

3. OPERATION OF THE FOREIGN ENLISTMENT ACT, 1937, UPON ENLISTMENT IN CANADA FOR SERVICE IN THE ARMED FORCES OF FINLAND

The Government has received numerous enquiries, from the Consul General for Finland and from other interested persons, as to the position of Finnish volunteers under The Foreign Enlistment Act 1937.

While, ordinarily, it is not the practice of the Government to issue general statements with regard to the interpretation of a statute, it has been necessary, in the case of this Act, to make certain preliminary decisions in matters of governmental administration that are affected by the provisions of the Act.

The general provisions of the Act, including prohibition of enlistment in foreign wars, can be invoked only when there is a state of war in the strict sense of the term. Armed conflict, unaccompanied by a formal proclamation of war, or by the assertion of the exercise of belligerent rights, or by a proclamation of neutrality, does not bring them into operation. Action by the Governor in Council, under Section 19, would be necessary to make the general provisions apply to the Finnish-Russian conflict. This section enables the Governor in Council to provide for a number of matters, including the application of the provisions of the Act, with necessary modifications, to any case in which there is a state of armed conflict existing between foreign countries, and the regulation of the issue, restrictions, cancellation and impounding of passports.

No action has been taken by the Governor in Council to apply the Act to the armed conflict which now exists in Finland, and no restrictions have been imposed upon the issue of passports to Canadians who have volunteered for service in the Finnish forces.

In the United Kingdom, the provisions of the Foreign Enlistment Act, 1870, are different from those of the Canadian statute. The Government has the authority to grant specific or general licences permitting enlistment, notwithstanding the provisions of the Act. Action has been taken and, with the exception of persons within the classes presently subject to the United Kingdom National Service Act, enlistment is freely permitted.

The position in Canada is not appreciably different, in practical effect, from that which exists in the United Kingdom. There are no barriers to volunteering by Canadian nationals or Finnish nationals or any other persons. The only restrictions are those arising under the Provisions of Section 11 of the Act, which penalize recruiting or inducement of enlistment in times of peace and war alike, subject, however, to special exceptions in the case of recruiting, by Consuls, of their own nationals.