

**SECRET**

CABINET DOCUMENT

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*K. Johnson* C194839

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SECRET

MEMORANDUM TO CABINET

REPORT FROM CABINET COMMITTEE ON JAPANESE PROBLEMS

The Cabinet Committee on Japanese Problems, at a meeting held January 10, 1947, considered and reviewed the question of deportation and control over movement of Japanese persons and, after discussion agreed to recommend to Cabinet:

- (a) that no action be taken to deport any persons of Japanese race under Order-in-Council P.C. 7355, December 15, 1945, but that financial assistance authorized to voluntary repatriates be continued under Order-in-Council P.C. 7355; and *FW*
- (b) that control over movement in Canada of Japanese persons be continued for a year or two by authority to be provided in the proposed bill to extend for one year the "National Emergency Transitional Powers Act" by extending the life of Order-in-Council P.C. 946, February 5, 1943. *FW*

The question of prohibition of fishing licences to Japanese persons in British Columbia was also considered and reviewed and, after discussion, the Committee agreed to recommend:

- (a) that existing orders issued by the Minister of Labour to regulate the issue of fishing licences to Japanese be rescinded; and
- (b) that authority for granting such fishing licences be left to the Federal Department of Fisheries and the Provincial Government.

All other Orders-in-Council still in force under the "Emergency Powers", affecting Japanese, will be allowed to lapse as of March 31, 1947, except the authority required by the Department of Secretary of State to complete the liquidation and distribution of properties situated in the former protected area of British Columbia, of Japanese evacuated therefrom. *As per... must not... 10/1/47*

The concurrence of Cabinet in the above recommendations is sought.

J/BC

C194914

Memorandum for the Prime Minister

The attached press release, for your approval, would make public the recent decision of Cabinet with regard to the problem of the Japanese in Canada. The Department of Labour is particularly anxious to have an announcement made at an early date as it would answer most of the doubts and a certain number of the criticisms as to the present position. It will also make clear the government position to the Co-operative Committee on Japanese Canadians and other groups that are taking an active part in the question.

The announcement is drafted on the assumption that an appeal will be carried to the Privy Council. This was confirmed by Mr. Brewin, the counsel for the Co-operative Committee, in a telephone conversation this afternoon with Mr. R. G. Robertson.

Mr. Brewin stated that the Co-operative Committee would still like to meet some representatives of the government to place before them their views with regard to the question, many of which deal with points that are not strictly legal.

  
N.A.R.

March 11, 1946.

*Prime Minister  
said this could be  
released at once if  
it is agreeable to  
Mr. G. Laurence -  
as he assumes  
it is / L.R.*

*Pickens will  
inform J.G.  
12/13/46*



FROM: The Inter Varsity Christian Fellowship,

C194921

University of Alberta, Edmonton.

PETITION

To The Right Honourable William Lyon MacKenzie King, C.M.G.,  
Prime Minister of Canada.

*Feb*

WE, THE UNDERSIGNED LOYAL CITIZENS OF CANADA, being naturally interested, where the honour and reputation for justice of our nation and people are concerned,

Having heard of our Government's discriminatory preparations and arrangements to repatriate or exile from Canada a certain racial group of loyal Canadian citizens, namely Canadians of Japanese racial origin, without regard to the natural principles which should underlie such procedure, do hereby record our emphatic dissent, upon the following grounds, among others:

1. Japanese nationals WHO HAVE BEEN PROVEN DISLOYAL form a separate category from others, and should be deported to Japan. Their children, born in Canada, should be dealt with separately and individually.
2. Japanese nationals WHO HAVE NOT BEEN PROVEN DISLOYAL, and are now lawfully in Canada and honestly desire to remain, should have their cases separately and carefully examined and dealt with.
3. Naturalized loyal Canadians of Japanese origin, are citizens with full rights and responsibilities of citizenship, and may not be exiled, if our citizenship has any meaning or confers any rights, and may not be discriminated against because of racial origin.
4. Children, born in Canada of naturalized parents of Japanese origin, are citizens with full rights of Canadian citizenship, and, if sent out of Canada, where they have become accustomed to our language, customs and way of life, and know no other, would have to be exiled. Such a thought is so naturally repugnant as to need no discussion.

WE THEREFORE RESPECTFULLY request that the Government, in dealing with this matter, fully comply with the established law of our land and the decent requirements of a common humanity.

And your petitioners will ever pray.

NAME

Address

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REPRESENTED

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C194922

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RECOMMENDATIONS CONCERNING CANADIAN CITIZENS OF JAPANESE ANCESTRY

WHEREAS it is stated that approximately 60% of Canadian citizens of Japanese ancestry in British Columbia relocation centres applied prior to the cessation of hostilities to go to Japan after the war, and

WHEREAS we believe that among the reasons for their decision is their sense of injustice at the denial to them of citizenship rights and the hazard of taking up their lives anew in central and eastern Canada, in spite of the best efforts of the Government Commissioners on replacement, and

WHEREAS this sense of insecurity in locating elsewhere in Canada was made acute by wartime emergency restrictions, Federal and Provincial, which, now that the war is over, in our judgment need no longer be imposed;

We urge: (1) THAT no loyal Canadian citizens of Japanese ancestry be sent out of the country.

(2) THAT all those who have applied to revoke their decision to go to Japan be allowed to remain in Canada.

(3) THAT the Dominion Government immediately seek ways and means of encouraging and aiding Canadians of Japanese ancestry to locate and re-establish themselves in the various provinces of the Dominion and to assure the Provinces and Municipalities that it is in the interest of this Dominion that permanent settlement by them should be encouraged as an implementation of the rights of Canadian citizenship.

(4) THAT full rights of citizenship, including property rights, the franchise, and freedom to travel be extended to all loyal Canadian citizens of Japanese ancestry.

(5) THAT all who have suffered financial loss with respect to property and the instruments of their livelihood as a result of relocation be indemnified.

RECOMMENDATION CONCERNING JAPANESE NATIONALS RESIDENT IN CANADA

We urge THAT, in the interest of justice and in view of the fact that many Japanese nationals have spent the greater part of their lives in Canada and have identified themselves in all respects with the country of their adoption, Japanese nationals loyal to Canada be encouraged to take out Canadian citizenship, and that, in the meantime, as many disabilities as possible be removed.

Witness... Dorothy Kelly, E. J. Francis, H. A. Hitchner  
Signature Address.

NAR/ET  
5 Jan., 1946

MEMORANDUM FOR THE PRIME MINISTER:

C194932

4 Jan.

I am enclosing copy of a note from the Deputy Minister of Justice, summarizing the arguments against the validity of the Japanese Orders-in-Council which were submitted yesterday to the Acting Minister of Justice by a Committee headed by Mr. B. K. Sandwell and Mr. F. A. Brewin of Toronto. They ask for a reference to the Supreme Court of the question of the validity of the Order-in-Council authorising the deportation of naturalized Canadians of Japanese origin. As you will see from Mr. Varcoe's commentary, the legal arguments adduced do not seem very formidable. (Incidentally they do not make any reference to the fact that under the procedure contemplated in the Order-in-Council revocation of naturalization is to be simultaneous with or even consequent on the fact of deportation. It seems to me that a legal basis for the Order would have been stronger if revocation had clearly preceded deportation).

The question of whether there should be a reference to the Supreme Court for an advisory opinion is for Cabinet consideration. Mr. Varcoe is inclined to think that such a reference should be made, and has prepared a draft recommendation to Council to this end. If such action is to be taken, it is recommended that the necessary Order-in-Council be considered at the next meeting of Council so that the hearing of the reference may commence by January 21st.

*attached*  
I have read F. R. Scott's letter in yesterday's CITIZEN to which you drew my attention. The same letter is published in this morning's GAZETTE. With much of the argument of the letter I have always been in general sympathy. The fact of racial discrimination does underlie our treatment of Japanese Canadians. We have tried to temper it and exclude its ugliest aspects, I think fairly successfully. Native born Canadians of Japanese origin are not to be subject to deportation, and naturalized persons who withdrew their application for repatriation to Japan before the end of hostilities are being permitted to remain in Canada. These points, which were made very plainly in your statement in the House, are overlooked, probably deliberately, in Scott's letter. They are, however, on the record and have been

C194933

recognized by many people as a real modification of the previous programme. Even with these modifications in mind, however, the fact remains that it has not been feasible to treat the Canadian population of Japanese origin in the same way as say the Canadian population of German or Italian origin have been treated. This fact will always enable the absolutists to charge the Government with countenancing racial discrimination. We do discriminate against the Japanese, against the Chinese, and against the British Indians, in our immigration laws and indirectly in our electoral laws, but until my native province of British Columbia achieves some change of heart, I do not see what we can do about it except strive to limit and lessen the discriminations every time an opportunity offers.

*hak*



OTTAWA, January 4, 1946.

## MEMORANDUM:

Re: Orders in Council for  
Deportation of Japanese

Mr. Sandwell, Professor Tatham, Mrs. MacMillan and Mr. Brewin made representations to the Acting Minister of Justice in support of their contention that the above Orders in Council are invalid. The following arguments were advanced in support of this.

(a) The effect of section 3 (b) of the War Measures Act - which is that the powers of the Governor in Council extend to "(b) arrest, detention, exclusion and deportation" - is to restrict the power of deportation to the deportation of aliens. They construe the word "deportation" as meaning "the forcible expulsion of aliens". The only authority cited for this restricted meaning of deportation was the case of Fong Yue Ting v. United States 149 U.S. 698 at 709. Mr. Justice Gray's opinion contained the following sentence: "'Deportation' is the removal of an alien out of the country, simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the country out of which he is sent, or of those of the country to which he is taken." The question under consideration was not, however, whether or not the word "deportation" could be applied to citizens, but simply whether deportation involved punishment, as for a crime.

The word "deportation" is used in association with arrest, detention and exclusion, which words Mr. Brewin admits are not subject to the limitation that he seeks to apply to deportation.

Mr. Brewin referred to dictionary definitions, but I do not find any that support his contention.

However, even if there were such a restricted meaning, the word is used as part of an enumeration in section 3 which, it is expressly provided, shall not restrict the generality of the power to do all such acts and things and make from time to time such orders and regulations as are "necessary or advisable for the security, defence, peace, order and welfare of Canada". In Gray's case (1918, 57 S.C.R. 150), the effect of the enumeration, far from being restrictive, was thus dealt with by Duff, J. at p. 168, "thus the context (enumeration), instead of qualifying the preceding language, emphasizes the comprehensive character of it and pointedly suggests the intention that the words are to be comprehensively interpreted and applied".

Mr. Brewin does not suggest that the powers of the Governor in Council are limited to the enumeration, but he says that, where a particular power is enumerated, then the Governor in Council is restricted on that topic by the language used. However, even if the word "deportation" has any such limited meaning as Mr. Brewin contends for, namely "forcible expulsion of aliens", it would not follow that

under the general power to legislate for the security, defense, peace, order and welfare of Canada the Governor in Council could not deal in a particular way with British subjects.

(b) Another argument mentioned, only faintly however, was that legislation respecting a particular race must fail for uncertainty because of the great difficulty of distinguishing persons of one race from another.

(c) A further point made was that deportation involves international relations and that Parliament must have intended the Governor in Council to exercise his powers in accordance with the accepted principles of international law, one of which, Mr. Brewin states, is that a nation will deport only aliens.

(d) Still another argument was mentioned by Mr. Brewin, but not elaborated, namely that the Orders made in the dying days of the War Measures Act could not be deemed "necessary or advisable, by reason of the existence of war, for the security, defense, peace, order and welfare of Canada". He mentions the fact that "deportation" was struck out of Bill 15.

(e) Finally, Mr. Brewin contended that, even as regards the Japanese nationals, the Order is bad because these provisions are inseverable from those relating to the Canadian citizens. Mr. Brewin filed a fairly lengthy opinion which he had obtained from Mr. J. R. Cartwright, which is to the following effect: "It is my opinion that the question is one which ought to be passed upon by the courts and at present I am inclined to the view that the Orders are not valid".

There are undoubtedly numerous influential people behind this move for a reference who sincerely believe that the Orders in Council are invalid. This fact should be considered in determining the question and with it the fact that already one action has been started for a declaration that the Orders in Council are invalid and that others will follow. I would recommend that a reference be made, but in this connection I should think the Governor must decide in advance that, if the decision of the Supreme Court is favourable, the Orders will be enforced regardless of any application by private individuals for leave to appeal to the Privy Council. The Chief Justice has indicated that he would, if requested, convene a special sitting of the court for January 21st to hear the reference.

F. P. V.

C195113

II - List of references in Hansard

Mr. King's statements in House  
of Commons



LIST OF REFERENCES IN HANSARD

<u>1942</u>		<u>Pages</u>
January 23 -	<u>Mr. Stirling</u> : Enquiry concerning transfer of Japanese in B.C. <u>Mr. Mackenzie</u> : Statement concerning numbers to be transferred immediately, and plans re the same	9 10
January 26 -	<u>Mr. Reid</u> : Request for statement by Prime Minister <u>Mr. King</u> : Promise of a statement	25 26
January 29 -	<u>Mr. Fraser</u> : Enquiry concerning confiscation of radios, cameras, etc., of Japanese <u>Mr. Mackenzie</u> : Promise of enquiry	146 146
	<u>Messrs. Freen and Cruickshank</u> : Demand for more adequate control of Japanese	172-173
February 2 -	<u>Mr. Reid</u> : Comprehensive criticism of Government treatment of Japanese Statement that Mr. H. R. MacMillan is opposed to confiscating Japanese fishing boats. Sale of fishing boats by the Government for cash will lead to strengthening the big fishing interests. Suggestion that Japanese labour be used on Ontario farms. Repatriation the only solution for the Japanese problem. Statement that Japanese nationals are allowed inside essential defence areas. <u>Mr. Ralston</u> : Legalistic casuistry in connection with defining defence areas.	247 248 248 248 249 250 251
February 3 -	<u>Mr. Fraser</u> : Demand that Japanese be kept out of Ontario	305
February 5 -	<u>Mr. MacInnis</u> : Statement of C.C.F. policy re Japanese.	372
February 6 -	<u>Mr. Harris</u> : Complaint about policy re Japanese.	429
February 9 -	<u>Mr. King</u> : Statement concerning security measures taken in British Columbia. <u>Mr. Mayhew</u> : Need for further supervision of Japanese. <u>Mr. Hanson</u> (Skeena): Need to control Japanese.	436 481
February 12 -	<u>Mr. Slaght</u> : Need for internment of Japanese.	589

- February 17 - Mr. King : Promise to supply information concerning guarding of power dams in British Columbia, in response to question by Mr. Cruickshank. 700
- February 19 - Mr. Stirling : Presentation of a resolution passed in Kelowna, B.C., demanding internment of Japanese. 772  
Mr. King : Request that public be moderate in its discussion of Japanese. 773  
Mr. Mayhew : Petition from Saanich, B.C., for more effective control of Japanese. 775  
Mr. Neill : Long outline of Mr. Neill's prophetic knowledge of Japanese. 778-786
- February 25 - Mr. King : Statement re Japanese nationals 891-892
- February 27 - Messrs. Cruickshank, Slight, St. Laurent, Stirling : Discussion following Mr. King's statement on British Columbia Security Commission and Evacuation of Japanese from protected areas. 1006-1009
- March 2 - Mr. Reid : Enquiry concerning purchase of fishing boats owned by Japanese 1022
- March 3 - Mr. McLarty : Statement concerning sale of fishing boats seized from Japanese 1072  
Mr. King : Promise of statement concerning British Columbia Security Commission (Shaw) 1073
- March 4 - Mr. King : Tables Order-in-Council establishing B.C. Security Commission 1119  
Mr. St. Laurent : Statement concerning control of Japanese outside protected areas 1121  
Mr. Mitchell : Statement concerning guards for Japanese nationals in work camps 1122
- March 5 - Mr. Hanson : Enquiry concerning transfer of Japanese nationals 1150  
Mr. St. Laurent : Promises to supply information 1150
- March 6 - Mr. Blackmore : Enquires concerning influx of Japanese into Alberta 1197  
Mr. St. Laurent : No information 1197

1942

- 3 -

Page

Mar. 10	<u>Mr. Neill</u> : Japanese should be removed from B.C.	1280
Mar. 10	<u>Mr. Cruickshank</u> : Enquires concerning large-scale movement of Japanese	1280
	<u>Mr. King</u> : States 1,000 have been removed to date and matter well in hand	1281
Mar. 26	<u>Mr. Fraser</u> : (Peterborough West): Return showing pay of Japanese road workers	1799
Apr. 23	<u>Mr. Mitchell</u> : States that Japanese problem well on way to solution. Questions by Reid and Cruickshank.	2040
Apr. 29	<u>Mr. Mitchell</u> : Replies to Reid enquiry as to removal of Japanese from B. C.	2159
Apr. 30	<u>Mr. Esling</u> : Protests against transfer of Japanese to certain districts	2188
	<u>Mr. Mitchell</u> : Statement as to policy	2188
May 1	<u>Mr. Cruickshank</u> : Enquiry concerning hunger strike. <u>Mr. Mitchell</u> replies	2235
May 6	<u>Mr. McLarty</u> : Statement re censorship of Japanese English newspapers	2378
May 11	Return showing number of Japanese immigrants 1930-41	2493
May 13	<u>Mr. Mitchell</u> : Replies to Cruickshank regarding movement of Japanese nationals to Alberta and Manitoba	2599
May 14	<u>Mr. Mitchell</u> : Further statement on progress made of transfer	2634
May 19	<u>Mr. St. Laurent</u> : Gives number interned under Defence of Canada regulations	2765
May 20	Order for returning giving facts re administration of Hastings park camp	2822
May 25	<u>Mr. St. Laurent</u> : Answers enquiry of Stirling re land licenses	2939
June 4	<u>Mr. Mitchell</u> : Statement re transfer to Indian reserve schools	3315
8	<u>Mr. Sterling</u> : Demands that Japanese labor be used to build roads in B.C.	3422
	<u>Mr. Mitchell</u> : Replies	3423
	<u>Mr. Neill</u> : Wants more guards placed over Japanese	3428
June 19	<u>Mr. O'Neill</u> : Critical of Government's attitude; Japanese a danger; too defiant	3787
	<u>Mr. Stirling</u> : Complains of conditions in labor camps, etc.	3788
	<u>Mr. Reid</u> : Japanese problem should be handled by different department	3789

1942

- 4 -

Page

June 19	<u>Mr. Reid:</u> Should shoot Japanese found in defence areas	3790
	<u>Mr. Cruickshank:</u> Japs openly defiant; should not be allowed to return to B.C.	3791
	<u>Mr. Green:</u> Not enough moved; Government should not have handed over responsibility to B. C. Security Commission	3792
	<u>Mr. Fraser:</u> Alleges Japs using cameras	3792
	<u>Mr. Neill:</u> Denounces Angus and Keenleyside of External Affairs	3793
June 19	<u>MR. KING:</u> Defends officials named and states willingness to assume responsibility for their actions	3793
	<u>Mr. Neill:</u> Denounces B. C. Security Commission. Japs should be expatriated after war	3794
	<u>Mr. Mitchell:</u> Intention to found policy of treatment upon human British justice	3795
	<u>Mr. Green:</u> Enquires re exchange of Japanese and Canadian Nationals	3796
	<u>Mr. Hanson:</u> Supports Government policy	3797
	<u>Mr. Blackmore:</u> Enquires re financial limitations placed on B.C. Security Commission	3797
	<u>Mr. Mitchell:</u> Commission has free hand	3797
June 19	<u>MR. KING:</u> States that exchange of nationals is being arranged	3798
July 1	<u>Mr. Reid:</u> Japanese fifth column a danger	4156
July 2	<u>Mr. MacInnis:</u> Believes that expulsion from B. C. has been efficiently handled; certain Japs victimized	4181
July 14	<u>Mr. Mitchell:</u> Replying to Mr. Reid says movement of Japs from West Coast satisfactory	4508
July 29	<u>Mr. Hanson:</u> Wants information re evacuation from B. C. coastal area	4730
July 29	<u>Mr. Green:</u> Situation unsatisfactory; deadline for removal should be set and Government take direct control	5315-6
	<u>Mr. Neill:</u> Urges that Japs be removed immediately, not in October. Military authorities should take over.	5320
	<u>Mr. Turgeon:</u> Urges that Japs be removed to various parts of interior; favours their repatriation	5322
	<u>Mr. Mayhew:</u> Matter should be taken from B.C. Security Commission	5323



1942

- 5 -

C195118

Page

July 29	<u>Mr. O'Neill:</u> Should be taken away from Security Commission	5324
	<u>Mr. McGeer:</u> Internment camp supervision necessary for <u>all</u> Japanese residents	5325
	<u>Mr. Mitchell:</u> Gives figures on removal; against internment; states policy	5328
	<u>Mr. Cruickshank:</u> General criticism of handling of Security Commission	5332
	<u>Mr. Esling:</u> Lack of proper policing	5333
	<u>Mr. Graydon:</u> Report on population of Japanese and total population in three Pacific Coast states of U. S.	5336
1943		
Feb. 4	<u>Mr. Reid:</u> Criticizes handling of Japanese problem	141
Feb. 8	<u>Mr. King</u> replies to Mr. Esling re repatriation	210
Feb. 8	<u>Mr. Mitchell:</u> Replying to Mr. Neill, gives particulars re transfer from coastal areas	216
Feb. 8	<u>Messrs. Reid and Esling:</u> Orders for Return	218
Feb. 12	<u>Mr. MacInnis:</u> Demands that Japanese children be given education	393
Feb. 12	<u>Mr. Stirling:</u> Long discussion of need to expel Japanese from British Columbia	403
Feb. 18	<u>Mr. Cruickshank:</u> Denunciation of Japanese in British Columbia	551
Mar. 1	<u>Mr. Neill:</u> Demand that Japanese be kicked out of Canada after the war	825
	<u>Mr. Ross (St. Paul's)</u> Agreement that Japanese be excluded after the war	827
Mar. 4	<u>Mr. Mitchell:</u> Gives Mr. Reid number of Japanese in B. C.	948
Mar. 9	<u>Mr. Bertrand:</u> Tables report of fishing vessels committee	1073
Mar. 10	<u>Mr. Bertrand:</u> Gives information to Mr. Neill re Japanese Fishing Vessel Disposal Committee	1125
	<u>Mr. Mitchell:</u> Statement re number of Japs in B.C. and their origin	1127
Mar. 15	Order for return re Fishing Vessel Disposal Committee	1234
Mar. 22	Order for Return re Tashma Camp	1431

1943

- Mar. 23 Mr. Black (Yukon): Support for policy of keeping Japanese out of school 1505
- Apr. 2 Mr. Neill: Lack of Japs for fishing not noticeable in industry 1835
- Apr. 8 Mr. Green: Order for return re Japs remaining in protected area of B.C. 1988
- Apr. 12 Mr. Green: Motion for papers re removal to other areas 2077
- Apr. 14 Mr. Cruickshank: Motion for Papers re Tashme Camp 2176
- May 24 Mr. Mitchell: Statement re interior housing projects - Mr. MacInnis 2985
- June 9 Mr. Crerar: Statement re sit down strike at Thunder River, B.C. - Mr. Neill 3535
- June 29 Mr. Reid: General statement on Japanese in Canada - should require Japanese to prove themselves worthy of Canadian citizenship; Japanese question one for all Canada - not just B.C. - have put it over many people close to government, and, in some instances, have blinded some of them by gifts 4258-61
- Mr. Mitchell: States Mr. Reid should name persons referred to in above statement 4261
- Mr. Reid: No one connected with Minister's Dept. 4261
- June 30 Mr. Green: Deals with Japanese situation 4290-4300  
People of B.C. have always been "pawns"; criticizes govt. policy; warns that people of B.C. insist that in the peace treaty there should be arrangement to repatriate them
- Mr. Neill: Parliament should introduce legislation to prohibit immigration of Orientals; Prime Minister should pledge influence to insist upon repatriation of all Japanese now in Canada 4298
- June 30 Mr. MacInnis: Population of Japanese origin in Canada just as loyal as any other section of the people; opposes repatriation 4302
- Statement made by CCF., B.C. section, in April this year 4305
- June 30 Mr. Cruickshank: Would not be in interests of Japanese minority if this or any other govt. dept. attempted to bring them back to B.C. 4308

1943

- 7 -

Page

- June 30 Mr. Stirling: Dominion govt. must formulate different policy in relation to Japanese 4309
- Mr. Mitchell: Insists that as Minister of Labour he will not depart from treatment of human beings that characterizes British people (to Japanese) 4310
- Canada's present policy re Japanese 4311
- July 9 Mr. Neill: Urges P. M. to announce policy re Japanese in Canada and those now in Japan 4678
- Lengthy statement re Japanese and Chinese 4679
- July 12 Mr. Esling: Wants Prime Minister to declare policy re Japanese evacuees 4761
- Citizenship of Canadian-born Japanese should be respected
- July 12 Mr. Graydon: Surprised at Mr. King's answer re govt. policy relating to Japanese situation. Mr. King said he hesitated to make pronouncement upon war policies which affected whole Oriental situation 4778-9
- Mr. Graydon: Objects to "appeasement" 4779
- Mr. Green: Requests that Lemieux Agreement be tabled in House 4780
- Mr. King: Understands that second ship leaving Japan shortly with exchange of nationals 4780
- July 13 Mr. King: Replying to Mr. Green, promised to endeavour to secure number of Japs desiring to be repatriated 4851
- July 15 Mr. MacInnis: Criticizes government for confiscating property of Canadian Japanese 4964
- July 17 Mr. King: Tables exchange of notes in 1907 between Japan and Canada 5080
- July 19 Mr. King: Tables copies of supplementary agreement on immigration between Canada and Japan concluded in 1928-9 5143
- July 22 Mr. Reid: Discusses conditions at Tashme camp in B.C. 5362
- 1944
- Feb. 11 Mr. Mitchell: Replies to Mr. Tustin re Royal Commission on complaints of Japanese nationals in B.C. 398

Feb. 11	<u>Mr. Fraser (P.W.)</u> Wants information as to removal of Japs to Ontario; their naturalization, right to vote, etc.	401
Feb. 11	<u>Mr. Tustin:</u> Question re Royal Commission	398
Feb. 12	<u>Mr. Fraser:</u> Order re prohibited areas	448
Feb. 14	<u>Mr. Esling:</u> Return ordered re removal of Japs	446
Feb. 14	<u>Mr. Mitchell:</u> Replies to Mr. Fraser (P.W.) re number of Japs removed from B. C.	446
Feb. 14	<u>Mr. Fraser (P.W.):</u> Order for return re number of persons of Japanese origin permitted to live and do business in prohibited areas in B.C.	448
Feb. 24	<u>Mr. Reid:</u> Return ordered re fuel wood cutting operations	842
Mar. 2	<u>Mr. Martin:</u> Replies to Mr. Ross (St. Paul's) re employment in forests on Crown Lands	1087
Mar. 9	<u>Mr. Mitchell:</u> Replies to Mr. Fraser (P.W.) re removal of Japs from B.C. to other provinces	1342
Mar. 20	<u>Mr. Mitchell:</u> Tables copies of Report on Royal Commission on complaints of Japanese in B.C.	1686
Mar. 23	<u>Mr. Martin:</u> Replies to Mr. Esling re removal of Japs at end of war	1798
Apr. 28	<u>Mr. Mitchell:</u> Utilization of Japanese labor and Regulations relating thereto	2504-5
May 5	<u>Mr. Mitchell:</u> Lengthy debate on War Appropriation Bill - after-war policy with respect to Japanese will be decided at some international gathering	2740 et seq
May 15	<u>Mr. St. Laurent:</u> Gives figures re internment	3014
May 22	<u>Mr. St. Laurent:</u> Tables Order-in-Council P.C. 3797 of May, 19, 1944, providing penalties for acquiring lands or crops for anyone known to be of Japanese race	3184
May 29	<u>Mr. Martin:</u> Replying to Mr. Reid, said no commitments with respect to post-war disposition of Japs evacuated from protected areas have been made	3415-6
June 1	<u>Mr. Mitchell:</u> Replies to Mr. Reid re collection of moneys, etc. in hands of Custodian	3514
June 5	<u>Mr. Reid:</u> Return ordered re credits for fishing vessels, rehabilitation, etc.	3615
June 30	<u>Mr. Reid:</u> No one of Japanese origin has	



1944

- 9 -

Page

- June 30 ever renounced his allegiance to Japan & gives proof 4471-2
- July 11 Mr. Esling: Nationals who owe allegiance to Emperor should be deported 4804
- July 24 Mr. Reid: Order for return re Noboru Yamamoto 5364
- Aug. 4 Mr. King: Lengthy statement on - need for establishment of quasi-judicial commission in near future 6051-3
- Aug. 4 Mr. Coldwell: Refers to discriminatory treatment of Canadians by birth of Japanese origin; agrees with Prime Minister that disloyal Canadians of Japanese origin should be denied right to live in Canada at end of war 6067
- Aug. 4 Mr. Neill: Comments on three basic lines of policy laid down by Prime Minister 6079
- Aug. 4 Mr. Roebuck: Upholds Mr. King's stand with regard to loyal Canadians of Japanese origin 6085
- Aug. 12 Mr. Neill: Lack of cooperation with different provinces with regard to removal of Japanese 6543

1945

- Mar. 29 Mr. Mitchell: Replying to Mr. Reid, said no representations have been made by any province to the Japanese security commission or the government regarding reallocation of Japanese following end of war 348
- Apr. 9 Mr. King: Replying to Mr. MacInnis, said the U.K. Government and other commonwealth governments have made requests to the Canadian government for the services of Canadians of Japanese origin for various purposes connected with conduct of war, and that the governments concerned have been informed that their needs will be filled in so far as qualified individuals can be found 668
- Sept. 17 Mr. Cruickshank: People of B. C. will not permit the return to the province of the Japanese. 223
- Sept. 18 Mr. J.L. Gibson: Opposition to Japanese based upon fact that they are not loyal Canadians and never have been; people of Comox-Alberni definitely determined that Japanese shall never return to B.C. 259

Oct. 1	<u>Mr. Reid:</u> Order for Return to questions re number of Japanese resident in nine provinces; how many interned, how many born in B.C., etc.	640
Nov. 21	<u>Mr. Mitchell:</u> Statement on Japanese situation in Canada - repatriation policy	2406
	<u>Mr. MacInnis:</u> Japanese Canadians not responsible for military aggression of Japanese government.	2416
Nov. 21	<u>Mr. Herridge:</u> Farmers' organizations in his riding have taken strong stand against racial discrimination against Japanese	2422
Nov. 22	<u>Mr. Herridge:</u> Government should give wide-spread publicity to part people of Japanese origin played in war effort; fair employment practices should be assured	2434
Nov. 22	<sup>Mr</sup> <u>Mr. Ivor:</u> Canadian citizenship a sacred thing - must be careful how we handle it.	2437
Nov. 22	<u>Mr. Reid:</u> Japanese houses at all strategic points on Pacific Coast - by design? Can a person born in Canada be truly Canadian if he owes allegiance to country from whence his father came?	2444
Nov. 22	<u>Mr. Green:</u> Japanese problem one for all Canada now. Lengthy statement.	2449 et seq
Nov. 22	<u>Mr. Rose:</u> Why are Germans treated differently from Japanese?	2459
Nov. 22	<u>Mr. Cruickshank:</u> Time we had official and final stand of Prime Minister of Canada on Japanese question.	2461
Nov. 26	<u>Mr. King:</u> Informs Mr. Stewart he may examine files re Japanese Nationals in Depts. of External Affairs and Labour	2526
Dec. 3	<u>Mr. Reid:</u> Order for return re amounts expended in connection with Japanese in Canada since Pearl Harbour, etc.	2871
Dec. 17	<u>Mr. MacInnis:</u> Now that war is over, some final solution of Japanese problem must be found	3760
Dec. 17	<u>MR. KING:</u> Statement re citizens of Japanese origin -	3762 et seq
Dec. 17	<u>Mr. St. Laurent:</u> Explains purport of certain Orders	3764
Dec. 17	<u>Mr. Matthews:</u> Pleas for deportation of Japanese - Komato Maru question	3765
Dec. 17	<u>Mr. King:</u> Further statement	3766

1945

- 11 -

C195124

Page

Dec. 17 Mr. Mitchell: Replies re use of coercion  
in signing of petitions to return to Japan

3768

Dec. 17 Mr. King: Komagato Maru incident

: 3765