the provinces, with mechanisms to provide for comprehensive joint planning and the formulation of co-ordinated arrangements for dealing with all aspects of emergencies falling under their respective jurisdictions.*

Through the regional offices of Emergency Preparedness Canada, joint activities have been undertaken with provincial officials to evaluate current resources, both legal and material, assess actual needs, demarcate and co-ordinate respective responsibilities and to develop mutual plans for dealing with emergencies of any kind and of any scale. The federal government has concluded Memoranda of Understanding with all but three of the provinces and territories to clarify respective responsibilities for emergency planning. A Joint Emergency Preparedness Program has been established with the provinces to enhance the national emergency response capability and to encourage co-operation between the federal government and the provinces. Disaster Financial Assistance arrangements have been established as a means of providing financial assistance to the provinces when the cost of dealing with a disaster would place an undue burden on the provincial economy.

In general, the provinces are well prepared to deal with the kinds of peacetime emergencies that have arisen fairly frequently in the past. At the

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* Wherever provinces are referred to in this paper, it is intended that the reference include both provinces and territories.

federal level emergency planning is carried on by all federal government departments in their respective areas of responsibility and in accordance with government policy. In addition, certain Ministers have been assigned lead responsibility for co-ordinating emergency planning in broader areas.

In the course of continuing reviews of emergency preparedness policy and assessments of the means of various federal departments to deal with emergencies, a number of gaps in the legal instruments available became apparent, raising questions about the government's ability to provide for the safety and security of Canadians in national emergencies in the future.

Shortcomings of the existing framework of federal emergency powers have been a matter of concern for some time. The October crisis of 1970 led to widespread dissatisfaction with the **War Measures Act** as a means of dealing with peacetime public order crises. There is very little current standing emergencies legislation to deal with other peacetime emergencies. The adequacy of safeguards constraining the use of the **War Measures Act** were called into question when Canada acceded to the **International Covenant on Civil and Political Rights** in 1976. As a signatory to the Covenant and the Optional Protocol, Canada has undertaken to ensure that its legislation incorporates certain fundamental human rights. To fulfill its obligations under Article 4 of the **Covenant** would require amendments to the **War Measures Act**, a point reiterated in the report of the McDonald Commission.

The proclamation of the **Canadian Charter of Rights and Freedoms** in 1982 has raised the issue of whether the safeguards in existing emergencies legislation are compatible with the fundamental rights and freedoms now constitutionally guaranteed by the **Charter.**

The federal government has concluded that new legislation is required to enable it to carry out its responsibilities to provide for safety and security in emergencies, and two new Bills were introduced in Parliament on June 26, 1987: Bill C-76, the **Emergency Preparedness Act**, and Bill C-77, the **Emergencies Act.**

II. CONTINGENCIES

Emergencies take many forms and arise from many causes. They may be man-made in origin or result from acts of God. They occur in peacetime and in war. The range of precipitating causes encompasses natural disasters, such as epidemics, earthquakes, fire, floods or drought; technological mishaps such as industrial spills, pollution or major accidents; civil disturbances arising from revolts, terrorism or riots; conventional war and, finally, the ultimate threat of nuclear war.

The common factors in these disparate events are the sudden threat they pose to the community, the widespread harm they can cause, and the need for prompt, often extraordinary measures to mitigate their effects and recover from them. In different ways and to varying degrees they may place in jeopardy the life and property of the individual, disrupt the peace, order and welfare of the community and, in the most extreme cases, threaten the continued existence of Canadian society itself.

For the purpose of the **Emergencies Act** a "national emergency" is defined in the preamble to the Act as follows:

> "And whereas the fulfilment of those obligations in Canada may be seriously threatened by a national emergency, that is to say, an urgent and critical situation of a temporary nature that imperils the well-being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution."

The range of possible contingencies which, on the basis of past experience, could give rise to a national emergency have been grouped into four broad categories, defined in the Act as follows:

1. **Public Welfare Emergency** means an emergency that is caused by a real or imminent

   1) fire, flood, drought, storm, earthquake or other natural phenomenon,

2) disease in human beings, animals or plants,

3) accident or pollution, or

4) breakdown in the flow of essential goods, services or resources

and that results or may result in a danger to life or property, or social disruption, so serious as to a national emergency.

2. **Public Order Emergency** means an emergency arising from "threats to the security of Canada" as defined in Article 2 of the Canadian Security Intelligence Service Act (CSIS Act), and that is so serious as to be a national emergency.

3. **International Emergency** means 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 directly threatens the sovereignty, security or territorial integrity of Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

4. **War Emergency** means war or other armed conflict, real or imminent, involving Canada or any of its allies or any other country in which the political, economic or security interests of Canada or any of its allies are involved.

This list is reasonably comprehensive in terms of the general classes of emergencies. Economic emergencies have not been included because it is not considered appropriate to deal with economic emergencies by means of standing emergencies legislation. (For a discussion of economic emergencies, see page 26.)

The impact of an event rather than its particular cause is the prime factor determining whether it gives rise to a national emergency. A number of factors bearing on the likelihood of major emergencies deserve emphasis. First, the growing complexity, urbanization and industrialization of society, as well as the increased interdependence of its constituent parts, pose new hazards and magnify old. Industrialization brings with it new risks of

environmental pollution and toxic spills, the effects of which are exacerbated by urbanization. Urbanization generates its own special problems: it aggravates the effects of a breakdown in the supply of essential goods and services and this, in turn, may create new strains on public order. Increased interdependence means that a major breakdown of any single element can produce severe dislocations of the whole and could attain the proportions of a national emergency. All these factors, therefore, multiply the risks of breakdown and exacerbate the problems of dealing with them.

Urbanization is only one side of the problem. Another facet is peculiarly Canadian in nature, insofar as the geography of the country renders it more susceptible to certain kinds of disasters. Canada is an enormous landmass with many small communities located in relatively isolated and remote areas which are especially vulnerable to being cut off by natural catastrophes. Some of our larger cities are on, or close to, the border with the United States and consequently could be affected by emergencies occurring in that country. Both these factors make all the more vital the need for effective emergency planning and adequate emergency powers to minimize the risks and facilitate a swift, effective response whenever and wherever national catastrophes occur.

III. CONSTITUTIONAL CONSIDERATIONS

The constitutional responsibility for dealing with emergencies is divided between the federal government and the provinces. The **Constitution Act, 1867** does not delineate in specific terms the authority of each level of government over emergencies, but the basic division of constitutional responsibilities is well established and reasonably well defined.

1. National Emergencies

The federal government has primary and ultimate responsibility to provide for the safety and security of Canadians during national emergencies. Its constitutional jurisdiction over such national emergencies stems from the power of Parliament to legislate for the "Peace, Order and Good Government of Canada" and the emergency doctrine which has evolved from it.

That doctrine invests the Parliament of Canada, during times of national crisis, with temporary plenary jurisdiction to legislate on all matters, including those normally reserved exclusively to the provinces. It operates, as Mr. Justice Beetz of the Supreme Court of Canada stated in the **Anti-Inflation Reference**, as a "partial and temporary alteration of the division of powers between Parliament and the provincial legislatures" ([1976], 2 S.C.R.373 at p.461) which gives to the Parliament of Canada in times of national crisis, "concurrent and paramount jurisdiction over matters which would normally fall within exclusive provincial jurisdiction" (Id. at p.463). And, as he also observed, "the power of Parliament to make laws in a great crisis knows no limits other than those which are dictated by the nature of the crisis" (Id. at p.461).

The fact that in times of national emergency the Parliament of Canada is temporarily vested with plenary legislative powers does not **ipso facto** extinguish the constitutional powers and responsibilities of the provinces. The role of the provinces may be greatly diminished but provincial authority continues until and unless it conflicts with, or is superseded by, federal legislation enacted under the emergency doctrine. Thus, in times of war or peacetime emergencies of national dimensions, the

responsibility of a province to protect the safety, security, health, property and welfare of its population continues. But its role is essentially a supportive, subsidiary and complementary one, the ambit of which is ultimately determined by the degree of intervention by the federal Parliament.

Certain situations stand out as clear examples of national crises of sufficient gravity to authorize the use of the federal emergency power.

It has always been clear that war and war-related emergencies constitute national emergencies and justify the invocation of the emergency doctrine. In fact, before the **Anti-Inflation Reference**, virtually every case in which legislation based on the emergency power was upheld had involved an emergency occasioned by war or its aftermath. Although the Judicial Committee of the Privy Council indicated in a number of cases that the emergency doctrine was not restricted to war-related emergencies, it offered little concrete guidance as to what kinds of peacetime crises would suffice.

The **Anti-Inflation Reference** has now clarified the application of the emergency doctrine to peacetime emergency situations in several important respects. First, while the Supreme Court of Canada was divided on the final outcome of the case, it was unanimous that the emergency doctrine could be invoked to deal with a national crisis arising from "highly exceptional economic conditions prevailing in times of peace" ([1976], 2 S.C.R.373 at p.436, **per** Beetz, J.). Secondly, they all agreed that the emergency doctrine is open-ended in nature. Chief Justice Laskin observed in the **Anti-Inflation Reference**, at the end of his review of the pertinent jurisprudence:

> "It is my view that (an) approach of caution is demanded even today, both against a loose and unrestricted scope of the general power and against a fixity of its scope that would preclude resort to it by circumstances now unforeseen....This is not to say that clear situations are to be unsettled, but only that a Constitution designed to serve this country in years ahead ought to be regarded as a resilient instrument capable of adaptation to

changing circumstances." (1976, 2 S.C.R. 373 at pp. 411-412)."

Beetz, J., who dissented in the result, made the same point equally clearly:

> "I am prepared to assume the validity of the following propositions:
>
> - the power of Parliament under the national emergency doctrine is not confined to war situations or to situations of transition from war to peace; an emergency of the nature contemplated by the doctrine may arise in peace time;
>
> - Parliament may validly exercise its national emergency powers before an emergency actually occurs: a state of apprehended emergency or crisis suffices to justify Parliament...taking preventive measures..." (**Id.** at p. 459)

No mention was made in the **Anti-Inflation Reference** of national crises arising from man-made or natural disasters and emergencies resulting from the breakdown of public order, but it seems clear from the general tenor of all the judgements that these and any other contingencies may warrant the use of the emergency doctrine. The essential point is that the situation should amount to a "national emergency" or "national crisis" and to determine this one must focus not on its specific cause but on its effects, whether apprehended, imminent or actual. And, as Ritchie, J. stated in the **Anti-Inflation Reference**,

> "such conditions exist where it can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces and thus presenting an emergency which can only be effectively dealt with by Parliament in the exercise of the powers conferred upon it by s.91 of the British North America Act "to make laws for the peace, order and good government of Canada." ([1976], 2 S.C.R.373 at p.436)

The definition of a "national emergency" in the preamble of the **Emergencies Act** has been based on this definition.

Whether there exists such an "urgent and critical situation" is determined by the Parliament of Canada, and while it is always possible to challenge Parliament's assessment of the gravity and scope of the crisis, the courts have been very reluctant to second-guess its judgement.

2. Other Emergencies

The constitutional responsibility for dealing with emergencies that do not attain national dimensions may rest either with the federal government or with the provinces or in some cases, with both.

The federal government has exclusive jurisdiction over most kinds of emergencies that occur in areas within the federal domain, such as Indian reserves and in national parks, as well as those which result from activities under exclusive federal regulation or control by virtue of section 91 of the **Constitution Act, 1867,** such as shipping, offshore fisheries, harbours or penitentiaries. It also has exclusive jurisdiction over the international aspects of all emergencies which cross national boundaries.

Peacetime emergencies that are local in nature and confined in their scope to the territorial limits of a province, fall under exclusive provincial jurisdiction, whether the emergency arises from a natural disaster, industrial accident or the local breakdown of public order. Provincial jurisdiction stems from section 92 of the **Constitution Act, 1867,** which vests in the provinces exclusive jurisdiction over property and civil rights and matters of a local and private nature in the province, the administration of justice in the province, and the power to enforce valid provincial legislation by the imposition of fines and penalties. Pursuant to their jurisdiction, every province has enacted general emergency powers legislation. Analogous responsibilities have been delegated to Yukon and Northwest Territories.

In between these two basic classes of limited peacetime emergencies there is a third in which neither level of government has complete or exclusive jurisdiction and where the limits of their respective

responsibilities are unclear. If the cause of an emergency lies within the territory of a province and its ramifications, although extremely disruptive and dangerous to the surrounding population, do not extend beyond provincial boundaries, such an emergency is, in an immediate sense, local and provincial. However, if it arises from a train derailment, plane crash, inland oil spill, or nuclear radiation leak, to cite just a few activities subject to federal controls, a narrow federal dimension is added to the situation. Both levels of government are technically involved and may have certain claims to jurisdiction. The province affected would share responsibility for dealing with the emergency, but precisely where the line falls between provincial and federal responsibilities, in strict legal terms, is not always easy to determine.

The above account summarizes briefly the major features of the constitutional framework which determines the basic jurisdiction of each level of government over emergencies. However, the role of each level of government is not always defined solely by its constitutional competence over a particular type of contingency or its location. It is also determined by practical considerations, such as immediate needs and available resources to deal with the emergency at hand. Sometimes the resources of more than one level of government are required to overcome an emergency and to provide relief quickly and effectively or private resources available within the boundaries of the affected province may be inadequate.

For example, in the case of a serious forest fire the federal government may be called upon by the province affected to supply urgently needed equipment; or following a severe earthquake, flood or storm it may be necessary to bring in resources from outside the affected province. Conversely, in an emergency arising on an Indian reserve or in a national park, the federal government may request a province to handle the emergency on its behalf and reimburse the province for any costs involved. In such cases, while jurisdictional considerations may determine which level of government has the constitutional authority to play the leading role, the extent of its participation is, in practice, determined by needs and agreement. By and large, federal-provincial working relationships have been extremely good, and effective co-operation among the various levels of government in dealing with emergencies is not a serious problem.

Co-ordination of resources, joint planning, and close co-operation among governments are thus key factors in dealing effectively with emergency situations. But it is also important for each level of government to have adequate authority to discharge to the full its constitutional responsibilities and be ready and able to provide for safety and security in emergencies. The federal government has particular responsibilities in this regard because of the wide disparity of provincial resources and the expectations made of it. All the provinces have enacted standing general emergency powers legislation. All provincial Acts authorize the making of interprovincial and federal-provincial agreements for planning and for providing emergency services. The question which arises is whether the federal government is presently equipped to discharge its responsibilities in emergencies in a satisfactory manner.

IV. ASSESSING FEDERAL EMERGENCY POWERS: THE CRITERIA

The nature of emergencies, whether arising in peacetime or war, is that they demand broad, flexible powers to act, and to act swiftly. They must be immediately available and relatively unrestrained if they are to enable government to take the necessary measures to ensure the safety and security of Canadians in an emergency. At the same time, they should be temporary in nature and should be limited to the duration of the emergency itself.

The authorities needed to provide for safety and security are, by their nature, exceptional. They are exceptional because they delegate to the executive extraordinary authority to take immediate and often drastic action to overcome a crisis that may involve the expropriation of private property, restrictions on freedom and movement and other infringements of basic civil liberties. They are extraordinary because, under the emergency doctrine, they can result in the temporary suspension of the normal division of powers and the total pre-emption of provincial jurisdiction.

While emergency authorities must, to some extent, be broadly delineated to give the executive the means to deal with the crisis, they must not be unlimited or unconstrained. There must be adequate safeguards to prevent the misuse of emergency powers and to preserve, even in times of urgent crises, certain fundamental values of our society. Indeed, one of the measures of a democracy is how it girds itself to deal with an emergency, and whether it manages to achieve a successful balance between the extraordinary authority given temporarily to the government and the safeguards provided to allow the legislature to fulfill its role and to the citizen to protect his rights. In a federal state like Canada, these problems are compounded by the further need to ensure that the integrity of both levels of government is respected.

In sum, for the federal government to fulfill its responsibilities to provide for the safety and security of Canadians:

1) it must have adequate **authority** to deal effectively with emergencies as they arise;

2) resort to emergency authority must be accompanied by sufficient **accountability** of the Executive to Parliament;

3) federal action must recognize and be consistent with the **federal nature** of the country; and,

4) there must be adequate **safeguards** to protect the basic rights and freedoms of the citizen consistent with the requirements of the **Canadian Charter of Rights and Freedoms** and Canada's obligations under the **International Covenant on Civil and Political Rights.**

These, it is suggested, are the criteria by which the current legal framework concerning federal emergency powers should be assessed. While each of these factors will be considered separately here, they ought not to be viewed in isolation from each other. Ultimately, the adequacy of existing legislation must be judged on whether it achieves the proper balance between powers and safeguards.

V. THE PRESENT LEGAL FRAMEWORK: THE POWERS OF THE FEDERAL GOVERNMENT

The powers available to the federal government to provide for the safety and security of Canadians during emergencies under its jurisdiction are derived from two principal sources. The Executive possesses certain inherent legal powers to act under the Crown Prerogative or by virtue of the common law. However, its most important powers both in number and in substance, are statutory in origin, enacted pursuant to its constitutional authority examined above.

1. Non-Statutory Powers

The federal Executive possesses certain inherent powers to act in times of emergency without the authorization of Parliament, by virtue of the Crown Prerogative. The Crown Prerogative consists of that residue of absolute authority belonging to the Crown which has not been abrogated or superseded by legislation. Under the Canadian Constitution, some of those prerogative powers devolve upon the Crown in right of Canada and thus are exercisable by the federal Cabinet.

The Crown Prerogative can play a role in developing contingency plans to deal with emergencies. The Emergency Planning Order of 1981 (revoked in 1987) was made by means of prerogative powers. It also has a role in dealing with war-related emergencies, for the power to declare war or make peace, and to requisition with compensation any property needed for the defence of the realm, are all prerogative powers belonging to the Crown in right of Canada. However, it should be noted that since it cannot be used to raise money, Parliament's support is needed to sustain any action initiated under the Crown Prerogative. Furthermore, the exercise of prerogative powers must comply with the provisions of the **Canadian Charter of Rights and Freedoms** and is subject to judicial review.

As far as peacetime emergencies are concerned, the Crown Prerogative is of very limited scope and of even less certain strength as a source of legal authority. It is very doubtful whether the Executive could rely on the Crown Prerogative to deal with public order emergencies, with the possible questionable and very limited exception of the use of

martial law, and it probably would be of little value in emergencies arising from natural disasters or major accidents in any case. Moreover, even within their limited sphere, the precise ambit of prerogative powers is vague and ill-defined.

The doctrine of "state necessity" may also provide some legal basis for certain federal emergency measures. The doctrine of state necessity has been used by the courts to treat otherwise unconstitutional legislation as valid and effective when there are such emergency or necessitous circumstances that it is impossible to comply with the Constitution. These emergency circumstances have included insurrection, civil war and, most recently in the **Manitoba Language Reference** opinion of the Supreme Court of Canada, preservation of normative order and the Rule of Law where all of the legislation of Manitoba would otherwise have been invalid. However, any such legislative measure must be proportionate to the circumstances and be of a temporary character.

There is also the old common law doctrine of necessity which may excuse or justify acts of trespass committed in circumstances of urgent necessity arising from actions of imminent peril to life or property. This common law doctrine is distinct from the Crown's prerogative powers, since it is available to the Crown and subject alike. But like the Crown Prerogative, the scope of this doctrine of necessity is narrow, and the powers it confers are both vague and limited. Its typical application arises in the private law sphere and concerns emergencies created by fire and flood and the power to enter another's property, demolish burning buildings, cut down trees, destroy crops, erect barriers or take other measures without incurring liability, to save oneself or one's own property. This common law doctrine might constitute a possible, if limited, source of legal authority in peacetime emergencies caused by earthquakes, floods or other natural catastrophes, as well as man-made disasters. However, it is unlikely to play any role in dealing with public order emergencies, and is probably of only marginal usefulness in war-related emergencies.

Even within its accepted limits, the doctrine of necessity has certain inherent drawbacks as a reliable source of legal authority. For example, it is unclear whether it can be used to compel a person to vacate his or her property. Furthermore, a heavy burden

of proof lies upon the party invoking the doctrine to justify actions.

If, during times of emergency, the Executive is compelled to act but exceeds its authority, Parliament may enact an Act of Indemnity validating retroactively what would otherwise have been unlawful. Acts of Indemnity are, in law, no more than an unusual exercise of Parliament's ordinary legislative authority. Since the proclamation of the **Canadian Charter of Rights and Freedoms**, Parliament's power to legalize retroactively "irregularities" by the Executive may no longer be as extensive as it once was.

2. Statutory Authorities

The **Constitution Act, 1867** provides several jurisdictional bases on which the federal government can rely to enact safety and security in emergencies legislation notably the defence power (s.91(7)), criminal law (s.91(27)) and, more generally, the emergency doctrine arising out of the "peace, order and good government" clause in section 91. Such legislation may take several forms. It can be general enabling legislation, directed at particular kinds of emergency situations, to be invoked by proclamation when needed. Only two such statutes presently exist, the **War Measures Act**, which deals with war-related emergencies and the most serious kinds of public order emergencies, and the **Energy Supplies Emergency Act, 1979**, which authorizes the imposition of emergency controls on the distribution of energy and energy products in case of foreign embargoes or other sudden disruptions of supplies. Safety and security in emergencies legislation may also be enacted **ad hoc** to deal with a particular crisis, an example of which was the **Anti-Inflation Act, 1975**. There are, in addition, a number of ordinary statutes such as the **Criminal Code** and the **National Defence Act** which include among their provisions isolated sections conferring special powers for use in emergency situations. Some of these authorities are relatively minor or peripheral; others may duplicate powers already available under standing emergency legislation. A list of the principal provisions can be found in Annex B.

VI. SHORTCOMINGS OF CURRENT FEDERAL LEGISLATION

As indicated earlier, the adequacy of existing federal legislation depends on whether it satisfies certain specific criteria. The first criterion relates to the scope of emergency powers and whether they are broad enough to permit the government to meet its responsibilities and provide for the safety and security of Canadians during emergencies. The remaining criteria relate to the adequacy of the safeguards governing the exercise of emergency powers and concern the protection of the individual's fundamental rights, accountability of the Executive to Parliament, and respect for the federal structure of Canada.

Applying the criteria suggested above, the first issue to consider is whether the authorities now available to the federal government enable it to meet its responsibilities effectively and efficiently One method of assessing the federal government's existing powers is to compare the actions currently available to it with the range of emergency powers that are considered necessary for it to discharge adequately its responsibility to provide for the safety and security of Canadians from any of the five basic categories of emergencies outlined above.

1. Federal Powers to Deal with Emergencies

1) War

As already indicated, the federal government has primary responsibility to provide for the safety and security of Canadians when the life, sovereignty or integrity of Canada is threatened by acts of war or enemy invasion. It is in such dire emergencies that the government needs the broadest powers over all aspects of society and the greatest flexibility to act. Authorities available in war should therefore enable the Governor in Council to make Orders and Regulations extending to any matter considered necessary or desirable to further the national war effort, protect national security and counter the emergency.

It would appear that the federal government enjoys ample powers under existing legislation to deal with war-related emergencies. The **War Measures Act**, when proclaimed in force by the Governor in Council, authorizes the Governor in Council "to do and authorize

such acts and things ...and make such orders and regulations as he may... deem necessary or advisable for the defence, peace, order and welfare of Canada." The emergency powers thus conferred on the Executive are extremely broad and, subject only to the **Canadian Charter of Rights and Freedoms**, enable it to bring under control by regulation virtually every aspect of economic, political and social life in every part of Canada. Not only are these powers ample as written, they have also withstood the test of two World Wars. There are, therefore, no obvious gaps in the federal government's armoury of legal powers. The **War Measures Act** confers ample authority to provide for the safety and security of Canadians during a war emergency.

Indeed, the main reservation about the scope of the **War Measures Act** is that its present reach may be too broad because it permits wartime powers to be invoked in certain peacetime crises. The **War Measures Act**, it will be noted, may be used not only in case of war, invasion or insurrection but also for "apprehended war" or "apprehended insurrection," which are really peacetime emergencies. There is a large body of opinion that the **War Measures Act** should be confined to war emergencies only, leaving peacetime crises, however severe, to be dealt with under peacetime emergency legislation.

The **War Measures Act** is not the only statute conferring exceptional powers to deal with war-related emergencies. The **National Defence Act** enables any part of the armed forces to be placed on active service in Canada or elsewhere, for the defence of Canada in an emergency. It also empowers the Minister of National Defence to enter, occupy, requisition, remove or destroy property of any kind (subject to compensation), including transportation or communications facilities, if an "emergency" is declared by the Governor in Council. An emergency is defined by the Act as "war, invasion, riot or insurrection, real or apprehended."

2) International Emergencies

It is questionable whether the notion of "apprehended war" that is currently found in the **War Measures Act** still has relevance in the nuclear age. Where once it meant, essentially, "imminent war," it now seems to have acquired a new connotation, namely, a

state of heightened international tension accompanied by the rapid deterioration in relations among nations or blocs of nations. During such periods of uncertainty and strain, events may move either towards the restoration of normal relations or towards military conflict.

In such circumstances, Canada might wish, or may even be bound by treaty obligations, to adopt precautionary measures to enhance its standard of military readiness and civil emergency preparedness, without taking steps that are, or may be seen to be, provocative to a potential adversary:

- ordering the activation of one or more of the National Emergency Agencies;
- regulating and controlling one or more designated industries or services, including the use of its equipment, facilities, and inventory;
- appropriating, controlling or confiscating property or services;
- requiring the temporary assistance of a limited number of individuals employed in essential industries, services and professions;
- establishing controls over the external aspects of financial and economic operations;
- authorizing extraordinary expenditures for dealing with the emergency;
- enabling federal Ministers to discharge additional civil emergency responsibilities that may be assigned to them for implementation during periods of deteriorating international relations;
- directing that various elements of Canada's civil defence program be quickly brought into operational readiness where necessary;
- accepting legal and financial liability for costs, compensation, damage, or loss

sustained by any party as a consequence of the implementation of emergency provisions applying to international situations;

- the regulating or prohibiting travel outside Canada by Canadian citizens or permanent residents;

- authorizing exceptional powers of entry, search and seizure to enforce and monitor defence contracts, to prevent hoarding of scarce commodities or black marketeering; and

- designating and securing protected places.

There is no general, continuing emergency legislation to authorize precautionary and preventive measures of a kind which might be required in an international emergency. The **War Measures Act** and the **National Defence Act**, presently cover emergencies arising from "apprehended" war or invasion. The invocation of the **War Measures Act** to deal with a crisis of the kind envisaged by an "international emergency" appears too drastic and might even be counter-productive. On the other hand, the powers conferred on the government under the **National Defence Act** are probably too limited. New intermediate legislation to deal with what would still be a peacetime emergency has become necessary. The Emergencies Act, Part III responds to this need.

3) Public Welfare Emergencies

The role of the federal government in providing for public welfare during natural disasters, industrial accidents, epidemics and environmental disasters, will, in jurisdictional terms, usually be secondary to that of the province where the emergency occurs. However, as has already been noted, this is not always the case. Where the scale of the disaster is such that it affects more than one province, or where it occurs on territory within the federal domain, the federal government will have primary if not exclusive responsibility to provide for public safety. If the disaster is confined within the boundaries of a single province, the federal government may still have important jurisdictional responsibilities where the emergency arises from a serious mishap involving nuclear

energy, the railways or other activities under federal regulation or control. Even in circumstances where its role is, in a jurisdictional sense, shared, the federal government should still have available to it the authority to discharge its strict constitutional obligations and the means to provide support in the form of human resources, material or money to act where a province has insufficient resources to overcome the emergency and requests federal assistance.

To meet its responsibilities in this area the federal government could require authorities such as the following:

- ordering evacuation and controlling movement from and within designated areas;
- requisitioning essential equipment and supplies;
- directing the use of real or personal property;
- directing qualified individuals to render urgently needed services;
- regulating the distribution and availability of essential goods, services and resources;
- making emergency disbursements;
- establishing emergency shelters, hostels and hospitals;
- assessing damage to facilities and establishing such priorities as may be required for their repair, replacement or reactivation; and
- in consultation and co-operation with the province or provinces involved, ordering the activation of one or more of the National Emergency Agencies.

At present, there is no general, continuing emergency legislation on the federal statute books to deal with a public welfare emergency which constitutes a national emergency. Various ordinary statutes may contain

provisions which, taken together, might legally entitle the government to implement some of the emergency measures deemed necessary. These include the **National Defence Act**, the **Defence Production Act**, the **Aeronautics Act**, the **Transportation of Dangerous Goods Act**, the **Expropriation Act**, the **Environmental Contaminants Act**, and the **Clean Air Act**. Isolated provisions, useful in this kind of emergency, might also be found in other statutes. The **Energy Supplies Emergency Act, 1979** might also be relevant if the powers sought to regulate the sale of essential goods included petroleum products. In sum this is an area where there appears to be important gaps in federal authorities.

4) **Public Order Emergencies**

In this category are several varied kinds of contingencies, ranging from civil unrest to apprehended insurrection. The common thread that ties them together is that public order emergencies arise from the deliberate actions of individuals or groups that place in jeopardy the life, liberty, safety security or property of the citizen, the rule of law, or constitutional government. And when such disturbances are so serious in nature or so widespread in scope as to threaten the security of Canada as a nation, the federal government has a constitutional as well as a social responsibility to intervene to restore conditions of safety and security.

The kinds of measures that may be needed in such emergencies include:

- imposing and enforcing curfew restrictions;
- prescribing the time, form, and manner of public assembly;
- designating and securing protected places;
- controlling and limiting access to and movement within designated zones or areas;
- assuming direct control and providing for the restoration of public utilities and services; and

- directing qualified individuals to render urgently needed services.

If the public order emergency falls within the scope of the **War Measures Act**, all the extraordinary powers deemed necessary would be available because that Act is so wide. However, the dividing line between a serious public order emergency that threatens the security of Canada and an apprehended insurrection can be a fine one, and it seems clear as a result of the events of October 1970 that the **War Measures Act** will not again be invoked during peacetime unless there is ample evidence of an urgent threat of a serious insurrection akin to a coup d'état. For this reason and those indicated earlier, there are sound arguments for restricting the **War Measures Act** to war-related emergencies.

Under Part XI of the **National Defence Act** a province may call on the armed forces where a riot or disturbance is "beyond the powers of the civil authorities to suppress, prevent or deal with" (s.233). In less urgent crises, a province may simply request, rather than requisition, military assistance to the civil authority (s.34). Troops called in aid of the civil authorities possess the powers of peace officers (s.239) and are recognized as such by the **Criminal Code**. However, it is doubtful whether the federal government has any similar power under present standing peacetime legislation. The relevant provisions of Part XI do not include the federal government and this raises the question of whether it could call on the military to quell any local disturbance having the potential of creating national repercussions where a province either neglects or declines to do so. The federal government may enjoy the same rights to protect its property as any individual under Sections 38 to 42 of the **Criminal Code**. However, the exact scope of the federal government's strict legal powers in such circumstances is unclear.

Less serious emergencies arising from the breakdown of public order may now be dealt with under various **Criminal Code** provisions dealing with treason (s.46) - which includes "using force or violence for the purpose of overthrowing the government of Canada or a province" (s.46(2))(a)); sabotage (s.52) - which prohibits doing an act "for a purpose prejudicial to the safety, security or defence of Canada"; inciting a mutiny (s.53); sedition (s.60) riot and unlawful

assembly (ss.64, 65); piracy (s.76) and hijacking (s.76.1). In addition, the Governor in Council may by proclamation prohibit assemblies for unlawful drilling, military exercises or training in the use of arms (s.71). These and other provisions are amplified by the sections dealing with conspiracy (s.423), aiding and abetting (s.21), counselling another to commit an offence (s.22), accessories after the fact (s.23) and attempt (s.24), and are supplemented or reinforced by other legislation, including the **Official Secrets Act**.

The **Criminal Code** also vests the police with broad powers of arrest, search and seizure. A peace officer may arrest without a warrant any person whom he or she believes, on reasonable and probable grounds, has committed, or is about to commit, an indictable offence (s.450). It is an indictable offence to obstruct the police in the execution of their duties (s.118). Persons arrested under the **Criminal Code** may not be detained for more than 24 hours without being charged, apart from very limited exceptions (s.454). The police have extensive powers of search and seizure provided they first obtain a warrant (ss.445-447). The **Criminal Code** (s.178.1) authorizes wire-tapping, if a warrant has been obtained.

The new **Canadian Security Intelligence Service Act** has increased the federal government's powers to detect and forestall threats to the security of Canada. The Act set up the Canadian Security Intelligence Service (CSIS), a federal agency vested with special powers to gather intelligence and investigate activities which, on reasonable grounds, may be suspected of constituting threats to the security of Canada. Threats to the security of Canada are defined by the Act to encompass espionage or sabotage, foreign influenced activities detrimental to Canada's interests, political terrorism and subversion. Another part of the same Act expands the powers of the federal government to enforce the existing law by allowing the Attorney-General of Canada to assume control over all prosecutions for security-related offences. Previously, the principal authority to conduct proceedings for security-related offences under the **Criminal Code** was vested in the Attorney-General of the province in which the alleged offence was committed.

The CSIS, through its special powers to gather intelligence and investigate conduct posing a

threat to the security of Canada, may help to prevent or contain unlawful activities having the potential, if left unchecked, to develop into full-scale national emergencies. However, it should be emphasized that the **Canadian Security Intelligence Service Act** creates no new offences to deal with threats to the security of Canada. The role and powers of the CSIS are limited to gathering and analyzing information, surveillance and investigation. It has no mandate and no special powers to deal with a national emergency arising from activities threatening the security of Canada, should one occur. The new powers conferred on the Attorney-General of Canada only enhance his or her authority to enforce the existing law governing security-related offences.

It has been suggested that the existing law is quite adequate to deal with public order emergencies, even those falling within the jurisdiction of the federal government. It is certainly true that the relevant provisions of the **Criminal Code** and related statutes confer wide powers and that some of them are vague and could be "stretched" in a crisis. But it is doubtful whether they could be legitimately stretched far enough, particularly since the enactment of the **Canadian Charter of Rights and Freedoms.** Even if they could, it is questionable whether the public interest would be better served by what is really the dubious overreaching of ill-defined provisions instead of confining such provisions within their intended limits and enacting new legislation conferring additional emergency powers made subject to adequate safeguards, both procedural and substantive.

The argument that the existing criminal law powers are sufficient to deal with any public order emergency is a controversial one. The McDonald Commission recognized that the **Criminal Code** might be inadequate to deal with a national crisis posing grave threats to public order. It then went on to consider whether new, continuing emergency legislation should be enacted, conferring special powers on the government to deal with public order emergencies falling short of "war, invasion or insurrection" and concluded that a case had not been made "from the point of view of national security" (Second Report, Vol. II, p.921). In its view, if exceptional powers were temporarily needed, authority should be sought from Parliament by means of an **ad hoc** special legislation.

This was done in December 1970 with the enactment of the **Public Order (Temporary Measures) Act** but only to replace wider powers already invoked under the **War Measures Act.** The present capacity of the government to react immediately to an urgent crisis threatening the security of Canada arising from the breakdown of public order would be far more limited if the **War Measures Act** were no longer available for peacetime use and the Parliament of Canada were not in session, and particularly if it were dissolved and hence not available to be recalled.

5) **Economic Emergencies**

The **Anti-Inflation Reference** established that accelerating inflation could constitute a national emergency within the meaning of the "Peace, Order and good Government" clause of Section 91 of the **Constitution Act, 1867.** Other economic conditions, whether international or domestic in origin, may give rise to similarly acute crises and require emergency measures. These include a major breakdown in the functioning of essential domestic industries, markets or services; a crisis of confidence in the banking system; an international assault on the value of the Canadian currency; and a sudden shortage of essential imported commodities resulting from foreign embargo or the breakdown of orderly world trade.

Although economic emergencies are best approached by special **ad hoc** measures, introduced at the time of the emergency, some discussion of permanent standing legislation for economic emergencies is included for information purposes.

The kinds of emergency powers that might be needed by the federal government to deal with economic emergencies of this magnitude could include one or more of the following:

- ordering and enforcing the imposition of emergency taxes, financial moratoria, and other related fiscal measures;
- imposing and enforcing wage and price controls;
- directing and controlling the operation of banking and related financial services;

- imposing and enforcing exchange controls;
- controlling the production, distribution, sale, and use of any designated commodity, good, or product;
- ordering the restoration and operation of essential services, utilities, or industries;
- controlling imports or exports of designated products;
- compelling the assistance of the private sector in implementing these measures.

There is only one continuing, peacetime emergency statute that deals with economic emergencies, and then only of a particular kind. The **Energy Supplies Emergency Act, 1979** is designed to ensure, by rationing or otherwise, the availability of energy in the event of serious disruptions in supply arising from foreign embargoes or other causes. Within its restricted scope, it confers upon the Executive some of the exceptional powers suggested above, including control over the distribution and sale, export and import of energy supplies.

Other general statutes contain provisions that might be useful in dealing with certain aspects of economic emergencies. These include the **Export and Import Permits Act** which can be used to regulate international trade, and the **Gold Export Act** which could be used to protect the Canadian dollar. Legislation such as the **Bank of Canada Act**, the **Bretton Woods Agreements Act** and the **Financial Administration Act** may also assist the government in handling grave economic crises.

Nevertheless, it did prove necessary in 1975 to enact **ad hoc** emergency legislation to impose wage and price controls to deal with an emergency arising from accelerating inflation. This suggests that the government's existing legislation is not broad enough to cover all the contingencies which could give rise to an economic emergency. However, the 1975 example also illustrates that such situations usually develop over a period of time, rather than occurring suddenly. In addition, while the range of situations which could give rise to an economic emergency is quite wide, the type

of exceptional measures that would be required to respond to the specific situation which required them would be relatively narrow and focussed. And having the power to take such measures precipitously could undermine international confidence in the stability of Canada's economic and financial policies. Thus it would seem preferable to deal with economic emergencies by means of carefully drawn special legislation, tailored to fit the particular case at the time.

6) Summary of Existing Powers

It seems evident from this brief description of existing federal Acts dealing with emergencies that there are large gaps in the legislative framework. The remaining vestiges of the Crown Prerogative and the common law doctrine of necessity might offer an immediate source of authority to act, although far too weak and too limited in the case of peacetime emergencies to provide any real alternative to standing legislation. Parliament undoubtedly possesses jurisdiction under the emergency doctrine to fill those gaps in times of crisis by ad hoc special legislation, but this can take time and, in an emergency, time is of the essence. Moreover, hastily enacted **ad hoc** legislation has its own drawbacks, including the possibility of over-reaction.

Furthermore, gaps in the legislative framework may not be the only reason for considering new, comprehensive emergency legislation. In some areas, even if the emergency legislation is adequate in scope, the particular Act may be deficient in terms of its procedural safeguards.

2. Parliamentary Accountability

Continuing emergency legislation, by its very nature, invests the Executive with exceptional powers authorizing the temporary infringement of civil liberties and other rights for the higher purpose of overcoming a severe national crisis. It is however, of the utmost importance to the democratic process that the delegation of such powers and the manner in which they are exercised be subject to adequate Parliamentary scrutiny and continuing surveillance. Ensuring sufficient parliamentary accountability may become problematical if Parliament is not sitting, and

particularly if it is dissolved, and hence not available for recall.

Ensuring that there is sufficient accountability by the Executive to Parliament in the use of emergency powers is also important for another reason. Under the **Canadian Charter of Rights and Freedoms**, the validity of any emergency measure that impinges upon the guaranteed rights and freedoms in the **Charter** may turn on whether the limitation of such rights is "reasonable" and can be "demonstrably justified in a free and democratic society." It is suggested that the courts would be more reluctant to hold that temporary restraints on civil liberties, imposed under a continuing emergency statute, were unjustified if they had not only been deemed necessary by the Executive but had also been approved after due deliberation by the full House of the elected representatives of the people and by the Senate.

As already noted, there are at present only two continuing emergency statutes: the **War Measures Act** and the **Energy Supplies Emergency Act, 1979.** Both provide for some measure of accountability to Parliament for the exercise of emergency powers.

1) **The War Measures Act**

The **War Measures Act** comes into force upon proclamation by the Governor in Council. The Act requires that the proclamation bringing it into operation be laid before both Houses of Parliament for debate and possible revocation "forthwith," if Parliament is sitting or, if it is not sitting, within 15 days after it has been reassembled. However, the **War Measures Act** does not stipulate any time limit within which Parliament must be recalled if it is not in session when the proclamation is made. Nor is there any requirement that the Government divulge to Parliament its reasons for invoking the **War Measures Act** so as to ensure an informed debate on the proclamation.

A notable feature of the **War Measures Act** is the extremely broad power it confers on the Executive to govern by regulation. Once the Act has been invoked, the government has plenary authority to make such orders and regulations as are deemed necessary or desirable for the security, defence, peace, order and welfare of Canada. At present, these regulations are neither tabled nor subject to any Parliamentary control

at the time they are made, and such scrutiny as may be brought to bear by the Standing Joint Committee on Statutory Instruments occurs only after they have come into force and cannot affect their legal validity or curtail their operation.

Once invoked, the **War Measures Act** remains in force until it is revoked, either by proclamation of the Governor in Council or by resolution of Parliament. There is, thus, no fixed time limit on the validity of the proclamation and the extraordinary powers it confers. In sum, the process for invoking emergency powers under the **War Measures Act** requires of the Executive only a very limited degree of accountability to Parliament, and once invoked the Act provides Parliament with only very limited means of surveillance over how the emergency powers are used by the Executive.

Even allowing for the fact that the **War Measures Act** is designed to deal with the gravest forms of national emergency and that in such crises the Executive needs the utmost flexibility and freedom of action, the existing degree of accountability to Parliament has been widely criticized as inadequate. The Task Force on Canadian Unity, The Canadian Bar Association Committee on the Constitution and, most recently, the McDonald Commission were all critical of the lack of Parliamentary supervision over the use of the **War Measures Act.**

2) Emergency Supplies Emergency Act, 1979

The provisions for accountability to Parliament under this Act are better in some respects than those in the **War Measures Act.** This may be attributed, in part, to the fact that as a peacetime emergency statute designed to deal with certain economic crises, there is less justification for compromising the ordinary democratic process. As a newer Act, it also reflects the improved standards now demanded for Parliamentary accountability. Nevertheless, as will be seen, it is still flawed.

Accountability to Parliament is initially ensured by requiring the declaration of an emergency to be laid before Parliament within seven days. To continue to remain in effect, the declaration must be approved by both Houses, after debate, and within a

prescribed period. The procedural machinery in the Act is more comprehensive and sophisticated than in the **War Measures Act.** It deals expressly with the situation where a declaration of emergency is made when Parliament is not sitting and stipulates what the McDonald Commission has recommended for the **War Measures Act**, namely, that Parliament be recalled within seven days. However, there is no requirement in the Act for informing Parliament, or a committee of Parliament, of the full reasons for declaring a national emergency.

The Act limits the duration of a state of emergency, and measures taken pursuant to it, to a maximum period of twelve months. After that period, a new Order is required to extend the emergency and prevent any exceptional powers from lapsing, and this is once more subject to the approval of Parliament and is liable to expire at the end of twelve months.

The Act confers upon the Executive broad powers to act by regulation and, like the **War Measures Act**, none of these regulations requires the approval of Parliament to take effect or continue in force. However, regulations establishing an emergency program for the control and allocation of petroleum products, or any scheme to impose rationing, must be tabled in Parliament. The Act thus creates for the implementation of far-reaching emergency measures a sort of half-way house of parliamentary accountability. Parliament has a right to be kept informed but it has no immediate power to control the emergency measures taken.

3. Protection of the Federal Nature of the Country

In a federal state where jurisdiction is divided between two orders of government, each vested with its own areas of jurisdiction and exclusive responsibilities, the cardinal principle must be that neither shall infringe upon the rights of the other and each shall respect the boundaries of its own jurisdiction. In Canada, reconciling these principles with the exigencies of emergencies raises at least two perennial issues. The first arises from an intrinsic conflict between the nature of federalism and the demands of a national crisis. As has often been observed, federalism is characterized by the division of powers. The problem, therefore, is how to ensure, in times of national emergency, when power is concentrated

in the federal level of government, that it is exercised in a manner consistent with the democratic traditions underlying Canadian federalism.

The second issue is that it is frequently not easy to determine, on strict legal grounds, which level of government is responsible for handling an emergency, to what extent, and subject to what limits. Emergencies do not always respect territorial boundaries or unfold according to constitutional principles. Even if they did, it would still be difficult in some cases to determine the responsibilities of each level of government. In some areas, jurisdiction overlaps and in others, powers are incomplete. The second problem, then, is how best to achieve the close degree of federal-provincial co-operation necessary to delineate jurisdiction, integrate responsibilities and co-ordinate efforts to provide for the safety and security of Canadians. Each of these issues will be dealt with in turn.

In times of national crisis, as has already been noted, the Parliament of Canada has plenary legislative jurisdiction over all matters, including those which in normal times are within the exclusive jurisdiction of the provinces. It is also clear that Parliament, and Parliament alone, has authority to determine when such a national emergency exists. The provinces have no legal right to participate in that decision, although efforts are made by the federal government to ensure they are consulted. This is not done only to respect principles of federalism: the effective deployment of the country's resources during a national crisis requires the co-ordination of efforts by all levels of government, and thus demands consultation.

The absence of any legal requirement to consult with the provinces before a national emergency is declared, and the present lack of any formal mechanisms for doing so, have been the subject of some comment by several groups which have examined the issue in the broader context of constitutional reform. These groups, which include the Task Force on Canadian Unity, the Canadian Bar Association Committee on the Constitution and, most recently, a Report of a Standing Committee of the Senate (The Goldenberg Report), reached at least one common conclusion: namely, that the Senate could be the forum for such consultation provided it was first reformed to make it more representative of

provincial interests. However, reform of the Senate is a much larger issue, and one which has yet to be resolved. In the meantime, the problem remains of finding a forum and a process in which both levels of government may have a voice in a decision which temporarily suspends the powers of one of them.

The second issue relates, not to suspension of jurisdiction, but to the sharing of responsibilities. In an ideal federal structure the lines between the federal and provincial areas of exclusive jurisdiction over emergencies would be clearly drawn. Provincial emergency powers legislation, if not completely uniform, would complement federal legislation and together mesh completely federal and provincial responsibilities. The system would permit the development of infrastructures appropriate to meet emergencies within their respective spheres of jurisdiction. There would be formal mechanisms to ensure continuing consultation at all levels of planning and execution, to provide for mutual aid, and to facilitate the mounting of a co-operative effort to deal with emergencies of a national scale.

Such is not the system that exists in Canada, at least so far as emergencies are concerned. The provinces and the federal government have their own areas of exclusive jurisdiction but, as has been seen, the lines between some of their respective fields of competence are blurred. All the provinces have standing emergency powers legislation but there is little degree of uniformity among provincial Acts. There is a wide disparity of resources among the various provinces and their susceptibility to catastrophes is not evenly shared. Some areas of Canada are regularly prone to natural catastrophes such as floods or forest fires, while the danger of similar incidents occurring elsewhere is far less. The effects of such disasters are also not likely to be uniform, again because the distribution of population, the means of communication and climatic variations all play a role in determining the severity of an emergency in a particular location. Finally, regardless of its exact constitutional responsibilities, the demands made on the federal government greatly enhance the role it is called upon to play in dealing with emergencies, national or otherwise.

All the above factors emphasize the importance of establishing effective means to ensure consultation and co-operation between the two orders of government in planning for emergencies, in developing

emergency measures, and in defining their respective responsibilities in those areas where the boundaries of jurisdiction overlap. It also emphasizes the importance of concluding federal-provincial agreements to ensure that equipment and other resources needed by one order of government in times of emergency will be made available to another order of government.

The importance of close federal-provincial co-operation is illustrated by the emergency arising from the train derailment in Mississauga, Ontario, in 1979, when cars carrying dangerous chemicals overturned. Some chemicals exploded and the threat of chlorine poisoning made it necessary to evacuate 250,000 people living in this densely populated city close to Toronto. While the emergency was purely local and provincial in scope, its cause involved the interprovincial carriage of goods by rail, an activity subject to federal regulation; and so both levels of government had certain constitutional responsibilities. A federal inquiry was set up in the aftermath of the emergency to examine, among other things, "how best investigative and corrective operations in response to an accident involving dangerous goods can be co-ordinated between various agencies, governmental and private, bearing in mind the existing constitutional and jurisdictional framework." As the Commissioner, the Honourable Justice Samuel Grange, observed: "there are enormous constitutional problems involved in the public response, and most of them can be resolved only by agreements between governments" (Report of the Mississauga Railway Accident Inquiry, p.151).

Other mechanisms exist for promoting federal-provincial co-operation in dealing with emergencies, particularly in the field of emergency planning. A number of federal-provincial agreements of varying degrees of formality divide responsibilities for handling emergencies between both orders of government in areas where the boundaries of jurisdiction are not clear-cut.

On the federal side, a number of initiatives have been taken in recent years in the field of joint emergency planning. Some of these, including the Joint Emergency Preparedness Program, have been noted in the Introduction to this paper. Nevertheless, there is still some way to go to achieve the desired level of national emergency preparedness and the co-ordination of responsibilities for ensuring the safety and security of Canadians in national emergencies.

4. Protecting the Basic Rights and Freedoms of the Individual

Perhaps the most difficult issue in emergency legislation is how to achieve a workable and satisfactory balance between the extraordinary authority granted temporarily to the government in time of crisis and the safeguards needed to protect the citizen's basic rights. The law must ensure, on the one hand, that the Executive has sufficient freedom of action to protect public safety and national security, and on the other hand, that the individual is adequately protected against unwarranted intrusions upon basic civil rights. Adequate safeguards presuppose not only clear limitations on the scope of emergency powers, but also an effective means of redress in case of abuse and a right to reasonable compensation for damage suffered. Certain legal safeguards currently exist and are found in the emergency legislation itself, the ordinary law, and the constitutional guarantees in the **Canadian Charter of Rights and Freedoms.**

1) Safeguards of Emergencies Legislation

The War Measures Act is sometimes criticized as being too wide in scope and too weak in safeguards. One of its most controversial features is that it removes completely all the safeguards the citizen may have had under the **Canadian Bill of Rights, 1960.** Section 6(5) of the **War Measures Act** expressly provides that "any act done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgement or infringement of any right or freedom recognized by the **Canadian Bill of Rights.**" This, in effect, meant that any or all basic rights and freedoms, such as freedom of speech, assembly, religion and non-discrimination, or legal rights such as the presumption of innocence, **habeas corpus**, the right to counsel and the protection against self-incrimination, could be suspended or overridden by regulations made under the **War Measures Act.** Furthermore, the Executive is empowered by Section 3(2) of the Act to set up special courts to try offences under the **War Measures Act.** Section 7 of the Act

does provide a procedure for fixing compensation for property requisitioned by the government for emergency purposes, but the **War Measures Act** confers no right to compensation. The assessment procedure operates only if compensation is to be payable and, as the Act makes clear, that is a decision to be made by the Executive.

The issue of safeguards was examined recently by the McDonald Commission, which concluded: "We are not convinced that the fundamental freedoms expressed in the **Canadian Bill of Rights** should be completely excluded after a proclamation under the **War Measures Act**" (Second Report, Vol II, p.923). Certain rights, it said, are "fundamental to our system of justice and public administration in peace and war" and ought never to be overridden (Id).

The issue of fundamental rights has now been overtaken by the new **Canadian Charter of Rights and Freedoms** which does formally govern the **War Measures Act**, and all other legislation, federal or provincial, and it entrenches certain basic rights subject, as will be seen, to some qualifications and possible exclusions. The specific recommendations of the McDonald Commission are examined below in a section evaluating the protection now afforded by the constitutional guarantees in the new **Canadian Charter of Rights and Freedoms.**

Within its own restricted sphere, the **Energy Supplies Emergency Act, 1979** is also inadequate, for while the opportunities for infringement of basic rights and liberties may be limited and it does not exclude the **Canadian Bill of Rights**, there is still room for the lawful but arbitrary requisition of property without any statutory right to compensation and no statutory means of relief for damage or injury resulting from the exercise of emergency powers. While both the **War Measures Act** and the **Energy Supplies Emergency Act, 1979** confer extensive emergency powers on the government, they provide few, if any, explicit safeguards for the basic civil rights of the citizen. They provide no statutory recourse against officials who exceed their powers. They grant no right to compensation to individuals who suffer harm as a result of emergency measures lawfully taken under the legislation. Such relief as exists must be found either in the ordinary law or in the **Canadian Charter of Rights and Freedoms.**

2) The Ordinary Law

An aggrieved individual possesses certain means of redress under the ordinary law if his or her rights have been infringed. The principles of administrative law may offer certain avenues of relief against the unauthorized exercise of powers. If he or she has suffered personal injury or damage to property, or other loss, there may be certain remedies in tort, including trespass to person or property, negligence and, possibly, abuse of power. If provisions in the **Criminal Code** are used to deal with a public order emergency and result in an individual's being wrongfully arrested or detained, or his or her person or premises unlawfully searched and his or her property illegally seized, that individual may also have other actions in tort, including wrongful arrest and perhaps, malicious prosecution. If the invasion of rights amounts to a violation of the **Criminal Code**, the individual may, in addition, be able to launch a private prosecution against the individuals concerned.

However, no legal relief is possible unless there is a legal wrong, and the ordinary law is unlikely to be of much assistance where the authority to act is derived not from the ordinary law but from emergency legislation conferring exceptional powers. In such cases there may be no actionable wrongs, only the legal suspension, reduction or extinction of a person's rights. And if, perchance, an official exceeds his or her delegated authority, the Act may confer on the official and on the government, statutory immunity. It is clear, therefore, that what is needed are not further avenues of legal relief under the ordinary law, but controls on the suspension or abrogation of basic rights in times of crisis under emergency powers legislation and an effective means of redress. This, in substance, is what has now been achieved under the **Canadian Charter of Rights and Freedoms**, the third and most potent source of legal safeguards protecting the individual's basic rights.

3) The Canadian Charter of Rights and Freedoms

The **Canadian Charter of Rights and Freedoms** guarantees to the individual certain basic liberties, notably the "fundamental freedoms" in Section 2, which include freedom of conscience, expression, peaceful assembly and association, and the "legal rights" in Sections 7 to 14 which guarantee the right to

life, liberty and security of the person; protection against unreasonable search or seizure and arbitrary detention; **habeas corpus**; the right to counsel; the presumption of innocence; the protection against self-incrimination, retroactive penal legislation, double jeopardy; and the right not to be subjected to cruel or unusual treatment or punishment. The right to equal treatment, or non-discrimination, is also guaranteed by Section 15 of the **Charter.** Any person whose rights have been infringed or denied is entitled to sue for relief under section 24 of the **Charter** and obtain such remedies as the Court considers appropriate and just in the circumstances. However, although these rights and freedoms are entrenched in the Constitution and apply to all legislation including the **War Measures Act**, they are not totally immune from derogation during periods of emergency.

The **Canadian Charter of Rights and Freedoms** makes no special provision for national emergencies (other than a technical provision allowing the House of Commons or a provincial Legislature to extend its life beyond five years in times of real or apprehended war, invasion or insurrection) but it does enable the government to suspend or curtail many of the guaranteed rights and freedoms in one of two ways. First, under Section 33 of the **Charter**, any of the "fundamental freedoms" and "legal rights" may be overridden for periods of up to five years by legislation which expressly provides that it is to operate notwithstanding the provisions in Section 2 and Sections 7 to 15 of the **Charter.** Secondly, the rights and freedoms guaranteed by the **Charter** are not absolute. They are all subject to "such reasonable limits, prescribed by law, as can be demonstrably justified in a free and democratic society" (Section 1). This means that a person whose guaranteed rights and freedoms have been infringed by emergency legislation may always challenge the constitutional validity of the measure and the onus will be on the government to show that such limits or restrictions were both "reasonable" and "demonstrably justified." It does not mean, however, that the government will not be able to discharge that onus, although the more serious the derogation the more convincing the evidence for its justification will have to be. Furthermore, the fact of having to justify any derogation may act as a salutary caution on the government's actions. The adoption of the **Charter** has considerably strengthened the civil rights of the individual. Whether the safeguards it offers are sufficient in scope and strength to protect the basic rights of the individuals during times of extreme crisis is an issue addressed later.

VII. THE NEED FOR REFORM

1. The Need for New Standing Legislation

It seems evident that, to meet all its responsibilities in the increasingly complex world of the 1980s, the federal government needs the means to respond quickly and effectively to a wide range of emergencies. The question thus becomes whether the federal government has the powers it needs to meet any foreseeable contingency. The above examination of the existing legal framework clearly suggests that the federal government's current powers, whether inherent or statutory, are not adequate to meet the needs of national emergencies.

The Crown Prerogative and the ordinary common law do not provide a clear, firm and sufficient legal basis for taking emergency measures. Whatever role the Crown Prerogative once had in war-related emergencies has largely been superseded by legislation. Its use in peacetime emergencies was always more doubtful, both in substance and in scope. The common law doctrine of necessity may offer some limited basis for justifying certain extraordinary measures in peacetime emergencies but it does not confer any special authority or immunity on the government. In addition to its inherent limitations in scope, the doctrine has certain procedural disadvantages. In sum, the non-statutory powers of the government to act in time of emergency are, in most cases, marginal, vestigial and uncertain.

As is also apparent, there are large gaps in the current arsenal of statutory powers available to the federal government. The two principal continuing emergency statutes, the **War Measures Act** and the **Energy Supplies Emergency Act, 1979** cover only certain types of contingencies. Many peacetime emergencies fall outside their scope, and are not adequately covered by the isolated provisions scattered among various other federal statutes and regulations conferring powers which might be useful in such emergencies. New legislation is therefore needed to enable the federal government to discharge its responsibilities to protect public safety and security during emergencies arising from natural disasters, certain major industrial accidents, serious energy crises, and public order emergencies which do not amount to "apprehended insurrection."

The issue thus becomes whether such legislation should be **ad hoc**, enacted to meet the needs of the moment, or whether new, general standing emergency legislation should be enacted. It has sometimes been argued, particularly with regard to public order emergencies, that it is preferable to rely on the ordinary law, supplemented by **ad hoc** emergency powers legislation, when necessary, rather than enact standing legislation for use in emergencies. The reservations about standing legislation rest on the fear that, if emergency powers are readily available they may well be too readily used. The advantage of requiring **ad hoc**, it is said, is that the granting of exceptional powers to the government could be done only by Parliament and according to the normal parliamentary process.

On the other hand, waiting for the crisis to erupt and asking Parliament to grant **ad hoc** emergency powers, carries with it certain pitfalls and disadvantages. Urgent legislation, enacted in haste, is not always sound legislation because it entails, very often, the sacrifice of some of the fundamental benefits of the normal democratic process. A Bill which may have been drafted in a hurry may not be subjected to full debate or proper examination. The result may be effective legislation, poorly designed for the task at hand, with the possibility of important safeguards overlooked. Unforeseen ramifications may be perpetuated if the legislation has no expiry date. Finally, if Parliament is dissolved, the delay in obtaining the necessary authorities for dealing with the emergency could result in damage that might have been avoidable.

Enacting standing emergency powers legislation in normal conditions offers certain clear advantages. Time can be devoted to the careful drafting of the Bill and any regulations. There will be an opportunity for full consultation with the provinces to ensure the clarification of responsibilities, the meshing of respective jurisdictions and the co-ordination of efforts. Parliament will have time to examine the legislation and consider whether it represents a proper balance between powers and safeguards.

If new legislation is needed to improve the federal government's capacity to deal with emergencies it would be preferable to have on hand general, continuing emergency legislation with adequate powers coupled with sufficient safeguards, ready to be invoked

immediately the need arises, than to rely on the hasty enactment of **ad hoc** legislation.

2. Achieving a Proper Balance Between Powers and Safeguards

Safeguards and powers are the two key components of emergency legislation that must always be kept in balance. In principle, greater powers require greater safeguards but, in practice, the equation is not always that simple. The appropriate balance is fundamentally influenced by the type of crisis. For example, in times of war, when the survival of the country is at stake, the government's powers must increase at the expense of safeguards to a degree that would be unacceptable in peacetime national emergencies. Safeguards, as the term is used here, comprise three distinct elements: safeguards to ensure the accountability of the Executive to Parliament; safeguards to preserve the federal character of the country; safeguards to guarantee the fundamental rights of the individual. How to achieve the desired balance between powers and safeguards in emergency powers legislation raises several key issues.

1) Wartime and Peacetime Emergencies: the Future of the War Measures Act

The **War Measures Act** is an anomalous statute. Enacted in 1914 after the outbreak of World War I, it conferred upon the Executive the power to govern all aspects of society by means of orders and regulations for the purpose of waging war. The Act was modelled on a similar English Act, the **Defence of the Realm Act, 1914**, which was also a wartime measure, but there were at least two significant differences. First, the **War Measures Act** extended not only to war, invasion or insurrection, which are war emergencies, but also to apprehended insurrection which, as indicated earlier, is a peacetime emergency. Secondly, while the English **Defence of the Realm Act** was repealed at the end of World War I, the **War Measures Act** has remained in force until the present day.

Whether such limited safeguards were appropriate even in wartime is open to question, but they were clearly inappropriate to peacetime emergencies within the scope of the Act. This was not of much practical consequence until October 1970, when the **War Measures Act** was used for the first time to deal with

a peacetime emergency. It soon became apparent that the full panoply of extraordinary emergency powers under that Act were not required to deal with a peacetime emergency arising from the breakdown of public order, and that the safeguards were plainly inadequate. A new special Act, the **Public Order (Temporary Measures) Act**, was therefore enacted and a notable feature of that Act was that it expressly incorporated a number of the safeguards in the **Canadian Bill of Rights.** The **Public Order (Temporary Measures) Act, 1970** expired on April 30, 1971.

Since 1970, there has been considerable debate about the proper role of the **War Measures Act** in peacetime emergencies. The consensus of opinion appears to be that it should have no role at all and that the **War Measures Act** should be restricted to wartime emergencies. If so, what kind of emergency legislation, if any, should be enacted to take over the peacetime functions of the **War Measures Act**? Whether the existing safeguards would be adequate if the **War Measures Act** were confined to wartime emergencies raises another issue which is considered below.

2) Safeguarding the Democratic Process: Checks and Balances on Executive Authority

During times of crisis, when extraordinary powers may be concentrated in the Executive, the ordinary democratic process may have to be truncated. However, certain controls ought never be sacrificed to the exigencies of the moment. If the emergency powers come from Parliament, the representatives of the people have a right to be satisfied that the powers are invoked for a purpose for which they were intended, that the powers are in fact needed and do not go beyond what is needed, that they are exercised in a legitimate manner, and that they are available for only so long as they are absolutely needed. In certain exceptional cases, the effective application of emergency powers may require that Parliamentary consideration be **in camera** and the results made public subsequently.

Taken as a whole, these are the conditions necessary to ensure that, even in times of crisis, the Executive remains accountable to Parliament. When existing standing emergency statutes are measured against these criteria they reveal certain shortcomings.

The McDonald Commission, echoing the concerns expressed by other bodies, has made important recommendations for change that would tighten Parliamentary control over the use of the **War Measures Act**, and which, if adopted, would go some way to meeting the criteria outlined above. The Commission recommended, first, that if the government invokes the **War Measures Act** when Parliament is not sitting, the Act should require Parliament to be recalled within seven days. This would ensure that Parliament was always seized with the matter within the shortest possible delay in order to consider whether or not to revoke the proclamation by a resolution of both Houses. The McDonald Commission also recommended that the government be required to divulge to Parliament, or to an all-party Committee, **in camera** if necessary, its reasons for invoking the **War Measures Act.** This would ensure an informed debate on the proclamation. Thirdly, the Commission recommended that a proclamation invoking the **War Measures Act** be valid for a maximum period of twelve months and that any extension would require the approval of Parliament. Finally, it recommended that all orders and regulations made under the **War Measures Act** be approved by Parliament in order to take effect. Draft regulations could be tabled for the approval of Parliament, which would enable them to be brought into force immediately the Act was invoked. Additional regulations made after the proclamation of the Act would have to be submitted to Parliament "forthwith" and would expire at the end of thirty days unless approved.

If the **War Measures Act** is modified to deal only with war emergencies, the overall approach to safeguards taken by the McDonald Commission would probably be suitable. If, however, the **War Measures Act** is to retain its peacetime role, further safeguards would be needed on the principle that there is a fundamental distinction between the minimum level of safeguards acceptable in war as opposed to peacetime emergencies.

Continuing emergency legislation dealing with peacetime crises should, in principle, follow the general pattern of the **Energy Supplies Emergency Act, 1979**, reinforced by adopting the recommendations of the McDonald Commission that all regulations be subject to Parliamentary scrutiny. The procedure for obtaining Parliament's confirmation of the initial order declaring

the state of emergency is a fundamental consideration in safeguarding the democratic process.

There are three basic possibilities. The declaration could be made subject to revocation by a negative resolution of both Houses of Parliament, as in the case of the **War Measures Act.** It could follow the **Energy Supplies Act, 1979** and require, instead, positive confirmation from Parliament within a reasonable time to continue in force. Thirdly, the invocation of emergency powers might require a resolution of Parliament to bring them into force, rather than a proclamation by the Executive.

3) Safeguarding the Federal Nature of Canada: Federal-Provincial Considerations

There are two distinct sides to the question of what kinds of safeguards ought to be incorporated in any new federal emergencies legislation to reflect and preserve the federal character of the country. As noted earlier, during urgent national crises the authority of the provinces may be temporarily eclipsed by the emergency doctrine. There are other kinds of emergencies that do not fall under the complete or exclusive jurisdiction of either level of government and require some accommodation to work out respective roles and responsibilities. To be consistent with the federal character of the country, federal emergency powers legislation ought to ensure, on one hand, that national emergencies do not irreparably harm the federal character of Canada and, on the other, that the strictures of federalism do not seriously impede the efficient handling of any emergency.

It has been suggested that in the interests of federalism, as well as the efficient mobilization of the nation's resources, the provinces should have a role in the process leading to the declaration of a national emergency. Although the federal government has always endeavoured to consult with the provinces before declaring a national emergency, several reform bodies have expressed the view that the provinces ought to have a stronger voice and a more formal role. There is less consensus on what that role should be and precisely how it should be formalized. Most proposals have linked the role of the provinces in the declaration of a national emergency to reform of the Senate, but even if the Senate is the most appropriate forum, a constitutional

change of this kind cannot take place under the aegis of new emergency powers legislation. However, new legislation dealing with peacetime emergencies could enshrine the principle that federal-provincial consultations shall take place, to the extent that circumstances permit, before any declaration of emergency is made and prior to the formulation of the federal response. This would provide an opportunity for negotiations and compromise consistent with the spirit of federalism.

To complement their role in the process leading to the declaration of a national emergency, the provinces ought to be prepared to play a significant part in handling the crisis after the national emergency has been proclaimed. That the federal Parliament has the constitutional authority to deal with every aspect of a national crisis is clearly established. Nevertheless, there are advantages from the point of view of respecting the federal framework of the country, as well as sound pragmatic reasons, to enlist the active support and collaboration of the provinces. This is one of the principal goals of the Joint Emergency Preparedness Program. It is also part of the mandate of all federal Ministers under the proposed **Emergency Preparedness Act.** The better the mechanisms for co-ordinating plans, defining responsibilities and sharing resources, the more likely it is that both federalism and the country will emerge from a national crisis intact.

This is equally true for those emergencies that do not fall under the jurisdiction of a single order of government because, though local and provincial in scope, they arise from an activity under federal regulation. In such cases, the objective should be to work out a satisfactory division of responsibilities. The mechanisms for doing so are already in place. As mentioned earlier, joint working groups have been established between Emergency Preparedness Canada and its provincial equivalents.

4) Safeguarding Civil Rights: the Protection Afforded by the Canadian Charter of Rights and Freedoms

Emergencies generally, and national emergencies in particular, demand effective and timely countermeasures of a type that often involve the temporary restriction, or even suspension, of some of

the basic rights of individuals. Emergencies legislation that enables government to have recourse to these kinds of countermeasures must endeavour to achieve a delicate balance. Such legislation must temporarily grant expanded powers to government for the sake of preserving life, property, or the rule of law in situations where these are threatened, yet it must also limit, to the minimum necessary, restrictions on individual rights and freedoms, the protection of which is fundamental to our constitutional order.

With the adoption of the **Canadian Charter of Rights and Freedoms** it might be thought that the issue of human rights considerations in emergencies legislation in Canada has been resolved. All federal and provincial emergencies Acts, including the **War Measures Act**, are subject to the guarantees afforded by the **Charter.** They will also apply, unless specific exemption is sought, to all future emergencies legislation, at both the federal and provincial level.

At the same time, it must be recognized that the **Charter** contemplates situations in which Parliament or a provincial legislature, as the case may be, may find it necessary to declare "that (an) Act or a provision therefore shall operate notwithstanding a provision included in Section 2 or Sections 7 to 15 of this Charter." A legislature may, in other words, direct that the guarantees of fundamental freedoms, legal and equality rights found in those sections will not apply to a particular statute or to a portion of it. Moreover, as has already been indicated, the guaranteed rights entrenched in the **Charter** are, under Section 1, all subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

It may well be that Parliament and the provincial legislatures will choose not to enact legislation overriding the guaranteed rights and freedoms in the **Charter**, and that the courts will develop satisfactory limits on the power to derogate from such rights under the proviso to Section 1. But there may still be sound reasons for not allowing the limits of the permissible derogations from entrenched rights to remain open-ended.

In the first place, there seems to be a consensus between present and previous governments, shared by the report of the McDonald Commission, that certain fundamental rights should be inviolable

even in times of national emergency. Some of those rights, identified by the Commission, have now been embodied in the **Canadian Charter of Rights and Freedoms** and thus are constitutionally entrenched, if not immune from derogation. They include the right to instruct counsel without delay (which corresponds to Section 10(b) of the **Charter**), the presumption of innocence (guaranteed by Section 11(d) of the **Charter**), the principle of non-retroactivity of penal legislation (recognized by Section 11(g)) and the rights to the assistance of an interpreter (equivalent to Section 14 of the **Charter**). Other rights which, in the view of the McDonald Commission, should be inviolable, such as the right of a Canadian citizen not to be deprived of citizenship, are not in the **Charter.** If a list of fundamental rights which ought to prevail undiminished even in emergencies could be agreed upon, there would be advantages to the citizen and to the state in identifying them in advance and inserting them in any standing emergency powers legislation.

Another reason for insulating certain fundamental rights from any form of derogation is that Canada is a signatory to the **International Covenant on Civil and Political Rights, 1966.** As such, Canada is obliged to ensure that its legislation conforms to Article 4 of the **Covenant,** which identifies certain rights that must be respected even in times of national emergency. That Article provides that "in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" a state may take measures derogating from its normal obligations but certain safeguards on civil and political rights must be maintained intact at all times.

Some of these find their parallel in provisions in the Canadian **Charter.** There can be no discrimination solely on the grounds of race, colour, sex, language, religion or social origin (compare Section 15 of the of the Canadian **Charter**). Emergency powers may not derogate from the right not to be arbitrarily deprived of life or subjected to cruel, inhuman or degrading treatment or punishment (compare Sections 7, 9 and 12 of the **Charter**), the right not to be subjected to slavery (compare Section 7), imprisoned for failing to fulfill contractual obligation, or subjected to retroactive penal laws (compare Section 11(g)), and the freedoms of thought, conscience and religion (compare Section 2 of the **Charter**). Since Canada is also a signatory to the

Optional Protocol to the **International Covenant,** a citizen may lodge a complaint to the United Nations Committee on Human Rights if Article 4 is not respected by the Canadian government.

The United Nations Human Rights Committee has already drawn attention to the fact that the **War Measures Act** does not embody the human rights guarantees called for by the **Covenant,** most notably those set out in Article 4 dealing with national emergencies. The Committee has asked Canada to give legislative effect to its own expressed intention of living up to these international obligations.

VIII. THE EMERGENCIES ACT (BILL C-77)

The previous two chapters reviewed the shortcomings of the current legal regime for dealing with national emergencies, and discussed a number of features that would be appropriate for inclusion in new legislation.

The shortcomings of the existing statutory regime may be summarized as follows:

The **War Measures Act** is generally conceded to be too broad and sweeping for peacetime public safety or public order emergencies. While it provides adequate powers for war or invasion, it includes few safeguards against abuse. Less provocative legislation for dealing with a deepening international crisis is not available.

Other Statutes such as the **National Defence Act**, the **Criminal Code**, and several other Acts contain some provisions that could be applied to emergencies. In most cases these provisions are unnecessary for a minor emergency and likely to be inadequate for a major one. Some would possibly be subject to challenge under the **Charter.** If invoked in combination, they would give rise to considerable confusion. Finally, few are adequately safeguarded.

The Crown Prerogative and the common law doctrine of "necessity" could possibly be used as the legal basis for taking emergency measures. However, the legal foundations of this approach are shaky and uncertain.

The government could resort to the enactment of "ad hoc" legislation during an emergency, basing its legislation on the "peace, order and good government" clause of the **Constitution Act.** However, the "ad hoc" approach could result in hasty and poorly drafted legislation if prepared in the heat of an urgent crisis. The process could be insufficiently rapid if Parliament were not in session, and would be impossible if Parliament were dissolved when the emergency arose.

Emergencies legislation is an attribute of statehood. Canada is unique among industrially developed nations in not having comprehensive emergency legislation on the books. As well, all of our provinces

and territories have legislation in place to deal with their responsibilities for emergencies.

The additional features that would be desirable in new legislation include adequate procedural safeguards against its misuse; appropriate opportunities for Parliament to be involved in its invocation and to oversee its use; appropriate recognition of the legitimate interests, concerns, and constitutional authorities of the provinces and territories; sufficient safeguards against inappropriate infringement of fundamental human liberties and civil rights; limitation of exceptional powers to what is necessary to deal with a national emergency; and provision to compensate individuals for any unfair damage or injury caused to them as a result of misapplication of the powers granted by the legislature.

The **Emergencies Act** meets the shortcomings of the existing regime and incorporates the desirable features noted above. It will enable the federal government to discharge its constitutional responsibility to provide for the safety and security of Canadians during "national" emergencies which are defined in the Preamble - a responsibility which stems from the "peace, order and good government" clause of the Constitution and from the so-called "emergency doctrine" which has been elaborated by both British and Canadian courts over the years.

The Act will provide the government with an appropriately safeguarded statute to deal with a full range of possible emergencies, not only enabling it to act quickly to minimize injury and suffering, but also ensuring that exceptional powers granted are no greater than those necessary to cope with the situation.

The Act clarifies for the people of Canada the four kinds of emergency situations which would justify reasonable limitations on Charter rights in accordance with Section 1 of the **Charter.** (Sec. 1 states that **The Canadian Charter of Rights and Freedoms** guarantees the rights and freedoms as set out in it are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.")

The Act will enable the government to discharge its responsibility for public order emergencies that become national emergencies, without

having to resort to the "bludgeon" of the **War Measures Act**, as it did in October 1970.

The Act will enable the government to react to a major international emergency by instituting appropriate preventive and preparatory measures in concert with our allies, without having to take the provocative step of invoking the **War Measures Act.**

The Act consolidates in one Act, a code of safeguards and procedures to protect fundamental rights and freedoms during emergencies.

The Act removes the need to deal with emergencies by hastily introducing the flawed "ad hoc" legislation after an emergency has occurred.

The Act will help the federal govermment, in co-operation and consultation with the provinces, to improve the national standard of emergency preparedness by stimulating emergency planning and preparedness.

1. **Safeguards of the Emergencies Act**

Perhaps even more important than the temporary exceptional measures for which the **Emergencies Act** provides are the safeguards it makes explicit.

The Act is subject to both the **Canadian Charter of Rights and Freedoms** and the **Canadian Bill of Rights.** In addition, it fulfills Canada's obligations under the **International Covenant on Civil and Political Rights**, to the effect that certain fundamental rights be inviolate even in the most severe emergencies. These rights include:

- the right to life,
- freedom from torture and/or inhuman punishment and slavery,
- freedom from the retroactive application of sanctions,
- the rights to the freedom of thought, conscience and religion.

Other safeguards and procedures of the draft **Emergencies Act** provide for Parliamentary oversight

of the use of emergency powers, and ensure that the Executive is accountable to Parliament for its use of such powers. The Act requires Parliament to be called into session within seven days after invocation of the Act, and be given:

- a concise explanation of the reasons for invocation;
- an opportunity for debate;
- an indication of the special measures anticipated; and
- an opportunity to revoke the declaration of an emergency and the special orders and regulations, made pursuant thereto.

The safeguards place a number of constraints on the use of special emergency powers by the executive. These include:

- a time limit on the application of the Act, once it is invoked;
- a requirement to return to Parliament, with full justification, for a continuation or amendment of the Act's application
- a requirement to consult the provinces before declaring an emergency and in some cases, permit invocation of the Act only following an indication from the Province in which the direct effects of the emergency occur that it is incapable of coping with the emergency;
- provisions which ensure that special temporary measures are no more than those dictated by the situation;
- a section which provides for redress and compensation procedures for any abuse of the special powers.

2. Details of the Emergencies Act

The **Emergencies Act** is a comprehensive multi-part Act which provides the federal government

with the means to fulfill its constitutional responsibilities for national emergencies, including public welfare emergencies, public order emergencies, serious international crises and war emergencies. The Act also provides for parliamentary review of the use of emergencies legislation and mechanisms to ensure that the government be kept accountable for its use of emergency powers.

The Act sets out, in four separate parts, the authorities, procedures and safeguards applicable to each of four categories of emergencies. The intent is that each part may be invoked separately. More than one Part may be invoked at the same time to deal with very severe emergencies arising from several contingencies, but compounded national emergencies of this sort would be doubly unlikely. Other parts of the Act deal with compensation, Parliamentary supervision, and consequential amendments.

The Act is divided into seven parts as follows:

- Preamble
- Part I: Public Welfare Emergencies
- Part II: Public Order Emergencies
- Part III: International Emergencies
- Part IV: War Emergencies
- Part V: Compensation
- Part VI: Parliamentary Supervision
- Part VII: Consequential and Related Amendments

The Preamble to the **Emergencies Act** forms a preliminary statement of the reasons which makes its enactment desirable. It is an integral part of the statute and constitutes a legitimate aid to construction and explanation of the "purport and object" of the Act, including the general objective of protecting the fundamental rights and freedoms guaranteed by the **Charter**, the **Canadian Bill of Rights** and the **International Covenant on Civil and Political Rights.**

The **Emergencies Act** applies only to "national emergencies" which are defined in the Preamble as follows. A national emergency is:

> "an urgent and critical situation of a temporary nature that imperils the well being of Canada as a whole or that is of such proportions or nature as to exceed the capacity or authority of a province to deal with it and thus can be effectively dealt with only by Parliament in the exercise of the powers conferred on it by the Constitution."

This definition of a national emergency makes it abundantly clear that the **Emergencies Act** is not to be invoked frivolously during "routine" or localized emergencies but applies only to an emergency which affects the well being of Canada as a whole or exceed the capacity or authority of the provinces to deal with it. The definition has been based on the judgements of Laskin C.J.C. and Ritchie J. in the **Anti-Inflation Reference** and has the advantage of being generally acceptable to the Supreme Court and to the provinces.

Parts I to IV are parallel parts dealing with each of the four types of national emergencies which could be declared pursuant to the Act. Each part contains provisions governing the declaration of the type of the emergency in question (the proclamation); requiring the contents of the declaration to be tabled in Parliament; prescribing the day on which the declaration becomes effective; prescribing the time limit imposed on the declaration; setting out a list of powers that may be acquired by order and regulation pursuant to the declaration; permitting the designation of the geographical area in which the declaration applies (Parts I and II only); provisions clarifying control of police forces under provincial direction or control (Parts I and II only); provisions governing the revocation of the declaration by Parliament or the Governor in Council; provisions governing the continuation or amendment of the declaration by the Governor in Council; provisions relating to the expiration of the Act; as well as provisions clarifying the role of the province or provinces affected in the declaration process.

Part I of the draft Act deals with public welfare emergencies. It is designed to enable the

federal government to marshall a national response to deal effectively with a public welfare emergency that is so serious as to be national emergency and is beyond the capacity of one or several provinces to cope. Provisions of the Act will ensure a quick and efficient response to a provincial or territorial request for the federal declaration of an emergency; will bring the combined resources of the nation to bear on the management of the emergency and provision of relief; and will permit an equitable sharing of the burden of responding to, and recovering from, the emergency.

All provincial governments have enacted standing emergencies legislation to deal with public welfare emergencies and have developed sufficient competence, resources and experience to enable them to cope with most public welfare emergencies either with or without the assistance of contiguous provinces or the federal government, using current standing authorities.

In a "national emergency" the combined resources of the entire nation may have to be brought to bear to deal with the emergency. A vast, co-ordinated and timely response of the sort required could only be mounted by the federal government, since only it can requisition and move private resources across provincial boundaries in an emergency.

In the interests of federalism, as well as the efficient mobilization of the nation's resources, it is recognized that the provinces should have a role in the process leading to the declaration of a public welfare emergency. Although the federal government would normally consult with the provinces before declaring a national emergency, several studies of constitutional reform have expressed the view that the provinces ought to have a stronger voice and a more formal role. The **Emergencies Act** therefore includes appropriate procedures in respect of provincial consultation.

"Consultation" in this context is to be interpreted in its fullest dictionary sense of not only exchanging information but also seeking the advice and taking into consideration the interests and views of the provincial governments which may be affected. Furthermore, to ensure clarity and accountability, the onus of consultation will vary depending upon the circumstances of the emergency and operational requirements. The limitation of "reasonableness," where

it is applied, is designed to permit the commencing and conducting of necessary operations and controls in a timely fashion. It is the intention of the federal government to work with provincial governments through Emergency Preparedness Canada to develop detailed plans and procedures to facilitate effective consultation when the need to consider invocation of the Act arises; this aspect is covered in the companion **Emergency Preparedness Act.**

The **Emergencies Act** stipulates that Part I may not be invoked unless the province in which the emergency principally occurs indicates that it cannot cope without federal authorities and assistance. In large emergencies affecting several provinces, all those affected must be consulted before invocation. In addition, it states that provincial jurisdiction over the police forces, including the RCMP, over which the province normally has jurisdiction, will not be altered. Thus it will not be possible for the federal government to use the legislation to intervene unilaterally in provincial or territorial emergencies which are within the capacities or authorities of the provinces and territories to respond to using their own resources (along with such federal assistance as might be provided without recourse to exceptional powers).

Part I does not provide any special powers that could be used to end or settle a labour dispute. The Act would permit the authorities to direct people to provide essential services which they are competent to provide, when "a breakdown in the flow of essential goods, services or resources" results in a "danger to life or property, in social disruption, so serious as to be a national emergency." This direction would, however, only be temporary and could be applied only to the extent needed to deal with the emergency. It would not extend to the termination of a strike nor to the imposition of the terms of settlement of a dispute between an employer and the employee organization, nor to the modalities for reaching a settlement. In short, Part I could not be used to interfere with employer-employee relations.

Part II of the **Emergencies Act** is designed to deal with public order emergencies including situations resulting from lawlessness, terrorism or insurrection. The common thread tying them together is that public order emergencies arise from the deliberate actions of individuals or groups that constitute

"threats to the security of Canada." When such disturbances are so serious in nature or so widespread in scope as to become national emergencies, the federal government has a constitutional responsibility to intervene to restore conditions of safety and security. The formal definition of a public order emergency makes use of the notion of "threats to the security of Canada" as defined by the Canadian Security Intelligence Service legislation. This latter definition was given very close scrutiny by Parliament during its consideration of the CSIS Act. For ease of reference, it is reproduced below:

> "threats to the security of Canada" means
>
> (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
>
> (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political objective within Canada or a foreign state, and
>
> (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,
>
> but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

Part II is intended to replace the "apprehended insurrection" reference of the **War Measures Act.** Unlike the **War Measures Act,** however, Part II confers no new powers relating to search, seizure, arrest or detention. The provisions of

the **Criminal Code** are considered to be entirely adequate to deal with those aspects of the restoration and maintenance of public order, even under unusual and exceptional circumstances.

Less serious emergencies arising from the breakdown of public order would continue to be dealt with under the **Criminal Code** or Part XI of the **National Defence Act** (which covers aid to the Civil Power and will not be amended, except to delete the requirement for the provinces to pay for such aid.)

For public order emergencies, as with public welfare emergencies, the **Emergencies Act** may not be invoked unless the situation constitutes a national emergency. If the emergency is confined to a single province, that province must indicate its incapacity or lack of authority to deal with the emergency before the Act can be invoked. If the effects of a public order emergency extend to more than one province or if the security of the nation as a whole is threatened, the federal government will be able to act under the Act's public order provisions provided that the requirements for consulting affected provinces are met.

Part III of the **Emergencies Act** deals with international emergencies and is intended to provide special temporary powers to enable the government to respond at an early stage in a serious international crisis, without resorting to the provocative and draconian powers needed for a war emergency. A declaration under this section may not be made until all provinces have been consulted to the extent that in the opinion of the Governor-in-Council it is appropriate and practicable to do so.

Part III enables the government to undertake and implement, in concert with our allies, civil military, economic and diplomatic preparatory and preventive measures and responses aimed at dampening the crisis and at the same time to bring the nation to a preliminary state of readiness for war; to begin the process of civil mobilization; to prepare for the protection of the civil population and thereby to create a deterrent to possible acts of aggression which are contrary to Canada's interests or the interests of our allies.

Part IV of the Act deals with war emergencies and provides powers identical to those in the **War**

Measures Act, except that they apply only to real or imminent war or invasion. Provinces must be fully consulted prior to the declaration of a war emergency "to the extent that, in the opinion of the Governor-in-Council it is appropriate and practicable to do so" (S.51).

Part IV should not, however be mistakenly viewed as the **War Measures Act** in another guise. The following table graphically illustrates the differences:

Emergencies Act, Part IV	War Measures Act
Application: "war or other armed conflict, real or imminent."	"war, invasion or insurrection, real or apprehended."
Invocation must be justified and can be contested.	declaration is "conclusive evidence."
Orders and regulations subject to Parliamentary review.	no provision.
Parliament can initiate re-consideration and revocation.	no provision.
Canadian Bill of Rights applies.	does not apply.
Time limited (360 days) - extension requires Parliamentary approval.	no time limit.
Compensation for loss or injury as a result of application of the Act is provided for.	no provision.
Provinces must be consulted, and their views reported to Parliament.	no provision.

Part V relates to compensation and describes the various remedies and routes the individual may pursue for compensation in the event of injury or damages resulting from the use of special powers in a national emergency. This part will reassure the many Canadians who regret that such remedies were not

available to Japanese-Canadians whose property was confiscated and who were interned during the Second World War.

Part VI relates to Parliamentary supervision and sets out provisions governing the procedures, roles and supervisory powers of parliament in the making, amendment, revocation or continuation of the declaration of an emergency, and the use of orders and regulations pursuant to the Act. The details are summarized in the earlier section of this chapter dealing with Safeguards.

Part VII includes a list of consequential and related amendments to other federal statutes (see Annex A) which apply to national emergencies and are intended to ensure that emergency powers exercised in other statutes are subject to the same safeguards and procedures to which the **Emergencies Act** is subject.

NATIONAL DEFENCE ACT R.S.C. 1970, C.N.-4
Consequential and Related Amendments
Explanatory Notes

Clause 71 Sections 218-220 of the **National Defence Act** are to be repealed.

S.218 deals with "Emergency Powers in relation to property" and empowered the Governor in Council (GinC in an emergency by order or regulation to empower the Minister of National Defence to "take control of property considered necessary for defence purposes" - to assume the operation and management of such property" including "all persons employed in connection with such property."

S.219 of the **National Defence Act** empowers "the officer in command of any unit" subject to regulations made by the GinC to "requisition, remove, destroy, desolate or lay waste" any designated property.

These subjects are now covered in S.6(c), S.28(b) and Part V of the Emergencies Act - and subject to all the safeguards and provisions of the Emergencies Act.

S.220 provides for compensation from the Consolidated Revenue Fund (C.R.F.) to persons who have lost such property.

Clause 72 The fourth paragraph of the form in section 237 is to be repealed. The fourth paragraph deals with an undertaking by the province to pay "all expenses and costs" incurred for the calling out of the Canadian Forces. This amendment together with the amendment proposed in clauses 73 and 74 would remove the requirement that a province pay the costs incurred by the Canadian Forces in providing "aid to the civil power" at the request of the province.

Clause 73 Subsection 238(2) of the **National Defence Act** is to be repealed. It deals with "an unconditionally undertaking" by the Attorney General of a province to pay all expenses and costs incurred for the calling out the Canadian Forces in "Aid to the Civil Power."

Clause 74 See also note to clause 72. Sections 241 and 242 of the National Defence Act are repealed. S.241 provided that "all expenses and costs incurred" for calling out the Canadian Forces in aid to the civil power shall be paid by the province.

S.242 provided for funds to be advanced from CRF until the province repaid the costs.

New S.242 provides that the monies required to pay for the calling out of the Canadian Forces in aid to the civil power shall be advanced out of the CRF on authority of the GinC.

Clause 75 S.260 of the **National Defence Act** is repealed. It is consequential on the repeal of S.218. S.260 creates an offence for non-cooperation re S.218.

Clause 10 of the **Emergency Preparedness Act** amends S.4 of the National Defence Act to transfer responsibility for **civil defence** from the Minister of National Defence to the Minister Responsible for Emergency Preparedness.

Sections of the **National Defence Act** which relate to emergencies but which will **not** change are:

Part XI deals with aid to the civil power and permits the Attorney General of a province to requisition the armed forces in aid to the civil power.

Section 34 under which a province may request assistance from the armed forces in times of "national disaster."

ENERGY SUPPLIES EMERGENCY ACT
Consequential and Related Amendments
Explanatory Notes

The purpose of the consequential and related amendments in Part VII of the **Emergencies Act** is to ensure that federal statutes which contain provisions which could be applied to national emergencies are subject to the same safeguards and procedures (regarding fundamental rights and freedoms; provincial consultation; parliamentary surveillance and compensation) as apply to the **Emergencies Act.**

The main consequential and related amendments to the **Energy Supplies Emergency Act** are as follows:

The Preamble of the **Emergencies Act** does not apply to the **Energy Supplies Emergency Act.**

Clause 62 Subsection 9(7) of the ESE Act is repealed. This section exempted members of the Allocation Board for liability.

New sections which are the equivalent of S.45(1) and (2) in the **Emergencies Act** (relating to liability of Ministers servants or agents of the Crown) are added to the ESE Act in S.9.

Former subsections 11(2) to 11(11) of the ESE Act are repealed and replaced by new S.11(2) which is the equivalent to S.5(1), 16(1), 27(1), 37(1) of the **Emergencies Act.** An order issued under the ESE Act is thus treated as the equivalent of a proclamation declaring an emergency under the **Emergencies Act** (hence it must be tabled within seven sitting days). New S.11(3) of the ESE Act is the equivalent of former S.11(11) of the ESE Act. Former Sections 11(2) to 11(11) of the ESE Act dealt with conditions of parliamentary surveillance but did not meet the higher standards regarding Parliamentary surveillance of the **Emergencies Act.**

Former subsection 12(6) of the ESE Act is repealed. It dealt with approving or amending a mandatory allocation program. Amendments are now covered under ESE Act S.38 which is the equivalent of S.58 of the **Emergencies Act.**

S.13(1) of the ESE Act is amended to add the phrase "by order" to relate it to S.11 which equates an order with a declaration of a national emergency under the ESE Act. S.13(1) would be subject to new ESE Act S.35 and S.36.

Former S.19(2) of ESE Act is repealed and replaced by new S.35 and S.36. Former S.19(2) dealt with parliamentary scrutiny of orders to institute a fuel rationing program.

Former S.22 of the ESE Act (which dealt with a special tribunal to hear complaints) is repealed and replaced by the equivalent of the compensation provisions of the **Emergencies Act** S.45-54.

The only difference is that "loss, injury or damage" is replaced by "deprivation of property" (S.22 line 5).

New S.22.1 of the ESE Act is the equivalent of S.47 of the **Emergencies Act.**

New S.22.2 of the ESE Act is the equivalent of S.48 of the **Emergencies Act.**

New S.22.3 - 22.8 of the ESE Act are the equivalent of S.49-S.54 of the **Emergencies Act.**

Former sections 34(4) and 34(5) of the ESE Act are repealed. They dealt with tabling a notice of motion - a further element of Parliamentary surveillance provisions. They are replaced by new S.35-36.

New sections 35-38 of the ESE Act are added to the ESE Act.

New S.35 of the ESE Act is the equivalent of the provincial consultation clauses in the **Emergencies Act.** (the word "appropriate" has been excluded to insure that there is greater obligation on behalf of the federal government to consult with the provinces).

New S.36 of the ESE Act is the equivalent of S.56 of the **Emergencies Act.**

New S.37 of the ESE Act is the equivalent of S.57 of the **Emergencies Act.**

New S.38 of the EST Act is the equivalent of S.58 of the **Emergencies Act** (deals with continuations or amendments of orders).

Radio Act

Clause 76: The amendment to the **Radio Act** is consequential on the proposed **Emergencies Act.** S.6(1)(d) of the **Radio Act** permits the Governor in Council to issue orders censoring radio messages in time of war, real or apprehended or rebellion.

ANNEX B

Current Federal Statutory Provisions

This Annex presents a partial list of the exceptional powers conferred on Ministers or on the Governor in Council by ordinary Acts. Some of these Acts were well known, while others were brought to light in the course of computer searches of the Revised Statutes of Canada and the Consolidated Regulations. For these searches, the Quic-Law system was employed, using such terms as "emergency," "disaster," "war," and "urgency."

More than 150 separate provisions in current federal statutes were screened for inclusion in this list. Of these, only a few proved to grant exceptional powers of any importance. Over 500 "emergency" provisions were found in the Consolidated Regulations, and of these fewer still were deemed to confer authorities of great potential importance in serious emergencies of any kind. On the other hand, given the inadequacies of keyword searches, there may well be additional "emergency-type" powers to be found in ordinary statutes. Failing a case-by-case review of federal statutes to determine the potential breadth of the powers conferred directly or indirectly, it is not possible to comment with assurance on the limits of executive action during emergencies of different kinds.

As a result of a review of the Acts identified by the keyword search of the statutes, the following 13 were judged to confer significant emergency powers.

1. **War Measures Act**, R.S.C. 1970, c.W-2 - which confers on the Governor in Council extremely broad powers in the event of "war, invasion or insurrection, real or apprehended."

2. **National Defence Act**, R.S.C. 1970, c.N-4 - which enables (i) the Governor in Council to require the armed forces to render assistance in times of "national disaster;" (ii) a provincial attorney-general to requisition the armed forces "in aid of the civil power;" (iii) the Minister of National Defence or a commanding officer to requisition or take control of

property of any kind during a "emergency" declared by the Governor in Council.

3. **Energy Supplies Emergency Act, 1979**, S.C. 1978-79 c. 17 - which enables the Governor in Council to impose gasoline rationing or take other steps to conserve supplies and ensure adequate distribution in a national emergency caused by shortages or market disturbances affecting the national security, welfare and economic stability of Canada.

4. **Broadcasting Act**, R.S.C. 1970, c.B-11 - which enables the Governor in Council to order the broadcasting of programs deemed to be of "urgent importance" (s.18).

5. **Canada Elections Act**, R.S.C. 1970, c.14 (1st Supp.) - which allows the Chief Electoral Officer to (i) extend voting laws if voting has to be suspended because of "accident, riot or other emergency" (s.14); or (ii) postpone elections if by reason of flood, fire or other disaster,it is impracticable to carry (them) out" (s.6).

6. **Clean Air Act**, S.C. 1970-71-72, c.47 - which enables the Governor in Council to put into effect a national emission standards to meet a "national emergency" created by "extremely hazardous air contaminants" without waiting the normal 60 days after publication (s.13).

7. **Criminal Code**, R.S.C. 1970, c.C.-34 - which permits normal procedures for obtaining authorization to wiretap to be abbreviated in cases of "urgency" (s.178.15).

8. **Expropriation Act**, R.S.C. 1970, c.16 (1st Supp.) - which empowers the Governor in Council to reduce or eliminate the normal procedures if possession by the Crown is "urgently required" (s.17(2)).

9. **Navigable Waters Protection Act**, R.S.C. 1970, c.N-19 - which empowers the Minister to remove or destroy vessels which obstruct or render navigation more dangerous (s.14).

10. **Official Secrets Act**, R.S.C. 1970, c.0-3 - which permits in cases of "great emergency" an RCMP Superintendent to issue a search warrant (s.11).

11. **Radio Act**, R.S.C.1970, c.R-1 - which empowers the Governor in Council to make regulations for the censorship and control of radio signals and messages in case of "actual or apprehended war, rebellion, riot or other emergency" (s.60).

12. **Transportation of Dangerous Goods Act**, S.C. 1980-81, c.36 - which empowers authorized persons, in the event of an accident, to take "all reasonable measures consistent with public safety;" grants access to any property, in order to prevent or mitigate harm to life, property or the environment from spills; and protects such persons from civil or criminal liability (s.17).

13. **Canada Post Corporation Act**, S.C. 1980-81, c.54 - empowers the Corporation, with the approval of the Minister, to make "such arrangements for transmitting mail in emergencies as, in its opinion, are necessary in the interests of the public" (s.36).