Box 1001

J-25-1 JAPAN 1946

FILE No. J-25-1

1946

PRIVY COUNCIL OFFICE
CANADA

SUBJECT

JAPAN

Japanese in Canada

J-25-1 JAPAN 1946
Japanese in Canada

J-25-1 "
Dec. 13/46.

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SECRET

A meeting of the Cabinet Committee on Japanese Problems was held in the Privy Council Office, on Friday, December 13, 1946, at 2.30 p.m.

Present:

The Acting Minister of Labour, (Mr. McCann), — Chairman

Also Present:

The Deputy Minister of Labour,
Mr. A. MacNamara

The Under Secretary of State, and Deputy Custodian,
Dr. E.H. Coleman

Mr. A.H. Brown,
Department of Labour,

Mr. D.H.W. Henry,
Department of Justice,

Mr. A.R. Menzies,
Department of External Affairs,

Mr. R.G. Robertson,
Prime Minister's Office,

Mr. K.W. Wright,
Counsel to the Custodian,

Mr. R. Ranger,
Privy Council Office,

Mr. Eric Stangroom,
Department of Labour — A/Secretary

1. The Chairman enquired as to the reaction in various parts of the country to the present distribution of persons of Japanese race, and as to measures required to maintain adequate stability.

2. The Deputy Minister of Labour enlarged on the details contained in the reference documents before the Committee, referring to the opposition of the Alberta government to the present concentration of Japanese in that Province; and also the choice between continuing existing Orders in Council under the National Emergency Transitional Powers Act, new legislation, and providing only for welfare and voluntary relocation through an item in the estimates.

3. The Under Secretary of State explained the Custodian's position, mentioning that if Japanese were not to be allowed to return to the coast, authority would be required to dispose of halls, churches, etc., owned by Japanese societies. Mr. Wright outlined the process by which, at present, title to the property of individuals was conveyed.

4. Mr. Brown and Mr. Henry agreed that consolidation of present Orders in Council was not feasible, and that new powers could not be obtained under the present National Emergency Transitional Powers Act.

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5. Mr. Robertson and Mr. Menzies pointed to the necessity for decision regarding various categories of Japanese who might be entitled to re-admission into Canada. It was agreed that the Secretary of State's Department should discuss the relevant legal issues with the Department of Justice.

6. The Deputy Minister of Labour mentioned that Japanese pensioners of World War I, mostly widows and mothers, would be seeking re-instatement. The Under Secretary of State felt this should be done when feasible, and that the payment of accumulated sums be made in the light of investigations by our mission in Tokyo.

He then read a telegram received by the Clerk of the Privy Council from the Minister of Veterans Affairs:-

"Vancouver, December 12, 1946. Confidential

"Would prefer Japanese question be deferred until my return to Ottawa December Twenty-third STOP Otherwise request that you firmly state my position that I am definitely against any Japanese being allowed back to protected areas of British Columbia.

(signed) Ian Mackenzie."

7. As there was not a quorum of Ministers at the Committee, it was decided to distribute the file of reference documents to all members of the Cabinet for their information, and that an endeavour be made to have the Committee meet again on Wednesday, January 8, 1947, at 2.30 p.m.

The meeting adjourned at 3.30 p.m.

Eric Stangroom,
A/Secretary.

Privy Council Office,
Ottawa, December 18, 1946.

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COMMITTEE OF CABINET ON

JAPANESE PROBLEMS

AGENDA FOR MEETING TO BE HELD IN THE PRIVY COUNCIL OFFICE AT 2.45 P.M., FRIDAY, DECEMBER 13, 1946

1. Report on activities of Japanese Division. (Reference Document 'A')

2. Future Policy on Deportation and Repatriation. (Reference Document 'B')

3. Future Policy on Relocation and Controls in Canada. (Reference Document 'B')

4. Future Policy on Status of Canadian-born Japanese in Japan. (Reference Document 'C')

5. Review of existing Orders in Council relating to Japanese to determine what continuing powers required to carry out policy decisions. (Reference Document 'D')

6. Report on activities of Custodian. (Reference Document 'E')

Eric Stangroom,
A/Secretary.

Privy Council Office,
December 11, 1946.

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Ref. Document 'D'

MEMORANDUM TO THE CABINET COMMITTEE ON JAPANESE PROBLEMS

RE: Orders in Council Relating to Persons of the Japanese Race

P.C. No.	Date	Subject Matter
9590	7/12/41	Makes the regulations re trading with the enemy applicable to the Japanese. Remarks: May be allowed to expire.
9760	16/12/41	This made provision for compulsory re-registration by the R.C.M. Police of all persons of the Japanese race in Canada who had reached their sixteenth birthday and provided penalties for non-compliance. It contained instructions concerning issuance of Registration Certificates to Japanese and the details of registration. Remarks: Required in connection with control of travel and residance, which would be most difficult without Japanese being required to carry registration cards.
9761	16/12/41	This prohibited any person of the Japanese race from using or operating any vessel in waters adjacent to the west coast of Canada without written authority from the Commissioner of the R.C.M. Police. It also provided for the seizure and detention of any vessel so illegally used by a person of the Japanese race and provided penalties for non-compliance. Remarks: Has lapsed as vessels have all been sold and Japanese are still prohibited from entering the coastal area.
251	13/1/42	Prohibition of Japanese fishing licences. Remarks: May be allowed to expire. Department of Fisheries.
1348	19/2/42	Authorizes Department of Mines and Resources to establish road camps for employment of evacuee Japanese. Amended by P.C. 6758 - 31/7/42, P.C. 8173 - 11/9/42 Remarks: May be allowed to expire.
1665	4/3/42	Creates British Columbia Security Commission to evacuate all Japanese from protected area, and to provide housing, welfare and placement for evacuees.

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P.C. No.	Date	Subject Matter
		Amended by P.C. 2483 - 27/3/42 P.C. 2541 - 30/3/42 P.C. 3231 - 21/4/42 Repealed except as to section 12 thereof by P.C. 946 - 9/2/43 Section 12 vested in the Custodian all property in the protected area of evacuated Japanese except liquid assets. Remarks: The complete repeal of this order is a matter for decision of the Department of Secretary of State.
4615	2/6/42	Concurred in agreement of B.C. Security Commission with Province of Alberta for temporary placement of evacuee Japanese in sugar beet culture in Alberta, and containing a provision that at end of war the Commission would at request of province remove the evacuees. Remarks: May be allowed to expire. The obligation of the B.C. Security Commission under this agreement has by P.C. 946 of February 9, 1943, been assumed by the Minister of Labour. The obligation under the agreement remains although the order lapses.
6247	20/7/42	As amended by P.C. 469 of January 19, 1943. Revokes P.C. 5523 of June 29, 1942. P.C. 6247 amended to give Custodian authority to complete liquidation of fishing vessels of evacuee Japanese, and authorizes the Custodian to sell and liquidate or otherwise dispose of all property of persons of Japanese race evacuated from protected area which was placed in the custody of the Custodian by any other order. This order is therefore an extension of the powers vested in the Custodian by section 12 of P.C. 1665 of March 4, 1942, as well as amending P.C. 6247 of July 20, 1942, referred to above. Remarks: Continuation of this order and of section 12 of P.C. 1665 a matter for Secretary of State. Evidently, however, this authority is required to be continued.
10773	26/11/42	This provides that British subjects who have applied for repatriation to an enemy country during the war shall in leaving Canada lose their Canadian citizenship.

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P.C. No.	Date	Subject Matter
		Remarks: This is an order of the Secretary of State and decision on this order rests with the Secretary of State and Department of External Affairs. Presumably the order may be permitted to lapse.
946	5/2/43	Dissolves B.C. Security Commission. Revokes P.C. 1665 of March 4, 1942, except section 12. Vests in the Minister of Labour power to provide for the welfare, placement, control of movement and discipline of persons of the Japanese race in Canada; to issue licences to Japanese to acquire an interest in real property which is otherwise prohibited. Amended by P.C. 5973 of September 14, 1945, and P.C. 5793 of December 18, 1945, P.C. 5637 of August 16, 1945, and P.C. 9743 of December 24, 1943.
		Remarks: To be continued in effect by extension of emergency powers or replaced by legislation if continued controls over movement and placement of Japanese in Canada is necessary.
1422	22/2/43	This suspends the operation of B.C. legislation which prohibits the employment of Orientals on Crown timberlands.
		Remarks: May be allowed to expire.
4002	17/5/43	This approves of an agreement entered into between the Province of Alberta and the B.C. Security Commission under which the Security Commission agreed to pay for the schooling of Japanese children moved to Alberta at the rate of $5.00 per pupil per month for Public School education.
		Remarks: The obligation under this agreement which is now vested in the Minister of Labour by P.C. 946 of February 9, 1942, still exists and will continue to exist even if the order lapses. The order may be permitted to lapse.
4365	28/5/43	Authorized the Minister of Labour to operate the fuel cutting project with Japanese labour in B.C. to be financed out of revolving fund.
		Remarks: This may be allowed to lapse.
7355	15/12/45	Provides for deportation of Japanese who requested repatriation to Japan and for payment of repatriation allowances to persons deported or repatriated on a voluntary basis; and payment of transportation expenses for these persons.
		Remarks: Continuation of order beyond expiry date is a matter of Government policy.

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	P.C. No.	Date	Subject Matter
95	7356	15/12/45	Revokes naturalization of naturalized Canadians of Japanese race who are deported or repatriated under P.C. 7355. Remarks: See 7355.
97			
9	7357	15/12/45	Authorizes the establishment of an Inquiry Commission to inquire into the activities of persons of Japanese race with a view to determining whether they should be deported because of disloyalty or lack of co-operation. Remarks: See 7355.
219		22/1/46	Establishes the rate of exchange of money turned in by Japanese repatriates for transmission to Japan and authorizes the Controller of the Treasury to make necessary arrangements with U.S. authorities to provide for transfer of funds of Japanese repatriates from Canada via U.S. via a Supreme Allied Commander in Japan to repatriated Japanese. Remarks: Will be required as long as funds are being transferred to repatriates, pursuant to provisions of P.C. 7355 above.

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List of Orders in Council relating to persons of the Japanese race.

9590	7/12/41	Regulations re Trading with the Enemy made applicable to the Japanese
9760	16/12/41	Re-registration of persons of Japanese race
9761	16/12/41	Prohibiting operation of vessels in waters adjacent to the West Coast by persons of Japanese race
251	13/1/42	Fishing licence - prohibited to persons of Japanese racial origin
288	13/1/42	Committee re disposal of fishing boats amended by P.C. 987 9/2/42 P.C. 3737 5/5/42
1348	19/2/42	Work camps for male enemy aliens amended by P.C. 6758 31/7/42 P.C. 8173 11/9/42
1665	4/3/42	British Columbia Security Commission amended by P.C. 2483 27/3/42 P.C. 3213 21/4/42
4615	2/6/42	British Columbia Security Commission and Province of Alberta - agreement for moving persons of Japanese race
6247	20/7/42	Boats and equipment owned by Japanese vested in Custodian
469	19/1/43	Transfer to Custodian of property of Japanese evacuees
946	5/2/43	Regulations re placement, control and maintenance of persons of the Japanese race in Canada amended by P.C. 9743 24/12/43 P.C. 5637 16/8/45 P.C. 5793 18/12/45 P.C. 5973 14/9/45
4002	17/5/43	British Columbia - Alberta agreement re Japanese school children
4365	28/5/43	Japanese labour to be utilized for wood fuel cutting and timber operations
468	23/1/45	T.B. Pickersgill appointed Commissioner of Japanese placements
7355	15/12/45	Deportation of persons of the Japanese race
7356	15/12/45	Revocation of Naturalization of persons of Japanese race deported under provisions of P.C. 7355
7357	15/12/45	Commission appointed to inquire into activities of persons of the Japanese race during the war.

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Orders in Council relating to persons of the Japanese race

9590	7/12/41	Regulations re Trading with the Enemy made applicable to the Japanese
251	13/1/42	Fishing licence - prohibited to persons of Japanese racial origin
1348	19/2/42	Protected area established in British Columbia. amended by P.C. 6758 31/7/42 P.C. 8173 11/9/42
1665	4/3/42	British Columbia Security Commission amended by P.C. 2483 27/3/42
4615	2/6/42	B.C. Security Commission and Province of Alberta - approval of agreement for moving persons of Japanese race.
5523	29/6/42	Regulations re property in British Columbia belonging to persons of the Japanese race amended by P.C. 6885 4/8/42
6247	20/7/42	Boats and equipment owned by Japanese vested in Custodian
469	19/1/43	Transfer to Custodian of property of Japanese evacuees
946	9/2/43	Regulations re placement, control and maintenance of persons of the Japanese race in Canada amended by P.C. 9743 24/12/43 P.C. 5973 14/9/45
4002	17/5/43	B.C. - Alberta agreement re Japanese shool children
4365	28/5/43	Japanese labour to be utilized for wood fuel cutting and timber operations
5637	16/8/45	Detention of prisoners of Japanese race to be continued
7355	15/12/45	Deportation of persons of the Japanese race
7356	15/12/45	Revocation of Naturalization of persons of Japanese race deported under provisions of P.C. 7355
7357	15/12/45	Commission appointed to inquire into activities of persons of the Japanese race during the War

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THE CO OPERATIVE COMMITTEE ON JAPANESE CANADIANS

In the Privy Council

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Copy to Mr. Stangroom

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Ottawa, December 7, 1946.

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4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

WASHINGTON OFFICE
JACL-ADC, INC.
P.O. BOX 1628
WASHINGTON 13, D.C.

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79th CONGRESS
2nd Session

July 26/46

In the House of Representatives

H. R. 6780

CREATING AN EVACUATION CLAIMS COMMISSION

By Mr. SUMNERS of Texas

REPORT No. 2679

FROM THE COMMITTEE ON THE JUDICIARY
(to accompany H. R. 6780)

Reprinted from the Official Documents
by the
JAPANESE AMERICAN CITIZENS LEAGUE
ANTI-DISCRIMINATION COMMITTEE, INC.
P. O. Box 1623, Washington 13, D. C.

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79TH CONGRESS
2D SESSION

Union Calendar No. 832

H. R. 6780

[Report No. 2679]

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1946

Mr. SUMNERS of Texas introduced the following bill; which was referred to the Committee on the Judiciary

JULY 26, 1946

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To create an Evacuation Claims Commission under the general supervision of the Secretary of the Interior, and to provide for the powers, duties, and functions thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established in the Department of the Interior, under the general supervision of the Secretary of the Interior, the Evacuation Claims Commission, with authority as hereinafter defined to adjudicate claims arising out of the evacuation or exclusion of persons of Japanese ancestry from west coast military areas, Alaska, and Hawaii subsequent to December 7, 1941. The Commis-

reentry rights under U.S. law. Those who are U.S. [illegible] would be entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

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7, 1946.

THE CO-OPERATIVE JAPANESE CANADIAN COMMITTEE

In the Privy Council

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1 sion shall consist of a chairman and two other members who
2 shall be appointed by the Secretary of the Interior. Two
3 members shall constitute a quorum and the agreement of
4 two members shall be sufficient for the transaction of any
5 business of the Commission.

6 JURISDICTION

7 SEC. 2. The Commission shall have jurisdiction to
8 adjudicate any claim by a person of Japanese ancestry
9 against the United States arising on or after December 7,
10 1941, when such claim is not compensated for by insurance
11 or otherwise and is substantiated in such manner as the
12 Commission may prescribe, for damage to or loss or destruc-
13 tion of real or personal property (including without limita-
14 tion damage to or loss or destruction of personal property
15 bailed to or in the custody of the Government or any agent
16 thereof), or other impairment of assets, that fairly arises
17 out of or is a reasonable and natural consequence of the
18 evacuation or exclusion of such person by the appropriate
19 military commander from a military area in Arizona, Cali-
20 fornia, Oregon, or Washington or from Alaska or Hawaii,
21 under authority of Executive Order Number 9066, dated
22 February 19, 1942 (3 CFR, Cum. Supp., 1092), section
23 67 of the Act of April 30, 1900 (48 U. S. C. 532), or
24 Executive Order Number 9489, dated October 18, 1944
25 (3 CFR, 1944 Supp., 45). As used herein "evacuation"

3

1 shall include voluntary departure from a military area
2 to but in anticipation of an order of exclusion there
3 Existence or intervention of other causes affecting the
4 age or loss, including action or nonaction by the cl
5 or his representatives, shall be considered by the C
6 sion in determining the amount of relief that will
7 and equitable according to the facts as they appear
8 case.

9 LIMITATIONS; CLAIMS NOT TO BE CONSIDE

10 SEC. 3. (a) The Commission shall receive
11 a period of eighteen months from the date of a
12 this Act. All claims not presented within that
13 be forever barred.

14 (b) The Commission shall not consider an

15 (1) by or on behalf of any person w

16 cember 7, 1941, was voluntarily or involun

17 from the United States to Japan or wh

18 resident in a foreign country;

19 (2) for damage or loss arising out

20 by any Federal agency pursuant to secti

21 4069, and 4070 (relating to alien ene

22 vised Statutes, as amended (50 U. S

23 pursuant to the Trading With the

24 amended (50 U. S. C. App., and S

25 (3) for damage or loss to any

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sion shall consist of a chairman and two other members who shall be appointed by the Secretary of the Interior. Two members shall constitute a quorum and the agreement of two members shall be sufficient for the transaction of any business of the Commission.

JURISDICTION

SEC. 2. The Commission shall have jurisdiction to adjudicate any claim by a person of Japanese ancestry against the United States arising on or after December 7, 1941, when such claim is not compensated for by insurance or otherwise and is substantiated in such manner as the Commission may prescribe, for damage to or loss or destruction of real or personal property (including without limitation damage to or loss or destruction of personal property in or in the custody of the Government or any agent thereof), or other impairment of assets, that fairly arises out of or is a reasonable and natural consequence of the evacuation or exclusion of such person by the appropriate military commander from a military area in Arizona, California, Oregon, or Washington or from Alaska or Hawaii, pursuant to the authority of Executive Order Number 9066, dated February 19, 1942 (3 CFR, Cum. Supp., 1092), section 1 of the Act of April 30, 1900 (48 U. S. C. 532), or Executive Order Number 9489, dated October 18, 1944 (3 CFR, 1944 Supp., 45). As used herein "evacuation"

shall include voluntary departure from a military area prior to but in anticipation of an order of exclusion therefrom. Existence or intervention of other causes affecting the damage or loss, including action or nonaction by the claimant or his representatives, shall be considered by the Commission in determining the amount of relief that will be fair and equitable according to the facts as they appear in each case.

LIMITATIONS; CLAIMS NOT TO BE CONSIDERED

SEC. 3. (a) The Commission shall receive claims for a period of eighteen months from the date of approval of this Act. All claims not presented within that time shall be forever barred.

(b) The Commission shall not consider any claim—

(1) by or on behalf of any person who after December 7, 1941, was voluntarily or involuntarily deported from the United States to Japan or who is otherwise resident in a foreign country;

(2) for damage or loss arising out of action taken by any Federal agency pursuant to sections 4067, 4068, 4069, and 4070 (relating to alien enemies) of the Revised Statutes, as amended (50 U. S. C. 21–24), or pursuant to the Trading With the Enemy Act, as amended (50 U. S. C. App., and Supp., 1–31, 616);

(3) for damage or loss to any property, or interest

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would be entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

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In the Privy Council

THE CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

therein, vested in the United States pursuant to said Trading With the Enemy Act, as amended; and

(4) for damage or loss on account of death or personal injury, personal inconvenience, physical hardship, or mental suffering.

HEARING; EVIDENCE; RECORDS

SEC. 4. (a) The Commission shall give reasonable notice to the interested parties and an opportunity for them to be heard and to present evidence before making a final determination upon any claim.

(b) Any relevant evidence having probative value shall be considered by the Commission in its inquiries. For the purpose of any hearing or investigation authorized under this Act, the provisions of sections 9 and 10 (relating to examination of documentary evidence, attendance of witnesses, and production of books, papers, and documents) of the Federal Trade Commission Act of September 26, 1914, as amended (15 U. S. C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission. Any person appointed to examine witnesses may be authorized by the Commission to issue subpenas to procure attendance of witnesses or production of documents and to appoint an officer to serve the same. Subpenas may be served personally, by registered mail, by telegraph, or by leaving a copy thereof at the residence or principal place

of business of the person required to be served. A verified return by the individual so serving the same, setting forth the manner of service, shall be proof of service, as shall be the return receipt or telegraph receipt when service is by registered mail or telegraph respectively. On request the United States marshals or their deputies shall serve such process in their respective districts.

(c) The Commission shall have a seal, which shall be judicially noticed.

(d) A written record shall be kept of all hearings and proceedings of the Commission and shall be open to public inspection.

ADJUDICATION; PAYMENT OF AWARDS; EFFECT OF ADJUDICATIONS

SEC. 5. (a) The Commission shall dispose of all claims filed with it by award or order of dismissal, as the case may be, upon written findings of fact and reasons for the decision. A copy of each such adjudication shall be mailed to the claimant or his attorney.

(b) The Commission may make payment of any award not exceeding $2,500 in amount out of such funds as may be made available for this purpose by Congress.

(c) On the first day of each regular session of Congress the Secretary of the Interior shall transmit to

unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

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Mr. Stangroom

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full and complete statement of all adjudications rendered by the Commission during the previous year, stating the name of each claimant, the amount claimed, the amount awarded, the amount paid, and a brief synopsis of the facts in the case. All awards not paid by the Commission under subsection (b) hereof shall be paid in like manner as are final judgments of the Court of Claims.

(d) The payment of an award shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary, and shall be a full discharge of the United States and all of its officers, agents, servants, and employees with respect to all claims arising out of the same subject matter. An order of dismissal against a claimant, unless set aside by the Commission, shall thereafter bar any further claim against the United States or any officer, agent, servant, or employee thereof arising out of the same subject matter.

ATTORNEYS' FEES

SEC. 6. The Commission, in rendering an award in favor of any claimant, may as a part of the award determine and allow reasonable attorneys' fees, which shall not exceed 20 per centum of the amount allowed, to be paid directly to the attorneys representing the claimant out of, but not in addition to, the amount of such award.

Any attorney who charges, demands, receives, or col-

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lects for services rendered in connection with such claim an
amount in excess of that allowed under this section,
recovery be had, shall be guilty of a misdemeanor, and sh
upon conviction thereof be subject to a fine of not m
than $2,000, or imprisonment for not more than one y
or both.

NO FORMER MEMBER OR EMPLOYEE TO PRACTICE BE
COMMISSION

SEC. 7. No member of the Commission or em
thereof shall, after termination of his appointmen
services with the Commission, be permitted dir
indirectly to represent any claimant before the Co

ADMINISTRATION

SEC. 8. For the purposes of this Act the C
may—

(a) Appoint a clerk and such attorneys,
interpreters, appraisers, and other employees
necessary to conduct the business of the Comm

(b) Call upon any Federal department
any information or records necessary in the
the Commission's business.

(c) Secure the cooperation of State an
governmental or otherwise, and reimburse
services rendered.

In the Privy Council

THE CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

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4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

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full and complete statement of all adjudications rendered by the Commission during the previous year, stating the name of each claimant, the amount claimed, the amount awarded, the amount paid, and a brief synopsis of the facts in the case. All awards not paid by the Commission under subsection (b) hereof shall be paid in like manner as are final judgments of the Court of Claims.

(d) The payment of an award shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary, and shall be a full discharge of the United States and all of its officers, agents, servants, and employees with respect to all claims arising out of the same subject matter. An order of dismissal against a claimant, unless set aside by the Commission, shall thereafter bar any further claim against the United States or any officer, agent, servant, or employee thereof arising out of the same subject matter.

ATTORNEYS' FEES

SEC. 6. The Commission, in rendering an award in favor of any claimant, may as a part of the award determine and allow reasonable attorneys' fees, which shall not exceed 20 per centum of the amount allowed, to be paid directly to the attorneys representing the claimant out of, but not in addition to, the amount of such award.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be guilty of a misdemeanor, and shall upon conviction thereof be subject to a fine of not more than $2,000, or imprisonment for not more than one year, or both.

NO FORMER MEMBER OR EMPLOYEE TO PRACTICE BEFORE COMMISSION

SEC. 7. No member of the Commission or employee thereof shall, after termination of his appointment to or services with the Commission, be permitted directly or indirectly to represent any claimant before the Commission.

ADMINISTRATION

SEC. 8. For the purposes of this Act the Commission may—

(a) Appoint a clerk and such attorneys, examiners, interpreters, appraisers, and other employees as may be necessary to conduct the business of the Commission.

(b) Call upon any Federal department or agency for any information or records necessary in the prosecution of the Commission's business.

(c) Secure the cooperation of State and local agencies, governmental or otherwise, and reimburse such agencies for services rendered.

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(d) Utilize such voluntary and uncompensated services as may from time to time be needed and available.

(e) Assist needy claimants in the preparation of claims for filing with the Commission.

(f) Make such investigations as may be necessary for the performance of its functions.

(g) Exercise any and all of its powers at any place within the continental United States, Alaska, and Hawaii.

(h) Make expenditures for personal services and rent in the District of Columbia and elsewhere, for the purchase of lawbooks and books of reference, for printing and binding, for the purchase, exchange, and maintenance of passenger-carrying vehicles, for supplies and equipment, for traveling expenses (including per diem in lieu of subsistence), for witness fees and mileage, for other administrative expenses, and for the payment of awards under section 5 (b) of this Act.

(i) Prescribe such rules and regulations, perform such acts not inconsistent with law, and delegate such authority as the Commission may deem proper in carrying out the provisions of this Act.

TERMINATION

SEC. 9. The existence of the Commission shall terminate at the end of five years from the date of approval of this Act: *Provided, however,* That if the Commission shall have earlier

finished its business its existence shall be terminated forthwith by direction of the Secretary of the Interior.

APPROPRIATIONS

SEC. 10. There are hereby authorized to be appropriated for the purposes of this Act such sums as Congress may from time to time determine to be necessary.

In the Privy Council

THE CO-OPERATIVE JAPANESE CANADIAN COMMITTEE

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for the Prime Minister:

79TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 2679

CREATING AN EVACUATION CLAIMS COMMISSION

JULY 26, 1946.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 6780]

The Committee on the Judiciary, to whom was referred the bill (H. R. 6780) to create an Evacuation Claims Commission under the general supervision of the Secretary of the Interior, and to provide for the powers, duties, and functions thereof, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

STATEMENT

The purpose of the bill is to authorize the adjudication of claims of persons of Japanese ancestry against the United States for losses arising out of the evacuation or exclusion of such persons by the War Department from the west coast, Alaska, and Hawaii during World War II. Appended hereto and made a part of this report is a letter from the Secretary of the Interior recommending the enactment of such legislation and explaining in detail the need therefor.

The committee feel that in all fairness the bill should pass and desire to call particular attention to the outstanding record of our 23,000 Japanese-Americans who served in the armed forces, in both the European and Pacific theaters, and to the fact that the records of the intelligence agencies show no case of sabotage or espionage by Americans of Japanese ancestry during the entire war.

In the following letter the President has expressed urgent reasons for the immediate enactment of the proposed measure:

THE WHITE HOUSE,
Washington, July 22, 1946.

Hon. HATTON W. SUMNERS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR JUDGE SUMNERS: There is pending before your committee a bill (H. R. 6780) to facilitate the adjudication and settlement of claims of Japanese-Americans for losses incurred by reason of their forced removal from their homes during a period of extreme national peril. The fears which impelled the Government to adopt the harsh expedient of excluding Americans of Japanese ancestry

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...face to obtain exit permits or to buy passage. If we

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...randum for the Prime Minister:

from strategic military areas have, most happily, proved largely groundless. An overwhelming majority of our Japanese-American population has proved itself to be loyal and patriotic in every sense. Those of them, and there were many, who entered the armed services have acquitted themselves with great distinction. It would, in my opinion, be a tragic anomaly if the United States were, on the one hand, to acclaim and decorate with honors the brave Nisei troops who fought so valiantly and at such sacrifice overseas, while, on the other hand, it ignored and left unredressed the very real and grievous losses which some of them, together with their immediate families, have suffered as a result of Government action in the midst of the same war.

* * * * * * *

Very sincerely yours,

HARRY S. TRUMAN.

A careful aualysis of the bill, section by section, has been made by the Attorney General and is set out in the following letter which he addressed to the chairman of the committee:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., July 24, 1946.

Hon. HATTON W. SUMNERS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in response to your request for my views relative to a bill (H. R. 6780) to create an Evacuation Claims Commission under the general supervision of the Secretary of the Interior, and to provide for the powers, duties, and functions thereof, and for other purposes.

Section 1 of the bill would provide for the creation of a three-man commission, to be known as the Evacuation Claims Commission, to be appointed by the Secretary of the Interior. Two members would constitute a quorum, and the agreement of two members would be sufficient for the transaction of any business of the Commission.

Section 2 would confer jurisdiction on the Commission to adjudicate any claim of a person of Japanese ancestry against the United States arising out of the loss or destruction of real or personal property, or the impairment of assets caused by the evacuation or exclusion of such claimants by military authority from a military area in the western portion of the United States, or from Alaska or Hawaii. Such claims must have originated after December 7, 1941, and must not have been compensated for by insurance or in any other manner.

Section 3 would authorize the Commission to receive claims for a period of 18 months after the enactment of the bill under consideration, and all claims not presented within that time would be barred. The section would not apply to (1) claims by or on behalf of any person who after December 7, 1941, was deported from the United States to Japan, or who is otherwise resident in a foreign country; (2) any claim arising out of any action taken by the Government relating to alien enemies, or pursuant to the Trading With the Enemy Act; (3) any claim for damage to or loss of property vested in the United States pursuant to the Trading With the Enemy Act; (4) or any claim for damage or loss on account of death or personal injury, inconvenience, physical hardship, or mental suffering.

Section 4 would grant interested parties an opportunity to be heard upon reasonable notice and would provide the Commission with the power of subpena and a seal which would be judicially noticed. The Commission would be required to keep a written record of all proceedings.

Section 5 would authorize the Commission to make payments not exceeding $2,500 out of such funds as may be made available by the Congress and would require the Secretary of the Interior to make a complete report to the Congress on the first day of each regular session, listing all adjudications rendered by the Commission, the amount claimed by each claimant, the amount awarded, the amount paid, and a brief synopsis of the facts in each case. The section further provides that the payment of an award would be final and conclusive for all purposes.

Section 6 would permit the Commission, in making an award, to allow a reasonable attorney's fee, not exceeding 20 percent of the amount awarded. Any attorney receiving an amount in excess of that allowed by the Commission would be guilty of a misdemeanor and, upon conviction, subject to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both.

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any ...im before the Commission. Section 8 would grant authority f... appo...ment of personnel of the Commission and would confer the powers ...sary for its operation. Section 9 would provide for the termination of the ...mission at the end of 5 years after the approval of the bill unless its work ...be finished sooner. In the latter event it would "be terminated forth... the direction of the Secretary of the Interior."

The necessity for the legislation arose out of the evacuation of approx... 110,000 persons of Japanese ancestry from the west coast and from the Ter... Hawaii and the Territory of Alaska. This evacuation caused economic lo... all types: property was sold at sacrifice prices, buildings were broken into... dals, fires destroyed some of the property, and in many instances trustees ... the property for the evacuees proved unfaithful. None of the usual m... safeguarding against such losses were available, since the evacuation ... and the evacuees were forbidden to return to the evacuated areas to ma... arrangements.

While the payment of the claims contemplated by the legislation ... effected either by private relief measures, which, because of the number ... would probably prove impractical, or by conferring jurisdiction on ... Court of Claims or the various United States district courts, which ... necessarily clog their dockets with cases involving small sums of mone... appropriate to permit the Department of the Interior to handle these c... that Department has, through its supervision of the evacuation progr... constant contact with the problems arising therefrom.

I find no objection to the enactment of the bill.

I have been advised by the Director of the Bureau of the Budget ... no objection to the submission of this report.

Sincerely yours,

TOM C. CLARK, *Attorn...*

The legislation is recommended in the following letter ... Secretary of the Interior addressed to the Speaker of th... Representatives:

DEPARTMENT OF THE INTERI...
OFFICE OF THE SEC...
Washington, A...

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: Enclosed is a draft of proposed legislat... the adjudication of claims of persons of Japanese ancestry aga... States for losses arising out of the evacuation or exclusion of such ... War Department from the west coast, Alaska, and Hawaii during ...

In 1942 the War Department, acting under Executive Order N... the exclusion of all persons of Japanese ancestry from the Pacific ... tinental United States, Alaska, and a portion of Arizona. Mo... removed to relocation centers administered by the War Reloc... They were joined later by over 1,000 persons evacuated from ... proximately 2½ years, these American citizens and their alien p... 100,000 in number, were exiled from their homes. After Jan... majority of them were allowed to return to the evacuated areas ... raveled ends of the life they knew before the forced evacuatio... 1945, about half of these people had so returned. The rem... scattered throughout the country or, in the case of the thousa... armed forces of the United States, are serving with the Arm... Europe or Asia. It is too early as yet to make a final estimat... and property losses sustained by the Japanese-Americans bec... tion, but it is well established that the losses have been heavy ... thing they had; many lost most of what they had.

The chief military justification for the removal of these ... the possibility of the existence of a disloyal element in the ... military situation in the Pacific which increased uneasiness ... of espionage or sabotage, and the lack of time and facilities ... screening. The persons evacuated were not individually ch... or with disloyalty, and subsequent experience has clearly d... vast majority of them were and are good Americans. Thi... cated by the outstanding record of our 23,000 Japanese-... in the armed forces, in both the European and Pacific the...

In the Privy Council

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Memorandum for the Prime Minister:

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who entered the armed services have acquitted themselves with great distinction.
It would, in my opinion, be a tragic anomaly if the United States were, on the
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OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., July 24, 1946.

on. HATTON W. SUMNERS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

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The necessity for the legislation arose out of the evacuation of approximately 110,000 persons of Japanese ancestry from the west coast and from the Territory of Hawaii and the Territory of Alaska. This evacuation caused economic injuries of all types: property was sold at sacrifice prices, buildings were broken into by vandals, fires destroyed some of the property, and in many instances trustees who held the property for the evacuees proved unfaithful. None of the usual methods of safeguarding against such losses were available, since the evacuation was rapid and the evacuees were forbidden to return to the evacuated areas to make proper arrangements.

While the payment of the claims contemplated by the legislation could be effected either by private relief measures, which, because of the number of claims, would probably prove impractical, or by conferring jurisdiction on either the Court of Claims or the various United States district courts, which would unnecessarily clog their dockets with cases involving small sums of money, it seems appropriate to permit the Department of the Interior to handle these claims, since that Department has, through its supervision of the evacuation program, been in constant contact with the problems arising therefrom.

I find no objection to the enactment of the bill.

I have been advised by the Director of the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

TOM C. CLARK, *Attorney General.*

The legislation is recommended in the following letter which the Secretary of the Interior addressed to the Speaker of the House of Representatives:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, April 24, 1946.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: Enclosed is a draft of proposed legislation to authorize the adjudication of claims of persons of Japanese ancestry against the United States for losses arising out of the evacuation or exclusion of such persons by the War Department from the west coast, Alaska, and Hawaii during World War II.

In 1942 the War Department, acting under Executive Order No. 9066, ordered the exclusion of all persons of Japanese ancestry from the Pacific coast of the continental United States, Alaska, and a portion of Arizona. Most of them were removed to relocation centers administered by the War Relocation Authority. They were joined later by over 1,000 persons evacuated from Hawaii. For approximately 2½ years, these American citizens and their alien parents, more than 100,000 in number, were exiled from their homes. After January 2, 1945, the majority of them were allowed to return to the evacuated areas and to pick up the raveled ends of the life they knew before the forced evacuation. By the end of 1945, about half of these people had so returned. The remainder have been scattered throughout the country or, in the case of the thousands who are in the armed forces of the United States, are serving with the Army of Occupation in Europe or Asia. It is too early as yet to make a final estimate of actual financial and property losses sustained by the Japanese-Americans because of the evacuation, but it is well established that the losses have been heavy. Some lost everything they had; many lost most of what they had.

The chief military justification for the removal of these 110,000 persons was the possibility of the existence of a disloyal element in their midst, the critical military situation in the Pacific which increased uneasiness over the possibility of espionage or sabotage, and the lack of time and facilities for individual loyalty screening. The persons evacuated were not individually charged with any crime or with disloyalty, and subsequent experience has clearly demonstrated that the vast majority of them were and are good Americans. This is convincingly indicated by the outstanding record of our 23,000 Japanese-Americans who served in the armed forces, in both the European and Pacific theaters, and by the fact

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Memorandum for the Prime Minister:

that the records of the intelligence agencies show no case of sabotage or espionage by Americans of Japanese ancestry during the entire war.

The evacuation orders gave the persons affected desperately little time in which to settle their affairs. The governmental safeguards that were designed to prevent undue loss in these circumstances were somewhat tardily instituted, were not at once effectively publicized among the evacuees, and were never entirely successful. Merchants had to dispose of their stocks and businesses at sacrifice prices. In a setting of confusion and hysteria, many evacuees sold personal possessions for a small fraction of their value. A large number had to accept totally inadequate arrangements for protection and management of property. Valuable leasehold interests had to be abandoned.

Continued exclusion increased the losses. Private buildings in which evacuees stored their property were broken into and vandalized. Mysterious fires destroyed vacant buildings. Property left with "friends" unaccountably disappeared; goods stored with the Government sometimes were damaged or lost. Persons entrusted with the management of evacuee real property mulcted the owners in diverse ways. Tenants failed to pay rent, converted property to their own use, and committed waste. Prohibited from returning to the evacuated areas even temporarily to handle property matters, the evacuees were unable to protect themselves adequately. Property-management assistance given by the War Relocation Authority on the west coast, although it often mitigated and sometimes prevented loss, could not completely solve the problem there, complicated as it was by difficulties in communication with absent owners and local prejudice.

In relocation centers the only income opportunities for evacuees lay in center employment at wage rates of $12 to $19 per month, plus small clothing allowances. Many felt compelled to discontinue payment of life-insurance premiums. Some found themselves unable to make mortgage or tax payments and lost substantial equities.

All of the foregoing examples of tangible loss to the evacuees are directly attributable to the evacuation and continued exclusion of these persons from their homes. Unlike our fighting men and their families, who also made financial and personal sacrifices in this war, this group was given no statutory right to ameliorating benefits. These persons have had to bear the losses occasioned by the evacuation in addition to the wartime deprivations they have shared with the rest of the American people. For the first time in our history, persons of Japanese ancestry are appearing in substantial numbers on the relief rolls. The least that this country can do, in simple justice, is to afford some degree of compensation for the measurable special losses that the evacuees have suffered.

The only clear recourse which the evacuees now have, through the passage of private relief bills, is totally impracticable. The potential volume of evacuee claims, if added to the load under which the Congressional Claims Committees are already laboring, might well produce a virtually unmanageable burden. The obvious result would be to postpone the settlement of most evacuee claims for an indefinitely protracted period. To provide for adjudication of the claims by the Court of Claims would be an imposition on that court, because of the small individual amounts involved and the potential volume of claims, and unfair to the claimants, because of the expense of prosecuting a claim before the Court of Claims and the probable delay in adjudication. The most economical and practical solution—one which Congress has adopted on numerous occasions in the past for the handling of mass claims arising out of a special subject matter—is the creation of a special tribunal to hear and determine the claims.

The enclosed bill would establish an Evacuation Claims Commission as such a tribunal. In order to avoid increasing the number of independent agencies and to benefit by the experience which this Department has had with the entire evacuation and relocation problem, the bill would establish the Commission within this Department rather than as a separate Federal agency.

The Commission would have jurisdiction to adjudicate claims by persons of Japanese ancestry for damage to or loss of real or personal property, or other impairment of assets, that arose from or as a natural and reasonable consequence of the evacuation and exclusion program. This standard is sufficiently flexible to permit the Commission to consider claims involving "property" losses only in the broad sense, such as the impairment of going-concern values. At the same time, the standard excludes claims that are largely speculative and less definitely appraisable, such as claims for anticipated wages or profits that might have accrued had not the evacuation occurred, for deterioration of skills and earning capacity, and for physical hardships or mental suffering.

In determining the amount of relief to be granted, the Commission would required to consider other existing or intervening factors that affected the Thus some losses, as in the case of businesses specializing in import or s Japanese goods, would have occurred even if there had been no evacu Likewise, damage may have been aggravated in some cases by failure evacuees to take steps which they reasonably should have taken, even abnormal circumstances, to protect themselves. On the other hand, the numerous instances in which intervening factors immediately causing th such as arson, theft, mortgage foreclosure, loss of goods while in Gover possession, or breach of trust, should not affect recovery, because the si giving rise to the loss would not have occurred had the owners been permi remain in possession.

Among the types of claims excluded by the bill from consideration by th mission are claims of persons who were voluntarily or involuntarily dep Japan after December 7, 1941, or who are resident in a foreign country. hundred evacuees voluntarily repatriated to Japan during the war. Sinc nation of hostilities approximately 7,500 persons, most of them evacuees Government expense voluntarily gone to Japan, chiefly from internme and the Tule Lake Segregation Center. In addition, the Department has been determining who among the aliens (including persons who r their American citizenship) should be deported to Japan. This process culmination of the loyalty-screening procedures to which the evacuees subjected since the evacuation. I do not believe that these repatr deportees have any moral claim upon this Government. Similarly, that persons who before the war went to Japan or elsewhere to establish have no claim for compensation that we need recognize.

The remaining provisions of the bill are largely self-explanatory, merely mention the more important. All claims would have to be file months following enactment, and the Commission would be required its work within 3½ years thereafter. The Commission would have tigatory authority, including the power of subpena, and each claima entitled to a hearing. Assistance in preparing claims for filing could by the Commission to needy claimants. The Commission's adjudica be conclusive and a bar to further recovery. Awards would be paid manner as are final judgments of the Court of Claims, except that the would be authorized to pay small awards, not exceeding $2,500 i order to afford more expeditious relief to those whose need may be a

As a matter of fairness and good conscience, and because th American citizens and law-abiding aliens have borne with patien feated loyalty the unique burdens which this Government has thro I strongly urge that the proposed legislation be enacted into law

The Bureau of the Budget has advised me that there is no ob presentation of this proposed legislation to the Congress.

Sincerely yours,

J. A. KRUG, *Secretary o*

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Memorandum for the Prime Minister:

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In determining the amount of relief to be granted, the Commission would be required to consider other existing or intervening factors that affected the loss. Thus some losses, as in the case of businesses specializing in import or sale of Japanese goods, would have occurred even if there had been no evacuation. Likewise, damage may have been aggravated in some cases by failure of the evacuees to take steps which they reasonably should have taken, even in the abnormal circumstances, to protect themselves. On the other hand, there are numerous instances in which intervening factors immediately causing the loss, such as arson, theft, mortgage foreclosure, loss of goods while in Government possession, or breach of trust, should not affect recovery, because the situation giving rise to the loss would not have occurred had the owners been permitted to remain in possession.

Among the types of claims excluded by the bill from consideration by the Commission are claims of persons who were voluntarily or involuntarily deported to Japan after December 7, 1941, or who are resident in a foreign country. Several hundred evacuees voluntarily repatriated to Japan during the war. Since termination of hostilities approximately 7,500 persons, most of them evacuees, have at Government expense voluntarily gone to Japan, chiefly from internment camps and the Tule Lake Segregation Center. In addition, the Department of Justice has been determining who among the aliens (including persons who renounced their American citizenship) should be deported to Japan. This processing is the culmination of the loyalty-screening procedures to which the evacuees have been subjected since the evacuation. I do not believe that these repatriates and deportees have any moral claim upon this Government. Similarly, I believe that persons who before the war went to Japan or elsewhere to establish residence have no claim for compensation that we need recognize.

The remaining provisions of the bill are largely self-explanatory, and I shall merely mention the more important. All claims would have to be filed within 18 months following enactment, and the Commission would be required to complete its work within 3½ years thereafter. The Commission would have broad investigatory authority, including the power of subpena, and each claimant would be entitled to a hearing. Assistance in preparing claims for filing could be extended by the Commission to needy claimants. The Commission's adjudications would be conclusive and a bar to further recovery. Awards would be paid in the same manner as are final judgments of the Court of Claims, except that the Commission would be authorized to pay small awards, not exceeding $2,500 in amount, in order to afford more expeditious relief to those whose need may be acute.

As a matter of fairness and good conscience, and because these particular American citizens and law-abiding aliens have borne with patience and undefeated loyalty the unique burdens which this Government has thrown upon them, I strongly urge that the proposed legislation be enacted into law.

The Bureau of the Budget has advised me that there is no objection to the presentation of this proposed legislation to the Congress.

Sincerely yours,

J. A. KRUG, *Secretary of the Interior.*

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e not at once effectively publicized among the evacuees, and were never
ely successful. Merchants had to dispose of their stocks and businesses at
nal prices. In a setting of confusion and hysteria, many evacuees sold
ce possessions for a small fraction of their value. A large number had to
t totally inadequate arrangements for protection and management of
rty. Valuable leasehold interests had to be abandoned. Private buildings in which evacuees
ntinued exclusion increased the losses. Mysterious fires de-
d their property were broken into and vandalized. Property left with "friends" sometimes
d vacant buildings. Property were damaged or lost.
; goods stored with the management of evacuee real property inducted the
s entrusted with the Government sometimes unaccountably disap-
in diverse ways. Tenants failed to pay rent, converted property to their
se, and committed waste. Prohibited from returning to the evacuees were unable to
ven temporarily to handle property matters, the evacuees given by the
themselves adequately. Property-management assistance often mitigated and
location Authority on the west coast, although it could not completely solve the problem there, com-
es prevented loss, as it was by difficulties in communication with absent owners and local
.

pcation centers the only income opportunities for evacuees lay in center
nt at wage rates of $12 to $19 per month, plus small clothing allowances.
t compelled to discontinue payment of life-insurance premiums. Some
mselves unable to make mortgage or tax payments and lost substantial

he foregoing examples of tangible loss to the evacuees are directly
le to the evacuation and continued exclusion of these persons from their
nlike our fighting men and their families, who also made financial and
crifices in this war, this group was given no statutory right to amelior-
fits. These persons have had to bear the losses occasioned by the
in addition to the wartime deprivations they have shared with the
American people. For the first time in our history, persons of Japanese
e appearing in substantial numbers on the relief rolls. The least that
y can do, in simple justice, is to afford some degree of compensation
surable special losses that the evacuees have suffered.
clear recourse which the evacuees now have, through the passage of
f bills, is totally impracticable. The potential volume of evacuee
ded to the load under which the Congressional Claims Committees are
ring, might well produce a virtually unmanageable burden. The
t would be to postpone the settlement of most evacuee claims for an
rotracted period. To provide for adjudication of the claims by the
ims would be an imposition on that court, because of the small in-
unts involved and the potential volume of claims, and unfair to the
cause of the expense of prosecuting a claim before the Court of
he probable delay in adjudication. The most economical and
ion—one which Congress has adopted on numerous occasions in the
andling of mass claims arising out of a special subject matter—is
a special tribunal to hear and determine the claims.
l bill would establish an Evacuation Claims Commission as such a
rder to avoid increasing the number of independent agencies and
he experience which this Department has had with the entire
relocation problem, the bill would establish the Commission
artment rather than as a separate Federal agency.
ion would have jurisdiction to adjudicate claims by persons of
y for damage to or loss of real or personal property, or other im-
ts, that arose from or as a natural and reasonable consequence of
nd exclusion program. This standard is sufficiently flexible to
mission to consider claims involving "property" losses only in
such as the impairment of going-concern values. At the same
d excludes claims that are largely speculative and less definitely
as claims for anticipated wages or profits that might have
he evacuation occurred, for deterioration of skills and earning
physical hardships or mental suffering.

J-25-1
Dec. 6146

Memorandum for Mr. Heeney:

With further reference to my note of this morning covering a copy of the memorandum which the Prime Minister wished me to send to you, I thought it might be useful to set out some additional problems relating to the general Japanese question which it might be useful for the Cabinet Committee to take into consideration when it meets. There will undoubtedly be a number of other questions which the Department of Labour will wish to raise but those which have occurred to me are the following:

(a) Future policy re deportation. This is the matter dealt with mainly in the memorandum which I have sent you.

(b) Internal restrictions on Japanese, the particular ones here relate to travel and land purchase. The present restrictions on travel will normally elapse as of March 31. Any attempt to legislate for continued restriction will probably be subject to severe criticism. A possible solution might perhaps be to eliminate all travel restriction except into the protected area on the coast. With regard to land purchase I believe that very few licenses have thus far been allowed. It might be desirable to have broad relaxation in this policy and perhaps even to give some assistance towards land purchase especially in cases of Japanese who previously held land which they have lost.

(c) Restitution for property disposed of. The Co-operative Committee on Japanese Canadians is very anxious about this and it might be worth considering whether some sort of coalition should be established to hear claims and try to dispose of the matter.

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Japanese in Canada
1946

...would have automatic ...be entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

So far as I know, no judgment has yet been handed down by the Exchequer Court in the case which went before them some two years ago.

(d) National status of Japanese who have either left Canada voluntarily in the past year or who may be deported in future if policy to this effect is applied. Under P.C. 7356 naturalized persons in both these groups would appear to suffer loss of their Canadian status. On the other hand, this Order in Council does not affect the Canadian nationality of persons born in Canada, and I believe that the Department of Justice has given an interpretation to the effect that P.C. 10773 of 1942 has no application except to persons who went to Japan during the war in pursuance of an exchange agreement. The net result of the present legal position would seem to be that we will have quite a number of Japanese of Canadian birth in Japan who will be Canadian citizens. As such they will have a right of entry into Canada under the Immigration Act and the question of policy with regard to their admissibility arises. There will also be questions with regard to diplomatic protection in Japan, and probably applications for assistance in cases of indigents.

(e) Future admissibility into Canada of Canadian citizens of Japanese origin and Japanese nationals who have domicile in Canada. Both of these groups will have a legal right of entry, and at least one case has already arisen in the second category -- that is a Japanese national with domicile here. Our Mission in Tokyo needs some instruction as to what it should do in such cases. Possible courses of action are:

(1) To refuse to recognize the right of entry (which would be contrary to the existing law and would require legislation of a rather unsavoury type).

[illegible] U.S. law. Those who are U.S. citizens would be entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

J-25-1 JAPAN 1946
Japanese in Canada

(2) To instruct the Mission that they should be prepared to grant visas for travel to Canada but should not give any assistance in securing transportation, or ,

(3) To instruct the Mission that it should issue visas and give assistance in securing accommodation to Canadian citizens but not to Japanese nationals. The decision on policy in this connection cannot longer be deferred as cases will arise constantly in the near future.

R.G.R.

6th December, 1946.

J-25-1 JAPAN 1946
Japanese in Canada

[illegible] U.S. law. Those who are U.S. citizens [illegible] entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

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J-25-1

Dec. 3/46

Memorandum for the Prime Minister:

The decision of the Judicial Committee of the Privy Council yesterday upheld in toto the validity of the Orders in Council relating to the Japanese in Canada. In view of this decision, and the impending termination of the force of the Orders on March 31, 1947, you may wish to consider whether action should be taken at an early date to determine the course that should now be followed.

The Orders in Council are to the following effect:

P.C.7355 - provides for deportation, where ordered, of:

(a) Japanese nationals who have signed a request to go to Japan or who were interned on September 1, 1945.

(b) Naturalized persons of Japanese origin who had not revoked requests by September 1, 1945.

(c) Canadian-born Japanese who want to go to Japan and continue so to desire.

(d) Wives and children of any of the above.

P.C.7356 - provides for the removal of British and Canadian status from any naturalized persons who are deported.

P.C.7357 - enables a Commission of three persons to be set up to investigate Japanese nationals and naturalized persons whose cases are referred to it by the Minister of Labour with a view to possible deportation.

J-25-1
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Japanese in Canada
1946

[illegible] rights under U.S. law. [illegible] would have automatic would be entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

Thus far a total of 3,671 no deportations have taken place. However, ~~about 3,300~~ Japanese have gone to Japan voluntarily, and another 260 are scheduled to leave on December 23rd.

The character of the problem has altered somewhat in the past year due to the voluntary movement referred to above and to the general success of the resettlement policy. The 1941 Japanese population of Canada was 23,149, of which 22,096 were in British Columbia. At present there are about 20,814 ~~21,250~~ Japanese in Canada, of which approximately 7,000 are in British Columbia (a reduction of some 15,000). In effect, British Columbia, which before the war had over 95% of the Japanese, now has only 33%. There has, in addition, been a shift of these from the coast to the interior areas. I understand that in some of these there is still a fair amount of anti-Japanese feeling, but it would seem reasonable to expect that there may now be less pressure from British Columbia for large scale deportations. At the same time, there seems no doubt but that there will be severe criticism elsewhere if substantial deportations are decided on - especially since the resettlement has taken place.

I am informed by the Department of Labour that there are 30 or 40 Japanese nationals who were all interned at some time during the war and who have refused employment. They have been a troublesome group and many of them have said they would like to go to Japan but would not assist the Canadian government by doing so voluntarily.

One possible line of policy might be to have a commission set up at once under P.C.7357 for the sole purpose of looking into these specific cases and any others, involving Japanese nationals only, which the Department of Labour might wish to put forward immediately. Deportation in such cases might be desirable and would probably not provoke much criticism. If any action of such a type were to be taken, however, it would have to be done immediately as the power to carry out the deportation would lapse on March 31, in the absence of legislation.

You may feel that the Cabinet Committee on Japanese should be instructed to look into the situation and report to Cabinet at an early date.

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There are also the less urgent problems of restrictions on the movement of the Japanese, and of the policy regarding property losses to be looked into.

R. G. R.

3rd December, 1946.

RGR:McK

J-25-1
JAPAN
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1946

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Box 1001

FILE No. J-25-1

1946

PRIVY COUNCIL OFFICE
CANADA

SUBJECT

JAPAN

Japanese in Canada

J-25-1

Ottawa, Ontario,
December 17, 1946.

Mr. A.D.P. Heeney, K.C.,
Clerk of the Privy Council,
Privy Council Office,
East Block,
Ottawa, Ontario.

Dear Mr. Heeney:

Pursuant to a decision taken at a meeting of the Cabinet Committee on Japanese Problems, held on Friday, December 13, 1946, I am attaching herewith for your information, Reference Documents "A", "B1", "B2", "C", "D", and "E", regarding Japanese repatriation and relocation.

Another meeting of the Cabinet Committee will be held on Wednesday, January 8, 1947.

Yours sincerely,

Raymond Ranger.

Enc.

J-25-1

CANADA

PRIVY COUNCIL OFFICE

CABINET SECRETARIAT

Ottawa, Ontario,
December 17, 1946.

Mr. A.D.P. Heeney, K.C.,
Clerk of the Privy Council,
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Yours sincerely,

Raymond Ranger

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Enc.

CDIX

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J-25-1

A. D. P HEENEY, ESQ., (CONFIDENTIAL),

CLERK PF THE PRIVY COUNCIL, EAST BLOCK OTTAWA ONT.

WOULD PREFER JAPANESE QUESTION BE DEFERRED UNTIL MY RETURN TO OTTAWA DECEMBER TWENTY THIRD STOP. OTHERWISE REQUEST THAT YOU FIRMLY STATE MY POSITION THAT I AM DEFINITELY AGAINST ANY JAPANESE BEING ALLOWED BACK TO PROTECTED AREAS OF BRITISH COUUMBIA STOP.

IAN MACKENZIE.

1013PM

Dec 11th 1946 J-25-1

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

SECRET

Ref. Document 'A'

MEMORANDUM TO THE CABINET COMMITTEE ON JAPANESE PROBLEMS

RE: Report on Japanese Repatriation and Relocation

1. Distribution of Japanese in Canada at November 30, 1946:

British Columbia	6981
Alberta	4262
Saskatchewan	503
Manitoba	1193
Ontario	6617
Quebec	1210
Nova Scotia	1
New Brunswick	10
Prince Edward Island	6
Yukon and Northwest Territories	31
Total	20,814

2. Of the 6,981 persons of Japanese origin in British Columbia, only 1000 remain in Departmental Housing Projects in the Kootenay Valley, the rest being widely distributed in self-sustaining employment scattered throughout the interior. By the end of December, the Department will be maintaining only one Housing Centre at New Denver, B.C., with a maximum of 700 or 800 people, mostly invalids and other unemployables.

3. Relocation

In the first eleven months of 1946 approximately 4,600 Japanese relocated from British Columbia east of the Rockies. For all practical purposes, movement eastward from British Columbia is completed except for isolated individual families and single persons.

It is proposed to continue to provide assistance for the movement of these people from British Columbia and for Japanese from Southern Alberta eastward on a voluntary basis during the year 1947 by provision of free transportation and subsistence allowances. The Japanese Placement Offices east of the Rockies will be maintained during 1947 to facilitate placement and re-establishment in areas from Saskatchewan east.

In addition to those in the departmental settlements in B.C., there are now approximately 825 Japanese in seven hostels operated by the Department at points between Moose Jaw, Saskatchewan and Farnham, Quebec. These people are in the process of placement, which should permit a gradual consolidation and closing of these hostels during 1947 as placement is accomplished.

4. Repatriation

A total of 3,674 Japanese have repatriated up to date in 1946 on a completely voluntary basis. The fifth ship, sailing December 23, 1946, will take from 270 to 300 more, who will probably be the last voluntary group of repatriates.

The Privy Council decision on the Japanese Orders was handed down a few days ago and holds that these Orders are intra vires in toto. This means that the Government may proceed with the deportation of Japanese Nationals who signed requests for repatriation (together with their dependents); naturalized Canadians who signed

(together with their dependents), and providing that they did not revoke before the end of hostilities with Japan; and Japanese Nationals who were interned (together with their dependents).

5. Conditions have, however, changed greatly since the Orders were enacted in December, 1945. The problem at that time consisted of a total of about 9,500 Japanese in our B.C. Housing Centres who resisted all efforts to relocate them and whose attitude was uncertain. In the last year this problem has been practically solved - firstly, by the repatriation on a voluntary basis of almost 4,000; and secondly, by the movement east of almost 4,600.

6. There is, however, a small group of approximately 30 Japanese Nationals who were interned for more than four years up to the end of June, 1946, because of resistance to evacuation and refusal to take self-sustaining employment. This group is now at the Moose Jaw Hostel and is still resisting placement, demanding in some cases to be sent back to British Columbia and in other cases to be deported by Government Order. In each individual case the records of the R.C.M.P. and the Department of Labour indicate reasonable grounds for deportation.

7. Arising out of the repatriation to Japan, the Department of External Affairs report that a number of Canadian-born persons of the Japanese race who were caught in Japan at the start of the war or who have repatriated along with their parents to Japan during the current year, may apply for admission into Canada in the near future. This raises the question as to future government policy with respect to these people.

8....

8. JAPANESE REQUESTING REPATRIATION

	ADULTS				CHILDREN				GRAND
	JN	NC	CB	TOTAL	JN	NC	CB	TOTAL	TOTAL
Number of Declarations for Repatriation Signed	2982	1460	2554	6996	12	2	3803	3817	10813
Of Signers, those repatriated to Japan up to Dec. 7, 1946	1169	534	560	2263	8	1	1198	1207	3470
Of Signers, those self-supporting in British Columbia	607	358	544	1509	2	1	892	895	2404
Of Signers, those in Interior Housing in British Columbia	156	91	94	341			184	184	525
Of Signers, those who signed and are still in eastern provinces	213	90	409	712	1		283	284	996
Of Signers, those who have died since signing	27	23	7	57			15	15	72
Of Signers, those relocated east of Rockies since signing - Alberta	124	67	155	346			246	246	592
Sask.	38	14	23	75			83	83	158
Manitoba	62	22	39	123			96	96	219
Ontario	516	207	628	1351	1		688	689	2040
Quebec	69	54	95	218			118	118	336
Yukon	1			1					1
TOTALS	2982	1460	2554	6996	12	2	3803	3817	10813

Dec 17/46. J-25-1

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Ref. Document 'B'(1)

RECOMMENDATIONS OF THE DEPARTMENT OF LABOUR TO THE CABINET COMMITTEE ON JAPANESE PROBLEMS

A. Deportation

The Department of Labour recommends:

1. That no Deportation Orders be issued for deportation of Japanese on the basis of voluntary declarations for repatriation.

2. That, with respect to the small group of Japanese Nationals formerly interned, approximately 30 in number, with dependents, who have shown continued lack of co-operation since release from internment, either of the following courses be pursued:

(a) Orders for their deportation be issued by the Minister of Labour under the authority of P.C. 7355, and that these persons be deported accordingly on the next ship sailing for Japan on December 23rd, and that their dependents be treated as voluntary repatriates where they elect to go with the deportee, or

(b) That the present accommodation provided for these Nationals and their dependents in the hostel at Moose Jaw be closed in the Spring of 1947 and if these parties still refuse to make efforts to support their families, they be dealt with under Canadian law relating to non-support, etc.

The Department of Labour is of opinion that the number of persons involved in possible deportation does not warrant the Government carrying through forcible deportation of persons of the Japanese race at this time. It is, therefore, of opinion that alternative (b) is preferable.

B. Relocation and Control of Persons of the Japanese Race in Canada.

The authority to control is given by Order in Council P.C. 946 which Order will lapse on March 31, 1947. The policy of the government has been declared to be one of distribution across Canada.

Relocation and distribution is now reasonably satisfactory. It will be noted that 4,262 are in Alberta and it is desirable that this number be reduced by moving a number to the eastern provinces. The number in British Columbia will be reduced to a total of about 6,500 which is not considered excessive when it is remembered that about 800 will be under the care of the Labour Department in the housing centre and sanitarium at New Denver.

It could be said that the relocation task had been completed and a solution of a problem which has been bothering the British Columbia people for a long period of years had been found.

If any assurance could be obtained that these persons would not move back to British Columbia as soon as Order in Council P.C. 946 lapsed there would be no need to suggest any further control of the movement of persons of the Japanese race. No such assurance can be given.

The opinion of the Labour Department, therefore, is that the safe course to pursue is to continue control of movement for a year or two more until these people become more settled in their new locations.

The recommendation, therefore, is that legislation be introduced in place of P.C. 946 in form as per attached draft (Ref. Doc.No.'B'(2)), enabling continued control over movement of Japanese in Canada, the lifetime of this Act to be for one year. Any continuing authority required by the Custodian to complete the liquidation and distribution of property of Japanese in the former evacuated area could be incorporated therein.

The introduction of a Bill in the House of Commons will undoubtedly create a critical debate. It is, we believe, a fact that the incentive against controlling the movement of Japanese is becoming stronger. The Manitoba Free Press carried an editorial in this connection on December 9, 1946.

The Department of Labour is of the opinion that the safe course would be to exercise control of movement for a further period; nevertheless, it recognizes the objection inherent in the recommendation for introduction of legislation and refers for consideration of the committee an alternative plan to avoid the necessity of bringing a Bill into the House of Commons which is to rely on keeping a reasonable control by giving assistance in placement, transportation, and welfare. This alternative would mean that no special power would be required and the only authority which would be needed from the House of Commons would be a passing of an item in the estimates providing for an appropriation for placement, transportation and welfare of the evacuated Japanese in Canada, the wording of the item to be so framed as to permit of the continuation of existing administrative arrangements for voluntary relocations.

Dec. 11/46. J-25-1

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Ref. Document 'B'(2)

DRAFT BILL FOR INFORMATION OF CABINET COMMITTEE ON JAPANESE PROBLEMS

An Act to provide for the Resettlement of Displaced Persons of the Japanese Race

WHEREAS during the war certain persons of the Japanese race resident on the Pacific Coast manifested sympathy with or support of Japan as a result of which it became necessary as a security measure to remove from the coastal area of British Columbia all persons of the Japanese race;

AND WHEREAS the Governor in Council by Order in Council P.C. 946 of February 5, 1943, enacted under the authority of the War Measures Act has made provision for relocation and resettlement of persons of the Japanese race displaced by removal from the coastal area;

AND WHEREAS the said Order in Council will cease to be operative with the expiration of the National Emergency Transitional Powers Act, 1945;

AND WHEREAS it is deemed undesirable in the public interest that persons of the Japanese race displaced by removal from the coastal area should again be permanently settled on the Pacific Coast of Canada;

AND WHEREAS the responsibility for the resettlement of persons of the Japanese race displaced by the aforesaid removal from the coastal area is a responsibility of the people of Canada as a whole;

NOW THEREFORE His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:-

Short Title

1. This Act may be cited as The Japanese Resettlement Act, 1946.

Interpretation

2. In this Act and in any order or regulation made thereunder, unless the context otherwise requires

(a) "Minister" means the Minister of Labour

(b) "displaced person" means a person of the Japanese race who left the coastal area of British Columbia during the war after the fifteenth day of February, one thousand nine hundred and forty-two

(c) "person of the Japanese race" means a person who

(i) is wholly or partly of the Japanese race,

(ii) was, on the fifteenth day of February, one thousand nine hundred and forty-two, ordinarily resident in the coastal area of British Columbia, and

(iii) left that area on or after the said fifteenth day of February.

(d) "coastal area" means that area of the Province of British Columbia including all islands west of a line commencing at Boundary Point No. 7 on the International Boundary between the Dominion of

...

...

Canada and Alaska, thence following the line of the "Cascade Mountains", as defined by paragraph 2 of section 24 of the Interpretation Act of British Columbia, being Chapter 1 of the Revised Statutes of 1936, to the northwest corner of Lot 1410, Range 5, Coast Land District, thence due east to a point due north of the northwest corner of Lot 373, Range 5, Coast Land District, thence due south to said northwest corner of Lot 373 being a point on the aforementioned line of the "Cascade Mountains", (being the area surrounding the village Municipality of Terrace), thence following said line of the "Cascade Mountains" to the western boundary of Township 5, Range 26, west of the sixth Meridian, thence following the northerly, easterly and southerly boundaries of said Township 5, to the southwest corner thereof, being a point on the line of the "Cascade Mountains", (being the area surrounding the Village Municipality of Hope); thence following the "Cascade Mountains" to the southerly Boundary of the Province.

(e) "removal" means the removal of a person of the Japanese race from one place in Canada to another pursuant to this Act.

3. The Minister may

(a) take such measures as he deems advisable to assist persons of the Japanese race to resettle themselves under this Act and to provide for shelter, maintenance, employment, care and welfare of such persons during the period of their resettlement and for such purposes, enter into contracts and acquire real or personal property on behalf of His Majesty or lease or dispose of the same, but no such contract shall be entered into by him for an amount in excess of fifteen thousand dollars nor shall any real property be purchased or disposed of by him pursuant to this Act except with the approval or under the authority of the Governor in Council as to the terms of purchase or disposition.

(b) employ persons of the Japanese race in the operation of any housing or employment projects or hostels administered or operated by the Department of Labour for the purposes of this Act, at such wage rates and terms as he deems advisable;

(c) make rules or regulations governing the welfare, conduct or discipline of persons of the Japanese race in any hostel, camp or housing project administered or operated by the Department of Labour for the purposes of this Act;

(d) make arrangements with any department or agency of the Government of Canada to assist in the administration of this Act;

(e) with the approval of the Governor in Council enter into an agreement with any province with respect to any of the matters enumerated in this section.

4. For the purpose of facilitating the resettlement in Canada of persons of the Japanese race the Governor in Council may make regulations and may authorize the Minister to make orders governing the movement of such persons in any area in Canada or from one place or area to another place or area in Canada.

General

5. The Minister may make such orders, rules or regulations as he deems necessary for the purpose of carrying out the provisions of this Act.

6. (1) The Governor in Council shall appoint an officer to be known as the Commissioner of Japanese Placement who under the direction of the Minister is charged with the administration of this Act.

(2) Such other officers, clerks and employees as may be necessary for the administration of this Act shall be appointed or employed in the manner authorized by law.

(3) Notwithstanding this section or any other statute or law, the officers, clerks and employees employed by the Minister pursuant to order of the Governor in Council made on the fifth day of February, one thousand nine hundred and forty-three (P.C. 946) and who immediately prior to the coming into force of this Act were employed under that order, may be employed by the Minister for the purposes of this Act at the rate of remuneration received by them at that time and such officers, clerks and employees shall perform such duties as are assigned to them by the Minister.

7. (1) All real and personal property or any interest therein acquired by or vested in His Majesty in right of Canada by or pursuant to the order of the Governor in Council made on the fifth day of February, one thousand nine hundred and forty-three (P.C. 946) shall be deemed to have been acquired by the Minister on behalf of His Majesty pursuant to this Act.

(2) The Minister may, in the name of the British Columbia Security Commission, established by Order of the Governor in Council made on the fourth day of March, one thousand nine hundred and forty-two (P.C. 1665), execute any conveyance, transfer or other document necessary to transfer to His Majesty in right of Canada the title to any real or personal property or any interest therein held in the name of the said Commission.

8. Any person who resists or obstructs or attempts to resist or obstruct any peace officer or other person from carrying out any order made pursuant to the provisions of this Act shall be guilty of an offence against the Act.

9. Any person who contravenes or omits to comply with any of the provisions of this Act or any regulation or 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.

10. 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 Act 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.

11. When any question arises in any prosecution under this Act as to whether the accused person is a person of the Japanese race as defined in this Act, the onus of proof that the accused person is not a person of the Japanese race shall lie upon the accused.

12. The costs and expenses incurred in the administration of this Act shall be paid out of moneys appropriated by Parliament for that purpose.

13. After the close of each fiscal year the Minister shall as soon as possible prepare an annual report respecting the administration of this Act and shall lay the said report before Parliament.

14. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council and shall expire on a day to be fixed by such a proclamation.

Dec. 17/46. J-25-1

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SECRET

Ref. Document 'C'

MEMORANDUM TO THE CABINET COMMITTEE ON JAPANESE PROBLEMS

RE: Status of Canadian-Born Japanese in Japan and Japanese Nationals in Canada.

A. Under P.C. 7356 Japanese who have either left Canada voluntarily in the past year, or who may be deported in future if policy to this effect is applied, would appear to suffer loss of their Canadian status. On the other hand, this Order in Council does not affect the Canadian nationality of persons born in Canada, and, in the opinion of the Department of Justice, P.C. 10773 of 1942 has no application except to persons who went to Japan in pursuance of an exchange agreement.

This means that there will be a number of Japanese of Canadian birth in Japan who will be Canadian citizens. As such they will have the right of entry into Canada under the Immigration Act.

Therefore, the question of policy with regard to their admissibility arises. In addition, questions as to their diplomatic protection in Japan and probable application for assistance in case of indigence require consideration.

B. Both Canadian citizens of Japanese origin and Japanese nationals who have domicile in Canada have a legal right of entry into Canada in the future. The policy regarding their admissibility also arises, and our Mission in Tokyo requires instructions on such cases.

The possible courses of action are -

1. To refuse to recognize the right of entry. This would be contrary to existing law, and require legislation of a controversial nature;
2. To instruct the Mission that they should be prepared to grant visas for travel to Canada, but should not give any assistance in securing transportation, or
3. To instruct the Mission that it should issue visas and give assistance in securing accommodation to Canadian citizens, but not to Japanese nationals.

J-25-1

Ottawa, 10th December, 1946.

Eric Stangroom, Esq.,
Deputy Minister's Office,
Department of Labour,
O t t a w a.

Dear Mr. Stangroom:

I am enclosing herewith six copies of the opinion handed down on December 2nd by the Judicial Committee of the Privy Council in connection with the appeal on the validity of the Orders in Council passed last year with regard to persons of Japanese origin. As you are the Secretary of the Cabinet Committee dealing with this matter, you may wish to have these copies available.

I am also sending copies of the Judgment to the Registrar of the Supreme Court, the Deputy Minister of Labour, the Deputy Minister of Justice and the Clerk of the Privy Council.

Yours sincerely,

(R. G. Robertson),
Secretary.

Privy Council Appeal No. 58 of 1946

The Co-operative Committee on Japanese Canadians and another - - - - - - - - - - - - - - - - - - Appellants

v.

The Attorney-General of Canada and another- - - Respondents

From

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, delivered the 2nd December, 1946.

Present at the Hearing:

Viscount Simon
Lord Wright
Lord Porter
Lord Uthwatt
Sir Lyman Duff

/Delivered by Lord Wright/

These are appeals by special leave brought by the Co-operative Committee on Japanese Canadians and the A-G of Saskatchewan from the opinion certified on the 20th February, 1946, by the Supreme Court of Canada upon a reference ordered by the Governor General in Council under Section 55 of the Supreme Court Act, Revised Statutes of Canada 1927, cap 35. The question referred for hearing and consideration was as follows:

"Are the Orders-in-Council dated the 15th December, 1945, being P.C. 7355, 7356, 7357 ultra vires of the Governor-in-Council either in whole or in part and if so in what particular or particulars, and to what extent?"

The recitals to the Orders-in-Council which it is sought to impeach show that they purport to have been made under the authority of The War Measures Act. That Act was first passed by the Parliament of Canada in 1914 and is now chap. 206 of The Revised Statutes of Canada 1927. Section 2 provides that the issue of a proclamation by His Majesty or under the authority of the Governor-in-Council shall be conclusive that war, invasion or insurrection real or apprehended exists and of its continuance until by the issue of a further proclamation it is declared that war, invasion or insurrection no longer exists. The proclamation first called for by this section was duly made but no proclamation that the war no longer existed has been made.

The relevant sections of this Act are as follow:-

"3. The Governor-in-Council may do and authorize such acts and things and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection, 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 mentioned, that is to say:-

(a) Censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;

(b) Arrest, detention, exclusion and deportation;

(c) Control of the harbours, ports and territorial waters of Canada and the movement of vessels;

(d) Transportation by land, air or water and the control of the transport of persons and things;

(e) Trading, exportation, importation, produotion and manufacture;

(f) Appropriation, control, forfeiture and disposition of property and of the use thereof.

(2) All orders and regulations made under this section shall have the force of law . . . ."

"6. The provisions of the three sections last preceding, shall only be in force during war, invasion or insurrection, real or apprehended."

The three Orders-in-Council were all made on the 15th December, 1945.

The preamble to the first Order (P.C. 7355) contains the following recitals:-

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 for the security defence peace order and welfare of Canada that provision be made accordingly.

The first Order (Section 2, subsections 2, 3 and 4) then authorizes the Minister of Labour to make orders for deportation "to Japan" of the following persons.

(1) Every person of 16 years of age or over, other than a Canadian national, who is a national of Japan resident in Canada and who had since the 8th December, 1941 (the date of the declaration of war by the Dominion against Japan) made a request for repatriation or who had been detained under certain regulations and was so detained on 1st September, 1945.

(2) Every naturalized British Subject of the Japanese Race of 16 years of age or over resident in Canada who had made request for repatriation provided that such request had not been revoked in writing before midnight on 1st September, 1945.

(3) Natural born British Subjects of the Japanese Race of 16 years of age or over resident in Canada, who made a request for repatriation and did not revoke it in writing before the Minister had made an Order for "deportation."

Subsection 4 of Section 2 provided as follows:-

(4) The wife and children under 16 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.

The remaining provisions of this Order are of an ancillary or administrative nature.

The second Order (P.C. 7356) provides that any person being a British Subject by naturalization under the Naturalization Act, cap. 138, A.S.C. 1927, who is deported from Canada under the provisions of P.C. 7355, 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.

The third Order (P.C. 7357) provides for the appointment of a Commission to make inquiry concerning the activities, loyalties and extent of co-operation with the government of Canada during the war, of Japanese Nationals and naturalized persons of the Japanese race in cases where their names are referred to the Commission by the Minister of Labour for investigation with a view to recommendation whether in the circumstances of any such case, such persons should be deported. The Commission was also at the request of the Minister of Labour to inquire into the case of any naturalized British Subject of the Japanese Race who had made a request for repatriation, and make recommendations. It was then provided that any person of the Japanese Race who was recommended by the Commission for deportation, should be deemed to be a person subject to deportation under the provisions of P.C. 7355, and as and from the date upon which he left Canada in the course of deportation, he should cease to be either a British Subject or a Canadian National.

There is one further Act of the Parliament of the Dominion to which it is necessary to refer - the National Emergency Transitional Powers Act 1945. This Act was assented to on the 18th December, 1945. It was to come into force on the 1st January, 1946, and on and after that day the war against Germany and Japan was for the purposes of the War Measures Act to be deemed no longer to exist. The Act was to continue in force until the 31st December, 1946, or if Parliament were not then sitting until a date determined by the sitting of Parliament.

The Act recites the War Measures Act and the continuance of a national emergency arising out of the war since the unconditional surrender of Germany and Japan, and the necessity that the Governor-in-Council should exercise certain transitional powers during the continuation of the exceptional conditions brought about by the war and the necessity that certain acts and things done and authorized, and certain orders and regulations made under the War Measures Act be continued in force, and that it was essential that the Governor-in-Council be authorized to do and authorize such further acts, and make such further orders and regulations as he might deem necessary or advisable by reason of the emergency and for the purpose of discontinuance in an orderly manner as the emergency permits, of measures adopted during and by reason of the emergency.

By Section 2 of the Act the Governor-in-Council was given power to make orders and regulations as he might, by reason of the continued existence of the National emergency, arising out of the war against Germany and Japan, deem necessary or advisable for certain purposes set out therein. Those purposes do not include arrest, detention, deportation, or exclusion but do include under subsection (e)

"Continuing or discontinuing in an orderly manner as the emergency permits, measures adopted during and by reason of

the war." Subsection 3 of Section 2 provides for every Order-in-Council passed under the Act, being laid before Parliament and being annulled upon resolution of the Senate or the House of Commons. Section 4 provides as follows:

"Without prejudice to any other power conferred by this Act, the Governor-in-Council may order that the Orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day this Act comes into force, shall while this Act is in force, continue in full force and effect subject to amendment or revocation under this Act."

On 28th December, 1945 the Governor-in-Council passed Order-in-Council P.C. 7414, pursuant to Section 4 of the National Emergency Transitional Powers Act, 1945 providing that all orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day the National Emergency Transitional Powers Act, 1945, should come into force, should, while the latter Act is in force, continue in full force and effect subject to amendment or revocation under the latter Act.

The result of this legislation is that the Orders-in-Council are now in force, if at all, by virtue of the Transitional Act.

In connection with the question raised by this case, three Acts of the Imperial Parliament are relevant.

The first of these is the Colonial Laws Validity Act, 1865:

Sections 2 and 3 of that Act run as follows:-

"2. Any Colonial Law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the Colony to which such law may relate or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the force and effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

3. No Colonial Law shall be or be deemed to have been void or inoperative on the ground of repugnancy to the law of England, unless the same shall be repugnant to the provisions of some such Act of Parliament, Order or Regulation as aforesaid."

The second is the Statute of Westminster passed in the year 1931 which was duly adopted by the Parliament of Canada. Section 2 of that Act is in the following terms:-

"2. - (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion."

The third Act is the British Nationality and Status of Aliens Act, 1914. Part I of that Act relates to Natural Born British Subjects. Part II relates to the Naturalization of Aliens and Section 9 provides that Part II shall not nor shall any certificate of naturalization granted thereunder have effect within any of the Dominions specified in the Schedule (which includes Canada) unless the legislature of the Dominions adopts Part II. The Act of the Imperial Parliament was subsequently amended. The Parliament of Canada by the Naturalization Act, 1914 did not in terms "adopt" the Imperial Act of 1914, but passed almost identical legislation. In 1915 the Parliament of Canada amended the Naturalization Act so as to introduce the amendments that had been made by the Parliament of Great Britain in Part II of the British Nationality and Status of Aliens Act, 1914. That Act of 1915 contained a recital to the effect that the Dominion had adopted Part II of the British Act.

It is convenient at this stage to deal with the question raised as to the effect of this legislation of the Dominion on this topic.

The contention of the Appellants was that the Parliament of Canada did "adopt" Part II of The Imperial Act in the sense in which that word was used in the Imperial Act and that in consequence Part II formed part of the law of the United Kingdom extending to the Dominion. The contention of the Respondents was that the Canadian Statutes are only parallel legislation. In arriving at a conclusion as to the advice their Lordships think it right to tender to His Majesty they find it unnecessary to express an opinion as to the correctness or otherwise of the contention of the Appellants. Their Lordships will assume that the Appellants are right in their contention, but they do not express any opinion one way or another upon it.

There was a considerable diversity of opinion between the members of the Supreme Court on some of the points which fell for decision under the reference. In one important respect at least - the invalidity of sub-section (4) of Section 2 of P.C. 7355 - the views of the majority of the Court were adverse to the respondents. No cross appeal was lodged. This in the circumstances was only the absence of a formality. A determination upon the legal effect of the orders as a whole is necessary in order to arrive at a conclusion upon the matters in respect of which the appellants appealed. The whole matter was fully debated before their Lordships and their Lordships accordingly propose to deal with the orders in their entirety.

Their Lordships now turn to the question at issue.

Upon certain general matters of principle there is not since the decision in Fort Francis Pulp and Power Co. v. Manitoba Free Press /1923/ A.C. 695, any room for dispute. Under the British North America Act property and civil rights in the several provinces are committed to the Provincial Legislatures, but the Parliament of the Dominion in a sufficiently great emergency such as that arising out of war has power to deal adequately with that emergency for the safety of the Dominion as a whole. The interests of the Dominion are to be protected and it rests with the Parliament of the Dominion to protect them. What those interests are the Parliament of the Dominion must be left with considerable freedom to judge.

Again if it be clear that an emergency has not arisen or no longer exists, there can be no justification for the exercise or continued exercise of the exceptional powers. The rule of law as to the distribution of powers between the Parliaments of the Dominion and the Parliaments of the provinces comes into play. But very clear evidence that an emergency has not arisen or that the

mergency no longer exists is required to justify the judiciary even though the question is one of ultra vires, in overruling the decision of the Parliament of the Dominion that exceptional measures were required or were still required.

To this may be added as a corollary that it is not pertinent to the judiciary to consider the wisdom or the propriety of the particular policy which is embodied in the emergency legislation. Determination of the policy to be followed is exclusively a matter for the Parliament of the Dominion and those to whom it has delegated its powers.

Lastly it should be observed that the judiciary are not concerned when considering a question of ultra vires with the question whether the Executive will in fact be able to carry into effective operation the emergency provisions which the Parliament of the Dominion either directly or indirectly has made.

It is unnecessary therefore for their lordships to take into review or even to recount the particular circumstances obtaining within the Dominion that led to the Orders in question or the arrangements made with a view to their execution.

The validity of the War Measures Act was not attacked before their Lordships and consistently with the principles stated was not open to attack. The validity of the Orders was challenged on many grounds. Their Lordships have considered not only the points put forward on behalf of the Appellants but whether the orders were susceptible of criticism for reasons not put forward. Their Lordships are satisfied that all possible grounds of criticism were in one form or another included in the grounds on which the Appellants relied.

For the validity of the orders it is necessary **First** that upon the true construction of the War Measures Act, they fall within the ambit of the powers duly conferred by the Act on the Governor General in Council **Second** that, assuming the orders were within the terms of the War Measures Act, they were not for some reason in law invalid.

The points taken were first that the War Measures Act did not on its true construction authorise orders for deportation to be made as respects British subjects or Canadian Nationals and that it should in certain respects receive a limited construction: second that if the Act purported on its construction to authorise the making of such orders, yet the orders made would be contrary to the Imperial Statute British Nationality and Status of Aliens Act and therefore to that extent invalid: third that the provision contained in para. 2 (4) of P.C. 7355 (relating to the wives and children of persons in respect of whom an order for deportation had been made) was for a specific reason invalid: fourth that in any event the order made under the National Emergency Transitional Powers Act continuing the former orders of the Governor-in-Council was invalid.

The first point raises questions of construction with which their lordships must now deal.

The language of the War Measures Act is in general terms but it was argued that certain limitations were as a matter of construction of the Act to be implied and that to the extent to which any order purporting to be made under the Act fell outside its proper ambit, the order would of necessity be invalid.

The first suggested limitation was based on the Colonial Laws Validity Act, 1865. At the date when the War Measures Act came into force legislation made by the Parliament was in its effect subject to the provisions as to repugnancy contained in the Act of 1865 and it was argued that the War Measures Act should be construed as confined in its possible ambit to the making of orders which would consistently with the Colonial Laws Validity Act, 1865, then be valid as law within the Dominion. If that was so the orders were not authorised by the War Measures Act in so far as they were repugnant to the British Nationality and Status of Aliens Act, 1914-18, which was an Act of the Imperial Parliament and in the appellants' contention extended to the Dominion as part of the law of the United Kingdom.

Their Iordships are unable to accept this contention. The effect of the Colonial Laws Validity Act, 1865, was only that Canadian legislation repugnant to the statutory law of the United Kingdom applying to the Dominion was inoperative. The only conclusion to be drawn from a consideration of the Colonial Laws Validity Act is that the War Measures Act did not on its true construction confer a power beyond the extent to which it might at the date of its use be validly exercised. The statutory law of the United Kingdom is not static and in their Iordships' opinion there is no justification for the imputation that the Parliament of Canada legislated upon the footing that it is static. The effectiveness of legislation of the Parliament of the Dominion at the date when those delegated powers are exercised, not the limitation on that legislation at the date when the War Measures Act was passed, is, so far as the Act of 1865 is concerned, the relevant matter.

Secondly, it was argued that, as a matter of construction, the War Measures Act did not authorise the making of orders having an extra territorial operation. This point was relevant by reason that the orders in question in terms authorised "deportation."

This point may be shortly disposed of. Extra-territorial constraint is incident to the exercise of the power of deportation (A.G. for Canada v. Cain [1906] A.C. 542) and was, therefore in contemplation. Any lingering doubts as to the validity in law of an Act which for its effectiveness requires extra-territorial application were, it may be added, set at rest by the Canadian Statute the Extra-Territorial Act, 1933.

Thirdly, it was argued that the War Measures Act should be construed as authorising only such orders as are consistent with the accepted principles of International Law and that the forcible removal **to** a foreign country of British subjects was contrary to the accepted rules of International Law. The Act therefore as a matter of construction did not, it was said, purport to authorise orders providing for such removal.

It may be true that in construing legislation some weight ought in an appropriate case to be given to a consideration of the accepted principles of International Law (cf. Croft v. Dunphy [1933] A.C. 156), but the nature of the legislation in any particular case has to be considered in determining to what extent, if at all, it is right on a question of construction to advert to those principles. In their Lordships' view those principles find no place in the construction of the War Measures Act. The Act is directed to the exercise by the Governor-in-Council of powers vested in the Parliament of the Dominion at a time when war, invasion or insurrection or their apprehension exists. The

accepted rules of International Law applicable in times of peace can hardly have been in contemplation and the inference cannot be drawn that the Parliament of the Dominion impliedly imposed the limitation suggested.

The next question of construction arising under the Act has more substance. It was said that there was inherent in the word "deportation" as part of its meaning the necessity that the person to be deported was - as respects the state exercising the power - an alien. The express power given to expel persons from Canada was therefore limited to aliens i.e., persons who were not Canadian Nationals. It was not permissible to treat as authorised by the general power a power to make orders for deportation in relation to a class of persons impliedly excluded from deportation by the terms of the specific power. There was therefore an implied prohibition against the deportation of Canadian Nationals.

Upon this argument it may be conceded that commonly it is only aliens who are made liable to deportation and that in consequence, where reference is made to deportation, there is often imported the suggestion that aliens are under immediate consideration.

The dictionaries as might be expected do not altogether agree as to the meaning of deportation but the New English Dictionary gives as its definition "The action of carrying away: forcible removal especially into exile: transportation."

As a matter of language their Lordships take the view that "deportation" is not a word which is mis-used when applied to persons not aliens. Whether or not the word "deportation" is in its application to be confined to aliens or not remains therefore open as a matter of construction of the particular statute in which it is found.

In the present case the Act is directed to dealing with emergencies: throughout it is in sweeping terms; and the word is found in the combination "arrest, detention, exclusion and deportation." As regard the first three of these words nationality is obviously not a relevant consideration. The general nature of the Act and the collocation in which the word is found establish in their Lordships' view that in this statute the word "deportation" is used in a general sense and as an action applicable to all persons irrespective of nationality. This being in their Lordships' judgment the true construction of the Act, it must apply to all persons who are at the time subject to the laws of Canada. They may be so subject by the mere fact of being in Canada, whether they are aliens or British subjects or Canadian Nationals. Nationality per se is not a relevant consideration. An order relating to deportation would not be unauthorised by reason that it related to Canadian Nationals or British subjects.

Even if this were not the case the same result may be reached by another route. The general power given to the Governor-in-Council in the opening part of Section 3 of the Act is not in this statute limited by reference to the acts particularly enumerated and their Lordships see no reason for differing from the view expressed by Rinfret C.J.C. that the order was justifiable under that general power (See King Emperor V. Sibnath Banerji [1945] L.R. 72 I.A. 247).

There remains one further question of construction of The War Measures Act, namely, whether it authorised the making of an order which provided that deported persons should cease to be either British subjects or Canadian Nationals. That matter must be considered in light of views which their Lordships have already expressed as to the construction of the Act. They see no reason for excluding from the scope of the matters covered by the general

power contained in Section 3 a power to take from persons who have in fact under an order for deportation left Canada their status under the Law of Canada as British subjects and Canadian Nationals.

The result is that upon its true construction The War Measures Act authorised the making of orders for deportation of any person whatever be his nationality and the deprivation so far as the law of Canada was concerned of his status under that law as a British subject or Canadian National.

The next question is whether The Colonial Laws Validity Act 1865 applies to the Orders of the Governor-in-Council. If it, does, then in so far as they are repugnant to The British Nationality and Status of Aliens Act (which their Lordships are assuming to be an Act of the Imperial Parliament extending to Canada) they are invalid unless the provisions of the Statute of Westminster can be relied upon.

The contention of the Appellants was that the orders, though law made after the date of the Statute of Westminster, were not law made after that date by the Parliament of the Dominion. The activities of Parliament in the matter in question had, it was said, ceased in 1927. The orders were not of is making. The passing by the Parliament of The National Emergency Transitional Powers Act, 1945 was for the purpose in hand immaterial, for the reason that Section 4 empowered the Governor-in-Council to order the continuance only of orders and regulations "lawfully" made under the War Measures Act.

Their Lordships agree that in considering this particular matter the National Emergency Transitional Powers Act, 1945 cannot be prayed in aid of the validity of the orders, but in their opinion the orders in question were made "after the passing of this Act (i.e., the Statute of Westminster) by the Parliament of the Dominion" as that phrase is used in the Statute of Westminster. This again is a question of construction.

Both in sub-sections 1 and 2 of Section (2) of the Statute of Westminster the matter which is dealt with is "law", and that is a general term which includes not only statutes but also orders and regulations made under statutes. Undoubtedly the law as embodied in an order or regulation is made at the date when the power conferred by the Parliament of the Dominion is exercised.

Is it made after that date by the Parliament of the Dominion? That Parliament is the only legislative authority for the Dominion as a whole and it has chosen to make the law through machinery set up and continued by it for that purpose. The Governor-in-Council has no independent status as a law making body. The legislative activity of Parliament is still present at the time when the orders are made and these orders are "law". In their Lordships' opinion they are law made by the Parliament at the date of their promulgation. A contrary conclusion would in their Lordships' view place an artificial and narrow construction on wide terms used in an Act of Parliament the subject matter of which demands that a liberal construction should be put upon the language used.

In the result therefore the Colonial Laws Validity Act, 1865, affords no ground for questioning the validity of the orders.

The next matter arises on sub-para. (4) of para. (2) of P.C. 7355. Under that provision an order for deportation may be made as respects the wives and children (not over the age of 16 years) of persons with respect to whom an order for deportation has been made.

The case sought to be made runs as follows:

The recitals in the order relate only to the desirability of making provision for the deportation of persons referred to in sub-paras. 1, 2 and 3 of para. (2) of the order. In the case of the classes of persons referred to in sub-paras. 1, 2 and 3 (leaving aside detainees) request for repatriation was at some stage necessary; a request was considered by the Governor-in-Council to be a substantive matter, but no such request is required as respects the persons mentioned in sub-para. 4 and the only apparent reason for subjecting them to liability for deportation is that an order for deportation has been made as respects the husband or father. The order therefore not only does not show that by reason of the existence of real or apprehended war it was thought necessary for the security, peace, order, defence or welfare of Canada to make provision for their deportation but, when considered in substance, shows that these matters were not taken into consideration. A deportation of the family consequential on the deportation of the father might indeed be thought desirable on grounds other than those requisite for a due execution of the powers given and, it is contended, it is apparent that it is grounds not set out in the statute which alone have here been taken into consideration.

The incompleteness of the recital is in their Lordships' view of no moment. It is the substance of the matter that has to be considered. Their Lordships do not doubt the proposition that an exercise of the power for an unauthorized purpose would be invalid and the only question is whether there is apparent any matter which justifies the judiciary in coming to the conclusion that the power was in fact exercised for an unauthorised purpose. In their Lordships'opinion there is not. The first three sub-paragraphs of paragraph 2 no doubt deal with the matter which primarily engaged the attention of the Governor-in-Council, but it is not in their Lordships' view a proper inference from the terms of those sub-paragraphs that the Governor-in-Council did not also deem it necessary or advisable for the security defence peace order and welfare of Canada that the wives and children under 16 of deportees should against their will also be liable to deportation. The making of a deportation order as respects the husband or father might create a situation with which, with a view to forwarding this specified purpose, it was proper to deal. Beyond that it is not necessary to go.

The last matter of substance arises on the National Emergency Transitional Powers Act, 1946.

It was contended by the Appellants that at the date of the passing of this Act there did not exist any such emergency as justified the Parliament of Canada in empowering the Governor-in-Council to continue the orders in question. The emergency which had dictated their making--namely active hostilities--had come to an end.

A new emergency justifying exceptional measures may indeed have arisen. But it was by no means the case that measures taken to deal with the emergency which led to the Proclamation bringing the War Measures Act into force were demanded by the emergency which faced the Parliament of Canada when passing the Transitional Act. The Order under the Act continuing the orders in question was therefore prima facie invalid.

This contention found no favour in the Supreme Court of Canada and their Lordships do not accept it. The Preamble to the Transitional Act states clearly the view of the Parliament of the Dominion as to the necessity of imposing the powers which were

exercised. The argument under consideration invites their Lordships on speculative grounds alone to overrule either the considered decision of Parliament to confer the powers or the decision of the Governor-in-Council to exercise it. So to do would be contrary to the principles laid down in Fort Francis Pulp and Power Co. V. Manitoba Free Press (ubi supra) and accepted by their Lordships earlier in this opinion.

One remaining matter relied upon by the Appellants should be mentioned. First it was said that the words "of the Japanese race" were so vague as to be incapable of application to ascertained persons. It is sufficient to say that in their Lordships' opinion they are not. All that can be said is that questions may arise as to the true construction of the phrase and as to its applicability to any particular person. But difficulties of construction do not affect the validity of the Orders.

In the result their Lordships find themselves in agreement with the conclusion at which Rinfret C.J.C. and Kerwin and Tachereau J.J. arrived and for the reasons they have expressed will humbly advise His Majesty that none of the Orders-in-Council is in any respect ultra vires and that the Appeal should be dismissed. There will be no order as to costs.

In the Privy Council

THE CO OPERATIVE COMMITTEE ON JAPANESE CANADIANS AND ANOTHER

v.

THE ATTORNEY-GENERAL OF CANADA AND ANOTHER

Delivered by Lord WRIGHT

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C. 2.

1946

Copy to Mr. Stangroom

J-25-1

Ottawa, December 7, 1946.

Mr. D.H.W. Henry,
Department of Justice,
Ottawa.

Dear Mr. Henry:-

Re Japanese Orders in Council

I have had a word about this matter with Mr. Stangroom of the Department of Labour and Mr. Robertson of the Prime Minister's office; tentatively Mr. Stangroom is to make arrangements for a meeting of the Cabinet Committee on Japanese Problems sometime next week and he and Mr. Robertson are to collaborate in the preparation of a report for the Committee which will indicate those Orders in Council which may be allowed to expire and will analize problems related to the remaining Orders in Council where policy devisions are required.

I have suggested to Mr. Stangroom that in making the arrangements for the meeting he should get in touch with you to make sure that representation from Justice is added. I know Mr. Jean felt that you should attend the meeting.

I am enclosing a draft list of Orders prepared by Mr. Stangroom in this connection, with suggestions regarding expiry. This list does not correspond with the list which was prepared for your Committee in that each of the lists contains certain Orders which are not noted in the other. You may wish to attempt a more complete consolidation.

I also enclose for your information at this point, a copy of two memoranda prepared by Mr. Robertson of the Prime Minister's office which may be of interest to you in this connection.

Sincerely yours,

J. R. Baldwin.

J-25-1

JRB
WCDH

DEPARTMENT OF LABOUR
CANADA

Ottawa, November 30, 1946.

Mr. A.D.P. Heeney,
Clerk of the Privy Council,
O t t a w a, Canada.

Dear Mr. Heeney,-

It is probable that I will be in Washington until Thursday morning, December 5th, but I think my office would be able to handle any matters that you would normally refer to me.

C-20-2
V.2

Regarding your letter of November 29th to the Acting Minister in connection with Orders in Council relating to persons of Japanese race, material for the Cabinet document is in course of preparation, and I understand that I will be back in Ottawa well before any meeting of the Cabinet Committee is held.

Must have been sent.

WH.

Yours very truly,

Eric Stangroom,
Special Assistant to the Deputy Minister.

J

CROSS REFERENCE SHEET

Name or Subject

File No.

J-25-1

Regarding

Date

Cabinet conclusions Nov.26 of interest to dept.,including -

Nov.29,1946
28

OC's outstanding under NETP Act;
OC's re persons of Japanese race -

Cabinet agreed,inter alia, that question of disposition of OC's re persons of Japanese race be referred to Cab.Com. on Japanese questions for examination & report -

SEE

Name or Subject

File No.

Dr.McCann(A/Min.of Labour) from ADPH (copy Mr.Stangroom)

C-20-2
v.2

Mr.Jean from ADPH (Nov.28)
(copy Mr.Henry
Mr.St.Laurent
Mr. Vancoe)

REQ. 15
5M—6-46

J-25-1

August 10, 1946

MEMORANDUM FOR THE ACTING SECRETARY OF STATE
FOR EXTERNAL AFFAIRS

Re: Applications to Return to Canada from Japan Made by Persons of Japanese Race

1. We have received, through the United Kingdom Liaison Mission in Tokyo, a few such applications and will no doubt receive many more. So far they fall into two classes:

(a) Canadian-born Japanese,

(b) Japanese nationals who were permanently resident in Canada, who went to Japan shortly before Pearl Harbour on temporary visits, and who have retained Canadian domicile.

A third likely class will be:

(c) Naturalized persons who went to Japan on temporary visits and who have retained Canadian domicile.

2. Persons in all three classes are entitled to enter Canada under present law. The question therefore is not whether they are to be allowed reentry but whether their endeavours to return to Canada are to be helped by the Canadian Government in any of the following ways:

(a) By authorizing the Canadian Mission now en route to Tokyo under Mr. E.H. Norman, to give or renew passports to applicants who are British subjects.

(b) By authorizing the Mission to give visas to those who are not British subjects.

(c) By helping persons to obtain exit permits and to buy passage. Without positive help from the Canadian Government it is unlikely, under present conditions, that any person of Japanese race could arrange to sail from Japan.

3. We asked our Embassy in Washington to find out informally how the United States Government was handling similar problems. The answer was that it was unlikely that a Japanese who is not a United States citizen would get a visa; none of this category would have automatic reentry rights under U.S. law. Those who are U.S. citizens would be entitled to passports; but no other positive assistance in arranging return to the U.S. would be given unless the person had voluntarily "stood out" as a U.S. citizen in Japan and had suffered for it.

4. It seems to me that there is in general no reason for the Canadian Government to help persons of Japanese race to obtain exit permits or to buy passage. If we

should have a case of a Canadian national who insisted on his Canadian status during the war and suffered for it, an exception could be made for his benefit.

5. Nor would I favour at present authorizing the giving of visas to Japanese aliens even if they have technically retained Canadian domicile. This policy would of course require reconsideration in a year or so.

6. Finally, I think that for the present we should generally refuse to give or renew passports to those who are British subjects. Exceptions might be made sparingly in special circumstances e.g. if a Canadian-born person went to Japan for a temporary purpose, if his family in Canada will be staying in Canada, and if the applicant did nothing actively disloyal during the war.

7. Our practice in Germany is not quite as strict as that proposed for Japan. We scrutinize carefully all applications from "Canadians" in Germany who were not interned during the war. However, in a number of cases (a minority), we have ended by giving such persons travel documents and helping them to return to Canada. Most of these cases involve German-born persons naturalized in Canada but some involve Canadian-born persons of German race. We do not seem to have had any cases presented involving German nationals who went to Germany on visits and who clearly retain Canadian domicile.

8. A closely related problem has been submitted to us by the United Kingdom Mission in Tokyo in these words:

> "Your letter of May 6th regarding Arthur and Harry Ono (refusing to authorize passports).
>
> "American Occupation Forces have been granting preferential treatment regarding salary and rations to persons who show proof that they have been accepted as Allied nationals by American or British Foreign Service Officers even though they have dual Japanese nationality and are of pure Japanese race. In some cases such certificate has been made the condition of employment.
>
> "2. Total inadequacy of our staff utterly precludes our making investigation of identity of individual cases on scale adopted by Americans and their practice has involved us in much embarrassment. In order to avoid discrimination we have granted certificates in some cases where dual British nationality was well attested and nothing was known to the detriment of the persons concerned.
>
> "3. Should we infer from your letter under reference that even this limited degree of recognition should not be granted in future? Certificates in question are of course utterly useless for all travel purposes."

I do not understand why the United States authorities grant such preference to dual nationals over other Japanese. However, perhaps we should follow their example so far as concerns Canadian-born dual nationals.

9. I should be grateful for your instructions.

HUME WRONG

J-55-1

Ottawa, Ontario,
August 2, 1946.

The Hon. D.C. Abbott,
Minister of National Defence,
Ottawa, Ontario.

Dear Mr. Abbott:

At the request of the Hon. Humphrey Mitchell, Chairman of the Cabinet Committee on Japanese Problems, I am attaching herewith for your information, a progress report, dated July 16th, 1946, on Japanese Repatriation, Relocation and legislation.

In view of this report it is thought that, for the time being, it is unnecessary to call a meeting of the above mentioned Committee.

Yours sincerely,

Raymond Ranger.

RR/GV
Enc.

J-55-1

Ottawa, July 17th, 1946.

Dear Mr. MacNamara:

Under date of June 27th I referred to you a copy of a letter which was being sent to the Deputy Minister of Justice requesting an opinion as to the applicability of Order in Council P.C. 10773 of 1942 to persons of Japanese origin who are now being moved to Japan. A reply dated July 3rd was received yesterday, July 16th, and I am enclosing a copy herewith for your information.

As you will note, the Deputy Minister of Justice is of the opinion that P.C. 10773 does not apply to Japanese persons who are now being moved to Japan as they are not leaving Canada on an exchange basis such as is contemplated in the Order in Council in question.

Yours sincerely,

Under Secretary of State
for External Affairs.

A. MacNamara, Esq.,
Deputy Minister of Labour,
Ottawa, Ontario.

J-25-1

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT
OF CANADA

SECRET

MEMORANDUM TO THE SUB-COMMITTEE OF CABINET
ON JAPANESE AFFAIRS:

July 16

Progress Report on Japanese Repatriation
and Relocation.

1. Repatriation

(a) A total of 1774 voluntary Japanese repatriates have been returned to Japan on two ships leaving Vancouver on May 31 and June 16 of this year. The total consists of 1230 adults and 544 children.

(b) A third boatload of 1300 voluntary repatriates will sail around August 2.

(c) In addition, a fourth boat will probably be required for a further 300 to 600 volunteer repatriates but shipping accommodation for same before the end of August appears unlikely.

II. Relocation

(a) A number of former service quarters have been taken over from National Defence to establish hostels for Japanese moved from the settlements in British Columbia for relocation between Saskatchewan and the Maritimes. Hostels have been established as follows:

Moose Jaw, Sask.	--	maximum accommodation 400
Winnipeg, Man.	--	maximum accommodation 200
Neys, N. Ont.	--	maximum accommodation 800
Farnham, Que.	--	maximum accommodation 200

There is also hostel accommodation for some 100 at Toronto and London, Ontario. Family groups are being moved to these hostels and relocated as quickly as local employment and accommodation is found for them.

(b) Movement out of British Columbia settlements to points east has been heavy in the past three months. Figures from April 1 to June 30 are as follows:

To Alberta	--	470
To Saskatchewan	--	21
To Manitoba	--	114
To Ontario	--	1118
To Quebec	--	173
To Prince E.Island	--	7
Total		1973

.....2

Movement in July will include several hundreds coming East to the Neys, Ontario and other newly-opened hostels, and at least 400 into Saskatchewan.

(c) There were 14,695 Japanese in British Columbia at March 31, 1946, which was reduced to 10,838 at June 30. The number in the British Columbia Housing Projects at March 31, 1946, was 9,645, and at June 30 had decreased to 5,595. The number in these settlements will be still further reduced by 1,300 persons sailing for Japan about August 2, as well as the hundreds who will move East. It is estimated that the number remaining in our settlement centres in British Columbia may be reduced to 2,500 or 3,000 by Autumn. The Department of Labour is now in the process of closing several British Columbia Housing Projects as the people move out.

(d) The biggest obstacle at the present time to the resettlement of Japanese east of the Rockies and especially in Eastern Canada remains the lack of housing accommodation close to available employment.

III. Legislation

The Department of Labour recommended that legislation be brought in at the present Parliamentary Session to re-enact in statutory form the provisions of the existing Orders-in-Council for the relocation of Japanese in Canada and for control over their movements and residence during the period of relocation. The Cabinet decided that all emergency Orders covering Japanese including those relating to relocation in Canada should stand over for re-examination after the present Session and that no legislation be introduced at this Session on this subject.

July 16, 1946.

PMA/FEA

J-25-1

DEPARTMENT OF JUSTICE, CANADA

Ottawa, July 3rd, 1946.

Copy

No. 150593

Dear Mr. Robertson:

With reference to your confidential letter of the 27th ultimo, I have ascertained that the Japanese who have been or are about to be returned to Japan are being so returned under the express provisions of one of the Orders in Council now before the Privy Council, and it would appear that P.C. 10773 relates to the repatriation of persons in exchange for Canadian nationals in enemy territory which is not the case with respect to the Japanese above referred to and, therefore, I am of opinion that P.C. 10773 would not apply to the persons in question.

Yours truly,

(sgd.) F.P. Varcoe

Deputy Minister.

The Under Secretary of State
for External Affairs,
O T T A W A.

J-25-1

RGR:McK

Confidential

Ottawa, June 27, 1946.

Dear Mr. Varcoe:

As you know, there are at present three Orders in Council dealing with persons of Japanese origin in Canada which are at present before the Privy Council in London for a ruling as to their validity. These are: Orders in Council P.C. 7355, P.C. 7356 and P.C. 7357 of December 15, 1945.

In addition to these three Orders in Council there is a fourth Order which was passed some three years previously, namely P.C. 10773 of November 26, 1942. This order was intended to apply to civilians who were repatriated during the war to countries at war with Canada on an exchange basis. This Order in Council was not submitted along with the other three for consideration by the Supreme Court or by the Privy Council as it was not a part of the general policy for dealing with the Japanese problem as were the other three Orders. However, it would appear that there is a good possibility that, on the basis of strict legal interpretation, P.C. 10773 would apply to many of the Japanese who are now being sent to Japan. In order that the government may decide what action it ought to take, with regard to this Order and its application, it is important to know whether, in the opinion of your department, the order will in fact apply to the persons who are now being moved.

F. P. Varcoe, Esq.,
Deputy Minister of Justice,
O t t a w a.

I am enclosing herewith a copy of Order in Council P.C. 10773. As you will note, it applies to persons whether born or naturalized in Canada "who make application for repatriation to any country which at the time of the application is at war with Canada". I think there is no doubt but that, from a strict legal point of view, we are at present in a state of war with Japan. Consequently, it would seem that the Japanese who may now or who have herewith to apply for repatriation may come within the scope of this portion of the Order.

You will also note that paragraph 1(a) of the Order provides for loss of British and Canadian status by any person "as from the date of his departure from Canada for repatriation". One question which would seem to arise here is whether the above language would mean that the Order would apply only to persons going voluntarily or also to persons who go under compulsion through the operation of the three Orders in Council of last December. In actual fact this point may not be of any practical importance since there is no possibility of exercising compulsion with regard to persons of Canadian birth, and loss of nationality for naturalized persons is taken care of under Order in Council P.C. 7356. However, the point might be of some relevance.

So far as the present situation is concerned, I may say for your information that no persons of Japanese origin are at present being sent out of Canada other than those who wish to go on a strictly voluntary basis. Two ship loads of these persons have gone thus far, involving a total of some 1700 people. There is a further group of over 500 still awaiting movement whenever accommodation can be provided. Apart from these persons, no action with regard to deportation proceedings will be taken until a decision has been handed down by the Privy Council with regard to Orders in Council P.C. 7355, P.C. 7356, and P.C. 7357.

I should appreciate it if I could have your views as to the application of P.C. 10773 at an early date as the government may, I think, be compelled to take some action with regard to it if it is felt that it does apply to persons of Japanese origin who are at present leaving the country. Those who may be particularly concerned are the minor children who are accompanying their parents but who, in many cases, have indicated the desire to return to Canada at a later date.

Yours sincerely,

Under Secretary of State
for External Affairs.

J 55-1 P-21

May 6146

Memorandum re Proposed Legislation "The Japanese Repatriation and Resettlement Act, 1946"

1. The attached draft Bill prepared by the Department of Justice, at the request of the Department of Labour, for submission to Parliament at the present session incorporates in sections three to six inclusive the provisions of the existing Orders in Council relating to deportation and repatriation of Japanese. The remainder of the Bill incorporates the provisions of existing Orders in Council giving authority relative to the relocation and resettlement of evacuated Japanese in Canada with necessary provisions for control over movement and residence for this purpose.

2. The Department of Labour recommends

(a) that sections three to six inclusive relative to deportation be dropped. If further legislation on this matter beyond that contained in the present Orders in Council is required, this could be introduced at the next session of Parliament,

(b) that section seven be dropped firstly, because resettlement of Japanese on a provincial quota basis is impracticable from an administrative point of view and secondly, because, at the present time, Alberta is the only Province with which difficulty is being encountered in the settlement of Japanese. This difficulty arises out of the provisions of the existing agreement with the Province. It is quite possible that these difficulties will be adjusted in the course of time.

(c) Special attention is directed to the provisions of section ten for consideration.

3. The Department of Labour recommends that subject to the modifications in the Bill suggested above, the Bill be introduced at the present session of Parliament.

C O P Y

10 - 11 GEORGE VI
Chapter

An Act to provide for the Repatriation or Resettlement of Displaced Persons of the Japanese Race

WHEREAS during the war certain persons of the Japanese race resident on the Pacific Coast manifested sympathy with or support of Japan as a result of which it became necessary as a security measure to remove from the coastal area of British Columbia all persons of the Japanese race;

AND WHEREAS on the Fifteenth day of December, 1945, the Governor in Council under the authority of the War Measures Act made Orders in Council (P.C. 7355, 7356 and 7357) which provided for the repatriation and deportation to Japan of certain persons of the Japanese race and for the cessation of the rights as a British subject or Canadian national of any person so deported who is a British subject by naturalization, and for the appointment of a Commission to inquire into the activities, loyalty and co-operation during the War of Japanese nationals and naturalized persons of the Japanese race;

AND WHEREAS the Orders in Council aforesaid are now before the Judicial Committee of the Privy Council for consideration as to their validity;

AND WHEREAS the said Orders in Council will cease to be operative with the expiration of the National Emergency Transitional Powers Act, 1945;

AND WHEREAS it is deemed undesirable in the public interest that persons of the Japanese race displaced by removal from the coastal area should again be permanently settled on the Pacific Coast of Canada;

AND WHEREAS it is deemed necessary in the circumstances that Parliament should make further provision for the repatriation and deportation of certain Japanese nationals and others of the Japanese race and for the resettlement of all other displaced persons of the Japanese race;

AND WHEREAS the responsibility for the resettlement of persons of the Japanese race displaced by the aforesaid removal from the coastal area is a responsibility of the people of Canada as a whole;

AND WHEREAS such responsibility may best be met by means of a policy whereby the displaced persons would in so far as it is practicable, be resettled throughout Canada under agreements to be entered into with the several provinces,

NOW THEREFORE His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:-

Short Title

1. This Act may be cited as <u>The Japanese Repatriation and Resettlement Act, 1946.</u>

Interpretation

2. In this Act and in any order or regulation made thereunder, unless the context otherwise requires

(a) "Minister" means the Minister of Labour

(b) "Deportation" means the removal, pursuant to the authority of this Act, of any person from any place in Canada to Japan and "deported" has a corresponding meaning.

(c) "displaced person" means a person of the Japanese race who left the coastal area of British Columbia during the war after the fifteenth day of February, one thousand nine hundred and forty-two

(d) "person of the Japanese race" means a person who

(i) is wholly or partly of the Japanese race,

(ii) was, on the fifteenth day of February, one thousand nine hundred and forty-two, ordinarily resident in the coastal area of British Columbia, and

(iii) left that area on or after the said fifteenth day of February.

(e) "coastal area" means that area of the Province of British Columbia including all islands west of a line commencing at Boundary Point No. 7 on the International Boundary between the Dominion of Canada and Alaska, thence following the line of the "Cascade Mountains," as defined by paragraph 2 of section 24 of the Interpretation Act of British Columbia, being Chapter 1 of the Revised Statutes of 1936, to the northwest corner of Lot 1410, Range 5, Coast Land District, thence due east to a point due north of the northwest corner of Lot 373, Range 5, Coast Land District, thence due south to said northwest corner of Lot 373 being a point on the aforementioned line of the "Cascade Mountains", (being the area surrounding the village Municipality of Terrace), thence following said line of the "Cascade Mountains" to the western boundary of Township 5, Range 26, west of the sixth Meridian, thence following the northerly, easterly and southerly boundaries of said Township 5, to the southwest corner thereof, being a point on the line of the "Cascade Mountains," (being the area surrounding the Village Municipality of Hope); thence following the "Cascade Mountains" to the southerly Boundary of the Province.

(f) "proportion of the province" or "its proportion" means the number of displaced persons which bears the same proportion to all the displaced persons in Canada on the day this Act comes into force as the population of the province bears to the population of Canada according to the General Census taken in the year one thousand nine hundred and forty-one.

(g) "removal" means the removal of a person of the Japanese race from one place in Canada to another pursuant to this Act.

(h) "request for repatriation" means a written request or statement of desire to be repatriated or sent to Japan.

Repatriation and Deportation

3. (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 the eighth day of December, nineteen hundred and forty-one, 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 fifth day of February, nineteen hundred and forty-three, as amended by P.C. 5637, of the sixteenth day of August, nineteen hundred and forty-five, and was so detained as at midnight of the first day of September, nineteen hundred and forty-five.

shall be subject to deportation to Japan.

(2) Every naturalized British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation shall be subject to deportation to Japan; Provided that such person has not revoked in writing such request prior to midnight the first day of September, nineteen hundred and forty-five.

(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 to be repatriated or sent to Japan shall be subject to deportation to Japan; Provided that such person has not revoked in writing such request prior to the making by the Minister of an order for his deportation.

(4) The wife and children under sixteen years of age of any person for whom the Minister makes and order for deportation to Japan shall be subject to deportation to Japan.

(5) Every person of the Japanese race resident in Canada who is found by a Commission appointed by the Governor in Council under the Inquiries Act for the purpose to have so conducted himself during the War as to make his deportation desirable in the national interest shall be subject to deportation to Japan.

4. The Minister may order the deportation to Japan of any person subject to deportation as provided in the next preceding section.

5. (1) Any person of the Japanese race for whom an order for deportation is made or 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 or departure 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 six 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 upon his deportation or departure;

(c) at the time of his deportation or departure 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 of the Japanese race 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.

6. (1) The Minister may at or immediately prior to the time of departure advance to or for a person of the Japanese race 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, the difference between the amount he possesses and two hundred dollars;

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

(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.

7. (1) The Minister shall confer with the government of each of the provinces for the purpose of negotiating an agreement, if possible, for the resettlement in such province of its proportion of displaced persons.

(2) Upon reaching an agreement with the government of a province the Minister may order the removal to such province of displaced persons to the number which such province agrees to accept.

(3) After negotiation, if it appears that there are displaced persons for whom no provision for resettlement in any province has been made, the Minister may, if requested to do so by the Lieutenant-Governor in Council of the province in which they reside, order the removal of such persons remaining unprovided for from such province to some part of Canada not within the geographical limits of any province.

8. The Minister may

(a) take such measures as he deems advisable to assist persons of the Japanese race to resettle themselves under this Act and to provide for shelter, maintenance, employment, care and welfare of such persons during the period of their resettlement and for such purposes, enter into contracts and acquire real or personal property on behalf of His Majesty or lease or dispose of the same, but no such contract shall be entered into by him for an amount in excess of fifteen thousand dollars nor shall any real property be purchased or disposed of by him pursuant to this Act except with the approval or under the authority of the Governor in Council as to the terms of purchase or disposition.

(b) employ persons of the Japanese race in the operation of any housing or employment projects or hostels administered or operated by the Department of Labour for the purposes of this Act, at such wage rates and terms as he deems advisable;

(c) make rules or regulations governing the welfare, conduct or discipline of persons of the Japanese race in any hostel, camp or housing project administered or operated by the Department of Labour for the purposes of this Act;

(d) make arrangements with any department or agency of the Government of Canada to assist in the administration of this Act;

(e) with the approval of the Governor in Council enter into an agreement with any province with respect to any of the matters enumerated in this section.

9. For the purpose of facilitating the removal and resettlement in Canada of persons of the Japanese race the Governor in Council may make regulations and may authorize the Minister to make orders governing the movement of such persons in any area in Canada or from one place or area to another place or area in Canada.

General

10. Notwithstanding anything contained in this Act no displaced person shall enter or settle in, or be permitted to enter or settle in the coastal area of British Columbia.

11. The Minister may

(a) take such measures as he deems advisable to provide or arrange for the deportation or removal of persons of the Japanese race, and for their transportation, detention, discipline, feeding, shelter, health or welfare, pending their deportation or removal.

(b) make such orders, rules or regulations as he deems necessary for the purpose of carrying out the provisions of this Act.

12. (1) The Governor in Council shall appoint an officer to be known as the Commissioner of Japanese Placement who under the direction of the Minister is charged with the administration of this Act.

(2) Such other officers, clerks and employees as may be necessary for the administration of this Act shall be appointed or employed in the manner authorized by law.

(3) Notwithstanding this section or any other statute or law, the officers, clerks and employees employed by the Minister pursuant to order of the Governor in Council made on the fifth day of February, one thousand nine hundred and forty-three (P.C. 946) and who immediately prior to the coming into force of this Act were employed under that order, may be employed by the Minister for the purposes of this Act at the rate of remuneration received by them at that time and such officers, clerks and employees shall perform such duties as are assigned to them by the Minister.

13. (1) All real and personal property or any interest therein acquired by or vested in His Majesty in right of Canada by or pursuant to the order of the Governor in Council made on the fifth day of February, one thousand nine hundred and forty-three (P.C. 946) shall be deemed to have been acquired by the Minister on behalf of His Majesty pursuant to this Act.

(2) The Minister may, in the name of the British Columbia Security Commission, established by Order of the Governor in Council made on the fourth day of March, one thousand nine hundred and forty-two (P.C. 1665), execute any conveyance, transfer or other document necessary to transfer to His Majesty in right of Canada the title to any real or personal property or any interest therein held in the name of the said Commission,

14. Any person for whom an order for deportation or removal is made and who is detained pending deportation or removal or who is placed under restraint in the course of deportation or removal by virtue of any order or measure made or taken under this Act shall, while so detained or restrained, be deemed to be in legal custody.

15. Any person who resists or obstructs or attempts to resist or obstruct any peace officer or other person from carrying out any order made pursuant to the provisions of this Act shall be guilty of an offence against the Act.

16. Any person who contravenes or omits to comply with any of the provisions of this Act 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.

17. 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 Act 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.

18. The Governor in Council may prescribe penalties by way of fine not exceeding five hundred dollars or by way of imprisonment for a term not exceeding six months or by way of both such fine and such imprisonment that may be imposed for violation of any order or regulation made under this Act and may also prescribe where and the circumstances in which the said penalties shall be imposed upon summary conviction or upon indictment or upon either summary conviction or indictment.

19. When any question arises in any prosecution under this Act as to whether the accused person is a person of the Japanese race as defined in this Act, the onus of proof that the accused person is not a person of the Japanese race shall lie upon the accused.

20. The costs and expenses incurred in the administration of this Act shall be paid out of moneys appropriated by Parliament for that purpose.

21. After the close of each fiscal year the Minister shall as soon as possible prepare an annual report respecting the administration of this Act and shall lay the said report before Parliament.

22. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council and shall expire on a day to be fixed by such a proclamation.

P.C. Gibb J-25-1

Ottawa, April 26, 1946.

Honourable D.C. Abbott,
Minister of National Defence,
O t t a w a.

My dear Colleague:

Re: Japanese Relocation

The Department of Labour is completing arrangements at the present time for the repatriation of Japanese voluntary repatriates. Action for the balance of the repatriated group is deferred pending the outcome of the Privy Council decision.

In the meantime, our Japanese Administration at Vancouver report a marked desire on the part of many of the Japanese subject to deportation to take advantage of placement openings offered east of the Rockies this year. In this respect the attitude is, of course, very much different from the attitude which has prevailed prior to this year. The question arises as to what policy should be followed with respect to these persons. There are three alternative courses which might be pursued:

(a) Retain these persons in Japanese settlements in the interior of British Columbia pending the result of Privy Council decision.

(b) Permit persons to go East who have Canadian-born children which are not deportable under the Supreme Court decision advising such persons that those who do so may thereupon be permitted to revoke their request for repatriation. The effect of this would be that only persons who are themselves deportable and who have not Canadian-born children under sixteen years of age would be held in the settlements contrary to their own wishes to go East.

(c) Permit persons who are deportable but who are ready to go East the opportunity to do so without, however, giving them any assurance that they may not be deported subsequently. These persons who are permitted to go East on this basis would be given the standard transportation and placement allowances applicable to persons moving from British Columbia further east.

....2

In my opinion, in view of the uncertainties as to what the Privy Council may decide and since the Government's policy with respect to Japanese remaining in Canada is one of dispersal, I would suggest that we would be warranted in proceeding in accordance with Alternative (c) above and permit as many of these persons as wish to go east at the present time to do so giving them the usual assistance for this purpose without prejudice to whatever subsequent action may be taken for deportation following the Privy Council decision.

I would anticipate that if this policy is followed, there may be a considerable number of deportable persons moving to employment east of British Columbia during the current year.

As a member of the Sub-Committee of the Cabinet on Japanese, I would appreciate your views on the above at your earliest convenience.

Yours sincerely,

(SIGNED) HUMPHREY MITCHELL

EL/JL

SECRET

J-25-1

Date

OTTAWA, May 6, 1946.

The Honourable Ian A. Mackenzie, K.C., M.P.,
Minister of Veterans Affairs,
OTTAWA, Ontario.

Dear Mr. Mackenzie;

I am attaching a draft Bill prepared by the Department of Justice at the request of the Department of Labour, relative to the repatriation and resettlement of Japanese, together with a covering memorandum incorporating the recommendations of the Department of Labour.

It is hoped to call a meeting of the Cabinet Committee in the very near future for discussion of this proposed legislation.

Yours sincerely,

B. F. Wood

Encl.

Copies to Mr. Abbott
Mr. Jean
Mr. Mitchell
Mr. Robertson, N.A.
Mr. Heeney
Mr. Halliday

J-25-1

Ottawa, April 1, 1946.

The Honourable Humphrey Mitchell,
Minister of Labour,
Ottawa, Canada.

Dear Mr. Mitchell:

I am enclosing for your records two copies of a minute which was prepared on the meeting that was held in the Prime Minister's office on March 26 with the delegation from the Cooperative Committee on Japanese Canadians.

Yours sincerely,

R. G. Robertson,
Secretary.

RGR/JV

J-25-1

Ottawa, March 25, 1946.

The Honourable J.G. Gardiner,
Minister of Agriculture,
O T T A W A.

Dear Mr. Gardiner:

I enclose herewith a copy of the minutes of the meeting of the Cabinet Committee on Immigration Policy held on Thursday, March 21, 1946.

Yours sincerely,

M.G. Glassco,
Secretary,
Cabinet Committee on Immigration Policy.

J-25-1

Ottawa, March 25, 1946.

The Honourable H. Mitchell,
Minister of Labour,
O T T A W A.

Dear Mr. Mitchell:

I enclose herewith a copy of the minutes of the meeting of the Cabinet Committee on Immigration Policy held on Thursday, March 21, 1946.

Yours sincerely,

M.G. Glassco,
Secretary,
Cabinet Committee on Immigration Policy.

J-25-1

Ottawa, March 25, 1946.

The Honourable Paul Martin, K.C.,
Secretary of State,
O T T A W A.

Dear Mr. Martin:

I enclose herewith a copy of the minutes of the meeting of the Cabinet Committee on Immigration Policy held on Thursday, March 21, 1946.

Yours sincerely,

M.G. Glassco,
Secretary,
Cabinet Committee on Immigration Policy.

CROSS REFERENCE SHEET

Name or Subject

File No.

J-25-1

Regarding

Date

Cabinet conclusions March 6 of interest to dept.,including -

March 8,1946

Deportation of persons of Japanese race -

Cab.upon recomm.of Min.of Labour agreed:
a) that govt.faciliate hearing of an appeal on the question by Judicial Com. of UK Privy Council -
b) that,pending outcome of appeal,arrgts. be made for any Japanese who wishes, to leave Can. for Japan on voluntary basis -
c) that appt. of Comm.to review cases of Japanese be deferred until completion of hearing of appeal,and that before its estab. its terms of reference be reconsidered -
d) that early announcement be made to above effect -

Also agreed to take steps re re-settlement of loyal Japanese - re lifting of prohibition re land purchases by such persons -

SEE

Name or Subject

File No.

N.A.Robertson from ADPH
(copy Mr.Wrong)

Mr.Mitchell from ADPH
(copy Mr.MacNamara
Mr.MacKenzie)

C-20-2
v.2

REQ. 15
5M—6-45

J-25-1

OFFICE OF THE CLERK OF THE PRIVY COUNCIL

MEMORANDUM

Mr. Heeney.

I saw Mr. Mackenzie yesterday and advised him of the decisions of the Cabinet Committee on deportation of Japanese.

He is quite in accord with the decisions of the Committee and I have advised Mr. Mitchell to that effect.

I would suggest that Cabinet authorize a public statement of Govt policy as soon as a decision is reached.

O. D. Skelton

Thos. 6/46

J-25-1

MINISTER OF LABOUR

CANADA

Ottawa, March 5, 1946.

Mr. A. D. P. Heeney,
Clerk of the Privy Council,
O t t a w a.

Dear Mr. Heeney:

C-20-2
V-2
(Can. Comm. correspondence)

With reference to your letter of March 4 in regard to the Cabinet Committee's recommendation with regard to the next move in connection with repatriation of persons of Japanese race.

Honourable Mr. MacKenzie has considered the proposal of the Sub-Committee, and he is in agreement with the proposal.

Yours sincerely,

CROSS REFERENCE SHEET

Name or Subject

File No.

J-25-1

Regarding

Date

March 2,1946

Cabinet conclusions March 2,of interest to dept., including -

Deportation of persons of Japanese race; report of Cabinet Committee -

(decision on report deferred due to absence of Minister of Labour)

SEE

Name or Subject

File No.

N.A.Robertson from ADPH -

C-20-2
v.2

REQ. 15
5M—6-45

J-25-1

Copies sent to:
Mr. Mitchell,
Mr. Mackenzie,
Mr. L. Jean,
Mr. N. Robertson,
Mr. A. MacNamara,
Mr. R.G. Robertson.
Mr. D.C. Abbott,

Ottawa, Ontario,
February 28th, 1946.

Mr. Arthur MacNamara,
Deputy Minister,
Department of Labour,
Ottawa, Ontario.

Dear Mr. MacNamara:

I am enclosing minutes of a meeting of the Cabinet Committee on Japanese Problems which was held in the Privy Council Chamber on February 27th, 1946.

Sincerely yours,

B.F. Wood,
Secretary.

J-25-1

(For immediate release)

March 16th, 1946.

File

Press Release.

Prime Minister's Office.

The Prime Minister, Mr. Mackenzie King, announced to-day that the government would facilitate any appeal which it was desired to carry to the Judicial Committee of the Privy Council from the decision handed down by the Supreme Court of Canada in the reference which was made to it concerning the validity of Orders in Council P.C. 7355, 7356 and 7357 of December 15, 1945, with regard to persons of Japanese origin in Canada.

Pending the outcome of such an appeal to the Privy Council, action under the Orders in Council with regard to deportation will be suspended. In the meantime, the Department of Labour will proceed with arrangements to assist any Japanese who wish to leave Canada to do so at an early date. Mr. King made it clear that notwithstanding the fact that the Orders in Council are under review, any Japanese persons who wish to go to Japan will be accorded the terms provided for in Order in Council P.C. 7355, which allows the removal of the value of all property and assets held in Canada, and which provides for minimum financial credits and government assistence in needy cases. Persons leaving under these arrangements will be accorded free transportation for themselves and their families and for whatever baggage allotment is allowed by shipping conditions.

The Prime Minister stated that the government would defer the appointment of the commission to review the cases of persons of Japanese origin until judicial review of the Orders in Council is completed. Prior to the appointment of the commission, its terms of reference, as set forth in Order in Council P.C. 7357, will be reviewed by the government.

CABINET DOCUMENT
No. 164
25

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SECRET

J 25-1

MEMORANDUM TO THE CABINET:

RE JAPANESE DEPORTATION POLICY

In accordance with the decision of Cabinet the Cabinet Committee appointed to consider the repatriation and relocation of persons of the Japanese race met on Wednesday, February 27th, to consider future action in light of the Supreme Court decision.

The Minister of Labour reviewed a memorandum which had been prepared and distributed to members of the Committee in which it was suggested that the following principles should govern the issue of deportation orders:

(a) husbands and wives will not be separated by forced deportation measures except in instances where domestic relations of a man and wife have already been broken up in which case each will be dealt with as a single individual.

(b) Canadian born persons will not be deported against their wishes.

Mr. Mitchell suggested three possible courses of action:

(1) that the appeal to the Privy Council be proceeded with if the parties so desire and that the hearing be expedited. In the meantime, that we content ourselves with making preliminary arrangements and if possible by despatching Japanese Nationals who have no minor children and voluntary repatriates.

(2) that those who are interesting themselves in the case be told of the principles that the government proposes to follow in not separating husbands and wives and not deporting Canadian born persons against their wishes. If this policy were accepted reference to the Privy Council would then become unnecessary.

(3) To proceed with deportation within the limits of the Supreme Court decision and notwithstanding that an appeal is taken.

The Committee was advised that Mr. Brewin who acted as Junior Counsel on behalf of the Japanese in the recent reference before the Supreme Court had asked whether it would be possible for a delegation of six or seven persons representing the Committee to discuss the Japanese question with the government. The delegation would particularly wish to raise the following points:

(1) In view of the difference of opinion in the Supreme Court judgments the Japanese orders should be withdrawn and the matter dropped.

(2) Failing an abandonment of the orders they would regard it as satisfactory solution if the government would agree that all those who are subject to deportation and who are not willing to go should have the right to have their cases heard by the Loyalty Commission which is to be established.

(3) If there is to be no change in government policy the Committee would like to have assurance that the matter would not be proceeded with pending the outcome of an appeal to the Privy Council.

Officials of the Department of Labour charged with the responsibility of administering Japanese affairs pointed out that under the Supreme Court decisions approximately 7,000 Japanese could be legally deported but that this would mean separating parents from their children. If, however, the government decided that families should not be broken up the number to be deported might be reduced to approximately 1,500.

The Committee after lengthy discussion decided to make the following recommendations to Cabinet:

(1) That the government facilitate an appeal to the Privy Council.

(2) Pending the outcome of the appeal the government would repatriate only those who still expressed a desire to be returned to Japan.

(3) The government would proceed with efforts at dispersal of Japanese to all parts of Canada other than the Pacific Coast.

(4) The setting up of a Commission of Appeal would be deferred until the decision of the Privy Council had been announced and the government would reconsider the terms of reference of this Commission in the light of Privy Council decision.

Privy Council Office,
February 27th, 1946.

A.D.P. Heeney,
Secretary to Cabinet.

Rec'd for A.J.B. Feb. 27

(1)

THIS DOCUMENT IS THE PROPERTY OF THE GOVERNMENT OF CANADA

SECRET.

MEMORANDUM TO THE CABINET:

RE JAPANESE DEPORTATION POLICY

I. In order to complete deportation orders covering Japanese who are to be sent to Japan under P.C. 7355, it is necessary to settle at this time the general principles which will be followed in the matter of deportation where persons are now unwilling to proceed to Japan. In suggesting the following rules, due consideration has been given to the decisions of the majority of the Judges of the Supreme Court of Canada.

P.C. 7355 outlines the classes of persons who may be deported but the issue of deportation orders is discretionary and discretion must be exercised in the case particularly of deportation of family groups in a reasonable and sensible manner. It is considered that the policy in this respect should be cleared through the Cabinet Committee on Japanese Repatriation.

II. The majority decision of the Supreme Court on the recent reference as to the validity of the orders relating to Japanese deportation holds the orders valid with the exception of the provision in P.C. 7355 which says that the wives and children under sixteen years of age of persons who are deportable may be included in an order for the deportation of such persons. This latter provision is declared to be ultra vires.

III. It is proposed that the following principles shall govern the issue of deportation orders:

(a) Husbands and wives will not be separated by forced deportation measures except in instances where the domestic relations of the man and wife have already been broken up in which case each will be dealt with as a single individual.

(b) Canadian-born persons will not be deported against their wishes.

IV. Applying the foregoing principles to specific types of family groups, the following rules are proposed, to apply to family groups and single persons:

1. Man and wife - both born in Japan. Both being Japanese Nationals and both having made a request for repatriation, - both will be included in Deportation Order regardless of any request for revocation. It will be assumed that parents will take their children with them. However, if difficulties arise in this connection in so far as Canadian born children are concerned the determining consideration will be the avoidance of division of family units.

It may be argued in some quarters that the deportation of parents of children under sixteen years of age indirectly means the effective forced repatriation of children under sixteen years of age and that the effect of such a policy will be to circumvent the decision of the Supreme Court. The policy on this point is therefore a matter for the Government to determine at this time. On the other hand, if deportation is not to be undertaken in the case of married couples where there are children involved, the number of persons who will be subject to deportation will be limited to 1500 persons. Moreover in each case the deportation of the man and wife will be based upon a request from each of them.

2....

2. Man and wife - both born in Japan. One having become a Naturalized British Subject and both having requested repatriation. If the one who is a Naturalized British Subject applied prior to midnight the first day of September, 1945, for revocation neither will be included in a Deportation Order (in order to avoid compulsory division of a family) unless on further interview the naturalized person makes a new election to go to Japan. It is assumed that the parents will take their children with them. If they refuse to do so no assistance to go to Japan will be given to a man and wife without the children.

3. Man and wife - both born in Japan and both Naturalized British Subjects - both having requested repatriation. If either applied for revocation prior to September 2, 1945, neither will be included in the Deportation Order unless upon a new election both decide to go. If neither person has applied to revoke prior to September 2, 1945, both will be included in the Deportation Order.

4. Rules 1, 2 and 3 are for cases where both have requested repatriation. In such limited number of cases (and there are very few) where the husband alone has requested repatriation and is deportable and the wife has been silent (i.e. has neither applied for repatriation nor made a statement verbally or written, of which there is a record, stating she does not wish to be repatriated) - neither will be sent if the wife is not prepared to go.

5. Man and wife - the husband having requested repatriation and the wife having signified her desire not to be repatriated. If the wife is not prepared to go, neither will be sent.

6. Man and wife - one born in Japan and one born in Canada - both having applied for repatriation. If the Canadian born applies for revocation, neither will be sent.

7. Where the husband goes to Japan and the wife stays in Canada, the children remain with the wife if they have been in the home with her unless the parties otherwise agree.

8. In the case of single Japanese born in Japan and not Naturalized, men or women, who have applied for repatriation, an order for deportation will be made and deportation proceeded with.

9. In the case of a single man or woman born in Japan who is a Naturalized British Subject, an order for deportation will be made and such person will be deported if such person has requested repatriation and has not revoked prior to September 2, 1945.

10. If the domestic relationship of the man and wife has already been broken up, each will be dealt with as in the case of a single individual.

11. No Japanese person, irrespective of national status, who fought for Canada in the last war, will be sent from Canada on other than a voluntary basis.

12. Forced deportation will not be undertaken in the immediate future in the family groups east of Manitoba who signed for repatriation but have since revoked. Voluntary repatriation from Eastern Canada may be proceeded with, however, at any time.

3.....

13. Internees

Japanese national internees are subject to deportation without having requested repatriation.

The following is the present status of internees:

JAPANESE NATIONALS

Signed for repatriation	15
Wouldn't sign but want to go	81
Undecided	49
Want to remain in Canada	26
	171

NATURALIZED CANADIANS

Signed for repatriation	14
Wouldn't sign but want to go	16
Undecided	0
Want to remain in Canada	10
	40

CANADIAN BORN JAPANESE

Signed for repatriation	123 (a number of these have revoked recently)
Wouldn't sign but want to go	28
Undecided	0
Want to remain in Canada	51
	202

In the case of Naturalized Canadian Internees and Canadian born Internees who have applied to be repatriated, the deportation of such persons and their families will be subject to the same provisions as apply to persons having a similar status and who are not presently interned. Persons in these groups who are not to be repatriated will be released as quickly as placement can be found for them.

In the case of Japanese Nationals, a deportation order will be issued covering those who have signed for repatriation and those who, although not having signed, have signified their intention of going. This is, however, subject to the provision that if the wife has not signed neither will be sent.

A decision has to be made as to whether the remaining Japanese Nationals who want to remain in Canada or are undecided should be deported under the same conditions as apply to those who have requested repatriation or whether, in the alternative, these should be permitted to stay in Canada or go to Japan as they may elect. It is suggested that the persons who are undecided should not be sent.

J-35-1.

Confidential

Note on the Report of the Recommendations of the Cabinet Committee on the Japanese - Meeting of February 27, 1946.

The conclusions of the meeting, as set forth in the report of the Secretary, might be modified slightly and presented in the following form:

"The Committee, after lengthy discussion, agreed to make the following recommendations to Cabinet:

That an announcement should be made at an early date, on behalf of the government, to the following effect:

(a) That, in the light of the uncertainty created in the legal situation by the differing judgments of the Supreme Court, the government would facilitate the hearing of an appeal on the question by the Privy Council.

(b) That, pending the outcome of the appeal, arrangements would be made at as early a date as possible for any Japanese who wished to do so, to leave Canada for Japan on a purely voluntary basis.

(c) That the appointment of the Commission to review the cases of Japanese persons would be deferred until the hearing of the appeal had been completed, and that before its establishment its terms of reference would be reconsidered.

In addition, the Committee agreed to recommend that consideration should be given to the steps that might be taken by the government immediately to facilitate the general resettlement of loyal Japanese persons throughout the country. To assist in achieving such resettlement on a permanent basis, it was felt that the prohibition on the purchase of land by loyal Japanese persons should be lifted."

MOST SECRET
This document on loan from the
PRIVY COUNCIL OFFICE-CANADA
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SECRET

A meeting of the Special Committee of the Cabinet appointed to consider the repatriation and re-location of persons of Japanese race in Canada was held in the Privy Council office on Wednesday, February 27th, 1946, at 10.30 a.m.

Present:

The Minister of Labour,
(Mr. Mitchell), - Chairman

The Minister of National Defence,
(Mr. Abbott).

Also present:

The Under-Secretary of State for External Affairs,
(Mr. N.... Robertson)

The Deputy Minister of Labour,
(Mr. A. MacNamara)

Mr. A.H. Brown
Department of Labour,

Mr. R.G. Robertson
Prime Minister's Office,

Mr. B.F. Wood,
Secretary,
Privy Council Office.

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1. The Minister of Labour reviewed a memorandum, copies of which had been circulated, in which it was suggested that in the light of the decisions of the Supreme Court the following principles should govern the issue of deportation orders:

(a) Husbands and wives will not be separated by forced deportation measures except in instances where the domestic relations of a man and wife have already been broken up in which case each will be dealt with as a single individual.

(b) Canadian born persons will not be deported against their wishes. (Department of Labour memorandum undated).

2. The Chairman reviewed a letter which he had sent to some of his colleagues in which he suggested three possible courses of action which might be followed:

(1) That the appeal to the Privy Council be proceeded with if the parties so desire and that the hearing be expedited. In the meantime that we content ourselves with making preliminary arrangements and if possible by despatching Japanese nationals who have no minor children and voluntary repatriates.

(2) That those who are interesting themselves in the case be told of the plan which the government proposes to follow. It is possible that their acceptance of the policy might be obtained and the reference to the Privy Council would then become unnecessary.

(3) To proceed with deportation within the limits of the Supreme Court decision and notwithstanding that an appeal is taken.

3. Mr. R.G. Robertson stated that a delegation of six or seven persons from Toronto was desirous of discussing the Japanese question with the government. They were particularly anxious to have the government consider the following three points:

(1) In view of the difference in opinion in the Supreme Court judgements the Japanese orders be withdrawn and the matter dropped.

(2) Failing an abandonment of the orders they would regard it as a satisfactory solution if the government would agree that all those who are subject to deportation and who are not willing to go should have the right to have their cases heard by the Loyalty Commission which is to be established.

(3) If there is to be no change in government policy the Committee would like to have assurance that the matter would not be proceeded with pending the outcome of an appeal to the Privy Council.

4. The Deputy Minister of Labour stated that if we were to strictly follow the decision of the Supreme Court approximately 7,000 Japanese would be liable to deportation. If, however, it was decided not to separate parents from their children this number might be reduced to approximately 1,500.

5. The Committee after lengthy discussion agreed to make the following recommendations to Cabinet:

(1) That the government facilitate an appeal to the Privy Council.

(2) Pending the outcome of the appeal the government would repatriate only those who still expressed a desire to be returned to Japan.

(3) The government would proceed with efforts at dispersal of Japanese to all parts of Canada other than the Pacific Coast.

(4) The setting up of a Commission of Appeal would be deferred until the decision of the Privy Council had been announced and the government would reconsider the terms of reference of this Commission in the light of Privy Council decision.

The meeting adjourned at 12.45 p.m.

B.F. Wood,
Secretary.

Privy Council Office,
Ottawa, February 27th, 1946.

CROSS REFERENCE SHEET

Name or Subject

File No.

J-25-1

Regarding

Date

Cabinet conclusions Feb.25 of interest to dept.including -

Feb.26,1946

Japanese questions;Supreme Court Judgement -

---

re request for reception of delegation by govt. for discussion re above - agreed that matter be deferred pending Cabinet consideration of report of special Cab.Com. -

SEE

Name or Subject

File No.

N.A.Robertson from ADPH (copy Mr.Wrong)

C-20-2 v.2

REQ. 15
5M—6-45

J-25-1
R-10-1

Memorandum for the Prime Minister.

Mr. Brewin of Toronto, who acted as junior counsel on behalf of the Japanese in the recent reference before the Supreme Court, and who has been the principal legal adviser of the Committee on Japanese, telephoned this morning to ask whether it would be possible for a delegation of six or seven persons representing the Committee to discuss the Japanese question with the government.

They would, of course, like to discuss the matter with you if at all possible, but I explained to Mr. Brewin the great pressure of the moment and told him that you might find it impossible to meet the delegation and perhaps would suggest that they discuss the matter with other Ministers.

Mr. Brewin outlined three points which the delegation would particularly wish to raise:

(a) Their primary suggestion would be that, in view of the difference in opinion in the Supreme Court judgments, the Japanese orders should be withdrawn and the matter dropped. (I do not think they seriously regard this as a possibility, but wish to put it forward for the record).

(b) Failing an abandonment of the orders, they would regard it as a satisfactory solution if the government would agree that all those who are subject to deportation, and who are not willing to go, should have the right to have their cases heard by the Loyalty Commission which is to be established. If this were agreed, they would be prepared to abandon their appeal to the Privy Council, provided that there could be assurance given as to the personnel of the Commission and some understanding as to the scope of its terms of reference. (A procedure, such as this, would involve a very large number of cases for hearing. In order to ascertain exactly what they had in mind, I asked

whether they felt that this right of hearing should be extended only to those with British status or whether it should also be given to Japanese nationals. Mr. Brewin replied that they felt that Japanese nationals should also be included.)

(c) If there is to be no change in government policy, the Committee would like to have assurance that the matter would not be proceeded with pending the outcome of an appeal to the Privy Council.

The delegation would, if possible, prefer to come to Ottawa toward the end of next week, possibly Thursday, February 28th, or Friday, March 1st.

The delegation would probably consist of Mr. Brewin, Colonel Croll, Canon Judd, B. K. Sandwell, Mr. Millard (or some other labour representative) and two Conservative Members of Parliament.

R.O.R.

February 23, 1946.

ROR/MD

CROSS REFERENCE SHEET

Name or Subject

File No.

J-25-1

Regarding

Date

Cabinet Conclusions Feb.21 of interest to dept.including - Feb.22,1946

Japanese questions;decision upon reference to Supreme Court of Canada -

re Supreme Court judgements re deportation & national status of persons of Japanese race- agreed that pending further consideration of effects of judgements & possible appeal to the Privy Council administrative action be deferred -

SEE

Name or Subject

File No.

N.A.Robertson from ADPH (copy for Mr.Wrong)

C-20-2
v.2

REQ. 15
5M—6-45

J-25-1

Memorandum for the Prime Minister.

Supreme Court Decision on the Japanese

I have gone over the judgments handed down yesterday by the Supreme Court in the reference on the Japanese and, as you may wish to have the results for early examination, I am attaching hereto a brief summary of the effect of the opinions as they relate to the operative portions of the various Orders in Council.

In substance, the seven judgments fall into three groups: three Judges (Rinfret, Kerwin and Taschereau) hold the Orders valid in toto; two Judges (Hudson and Estey) hold the Orders valid except as authorizing the deportation of wives and children who did not sign declarations; two Judges (Rand and Kellock) hold the Orders valid except as regards wives and children, compulsory removal of Canadian-born persons even though they did not withdraw their applications before an order for deportation, and removal of the status of British subject from naturalized persons other than under the provisions of the Naturalization Act.

The points raised by Justices Rand and Kellock, with regard to Canadian-born persons and with regard to naturalization status, are not of any practical importance. It is less convenient but not difficult to give a full right to Canadian-born persons to change their minds at any time and the removal of the status of British subject from naturalized persons who are deported is not of any great consequence. Canadian-born persons who leave will be allowed to retain their British status under the orders.

So far as wives and children are concerned, most of the wives will be found to have signed applications in the same way as their husbands did (all persons over the age of sixteen were asked if they wished to go to Japan, and in most cases husband and wife acted in common). Children of sixteen or over are no problem as they are entitled to follow their own inclination and sign or not in any event. Children under sixteen would be subject to the wishes of their parents, and if their parents are leaving Canada, they would almost certainly take their children with them.

On the whole, it seems apparent that the Supreme Court decision has left the Orders in Council virtually intact for all practical purposes.

If it is decided that an appeal to the Privy Council should be allowed (it would probably be difficult to refuse) the earliest hearing would probably be about mid-summer. It would involve a serious delay if all action were to be held up until that time and, in view of this, it might be felt that a start could be made on liquidation of the problem by proceeding with -

(a) Japanese genuinely willing to go to Japan, of whatever category they might be; and

(b) Japanese nationals who signed declarations.

There has been very little real objection taken in the letters we receive to the deportation of Japanese nationals and all the Judges were unanimous in holding that the federal government has full power to proceed with their deportation. Cases involving Canadian-born wives, etc. might have to be withheld, but many would probably present no difficulty.

R.G.R.

21st February, 1946.

Feb 21/46. J-25-1

Summary of the Effect of the Supreme Court Judgment re Japanese Orders

P. C. 7355 -

Groups of persons involved:

(1) Japanese nationals -

(a) internees

(b) those who signed declarations

- unanimous that these can be deported.

(2) Naturalized persons -

- unanimous that these can be deported.

(3) Canadian-born Japanese -

- 5 - can be deported as provided (Rinfret, C.J., Kerwin, Taschereau, Hudson, Estey, J.J.)

- 2 - No compulsory removal

- must be able to withdraw at any time (Rand & Kellock, J.J.)

(4) Wives and Children -

- 3 - can be deported (Rinfret, C.J., Kerwin and Taschereau, J.J.)

- 4 - cannot be deported (Hudson, Rand, Kellock, Estey, J.J.) i.e. unless they come within classes 1-3 (Hudson and Estey, J.J.), or 1-2 (Rand and Kellock, J.J.)

P.C. 7356 -

(1) Removal of status of British subject -

- 5 - O.K.
(Rinfret,C.J., Kerwin, Taschereau, Hudson, Estey, J.J.)

- 2 - ultra vires
(Rand and Kellock, J.J.)

(2) Removal of status of Canadian national

- unanimously O.K.

P.C. 7357 -

- 5 - O.K.
(Rinfret, C.J., Taschereau, Kerwin, Hudson, Estey, J.J.)

- 2 - O.K.

- except no revocation of naturalization to be involved except within provisions of Naturalization Act.
(Rand and Kellock, J.J.)