

RECORD GROUP 117
VOLUME 1
FILE 13

RG117
vol 1
file 13

Ottawa, December 22, 1942.

Material from Mrs. Steir's Office in 1961-2

FFV/AE



RECEIVED 22 AM 9:23

PLEASE ADDRESS
THE DEPUTY MINISTER OF JUSTICE
OTTAWA

UNDER SECRETARY
OF STATE

OTTAWA December 21, 1942.

TO: E. H. Coleman, Esq., K.C., Under Secretary of State.

J.R. 7034-42

With reference to the question of liability for damages suffered by persons lawfully entering upon property vested in the Custodian resulting from lack of repair of the premises, I beg to advise that in my opinion liability should be denied. The position of the Custodian in this respect should be differentiated from that of a subject owning property. The vesting of property in the Custodian does not in my opinion cast upon him the full responsibility of a property owner as is established by such precedents as the case *Indermaur v. Dames*. I would advise that you take the position that the Custodian is the representative of His Majesty and that liability is limited to claims arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

On the other hand, I would not be prepared to recommend that the liability of the Custodian should be limited. I see no reason why such a course should be adopted.

F. P. Varcoe

Deputy Minister.

The Deputy Minister of Justice,
OTTAWA,

Noted transcript from Mr. Varcoe's Office in 1962

RG 17
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file 13

Ottawa, December 16, 1942.

G. W. McPherson, Esq.,
504 Royal Bank Building,
Vancouver, B.C.

re Custodian's liability for
accident actions.

I had a telephone message from a legal officer in the Department of Justice yesterday advising me that the Department was reviewing, in the light of Mr. Sheppard's opinion, the departmental ruling previously given. The officer who has charge of the matter told me that he had discussed it with the Deputy Minister, Mr. Varcoe, and that Mr. Varcoe had undertaken to take it up with the Minister of Justice. The purpose of the telephone call was to assure me that the matter had not been overlooked but that it was under consideration by the heads of the Department.

For your confidential information, I rather gather that unanimity had not yet been reached among the Law Officers as to the correctness of either opinion. This, I surmise, is the reason why it was felt the views of the Minister, himself a lawyer of great distinction, might be obtained.

E. H. Coleman
Under Secretary of State
and Deputy Custodian.

The Deputy Minister of Justice,
Ottawa,

Material transferred from Mr. Llewellyn's Office in 1961-62

RG 17
vol 1
file 13

ERC:DC

Ottawa, December 8th, 1942.

The Deputy Minister of Justice,
O t t a w a.

On October 10th, 1942, I forwarded you a copy of an opinion from Messrs. Locke, Lane, Guild and Sheppard supplied to the Custodian's representative in Vancouver on the question of the liability of the Custodian toward third persons.

I have had a letter from the Custodian's representative advising me that very recently a tenant sustained an injury, a broken leg, in one of the Japanese properties. Our representative is of the opinion that quite possibly we may be confronted with a claim for damages.

In my letter of October 10th enclosing a copy of the opinion from the Solicitors in Vancouver, I inquired if your Department felt that it should give consideration to any amendment to the Order relating to property of evacuated Japanese to afford the Custodian protection against claims of this nature.

I should be obliged if you would advise me at the earliest convenient time whether you desire to express any further opinion on this point.

(E.H. Coleman)
Under Secretary of State.

The Deputy Minister of Justice,
O t t a w a.

Material forwarded from Mr. Little's Office in 1961-12

RG 17
vol 1
file 13

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

RECEIVED 7 AM 9:30 December 4, 1942

ADDRESS ALL
COMMUNICATIONS
TO THE
CUSTODIAN'S OFFICE
PLEASE REFER
TO
FILE NO.

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

Dear Mr. McPherson,

Dr. E.H. Coleman, K.C.,
Under Secretary of State,
West Block,
Ottawa, Ontario.

Dear Dr. Coleman:
Re: Public Liability Insurance.

You will recall that we discussed this matter when
I was in Ottawa, and that the Department of Justice
was considering same.

In order that you may be kept up-to-date in the
matter, I wish to advise you that upon my return to
Vancouver, I was informed that there had been another
accident in one of our houses and the tenant had
broken his leg. I do not know whether he will sue
the Japanese or sue the Custodian, but I do feel that
the question of Public Liability Insurance is one that
the Department of Justice should give a decision on as
soon as possible, and preferably before I leave for the
East.

G. W. McPherson, Esq.,
302-10 Royal Bank Bldg.
Vancouver,

Yours very sincerely,
G. W. McPherson
(G. W. McPherson)
Authorized Deputy of the Secretary
of State and/or Custodian.

GWMcP/MFP

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Little's Office in 1964-2

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Ottawa, October 10, 1942.

Dear Mr. McPherson,-

I have received your letter of the 5th enclosing a copy of the opinion from Messrs. Locke, Lane, Guild & Sheppard. I am sending a copy of the opinion to the Deputy Minister of Justice and will advise you when I have heard further from him.

Yours sincerely,

E. H. COLEMAN

G. W. McPherson, Esq.,
509-10 Royal Bank Building,
Vancouver, B.C.

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Little's Office in 1964-12

file 13

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IX
Ottawa, October 10, 1942.

Dear Sir,-

With reference to my letter of July 22nd last, I am enclosing for your perusal a copy of an opinion from Messrs. Locke, Lane, Guild & Sheppard supplied to the Custodian's representative in Vancouver under date of October 1st.

I shall be pleased if you will consider this opinion and indicate whether it alters the view of your Department on the question of possible liability.

You may wish to consider whether we should not amend the Order relating to property of evacuated Japanese to afford the Custodian protection against claims of this nature.

Yours sincerely,

E. H. COLEMAN
Under Secretary of State.

The Deputy Minister of Justice,
O t t a w a .

The Deputy Minister of Justice,
O t t a w a .

Material transferred from Mr. Little's Office in 1964-12

file 13

CANADA
DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

703 Rogers Building,

1942 OCT 10 AM 9:34

1709 Royal Bank Building,
Vancouver, B.C. Vancouver, B.C.

October 1st, 1942.
UNDER SECRETARY OF STATE

Dr. E.M. Coleman, K.C.,
Under Secretary of State,
West Block, Ottawa,
OTTAWA, Ontario.

Attention Mr. McPherson

Re: Public Liability Insurance

Dear Dr. Coleman: ~~Re: Public Liability Insurance.~~

You will recall that I wrote you some time ago, concerning the question of whether or not the Custodian should take liability insurance on property administered by him. In those cases where invitees would be examining the property with a view to either purchasing or renting same, as not arise through a claim by the Japanese or by a creditor of Subsequently you advised me that the Department of Justice had ruled that there was no liability on the Custodian existing and that insurance of this nature was, therefore, unnecessary. I have obtained a legal opinion from Mr. Sheppard, a member of the firm appointed as counsel for this office, by the Department of Justice and two copies of his opinion are enclosed. I assume the Department of Justice will be interested in considering Mr. Sheppard's opinion, but in the meantime, unless instructed otherwise, no liability insurance is being placed on property that is, one who enters on a matter of business concerning the occupant.

For your information, we have already had two claims, one filed, which, fortunately for us, arose out of an accident on the Japanese property which the Japanese had covered by liability insurance, and the other, which resulted in injuries, 1866 to one of our own employees. This latter case will, I think, be settled without any trouble, but it would be nice to know the Department of Justice are prepared to accept the responsibility, if the Custodian becomes involved in litigation. Reason of a trap, that is a hidden danger covered over to give the appearance of safety, Yours truly, 1866, L.R. 2 C.P. 375

[Signature]
W. McPHERSON,
Authorized Deputy of the Secretary
of State and/or the Custodian.

GWM:P:HW.
Encls.

The Deputy Minister of Justice,
Ottawa.

Original forwarded from Mr. Lavin's Office in 1961-2

file 13

Copy
Guild & Sheppard
& Solicitors
o
Locke, K.C.
Lane C.K. Guild, K.C. (Man.)
Sheppard, K.C. (Sask) K.L. Yule
Young C.C. Locke S.C. Lane

703 Rogers Building,

Vancouver, B.C.
October 1st, 1942.

The Custodian,
509-10 Royal Bank Bldg.,
Vancouver, B.C.

Attention Mr. McPherson

Dear Sir:-

Re-Public Liability Insurance.

We have your enquiry as to the liability of the Custodian towards third persons by reason of lands of Japanese and the control and management thereof having been vested in the Custodian. Possible liability does not arise through a claim by the Japanese or by a creditor of that Japanese but rather a claim by third persons in tort for damages suffered through conditions existing on the premises.

Firstly, liability may arise through duty imposed in law upon an occupant towards third persons entering on the premises. That duty varies with the particular relation to the person entering as follows:-

- (a) towards an invitee, that is, one who enters on a matter of business concerning the occupant, and on whose invitation, express or implied, there is a duty to protect such invitee against unusual dangers of which the occupant knew or ought to have known, Indermaur v. Dames, 1866 L. R. I C.P. 274.
- (b) Towards a licensee, that is, one entering on a bare permission, who has a duty not to cause injury by reason of a trap, that is a hidden danger covered over to give the appearance of safety, Gautret v. Egerton, 1866, L.R. 2 C.P. 375

The Deputy Minister of Justice,
Ottawa,

Material transferred from Mr. Blair's Office in 1964-12

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The Custodian.

- (c) Towards a trespasser, not to injure him wilfully.
In this latter case, because of the restricted nature of this duty, liability would not arise.

While the authorities speak of the obligation here being imposed upon the occupant the essential reason for that liability is because the occupant has the control, and therefore having control is the one deemed at fault. Therefore, it follows that where the person has control of the premises he comes within that duty imposed upon the occupant. This is explained in the judgment of Lord Atkinson in Cavalier v. Pope, 1906 A. C. 433, also by Abbot, C.J. in Laugher v. Pointer (1826) 5 B. & C. 576, where he states:-

"I have the control and management of all that belongs to my land or my house and it is my fault if I do not so exercise my authority as to prevent injury to another"

and by Masten J.A. in Read v. Town of Mimico, 1926 59 O.L.R. at page 584.

In the case of an evacuee, his lands and the control and management thereof are vested in the Custodian (P.C. 2483 amending Regulation 12 of P. C. 1665) and in the case of a Japanese enemy there is at least an equivalent vesting under the Consolidated Regulations respecting trading with the enemy. There is, therefore, vested in the Custodian that control necessary to vest in him those common law duties to third persons entering on the lands in the respective categories of invitee and licensee. There are evident instances where an action may arise, where with the permission of the Custodian or of an officer concerned in the management a third person enters to determine whether he will lease or purchase; then such third person is entering upon a matter of business that concerns the occupant (having regard to the vesting of the duty of management and control.) Therefore there arises the relation of invitee and invitor and the consequent liability for injuries from an unusual danger or from the premises not being reasonably safe. Similarly a third person entering on a bare permission would assume the

The Deputy Minister of Justice,

Ottawa.

Material transferred from the Office of the Clerk of the Privy Council in 1961-12

file 13

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The Custodian.

relation of licensee at least, and there would be a liability for injuries which were received from a trap. As for example, an insecurely covered cesspool or other pit.

Again you will remember that under the Japanese system of farming it is not uncommon to find several holdings on the one parcel of land and access to a holding may be over other holdings on the same parcel. It, therefore, follows that a tenant as an incident of a lease from the Custodian may acquire the right of crossing other holdings and in so crossing the tenant would assume the relation of invitee or licensee depending upon whether he had purchased the right or it had been given to him subsequently as a gift. This duty imposed on the Custodian would cease in respect of a particular parcel when it has been leased and repossession taken by the tenant (*Cavalier v. Pope*) but it would appear that so long as the control remains in the Custodian the common law duty on an occupant would continue.

Secondly, there is a possible liability for nuisance. Whether the Japanese be an enemy or evacuee, there is a vesting of his lands in the Custodian (Consolidated Regulations, Sec. 21, (P.C. 2483 enacting Regulation 12) and it is to be observed that the liability in respect of a nuisance existing at the time of the vesting is not necessarily abrogated by a subsequent leasing, *Rich v. Basterfield*, 1947, 16 L.J.C.P. 273.

We appreciate that the principle of respondeat superior does not apply to impose upon a superior officer of the Crown any liability for the negligence of a subordinate, but that does not appear to apply here. The duty is on the Custodian in whom is vested the property and control and any omission to perform that duty would be the personal omission of the Custodian in whom is imposed the duty of care, and that would be equally the case though the Custodian had delegated the duty of care to subordinates; while he may delegate the performance that does not divest the obligation. Because of this potential liability there would appear necessary a statutory immunity if that liability were to be excluded. We have read the Regulations and fail to find anything on which can be founded a statutory defence to these types of action. Such a defence could be expected to be effective only if it were expressed and without ambiguity. Consolidated Regulations 6 (3) offers immunity not to the Custodian but to those acting under his express orders, or in the belief that they are authorized.

The Deputy Minister of Justice,

Ottawa.

Material transferred from Mr. Klein's Office in 1961-62

file 13

- 4 -

The Custodian.

This, therefore, would offer the Custodian no defence, Regulation 21 precludes an action by an enemy to recover his property, but could not apply to an action by a third person for damages suffered in tort. Section 45 (2) bars actions by creditors of Japanese and Regulation 50 applies only to charges statutory or otherwise. In the case of an evacuee the immunities of the Consolidated Regulations are made applicable by reference "for the purposes of control and management of such property" and therefore there is no additional statutory defence.

In conclusion we are of the opinion that the control vested in the Custodian would carry with it those corresponding obligations of an occupant and therefore there is a possible liability to third persons for injuries received on the premises while that control remains.

Yours truly,
LOCKE, LANE, GUILD & SHEPPARD,

Per:- (Initialed) FAS.

FAS/EB.

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Allen's Office in 1964-65

RG 117
vol. 1
file 13

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

RECEIVED ALL
COMMUNICATIONS
TO THE
CUSTODIAN'S OFFICE
PLEASE REFER
TO
FILE NO.

501 Royal Bank Building,
Vancouver, B.C.,
July 28th, 1942.

Dr. E.H. Coleman, K.C.,
Under Secretary of State,
West Block,
OTTAWA, Ontario.

Re: Evacuation Section

Dear Doctor:

Further to my letter of July 15th and to my
wire about Indemnity Insurance, it would be
greatly appreciated if you could let me have
a ruling on the points raised, since these are
problems that are very urgent here.

I know that you are extremely busy and I would
not trouble you in the matter, except that I
am anxious to do everything possible to fac-
ilitate the evacuation by the Commission, and
in order to protect the Custodian from criticism
that is bound to arise in the near future.

Yours truly,

G.W. McPHERSON.

Authorized Deputy of the Secretary
of the State and/ or the Custodian.

GWMcP:EW.

policy to pay taxes where the property
bearing, and if so I assume that it is in order to
charge such taxes against revenue.

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Lavin's Office in 1964-2

RG 17
vol. 1
file 13

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

501 Royal Bank Bldg.,
Vancouver, B.C.,
July 15th, 1942.

Dr. E.W. Coleman, K.C.,
Under Secretary of State,
West Block,
Ottawa, Ontario.

Dear Dr. Coleman:

Re: Evacuation Section

There are several important questions of policy which can only be decided in Ottawa and it is desirable that a definite ruling be obtained and put into force before I leave here at the end of the month. It would help considerably, therefore, if you would review the following questions and let me have your decisions as to policy at your convenience.

INSURANCE: There are two classes of Insurance and I will deal with them separately, and the problems involved.

Fire Insurance. Should the Custodian, as a trustee, insure property coming into his possession which was not insured by the Japanese owner? This question which insurance on houses and the contents.

Life Insurance. As I recall our discussion in Ottawa, you consider Life Insurance policies to be securities that the Japanese is entitled to take out of the area with him. However, if he leaves the policy in the area and the Custodian has funds, should the Custodian's office pay the premiums and keep the policy in force regardless of whether or not there are creditors, or should he merely refer the company to the Japanese and forward the policy to him?

In the above cases if any disbursements are made by the Custodian, I presume he is entitled to charge same against any assets of the Japanese under his control.

TAXES: It is the policy to pay taxes where the property is revenue bearing, and if so I assume that it is in order to charge such taxes against revenue.

The Deputy Minister of Justice,

Ottawa.

Material transferred from Mr. Allen's Office in 1964-2

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AGENTS FEES; Considerable expense is being incurred by way of disbursements to agents as distinct from actual administration expenses of this office. Is it the policy of the Custodian that such disbursements be charged against the assets of Evacuees, regardless of the provision in the Order in Council that no commission is to be charged. Cannot the provision of the Order in Council be read that no commission is to be charged for actual office administration distinct from disbursements?

PAYMENTS TO JAPANESE: The Order in Council permits Evacuees to take cash assets with them, but the balance of the property left vests in the Custodian. In administering such property, revenue is received and funds representing the proceeds of sale. Is it the policy of the Custodian that such funds coming into the Custodian's hands should be forwarded to the Evacuee?

In considering this, it should be kept in mind that many Evacuees left debts which will have to be paid; and many Evacuees left their families who have not yet been moved, and they are being fed and housed under Government Agencies with the necessary expense. In addition, if the answer to the above question is that the Custodian is entitled to charge disbursements, then would it not be advisable to freeze all funds until the Evacuation is completed and all charges in the nature of Agents Fees, Insurance, Taxes, Debts and Maintenance paid.

A criticism of such a policy may come from the B.C. Security Commission who have permitted many of the more wealthy Japanese to evacuate themselves to self-sustaining camps, and the Commission will claim that we are embarrassing them by not remitting funds. We have been careful not to give the Commission any undertaking that we would remit funds to these Japanese. On this point I would suggest that the property having vested in the Custodian is his property and while he owes a duty to the Japanese, he owes a duty also to the creditors, municipal tax collectors, and the tax payers of Canada generally, and the question of maintenance while they are evacuated is for the Security Commission rather than the Custodian.

FARM LANDS: The insertion of the Soldier Settlement Board into the work of the Custodian's office here has not simplified matters, and has definitely complicated the renting of farm lands. It is essential that if the Custodian expects to keep the tenants that we worked so hard to obtain this year, on the land next year, immediate arrangements must be made to execute leases. I am advised that no man will rent

The Deputy Minister of Justice,

Ottawa.

Material forwarded to Mr. Lewis's Office in 1942

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a strawberry farm as such for less than two years and prefer it for four, since it is a four year crop. I am also advised by Mr Child of the Soldier Settlement Board here, that the Director will not consent to more than a one year lease. This, in my opinion, is a hopeless situation, since we wish to rent for two years and he will not consent to more than a one year lease. Therefore, is it the Custodian's policy that the office here spend its time hunting for tenants for Mr. Murchison to reject, or should Mr. Murchison's Organization find the tenants and this office approve the renting of the premises. If he will approve of two year leases, the situation would be considerably improved and we could go ahead immediately.

The organization is set up here to function and the matter cannot, without considerable expense and loss of tenants, be allowed to drag for a month or six weeks as suggested by the Soldier Settlement Board. If the Custodian desires his staff here to make a satisfactory job, above criticism, of handling the Fraser Valley farm situation then it is essential that the details and the responsibilities of the two departments concerned be determined as quickly as possible.

I would not write you concerning these questions and particularly concerning the last question if they were not urgent, and it would be appreciated if you could advise me of your decisions as soon as possible so the policy may be put into effect immediately.

Yours very truly,

John L. ...

GWMcP:VJ

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Llewellyn's Office in 1964-2

RG 17
vol. 1
file 13

Ottawa, July 27, 1942.

re Public Liability

Dear Mr. McPherson,-

I have received your letter of the 25th July.
I put the matter before the Deputy Minister of Justice
last week and asked him to consider drafting an appro-
priate amendment. I have not yet heard from him.
Yours sincerely,

E. H. COLEMAN

G. W. McPherson, Esq.,
501 Royal Bank Building,
Vancouver, B.C.

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Klein's Office in 1961-12

RG 17
201.1
file 13

VIA AIR MAIL

ADDRESS ALL
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PLEASE REFER
TO
FILE NO.

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

501 Royal Bank Building,
Vancouver, B.C.
July 25th, 1942.

Dr. E.H. Coleman, K.C.,
Under Secretary of State,
West Block,
Ottawa, Ontario.

Re: Public Liability

Dear Doctor:

I sent you a wire, dealing with this matter,
on July 16th, the wire being as follows:-

"Sheppard advises liability incurred lady
fell down stairs property vested. Custodian
owns several thousand properties months
before condition regarding dangers to
invitees known. Insurance appears pro-
hibitive recommend retroactive amendment
limiting liability value assets vested
specific case as under Trustee Acts.
Appreciate ruling case has arisen."

I have not yet received a reply and feel that
this matter is rather urgent, since we have
already had two accidents. I discussed the
matter with Mr. Sheppard and with various
Insurance Agencies and it appears that the
insurance may be prohibitive. The only logical
solution would appear to be a provision inserted
in the "Trading with the Enemy Regulations"
to protect the Custodian generally from action
for public liability, at least to the amount
of the property administered by him.

Yours very truly,

E.H. Coleman

GWMcP:HW.

E.H. COLEMAN
Under Secretary of State.

The Deputy Minister of Justice,
Ottawa.

RG 17
201.1
file 13

1X
CANADIAN PACIFIC
TELEGRAPHS
REAL

Ottawa, July 22, 1942.

Dear Sir,-

You will recollect that under Order in Council P.C. 2483, approved on the 27th March, Regulation twelve, dealing with the Japanese evacuation, vested in the Custodian the property situated in any protected area of British Columbia belonging to any person of the Japanese race. For your convenience I enclose a typewritten copy of the Order in Council.

You will observe that the Order provides for the vesting when the owner is evacuated. The effect of this has been that more than 1,000 parcels of real property have vested in the Custodian, the vesting in many cases taking place on the evacuation of the Japanese owner although, as a matter of fact, on occasion it may be some time before the Custodian's officers have any information as to the actual evacuation of the individual having taken place.

A difficult point has now arisen. Many of these properties which were unoccupied have been offered for rent and prospective tenants have inspected them. In one case a woman who was inspecting a property with the view to renting it fell downstairs and sustained personal injuries including a broken leg. She has now threatened an action for damages against the Custodian and the Solicitor in Vancouver nominated by your Department to advise the Custodian has advised that there is liability.

The Custodian's representative in Vancouver advises me that the premium rates for insurance appear to be prohibitive and he recommends that the Order in Council be amended limiting the liability to the value of the assets vested in any specific case on the principle set out in the various Provincial Trustee Acts. He further recommends that this amendment should be retroactive.

Will you kindly consider this point and advise me if the Minister of Justice is prepared to recommend an amendment to this effect. I observe that the Order in Council of the 27th March was passed on the recommendation of the Minister of Justice.

Yours sincerely,

E. H. COLEMAN
Under Secretary of State.

The Deputy Minister of Justice,
Ottawa.

Material transferred from Mr. Lewis's Office in 1961-2

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file 13

CANADIAN PACIFIC TELEGRAPHS

World Wide Communications

C.D. IX

W.D. NEIL, GENERAL MANAGER OF COMMUNICATIONS, MONTREAL

25VRC4 48 NL

VANCOUVER BC JULY 16

DR E H COLEMAN K.C., 1470

UNDER SECRETARY OF STATE WEST BLOCK OTTAWA ONT

SHEPPARD ADVISES LIABILITY INCURRED LADY FELL DOWN STAIRS PROPERTY VESTED
STOP CUSTODIAN OWNS SEVERAL THOUSAND PROPERTIES MONTHS BEFORE CONDITION
REGARDING DANGERS TO INVITEES KNOWN STOP INSURANCE APPEARS PROHIBITIVE
RECOMMEND RETROACTIVE AMENDMENT LIMITING LIABILITY VALUE ASSETS VESTED
SPECIFIC CASE AS UNDER TRUSTEE ACTS STOP APPRECIATE RULING CASE HAS
ARISEN

G W MCPHERSON

12MIDNITE

with regard to the placement of such persons be limited to making provision for the temporary placement only of such persons during the continuation of the state of war now existing and that the authority of the Commission should include power to vary or amend any placement order;

AND WHEREAS recommendations have been made to the Minister of Justice by the British Columbia Security Commission to the effect that a greater degree of protective control over persons of the Japanese race and the property of such persons be provided for than was provided by the Order establishing the Commission, above referred to;

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and under and by virtue of the powers conferred by the War Measures Act, Chapter 206, R.S.C., 1927, is pleased to amend the Regulations established by Order in Council P.C. 1665 dated March 4th, 1942 as follows:

1. Regulation one is hereby amended by adding thereto the following paragraph:

"(bb) 'Person of the Japanese race' means any person of the Japanese race required to leave any protected area of British Columbia by Order of the Minister of Justice under Regulation 4, as amended, of the Defence of Canada Regulations (Consolidation) 1941."

Material forwarded from Mr. Linn's Office in 1942

1942
July 13

copy

P.C. 2483.

PRIVY COUNCIL
CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
FRIDAY, the 27th day of MARCH, 1942.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS BY Order in Council P.C. 1665 dated March 4th, 1942, the British Columbia Security Commission was established for the purpose of planning, supervising and directing the evacuation from the protected areas of British Columbia of all persons of the Japanese race and for such purpose was empowered to determine amongst other things all matters relative to the placement of such persons;

AND WHEREAS it is represented to the Minister of Justice that it is desirable to provide that any plan with regard to the placement of such persons be limited to making provision for the temporary placement only of such persons during the continuation of the state of war now existing and that the authority of the Commission should include power to vary or amend any placement order;

AND WHEREAS recommendations have been made to the Minister of Justice by the British Columbia Security Commission to the effect that a greater degree of protective control over persons of the Japanese race and the property of such persons be provided for than was provided by the Order establishing the Commission, above referred to;

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and under and by virtue of the powers conferred by the War Measures Act, Chapter 206, R.S.C., 1927, is pleased to amend the Regulations established by Order in Council P.C. 1665 dated March 4th, 1942 as follows:

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Material transferred from the War Office in 1942

MS. A. 1
4.12.12

to an enemy within the meaning of the said Consolidated Regulations".

A.D.P. HEENEY
Clark of the Privy Council.

Clerk of the Privy Council.

Material transferred from Mr. Stein's Office in 1961-62

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2. Regulation ten is hereby amended by adding thereto the following paragraphs:

"(5) Any such plan or plans shall make provision for the temporary placement only of such persons during the continuation of the state of war now existing.

"(6) The Commission's authority relative to the placement of persons shall include power to vary or amend any placement order."

3. Regulation eleven is hereby amended by rescinding paragraph two thereof and substituting therefor the following:

"(2) The Commission may make orders respecting the conduct, activities and discipline of any person of the Japanese race who is within any protected area or who is ordinarily resident within any protected area but who has left or leaves such area after February 5th, 1942."

4. Regulation twelve is hereby rescinded and the following substituted therefor:

"12 (1) Subject as hereinafter in this Regulation provided, as a protective measure only, all property situated in any protected area of British Columbia belonging to any person of the Japanese race (excepting fishing vessels subject to Order in Council P.C. 288 of January 13th, 1942, and deposits of money, shares of stock, debentures, bonds or other securities) delivered up to any person by the owner pursuant to an order of the Minister of Justice, or which is turned over to the Custodian by or on behalf of the owner, or which the owner, on being evacuated from the protected area, is unable to take with him, shall be vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy, (1939); provided, however, that no commission shall be charged by the Custodian in respect of such control and management.

"(2) The Custodian may, notwithstanding anything contained in this Regulation, order that all or any property whatsoever, situated in any protected area of British Columbia, belonging to any person of the Japanese race shall, for the purpose of protecting the interests of the owner or any other person, be vested in the Custodian, and the Custodian shall have full power to administer such property for the benefit of all such interested persons, and shall release such property upon being satisfied that the interests aforesaid will not be prejudiced thereby.

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