

150519 pt. 1

No. ~~J.R.~~ 150519

Date APRIL 1, 1946

FILE CHECKED FOR MPV
SEE BACK COVER
DOSSIER VERIFIE POUR DSUU
VOIR ENDOS DE LA CHEMISE

REGISTRY

Department of Justice

From MINISTER OF LABOUR.

SUBJECT:

THE JAPANESE CANADIAN RELOCATION AND RE-ESTABLISHMENT ACT, 1946.

Charged to E. A. D.

REMARKS:

PERMANENT RETENTION
IN JUSTICE
CONSERVATION PERMANENTE
A LA JUSTICE

CROSS REFERENCE:

No. ~~J.R.~~ 150519

MPV / DSUU ON FILE / SUR DOSSIER
YES / NO / NON ()

ADDITIONAL INFORMATION VS

DATE: 7/8/85

TIP-BACK SINGLE
FINGER HOLDER
PATENT NO. 361978



No. ~~J.R.~~ 150519



mj

OTTAWA, 7th May, 1946.

My dear Colleague,-

I herewith enclose copy of letter
from the Attorney-General of British Columbia
re Japanese situation.

I acknowledge receipt of your
proposed Bill, and would hope to have this
discussed as soon as possible. It is a good
Bill.

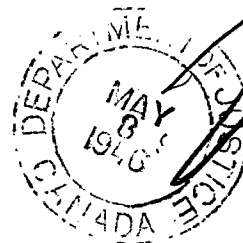
Yours sincerely,



The Honourable Humphrey Mitchell,
Minister of Labour,
Ottawa.



EXTERNAL AFFAIRS
CANADA



REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

Ottawa, May 7, 1946.

150519 ✓

Dear Mr. Varcoe:

I should like to acknowledge your letter of April 25th, covering a copy of a draft Bill that has been prepared concerning the deportation and resettlement of persons of Japanese origin.

I am enclosing herewith a copy of a letter of to-day's date which I am sending to the Secretary of the Cabinet Committee on Japanese.

Yours sincerely,

Under-Secretary of State
for External Affairs.

F. P. Varcoe, Esq.,
Deputy Minister of Justice,
Ottawa, Ontario.

Ottawa, May 7, 1946.

Dear Mr. Wood:

I should like to refer to your letter of May 6th, under cover of which you forwarded a copy of a draft Bill that has been prepared to provide for the repatriation and resettlement of persons of Japanese origin together with a copy of recommendations submitted by the Department of Labour with regard to this matter.

I had previously received a copy of the draft Bill from the Deputy Minister of Justice. After examination of it, I may say that my views are very much in line with those of the Department of Labour. With the very strong public reaction that there has been to the Orders in Council of last December 15th, I feel that it would be most unwise to bring any legislation in the present session of Parliament which would restate the provisions of those Orders in statutory form. In addition to the public reaction on the merits of the question, I feel that the government might also be open to criticism as attempting to take action in a form which would legalize what many regard as an attempt to infringe the rights of citizens, which attempt has been frustrated in part by the Supreme Court. There is also for consideration the fact that the climate of opinion at present is strongly against enactments that might be regarded as discriminatory or as limitations upon the rights of a citizen.

I would agree with the suggestion by the Department of Labour that Sections 3 to 6 of the draft Bill should be dropped. Presumably the related paragraphs of the preamble would also be deleted if this were done.

So far as Section 7 is concerned, I think that the view of the Department of Labour is quite correct to the effect that resettlement on a quota basis is impracticable. It also seems that it might involve an undesirable precedent - namely that provinces could exercise a control upon immigration into their boundaries. The basis of allocation in proportion to population might also, I think, prove unsatisfactory and it seems to me that it is doubtful whether it will prove feasible to reduce the British Columbia quota to one that would have exact regard for the percentage of population within its area. For these reasons I feel that the Section should not be allowed to stand.

The following points have also occurred to me with regard to other Sections of the Bill:

Section 8 - I am not clear why it should be necessary to enact Sub-section (e) of this Section. Presumably, the arrangements will be rather a matter of administrative agreement than of formal compact and if this is the case there would not seem to be any necessity of statutory provision.

Section 9 - Would it not be desirable here to insert a limitation as to the time during which restriction on movement would be possible? I feel that such restriction is undesirable in principle however necessary it may be administratively for the time being. In view of this, I think that a limitation might be useful.

Section 10 - If such a provision were to be included at all, I feel that it too should carry a limitation as to time. On the whole, I doubt whether it would be desirable to have a provision of this type included in a statute. It would, I think, be particularly subject to criticism if it came up in the same session as a citizenship bill during the debate on which a great deal of emphasis has been given to the necessity for equal treatment of all citizens of whatever origin.

Sections 14 to 18 - It would appear that the provisions made by these Sections (which reproduce various Sections of Order in Council P.C. 7355) are much more stringent than would be necessary for a statute having to do purely with resettlement. Consequently, if Sections 3 to 6 are dropped, I feel that these should be carefully examined.

Section 19 - It seems to me that this provision would be particularly undesirable. I believe that something similar was included in one of the earlier drafts of Order in Council P.C. 7355 but was deleted before the Order passed. The Section would be subject to castigation both because it is a straight racial provision and because it shifts the conventional onus of proof.

On the whole, it seems to me that in legislation brought forward at this time, the government should limit itself to the provisions that are strictly necessary in order to carry out the relocation policy and should not go beyond that for the time being.

I have gone into some detail in commenting in this matter as it is probable that it will not be possible for me to attend any Cabinet Committee meeting to deal with the Japanese if one is held later ~~on~~ ^{this} week.

I am sending copies of this letter to the Deputy Minister of Justice and the Deputy Minister of Labour.

Yours sincerely,

Under-Secretary of State
for External Affairs.

B. F. Wood, Esq.,
Secretary,
Cabinet Committee on Japanese,
Privy Council,
Ottawa, Ontario.

C O P Y

OTTAWA, 6th May, 1946.

The Honourable Ian A. Mackenzie,
Minister of Veterans Affairs,
OTTAWA, Canada.

Dear Mr. Mackenzie:-

On the 15th day of December, 1945, His Excellency the Governor General in Council, by P.C. 7355, 7356 and 7357, made provision for the deportation to Japan of Japanese nationals and other named persons of the Japanese race. These Orders were passed under the authority of the War Measures Act, and constituted the announced policy of the Government in connection with Japanese resident in Canada.

Following the adoption of the Orders, representations were made to the Minister of Justice, by and on behalf of a number of Canadian organizations and societies, expressing the opinion that the Orders were ultra vires, and requesting a reference to the Supreme Court of Canada to test the question, and an action was commenced against the Attorney-General of Canada for declaration that the Orders-in-Council were ultra vires.

Accordingly, His Excellency the Governor General in Council submitted the question to the Supreme Court of Canada for hearing and consideration, and on the 20th day of February, 1946, that Court gave answers to the questions, as set out in the Certificate of the Registrar dated the 20th day of February, 1946.

There was considerable difference of opinion in the Court.

The Honourable Ian A. Mackenzie ..

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The Chief Justice, Kerwin and Taschereau, JJ., were of opinion that the Orders in Council in question were not ultra vires of the Governor in Council, either in whole or in part.

Hudson and Estey, JJ., were of opinion that the Orders in Council were not ultra vires of the Governor in Council, with the exception of paragraph 4 of Section 2 of P.C. 7355.

Rand, J., was of opinion that -

"(1) Order in Council 7355 is not ultra vires of the Governor in Council in relation to Japanese nationals and to persons of the Japanese race, naturalized under the Naturalization Act of Canada, as well as to persons voluntarily leaving Canada; but is ultra vires in relation to the compulsory deportation of natural born British subjects resident in Canada, and of wives and children under 16 who do not come within the first two classes; and that

(2) Order in Council 7356 is not ultra vires insofar as it takes away incidental rights and privileges of persons of the Japanese race as Canadian nationals; but that it is ultra vires of the Governor in Council to the extent that it purports to revoke the naturalization of such persons under the Naturalization Act; and that

(3) Order in Council 7357 is not ultra vires of the Governor in Council, subject to the observance of the requirements of the Naturalization Act as to grounds for the revocation of naturalization."

The Honourable Ian A. Mackenzie ...

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Kellock, J., was of opinion that -

"(1) Order in Council 7355 is not ultra vires except in the following particulars:

- a) Subsection 3 of Section 2 and Section 3 are ultra vires insofar as they authorize the deportation of natural born British subjects who do not wish to leave Canada, and insofar as it prevents such persons from withdrawing consents at any time and in any manner.
- b) Subsection 4 of Section 2 is ultra vires in toto.

(2) Order in Council 7356 is not ultra vires with the exception of Section 1 thereof insofar as it provides for loss of the status of a British subject.

(3) Order in Council 7357 is not ultra vires save insofar as it may purport to authorize a departure from the provisions of the British Nationality and Status of Aliens Act 1914."

These judgments, for the most part, rest upon highly technical considerations, and in my view, although two of the learned Judges dissent from the proposition to some extent, it cannot be seriously contended that the Parliament of Canada has not the power to do that which the Orders-in-Council purport to do.

The argument on behalf of the Co-operative Committee on Japanese-Canadians is summed up in the judgment of the Chief Justice Kerwin and Taschereau, JJ., at page 7, and is dealt with in the judgment of all the Judges, and it will be seen that,

in the main, the objections go to the jurisdiction of the Governor in Council under the War Measures Act, and whether the language used in the Orders-in-Council is apt to bring about the result which the Orders-in-Council sought.

There is considerable difference of opinion, on the part of the Judges, on the issues, and in the result, certain features of the Orders-in-Council in question are held to be beyond the powers of the Governor in Council.

An appeal has been taken by counsel for the Co-operative Committee on Japanese-Canadians to the Privy Council, and this is expected to be heard at the June sittings of that tribunal.

It seems to me that, from the standpoint of British Columbia, the position is most unsatisfactory.

The Government of Canada, after full investigation, has announced a definite policy dealing with the Japanese question in Canada. Parliament is in Session, and yet we have the whole issue in doubt, not because of any serious question of the sovereign power of Parliament to carry out the policy of the Government, but because of the objection that the Government had no power to do it in the form of the Orders-in-Council.

The Supreme Court has held that parts of the Orders-in-Council are intra vires, and that other portions are ultra vires. There is danger that, in the Privy Council, other portions, or the whole of the Orders-in-Council, may be held to be ultra vires. In other words, the whole policy of the Government dealing with Japanese may be rendered abortive through legal considerations, many of them highly technical in their character, though there is no doubt whatever that such policy could be implemented and carried into effect if an Act of Parliament were passed for that purpose.

The Honourable Ian A. Mackenzie

-5-

Acting on behalf of British Columbia, which is mainly concerned, I feel that it would be most unfortunate if this situation were permitted to continue, and I would urge that steps be taken to bring this whole matter before Parliament, with a view to passing legislation clearly authorizing the Government to carry its announced policy into effect.

It seems to me that the question which is now being posed to the Privy Council, namely, the power of the Executive Council in the emergency of war, is largely academic.

I might state further that, as far as I can ascertain, there is no Order-in-Council or statute providing for the re-allocation of those Japanese who, if the policy of the Government were implemented, would remain in Canada, and there would, therefore, be no way to avoid those particular members of the Japanese race returning to British Columbia en bloc. If the Privy Council appeal succeeds, then their numbers would be augmented by all Japanese in Canada who wished to go there. This would create a most serious situation in our Province.

There are very many further reasons, apparent upon a perusal of the judgments of the members of the Supreme Court, which make it essential that the whole Japanese question should be dealt with by Parliament at this Session.

I should be glad if you would give this matter your consideration.

Yours faithfully,

ATTORNEY/GENERAL
for
British Columbia.



Ottawa, May 2, 1946.

Mr. F. P. Varcoe, K.C.,
Deputy Minister of Justice,
O t t a w a.

1305-19

Re: Deportation and Resettlement of
Persons of the Japanese Race

Thanks for your memo of April 25th enclosing draft Bill for the resettlement of the Japanese. We are proposing to bring the Bill before the Cabinet Committee on Japanese for consideration at an early date.

We very much appreciate the attention you have given to this matter.

A. MacNamara
A. MacNamara.

Mr. *Dredger*
THIS FILE WAS SENT TO YOU
ON *1/4*
W
FILES SEC.

File away

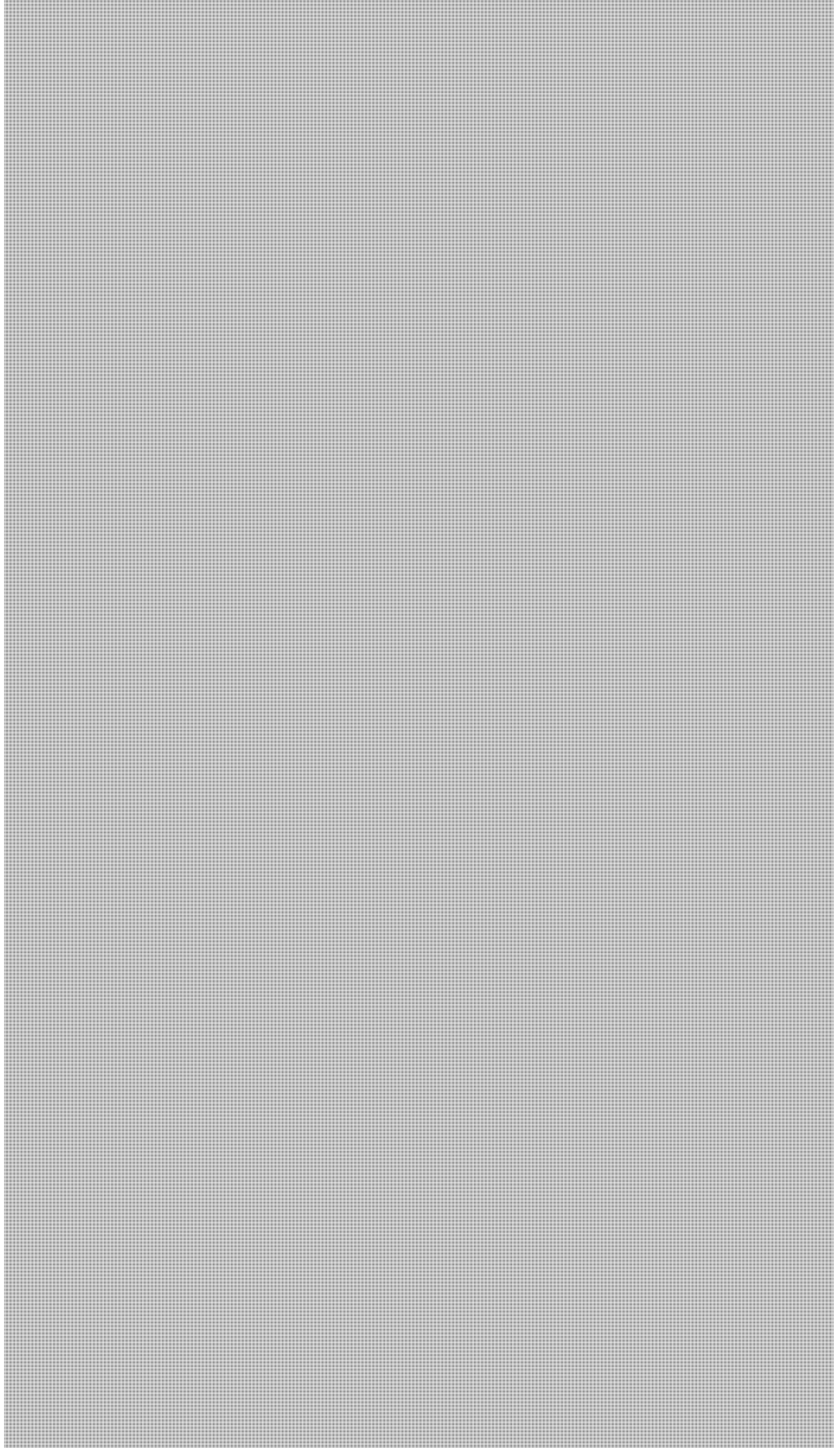
April 15, 1946

MEMORANDUM FOR MR. DRIEDGER:

Re: Japanese

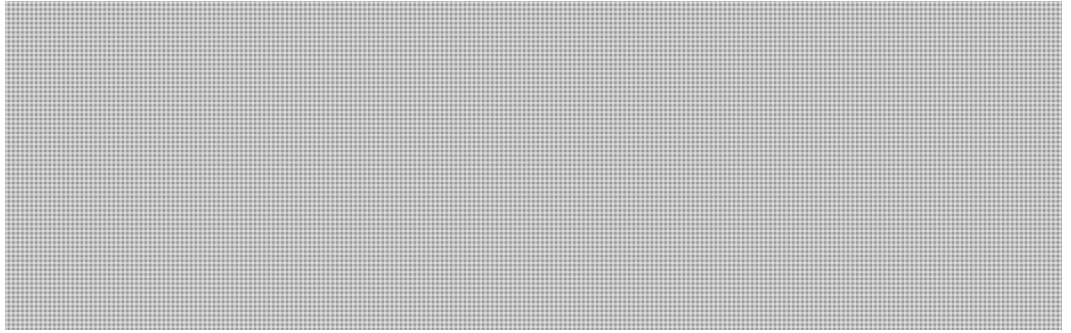
I wish you would consider in connection with the proposed Bill the following points:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.



11.

12.



F.P.V.

s.23

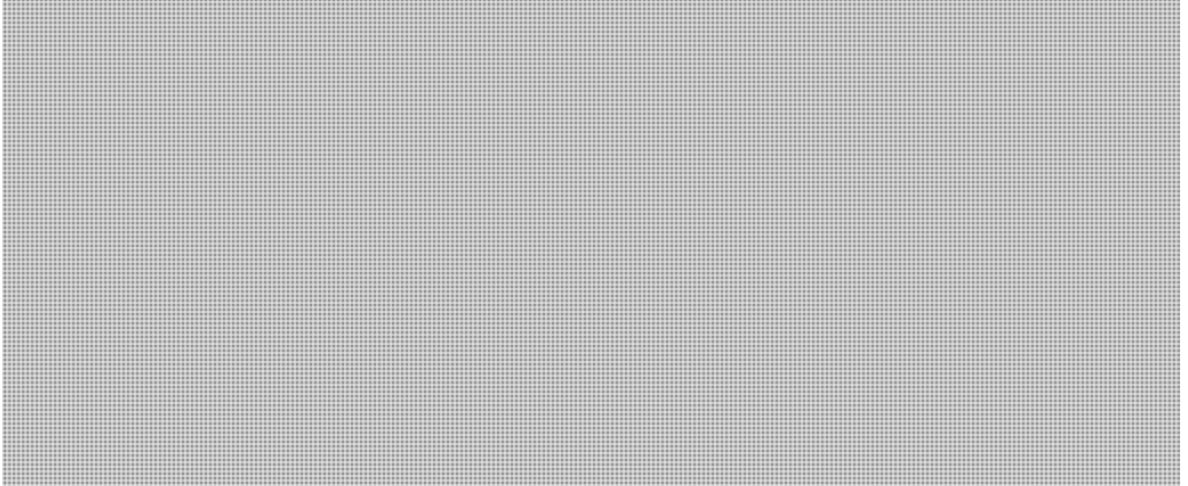
s.23

April 4, 1946

150519

OPRU Doc. No. 0100
UROJ No de Doc.

MEMORANDUM FOR MR. DRIEDGER:



F.P.V.

OTTAWA, April 2nd, 1946.

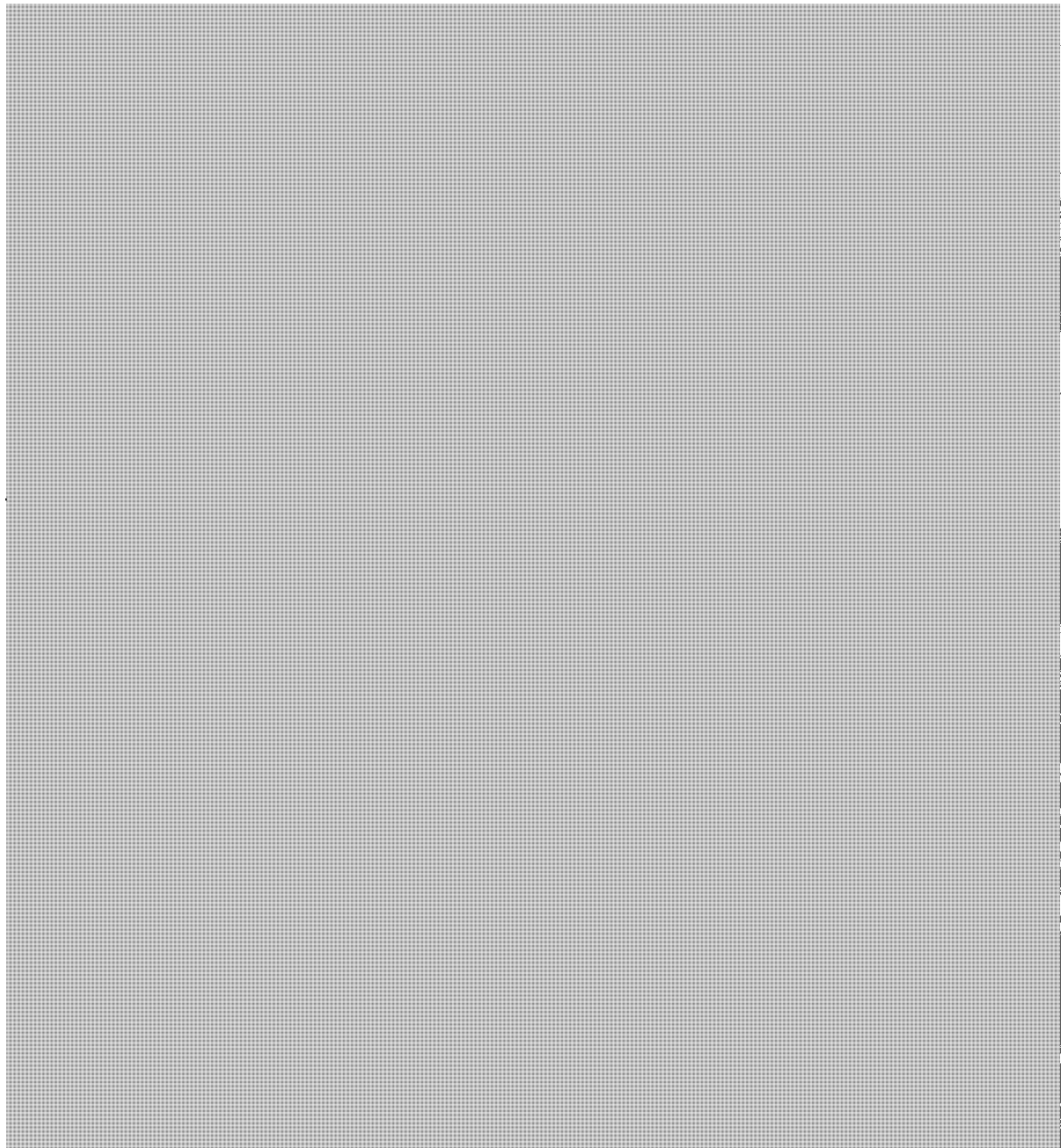
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OPRU Doc. No. 0100A
UROJ No de Doc.MEMORANDUM FOR THE DEPUTY MINISTER:150519

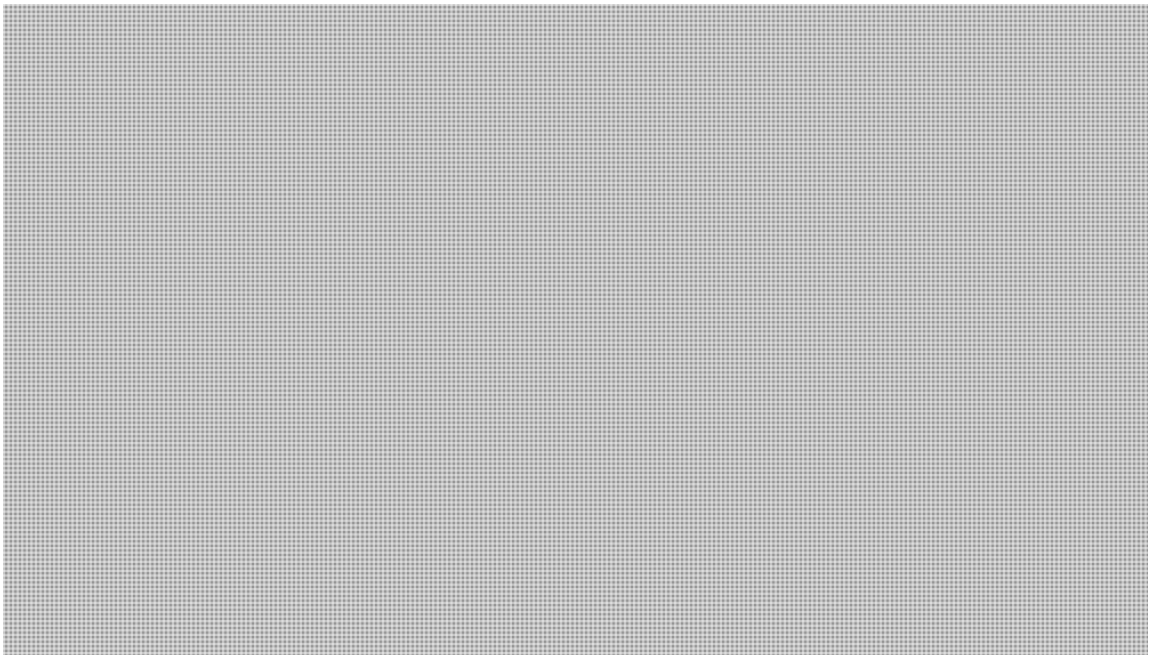
The Minister of Labour has submitted to you a draft bill respecting the re-establishment of persons of the Japanese race. This draft will require extensive revisions as to form but before undertaking this there is a constitutional point to be settled.

I have not looked into the matter very fully but the bill is urgent.

Section 4 of the bill reads as follows:



....



May I have your further instructions,
please?

E.A.D.

s.23

Ottawa, April 25, 1946.

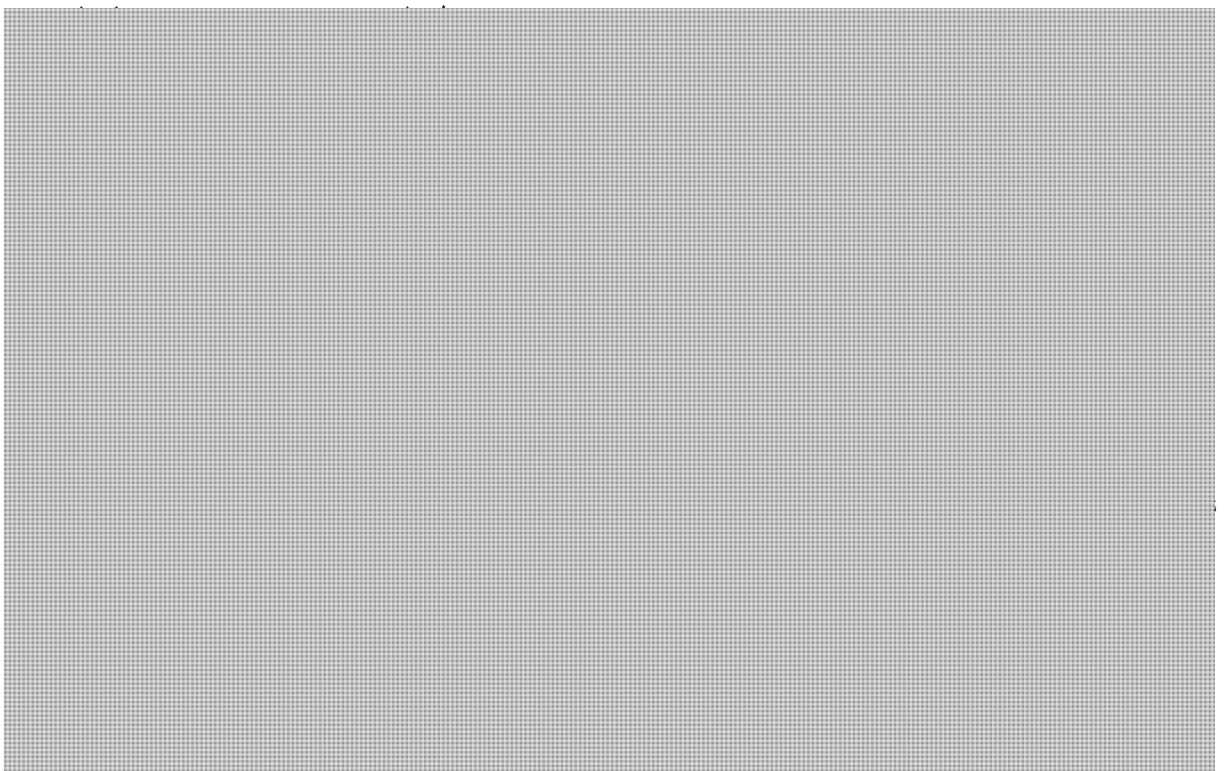
MEMORANDUM FOR THE DEPUTY MINISTER:

Re: The Japanese Repatriation and Resettlement
Act, 1946.

The following comments occur to me with reference
to the attached draft Bill.

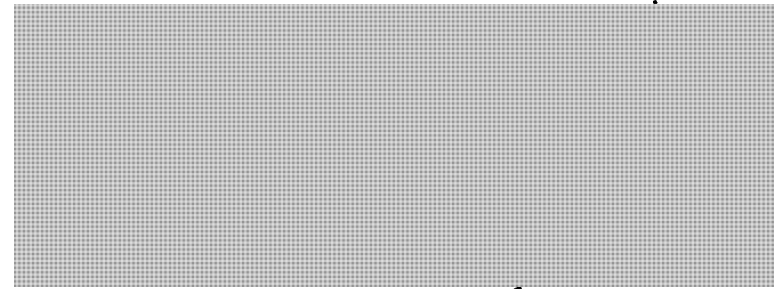


2. Certain minor drafting points appear as follows:



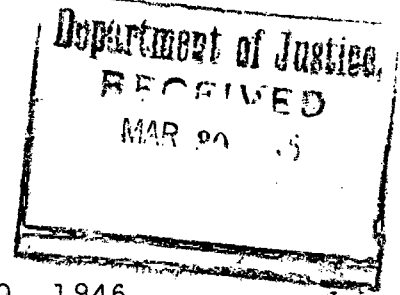
D.W.M.

s.23



FPV

Driedger



s.23

Ottawa, March 30, 1946.

Mr. F. P. Varcoe, K.C.,
Deputy Minister of Justice,
O T T A W A.

Dear Mr. Varcoe:



Very truly yours,

Wm. L. B. Driedger

Encs.

Pages 57 to / à 70
are withheld pursuant to section
sont retenues en vertu de l'article

23

of the Access to Information Act
de la Loi sur l'accès à l'information

Vancouver, B.C.

JAPANESE POPULATION IN THE DOMINION OF CANADA AS OF

MARCH 30TH, 1946

		JAP.	NAT.	CAN.	U.S.	INTER			
		NAT.	CAN.	BORN	CIT.	-WED	T O T A L S		
<u>BRITISH COLUMBIA</u>									
<u>Interior Housing Projects:</u>									
Tashme	Adults	762	216	383		2	1363		
	Children	5	1	932			938	2301	
New Denver	Adults	356	223	230		1	810		
	Children	2		441			443	1253	
New Denver San.	Adults	15	13	50			78		
	Children			1			1	79	
Internees New Denver			2	2			4	4	
Rosebery	Adults	108	78	92			278		
	Children			130			130	408	
Slocan City	Adults	357	204	399			960		
	Children	5		432			437	1397	
Internees Slocan City		1	1				2	2	
Bay Farm	Adults	168	101	146			415		
	Children			321			321	736	
Popoff Farms	Adults	135	97	91			323		
	Children	1		227			228	551	
Lemon Creek	Adults	399	229	343			971		
	Children	5		774			779	1750	
Kaslo	Adults	34	38	57			129		
	Children			94			94	223	
Greenwood	Adults	129	173	181			483		
	Children	1		457			458	941	9645
<u>Work Camps:</u>									
Blue River - Yellowhead:									
Blue River		3					3		
Black Spur		65					65		
Pyramid		44		2			46	114	114
<u>Self-Supporting Projects:</u>									
Bridge River	Adults	4	10	8			22		
	Children			7			7	29	
Christina Lake	Adults	6	13	29			53		
	Children			24			24	77	
Greenwood	Adults	9	13	20			44		
	Children			71			71	115	
Lillooet	Adults	57	65	66			188		
	Children	2		117			119	307	
McGillivray Falls	Adults	5	4	4			13		
	Children			10			10	23	
Taylor Lake	Adults	13	31	51			95		
(Clinton)	Children			52			52	147	
Minto City	Adults	37	50	38			125		
	Children	1		47			48	173	
<u>At Other Points Throughout</u>									
<u>B.C.</u>	Adults	861	489	932	1	3	2286		
	Children	4		789			793	3079	3950

		JAP. NAT.	NAT. CAN.	CAN. BORN	U.S. CIT.	INTER -WED	T O T A L S		
Registered Outside Prohibited Area (Not Evac.)	Adults	289	94	212		7	602		
	Children			279			279	881	881
<u>Miscellaneous:</u>									
St. Vincents Hospital, Vancouver, B.C.				1			1	1	
General Hospital, Vancouver, B.C.	Adults			1			1		
	Children			1			1	2	
Juvenile Detention Home, Vancouver, B.C.				1			1	1	
Essondale Mental Hospital, Pt. Coquitlam, B.C.									
	Adults	33	11	17			61		
	Children			2			2	63	
Queen Alexander Solarium, Vancouver Island, B.C.				1			1	1	
Oakalla Prison Farm, Burnaby, B.C.		1		2			3	3	
Intermarriages Inside Area Enroute						28	28	28	
	Adults	1		3			4		
	Children			2			2	6	105
<u>TOTAL BRITISH COLUMBIA</u>		3918	2163	8572	1	41	14695	14695	14695
<u>ALBERTA</u>									
Evacuated	Adults	678	319	1053	2	5	2057		
	Children	4		994			998	3055	
Registered Outside Prohibited Area (Not Evac.)	Adults	94	103	162		7	366		
	Children			218			218	584	
Enroute	Adults	3	1	3			7		
	Children			2			2	9	3648
<u>TOTAL ALBERTA</u>		779	423	2432	2	12	3648	3648	3648
<u>SASKATCHEWAN</u>									
Evacuated	Adults	16	8	25			49		
	Children	1		28			29	78	
Registered Outside Prohibited Area (Not Evac.)	Adults	16	29	19		8	72		
	Children			18			18	90	
Enroute				1			1	1	169
<u>TOTAL SASKATCHEWAN</u>		33	37	91		8	169	169	169

		JAP. NAT.	NAT. CAN.	CAN. BORN	U.S. CIT.	INTER -WED	T O T A L S		
<u>MANITOBA</u>									
Evacuated	Adults	216	145	357	1	1	720		
	Children		1	335			336	1056	
Registered Outside Prohibited Area (Not Evac.)	Adults	6	8	7		4	25		
	Children			2			2	27	1083
<u>TOTAL MANITOBA</u>		222	154	701	1	5	1083	1083	1083
<u>ONTARIO</u>									
Northern Evacuated	Adults	76	34	273		1	384		
	Children			76			76	460	
Interned		168	39	203	3		413		
Interned from Newfoundland (See New Denver for 4 Internees) (See Slocan for 2 Internees)		1					1	414	874
Southern Evacuated	Adults	424	285	1600	4	6	2319		
	Children			492	1		493	2812	2812
Registered Outside Prohibited Area (Not Evac.)	Adults	42	17	33		19	111		
	Children			14			14	125	125
Enroute	Adults	1		11			12		
	Children			4			4	16	16
<u>TOTAL ONTARIO</u>		712	375	2706	8	26	3827	3827	3827
<u>QUEBEC</u>									
Evacuated	Adults	110	67	393		4	574		
	Children			107			107	681	
Registered Outside Prohibited Area (Not Evac.)	Adults	6	6	9		6	27		
	Children			1			1	28	
Enroute	Adults			5			5	5	714
<u>TOTAL QUEBEC</u>		116	73	515		10	714	714	714
<u>NOVA SCOTIA</u>									
Registered Outside Prohibited Area (Not Evac.)		1					1	1	1
<u>TOTAL NOVA SCOTIA</u>		1					1	1	1

		JAP. NAT.	NAT. CAN.	CAN. BORN	U.S. CIT.	INTER -WED	T O T A L S	
<u>NEW BRUNSWICK</u>								
Evacuated	Adults	2		2			4	
	Children			6			6	10 10
<u>TOTAL NEW BRUNSWICK</u>		2		8			10	10 10
<u>YUKON & NORTHWEST TERRITORIES</u>								
Registered Outside Prohibited Area (Not Evac.)	Adults	5	10	5		1	21	
	Children			9			9	30 30
<u>TOTAL YUKON & N.W.T.</u>		5	10	14		1	30	30 30
<u>S U M M A R Y</u>								
British Columbia		3918	2163	8572	1	41		14695
Alberta		779	423	2432	2	12		3648
Saskatchewan		35	37	91		8		169
Manitoba		222	154	701	1	5		1083
Ontario		712	375	2706	8	26		3827
Quebec		116	73	515		10		714
Nova Scotia		1						1
New Brunswick		2		8				10
Yukon & Northwest Territories		5	10	14		1		30 24177
<u>TOTAL JAPANESE IN CANADA</u>		5788	3235	15039	12	103		24177 24177
<u>TOTAL JAPANESE RESIDENT IN CANADA TO DATE</u>								
JAPANESE REGISTERED WITH RCMP		5788	3235	15039	12	103		24177
BUT NOW OUTSIDE CANADA		176	69	56	3			304
CANADIAN ARMED FORCES			2	102		2		106
CANCELLED REGISTRATIONS		3	18	60	1			82
DECEASED	Adults	231	196	92		1	(520)	
	Children	1		126			(127)	647 25316
<u>TOTAL JAPANESE REGISTERED UNDER O.C. P.C. 9760</u>		6199	3520	15475	16	106		25316 25316

N.B.

During the month under review, 33 births and 14 deaths were recorded.

"JAPANESE REGISTERED WITH RCMP BUT NOW OUTSIDE CANADA" included 7 Japanese who are in the United States and 297 Japanese who have returned to Japan since the start of registration under Order-in-Council P.C. 9760.

It is noted that there are two additional Intermarriages and two more United States citizens by marriage.

**Pages 75 to / à 88
are withheld pursuant to section
sont retenues en vertu de l'article**

23

**of the Access to Information Act
de la Loi sur l'accès à l'information**