

Source: British Columbia Archives

Call Number: MS-2119

Box: 1

File: 2

For research or private study
use only.

ORDER IN COUNCIL RE DEPORTATION OF JAPANESE, P.C. 7355, 7356, 7357
NOTE OF OPINION RE P.C. 7355, 7356, 7357
NOTES RE VOLUNTARY REPATRIATION, RESETTLEMENT. REPATRIATION FORM

Add. MSS.

2119

Order in Council re deportation of Japanese.
P.C. 7355.

AT THE GOVERNMENT HOUSE AT OTTAWA
SATURDAY, the 15th day of DECEMBER, 1945.
PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS during the course of the war with Japan certain Japanese nationals manifested their sympathy with or support of Japan by making requests for repatriation to Japan and otherwise;

And WHEREAS other persons of the Japanese race have requested or may request that they be sent to Japan;

AND WHEREAS it is deemed desirable that provisions be made to deport the classes of persons referred to above;

AND WHEREAS it is considered necessary by reason of the war, for the security, defence, peace, order and welfare of Canada, that provision be made accordingly;

NOW HEREBY, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, concurred in by the Secretary of State for External Affairs, and under the authority of the War Measures Act, Chapter 206 of the revised Statutes of Canada, 1927, is pleased to make and doth hereby make the following Order,-

- O R D E R -

1. In this Order, unless the context otherwise requires:
 - (a) "deportation" means the removal pursuant to the authority of this Order of any person from any place in Canada to a place outside Canada;
 - (b) "deported" means removed or sent from Canada pursuant to the authority of this Order;
 - (c) "Minister" means the Minister of Labour;
 - (d) "request for repatriation" means a written request or statement of desire, to be repatriated or sent to Japan.
2. (1) Every person of sixteen years of age or over, other than a Canadian national, who is a national of Japan resident in Canada and who,
 - (a) has, since the date of declaration of war by the Government of Canada against Japan, on December 8th 1941, made a request for repatriation; or
 - (b) has been in detention at any place in virtue of an order made pursuant to the provisions of the Defence of Canada Regulations or of Order in Council P.C. 946, of the 16th day of August, 1945, and was so detained as at midnight of September 1st, 1945;may be deported to Japan.

Every natural born British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation may be deported to Japan: provided that such person has not revoked in writing such request prior to midnight the first day of September, 1945.

(3) Every natural born British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation may be deported to Japan: Provide that such person has not revoked in writing such request prior to the making by the Minister of an order for deportation.

(4) The wife and children under sixteen years of age of any person for whom the Minister makes an order for deportation to Japan may be included in such order and deported with such person.

3.

Subject to the provisions of section 2 of this Order, a request for repatriation shall be deemed final and irrevocable for the purpose of this Order or any action taken thereunder.

4.

The Minister may

- (a) make orders for the deportation of any persons subject to deportation;
- (b) take such measures as he deems advisable to provide or arrange for the deportation of such persons, and for their transportation, detention, discipline, feeding, shelter, health or welfare, pending their deportation;
- (c) make such orders, rules or regulations as he deems necessary for the purpose of carrying out the provisions of this Order;
- (d) subject to the approval of the Governor in Council, employ such officers and other employees as are necessary to assist him in carrying out this Order and fix their remuneration;
- (e) authorize from time to time any person to exercise on his behalf any power vested in him under paragraph (b) of this section.

5. An order for deportation made by the Minister shall be in force and effect from the date of the order;

.....

P.C. 7355.

6.(1) Any person for whom an order for deportation is made and who, having made a request for repatriation, is proceeding to Japan without the issue of such an order, shall be entitled, in so far as circumstances at the time permit

- (a) at or immediately prior to the time of his deportation from Canada, to purchase suitable foreign exchange to the extent of any money in his possession or standing to his credit in Canada or advanced to him by the Minister pursuant to section seven and to take such foreign exchange

out of Canada with him;

- (b) to deposit any money in his possession or standing to his credit in Canada with the Custodian of Enemy Property, who shall provide such person with a receipt therefor and purchase foreign exchange therewith, and transfer the same, less transfer charges, to such person whenever reasonably possible following his deportation;
- (c) at the time of his deportation to take with him such other personal property belonging to him as may be authorized by the Minister;

and the Foreign Exchange Control Board shall do such things and issue such permits as may be required to implement these provisions

- (2) Where real or personal property of a person who has been deported to Japan or who, having made a request for repatriation, has proceeded to Japan without the issue of an order for deportation, has not been sold or otherwise disposed of prior to departure such real and personal property shall, as of the date of deportation of such person, be vested in the Custodian of Enemy Property who shall sell the same as soon as in his opinion it is reasonably practicable to do so, and in the meantime he may take such measures as he deems proper for the care, maintenance and safeguarding of such property, and the net proceeds realized from such sale, after the deduction of reasonable charges of handling shall be placed to the credit of such person and dealt with as provided in paragraph (b) of subsection (1) of this section.

7.(1) The Minister may at or immediately prior to the time of ~~departure~~ departure advance to or for a person who is being deported to Japan or who, having made a request for repatriation, is proceeding to Japan without the issue of an order for deportation, an amount in suitable foreign exchange equivalent to the following:

- (a) Where such person is sixteen years of age or over and does not possess at least two hundred dollars, ~~which shall be paid to such person~~ the difference between the amount he possesses and two hundred dollars which shall be paid to such person;
- (b) Where such person has one or more dependents under sixteen years of age and does not possess at least ~~two~~ two hundred dollars together with a further amount computed on the basis of fifty dollars for each such dependent, the difference between the amount ~~in~~ he possesses and the total of two hundred dollars and the amount so computed, to be paid to such person.

(2) Any amount advanced as provided for in subsection (1) of this section shall be recoverable from the person to whom it is paid, from any money to the credit of such person with the Custodian of Enemy Property.

8. (1) The Minister may make arrangements with any department or agency of the Government of Canada to assist him in carrying out the provisions of this Order.
 - (2) The Department of National Defence shall provide any military guard personnel which may be required in carrying out the provisions of this Order.
 - (3) The Commissioner of the Royal Canadian Mounted Police shall give all assistance which may be required of him by the Minister in the carrying out of the provisions of this Order.
9. Any person for whom an order for deportation is made and who is detained pending deportation or who is placed under restraint in the course of deportation by virtue of any order or measure made or taken under Section 4 of this Order shall while so detained or restrained, be deemed to be in legal custody.
10. Any person who resists or obstructs or attempts to resist or obstruct any peace officer or other person from carrying out his duties with respect to any order made pursuant to the provisions of this Order shall be guilty of an offence against this Order.
11. Any person who contravenes or omits to comply with any of the provisions of this Order or any order made or given pursuant thereto is guilty of an offence and liable upon summary conviction to a fine not exceeding Five Hundred Dollars or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.
12. Every document purporting to be or to contain or to be a copy of an order, certificate or authority made or given by the Minister in pursuance of the provisions of this Order and purporting to be signed by the Minister shall be received as evidence of such order, certificate or authority without proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.
- GENERAL.
13. The costs involved in the administration of this Order shall be paid from the amounts allotted from the war appropriation to the Department of Labour for Japanese administration.

A.D.P. Heeney,
Clerk of the Privy Council.

Order in Council revoking naturalization
of persons deported in pursuance of Order
in Council P. C. 7355, 15th December, 1945.

P.C. 7356.

AT THE GOVERNMENT HOUSE AT OTTAWA
SATURDAY, the 15th day of DECEMBER, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS by Order in Council P.C. 7355 of 15th December, 1945, provision is made for the deportation of persons who, during the course of the war, have requested to be removed or sent to an enemy country or otherwise manifested their sympathy with or support of the enemy powers and have by such actions shown themselves to be unfit for permanent residence in Canada;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Secretary of State (concurrent in by the Secretary of State for External Affairs) and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows:

1. Any person who, being a British subject by naturalization/ under the Naturalization Act, Chapter 138, R.S.C. 1927, is deported from Canada under the provisions of Order in Council P.C. 7355 of 15th December, 1945, shall, as and from the date upon which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national.
2. The Secretary of State shall publish in the Canada Gazette the names of all persons who have ceased to be British subjects or Canadian nationals by virtue of this Order.

A.D.P. Heeney,
CLERK OF THE PRIVY COUNCIL.

Order in Council re Commission to inquire
into conduct during the war of persons of
the Japanese race, etc.

P.C. 7357

AT THE GOVERNMENT HOUSE AT OTTAWA
SATURDAY, the 15th day of DECEMBER, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS during the war particular measures with regard to persons of the Japanese race in Canada were made necessary by reason of their concentration along the Pacific coast of Canada;

AND WHEREAS experience during the war in the administration of Order in Council P.C. 946 of February 5, 1943, providing for the control of persons of the Japanese race has indicated the desirability of determining whether the conduct of such Japanese persons in time of war was such as to make the deportation of any of them desirable in the national interest;

AND WHEREAS it is deemed advisable to make provision for the appointment of a Commission to institute the investigation referred to above;

THEREFORE His Excellency the Governor General in Council, on the recommendation of the Prime Minister, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows:

1. A Commission consisting of three persons shall be appointed to make inquiry concerning the activities, loyalty and the extent of co-operation with the Government of Canada during the War of Japanese nationals and naturalized persons of the Japanese race in Canada in cases where their names are referred to the Commission by the Minister of Labour for investigation with a view to recommending whether in the circumstances of any such case such person should be deported.
2. Notwithstanding anything contained in the provisions of Order in Council P.C. 7355 of the 15th day of December, 1945, the Commission may, at the request of the Minister of Labour, inquire into the case of any naturalized British subject of the Japanese race who has made a request for repatriation and which request is final under the said Order in Council and may make such recommendations with respect to such case as it deems advisable.
3. The Commission shall report to the Governor in Council
4. Any person of the Japanese race who

4. Any person of the Japanese race who is recommended by the Commission for deportation shall be deemed to be a person ~~sub~~ subject to deportation under the provisions of Order in Council P.C. 7355 of the 155th day of December, 1945, and the provisions thereof shall apply, mutatis mutandis, to such person.
5. Where any person is recommended for deportation pursuant to this Order he shall, as and from the date on which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national.
6. The Commission shall, for the purpose of all inquiries and investigations made pursuant to this Order, have all the powers and authority of Commissioners appointed under Part One of the Inquiries Act.
7. The Commission is authorized to engage the services of such clerks, reporters, assistants and counsel as they deem advisable to aid and assist in the performance of their duties.
8. The Commissioners shall be paid such remuneration, allowances and expenses as the Governor in Council may fix.
9. All expenses incurred in connection with the inquiries and investigation of the Commission pursuant to this Order, including the remuneration, allowances and expenses of the commissioners, shall be paid from amounts allowed from the War Appropriation to the Department of Labour for such purpose.

A.D.P. Heeney,

CLERK OF THE PRIVY COUNCIL.

N O T I C E .

To all persons of Japanese Racial origin having reference to making application for voluntary repatriation to Japan.

The Minister of Labor has been authorized by the Government of Canada to make known the following decision made with respect to persons of Japanese ancestry now resident in Canada who make application to go to Japan after the war or sooner, where this can be arranged.

1. The net proceeds realized from the sales of their property real and personal in Canada and standing to their credit at time of their repatriation will be secured to them and may be transferred by them to Japan upon repatriation following the close of the war.
2. In case of persons sent to Japan under agreement for exchange of naturalized Canadians and Japanese before the close of the war under which agreement the amount of personal property and funds carried by the repatriate is established the Custodian of Enemy Alien Property will be authorized on the advice of the Department of External Affairs to provide such Japanese repatriates with receipts showing the property left behind in Canada or net proceeds of same if sold with a view to their being permitted to secure possession of their property for the net proceeds thereof after the end of hostilities,
3. Free passage will be guaranteed by the Canadian Government to all repatriates being sent to Japan and all their dependents accompanying them and including free transportation of such of their personal property as they may take with them.

The above assurances will apply to such persons as have already made written application in satisfactory form to the Government of Canada to go to Japan, or those who make written application hereafter for that purpose to Government of Canada within the period of time fixed by the Commissioner of Japanese Placement for the completion and filing of applications.

These assurances do not apply to persons of the Japanese repatriating on other than voluntary basis.

HUMPHREY MITCHELL
Minister of Labor.

R.C.M.P. special detachment will take applications at Tashme April 9 - 13. Every person of Japanese origin 16 years of age and over is required to report to R.C.M.P. Detachment on April 9 - 13 to signify his or her intention concerning repatriation.

*Posted
March 16/45*

N O T I C E .

To all persons of Japanese origin now resident in B.C.

1. Japanese Nationals and others of Japanese origin who will be returning to Japan have been informed by notices issued on authority of the Honourable Minister of Labour, that provision has been made for their return and for the filing of an application for such return. Conditions in regard to property and transport have been made public.
2. Japanese Canadians who want to remain in Canada should now re-establish themselves East of the Rockies as the best evidence of their intentions to co-operate with the Canadian Government in carrying out its policy of dispersal.
3. Failure to accept employment East of the Rockies may be regarded at a later date as lack of co-operation with the Canadian Government in carrying out its policy of dispersal.
4. Several thousands of Japanese have already re-established themselves satisfactorily East of the Rockies.
5. Those who do not take advantage of present opportunities for employment and settlement outside of B.C. at this time, while employment opportunities are favourable will find conditions of employment and settlement considerably more difficult at a later date and may seriously prejudice their own future by delay.
6. To assist those who want to re-establish themselves in Canada the Japanese Divisional Placement officers and the Employment and Selective Service officers with the assistance of local Advisory Committees are making special efforts this Spring to open up suitable lines of endeavour and in areas where prospects of suitable employment are best.
7. The Department also provides free transportation to Eastern Canada for the members of a family and their effects, a sustenance allowance to be used while in transit and a placement allowance based in amount upon size of the family.

T.B. PICKERSGILL
Commissioner of
Japanese Placement.

¹²
Vancouver, March 12, 1945.

• Posted Mar 16

WncB

MEMO OF OPINION RE P.C. 7355, 7356, 7357 and "DEPORTATION"
OF JAPANESE CANADIANS.

In my opinion the three Orders-in-Council are invalid. They are passed by the Governor-in-Council or Executive under the purported authority conferred by the War Measures Act R.S.C. 1927, Chapter 206. This Act delegates the widest powers to the Executive both to interfere with the liberty of the subject and to encroach upon subjects which would ordinarily fall within the exclusive jurisdiction of the provincial legislatures. This extension of power is justified by the existence of the emergency of war. (Fort Frances Pulp and Paper Co. v. Manitoba Free Press).

But the powers are though sweeping are not absolute. Any order or regulation made under the War Measures Act is subject to the specific provisions of the Statute and the Reference as to validity of Regulations in relation to Chemicals, 1943 S.C.R. 1, illustrates not only the wide sweep of powers delegated to the Governor-in-Council but also the limitations as paragraph 4 of the Controllers Order was held to be in conflict with section 7 of the War Measures Act and therefore invalid.

Section 3 of the War Measures Act confers on the Governor-in-Council the power to make such orders and regulations as he may by reason of the existence of real or apprehended war..... deem necessary or advisable for the security, defence, peace, order and welfare of Canada and for greater certainty but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor-in-Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:-

(b) arrest, detention, exclusion and deportation. While it seems clear that the enumeration of subjects or classes of subjects does not limit the general powers, conferred on the Governor-in-council in other matters not enumerated it would seem that in respect to the class of subject mentioned or some class similar thereto the expression of a particular subject must have a limiting effect. Subsection (b) deals with the right to restrain the liberty of persons. That this delegation of power is not to be arbitrary or unlimited is evidenced by Section 4 of the Act which restricts the penalties to be imposed for infractions of orders or regulations to a \$5,000 fine or imprisonment for 5 years. It is submitted that interference with the liberties of persons in Canada by the delegated power of the Governor-in-Council is restricted to the terms "arrest, detention, exclusion and deportation".

The orders-in-council herein question form part of a consistent whole and must be read together. They purport to authorize the Minister of Labour under certain conditions to make orders for the "deportation" of Japanese nationals, naturalized Canadians of the Japanese race.

D Deportation however has been held to mean "the removal of and alien out of the country simply because his presence is deemed inconsistent with the public welfare". Fong Tue Ying vs U.S. 149 W.S. 698 at 709. See also Webster's Dictionary.

The Immigration Act, which provides for "deportation" restricts the application of the term to those who are not British subjects or Canadian nationals. Deportation under British statutory enactments is restricted to aliens.

When Parliament delegated to the Executive the power to make orders and regulations in regard to "deportation" it must be held to have used that expression in the sense attributed to it by law. The forcible banishment or exile of Canadian citizens was not a power delegated to the Governor-in-Council. "Arrest" and "Detention" provide ample scope for restraints upon the subject deemed necessary for the safety of the state in the emergency of war.

While the liberty of the subject is seriously jeopardized by deportation, it cannot be said that in wartime, emergency powers are to be interpreted in any narrow sense. It remains true however that the Courts should not adopt an interpretation which requires a breach of international law, if another interpretation is reasonable. The recent extension of the principle of international law by the approval of the Charter under which the trial of war criminals is taking place is significant. Listed as a crime against humanity is the deportation of civilian populations on racial grounds. The indictment in the present Nuremberg trials includes such a phrase. The present Orders-in-Council expressly purport to authorize deportation under certain conditions of citizens of the Japanese race, irrespective of any finding of disloyalty against them and on the basis of requests revocable in form and secured under conditions in which the free exercise of will was difficult if not impossible. Any interpretation of the War Measures Act which would avoid the imputation on the Parliament of Canada of authorizing acts described as crimes against humanity in an international charter should be adopted.

There are other grounds for questioning the validity of the Orders-in-Council. It may be doubted whether they were passed "by reason of a state of war or apprehended war". On December 7th, the House of Commons passed the National Transitional Emergency Powers Act, which conferred transitional powers on the Governor-in-Council of a very much more limited extent than those in the War Measures Act. The preamble to the Act recites that there is a continuing emergency but only a limited need for Parliamentary delegation of powers on the Executive. It is true that the Act only comes into effect on January 1 and the War Measures Act continues in force until that date. It may be doubted how far new and extensive legislation of a sweeping and ~~extraordinary~~ extraordinary nature can in the interim between the passing of the new Act and the purely formal and arbitrary date it comes into effect be considered as related to the emergency. Parliament by its declaration on December 8th may be considered to have recognized the limited extent of the emergency, and the War Measures Act may

be said to continue in force until January 1 only for the limited purposes outlined. The removal from Bill 15 as drafted and circulated of an express authority to deal with deportation and revocation of citizenship is ~~not~~ not without significance.

All statutory powers must be exercised in good faith for the purposes for which they are given. Duff C.J.C. in Chemicals Reference 1943 S.C.R. 13.

To restrain the ~~liberty~~ liberty of the subject where no crime has been committed was beyond question an interference with a civil right. Per Robertson C.J.O. 1945 O.W.R. 811.

The requests for repatriation referred to in the Orders-in-Council may also be regarded as nullities which neither the persons who signed them nor the Minister can put forward as a basis for action (in cases of Japanese nationals the form may be unobjectionable; in the case of Canadian citizens the forms which purport to have the signatures relinquish Canadian citizenship so as to become enemy aliens are contrary to both the Domestic and International law. Dicey 176. Westlake 6th Ed. 361 Hallecks International Law 4th Edition Vol. 1, Chapter 12 - 529.)

To question the legality of the Orders-in-Council in my opinion the best procedure would be for parties affected to institute actions for declarations in accordance with the principles in Dyson v. Attorney-General 1911 1 K.B. 410. Alternatively the Government might refer the validity of the Orders to the Supreme Court of Canada under the provisions of Section 55 of the Supreme Court Act. Applications for habeas corpus are subject to this difficulty that they do not lie until some actual restraint upon liberty has taken place.

In connection with action to test the legality of the orders-in-council reference may usefully be made to the following passages from judgments of the Privy Council:

"Eastern Trust vs. Mackenzie 1915 A.C. 759 per Sir George Parwell
It is the duty of the Crown and of every member of the Executive to abide by and obey the law. If there is any difficulty in ascertaining it, the Courts are open to the Crown to sue and it is the duty of the Executive in cases of doubt to ascertain the law in order to obey not to disregard it".

In another Privy Council appeal, from Nigeria, Lord Atkin said:
(1931 A.C. 670):

"The Governor acting under the ordinance acts solely under Executive powers and in no sense is a Court. As the Executive he can only act in pursuance of the powers given to him by law. In accordance with British jurisprudence no member of the Executive can interfere with the liberty or property of a British subject except on condition that he can support the legality of the act before a Court of Justice and it is the tradition of British justice that Judges shall not shrink from deciding such cases in

the face of the Executive. The analogy of powers of the English Home Secretary to deport aliens was invoked in this case. The analogy seems very close. Their Lordships entertain no doubt that under the legislation in question, if the Home Secretary deported a British subject in the belief that he was an alien, the subject would have the right to question the validity of any such order of proceedings in habeas corpus and that it would be the duty of the Courts to investigate the issue, alien or not".

("Repatriation Form")
Government of Canada--Declaration No. C.B.W.

I..... born registered as Canadian
born British Subject under Order-in-Council P.C.
No. 9760 dated December 16, 1941 hereby declare
my desire to relinquish my British nationality and
to assume the status of a national of Japan. F
Further I request the government of Canada under
the conditions set out in the statement of the
Minister of Labour dated February 15, 1945 to
arrange for ~~my~~ and effect my ~~ix~~ repatriation to
Japan.

I declare that I fully understand the contents
of this document and I voluntarily affix my
signature here to.

Date1945

.....signature.....
.....interpreter..

Place.....

Note: All persons 16 years or over are required
to sign a separate declaration.