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London, July 11th, 1917.

Kemp Defensor,  
Ottawa.

Under attestation form Canadian soldier agrees be inoculated and vaccinated.

Turners routine order 1221 twentyfirst April, 1917 makes refusal an offence.

Canadian soldier was recently court-martialled and convicted for refusal submit inoculation. British Judge Advocate General quashed conviction on ground refusal was not military offence as soldier cannot by agreement make failure submit inoculation crime punishable by military law. Judge Advocate considers this can only be done by statute or regulation having same force.

Our military and medical advisers here are strongly of opinion that agreement which every soldier makes submit himself to this treatment should be strictly enforced and that if necessary regulation under sections 74 and 144 of Militia Act should be passed making refusal military offence punishable by Court Martial.

No Canadian soldier is allowed to go to France unless has been inoculated and vaccinated. Number cases in which refusal attempted is small but if allowed go unchecked would have very bad effect from disciplinary standpoint.

Perley

arises.

Your obedient servant,

E. L. Newcombe

Deputy Minister of Justice,

The Deputy Minister

of Militia and Defence,

Ottawa.

Ottawa, 31st July, 1917.

1258/17.

Sir:-

Referring to your letter of 24th instant, with enclosures, submitting, as I understand, a question as to the power of the Governor in Council to provide by regulation that it should be a military offence cognizable by court martial for a soldier belonging to the Canadian Expeditionary Forces to refuse to be inoculated and vaccinated before going to the Front, I may say, with all deference to the contrary view expressed by the Judge-Advocate General, that I have no doubt that the members of the Canadian Expeditionary Forces remain subject to Canadian legislative jurisdiction, although absent from Canada upon foreign service. This I think is sufficiently clear having regard to the constitution of the force and the provisions of Section 177 of the Army Act, and therefore I think that under the powers conferred by the Militia Act and the War Measures Act, 1914, it is competent to the Governor in Council to enact regulations to the effect in question.

I preceive that His Majesty's Judge Advocate General is reported to have quashed a conviction against a Canadian soldier for refusal to be inoculated and vaccinated upon the ground that such refusal does not constitute a military offence under the law as it stands, but I have not considered the question which this intimation suggests as to the authority of His Majesty's Judge Advocate General to quash a Canadian conviction, and I do not understand that that question arises.

Your obedient servant,

E. L. Newcombe

Deputy Minister of Justice,

The Deputy Minister  
of Militia and Defence,  
Ottawa.

PC 2830

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ADDRESS REPLY TO  
THE SECRETARY, MILITIA COUNCIL  
HEADQUARTERS,  
OTTAWA, CANADA

H.C. 8358-1-5  
AND QUOTE NO.

DEPARTMENT OF MILITIA AND DEFENCE

OTTAWA,.....September 27, 1917.....

To -

His Excellency

The Governor-General in Council.

WHEREAS representations have been made by the Military Authorities Overseas, and by the Medical Authorities both Overseas and in Canada, that it is desirable in the interests of the health of the troops, and the welfare of Canada generally, that vaccination against smallpox and inoculation against typhoid fever, dysentery, cholera and other such infectious diseases be made compulsory in the cases of members of the Canadian Expeditionary Force, and that all soldiers be required to submit to blood-examinations when so required by superior authority. x

The undersigned has the honour to recommend that an Order-in-Council be passed, under the provisions of THE WAR MEASURES ACT, 1914, to the effect that -

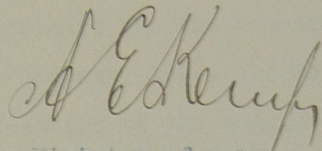
1. When in the judgment of the Military Authorities such procedure is necessary, compulsory vaccination against smallpox and compulsory inoculation against typhoid fever, dysentery, cholera and other such infectious diseases, may be resorted to in the cases of members of the Canadian Expeditionary Force.

2. With a view to the protection of the community against the transmission of venereal disease, all members of the Canadian Expeditionary Force shall submit to blood-examinations, when so required by superior authority.

3. Notwithstanding the foregoing provisions, and in addition thereto, it shall be an offence,

cognizable by a Court-Martial, for a soldier belonging to the Canadian Expeditionary Force to refuse to be inoculated or vaccinated, or to submit to the blood-examinations above mentioned, and for such offence he shall, on conviction, be subject to the penalty provided for an offence under Section 18 of the Army Act.

Respectfully submitted:



Minister of Militia and Defence.

1. Copy of cable from Overseas Minister dated July 11th, attached.
2. Copy of letter from Deputy Minister of Justice to Deputy Minister of Militia, dated 31st July, 1917.