Saskatchewan

OFFICE OF ATTORNEY GENERAL

Regina, Sask.,
Mar. 1, 1946.

Mr. F.A. Brewin,
Barrister,
Sterling Tower,
Toronto 1, Canada.

AIRMAIL.

Re: Japanese Canadians.

Dear Mr. Brewin:

I wired you today as follows:

> "Government of Saskatchewan supports your representations to Prime Minister for abandonment or amendment of orders in council or stay of proceedings."

This was in reply to your letters of the 21st and 22nd ulto.

Would you kindly give me your idea of the cost to us if we decided to join in the appeal to the Privy Council. My opinion is that we should go through with the thing but I must get the approval of the Cabinet.

Yours faithfully,

J.W.CORMAN,

ATTORNEY GENERAL.

AMERICAN CIVIL LIBERTIES UNION

170 Fifth Avenue · New York City (10)
(at 22nd Street)
GRamercy 7-4330

March 4, 1946

Mr. F. A. Brewin
Sterling Tower Building
Toronto, Canada

Dear Mr. Brewin:

We are greatly interested in the decision of the Supreme Court in the Japanese cases and would appreciate getting a copy of the opinion and of the papers on the appeal to the Privy Council.

If you have copies to spare, we would be glad to have them. If not, would you be good enough to tell us how we may purchase them?

May we ask whether there is still any general civil liberties association in Canada? We have been unable to locate anyone who is carrying on the former work, although there seem to be a number of special agencies dealing with particular problems.

Sincerely yours,

Roger Baldwin

rnb:rs

March 4, 1946.

Mr. Cusey Oyama,
6th Floor,
Bedford Building,
281 McDermid Avenue,
Winnipeg, Manitoba.

Dear Mr. Oyama:

We are enclosing herewith copy of the Reasons for Judgment of the Supreme Court of Canada. Will you make these Reasons available to any one in Winnipeg who may be interested.

As you know, we are seeking to have the Government amend the Orders, also we are appealing to the Privy Council.

We expect a deputation to see the Government next week, or the following week. We call your attention and the attention of your legal advisers to the unanimous decision of the Court, that Section 9 of P. C. 7365 does not take away the right to apply for Habeas Corpus, and the further view which appears to be the view of the majority of the Court that the right of the Government to deport Canadian citizens depends upon the reality of Consent. We also call your attention to passages in Mr. Justice Hudson's Judgment that upon application for Habeas Corpus it would be possible for any individual to raise the question as to the reality of his consent and to show that the request was secured by coercion, misrepresentation or was otherwise invalid.

If the Government decides to proceed with the deportation, it will no doubt be important to have individuals who feel that the consent was not a real one, to apply for Habeas Corpus.

Yours very truly,

FAB:HC
Encl.

March 4, 1946.

Mr. Gladstone Virtue, K.C.,
Barrister, etc.
McFarland Building,
Lethbridge, Alberta.

Re: Japanese Canadians

Dear Sir:

We are enclosing herewith copies of the Judgment of the Supreme Court of Canada.

We thought this would be of interest to you in case you were preparing proceedings by way of Habeas Corpus, if the Government proceeds with the deportation.

You will notice the unanimous view of the Court, Section 9 of P. C. 7355 does not take away the right to Habeas Corpus, and the view of the majority of the Court that the right to deport Canadian citizens depends upon consent and as expressed by Mr. Justice Hudson upon Habeas Corpus it would be open to any individual to attach the reality of the consent on the grounds of misrepresentation, coercion, etc.

When the Judgments have served your purpose, you might pass them on to Mr. Marks in Edmonton whom we believe to be representing the Co-operative Committee in that city.

Yours very truly,

FAB:HC
Encl.

March 4, 1946.

The Honourable J. W. Corman,
Attorney General of Saskatchewan,
Regina, Saskatchewan.

Dear Mr. Corman:

Thank you for your wire which we will present to the Cabinet when we get an appointment. We expect the appointment to be some time this week.

We are sending to you the Reasons for Judgment for your consideration.

Yours very truly,

FAB:HC
Encl.

March 4, 1946.

Messrs. Campbell,Brazier,Fisher & McMaster,
Barristers and Solicitors,
675 West Hastings Street,
Vancouver, B. C.

Attention Mr. McMaster.

Dear Sirs:

I have received and read your letter of February 25th and your two letters of the 26th. I agree that I was mistaken in thinking that the application direct to the Supreme Court of Ontario for Habeas Corpus was available in this case. I quite agree that that remedy is confined to criminal cases.

I am sorry to say that I do not think that Habeas Corpus lies until someone is at actual custody, and Section 9 of P. C. 7355 states that a person is deemed to be in legal custody when an order for deportation is made and he is detained pending deportation, or is placed under restraint in the course of deportation.

This would seem to mean that once the order is made, any detention would be assumed to be by virtue of the Order for deportation, but clearly would not apply where a person was at large.

I have considered your suggestion in regard to certeorari. The subsequent decisions which you refer to in your letter which are unfavourable no doubt included Rex vs Leamen ex parte Vericoff 1920 3 K.B. 372. This case seems to be express authority for the proposition that the Secretary of State exercising power to make deportation orders is exercising an executive not a judicial function, and therefore the proceedings cannot be quashed on certeorari. The case might possibly be distinguished however, on the ground that what was in question in that case was the procedure adopted by the Minister, and it might be argued that certeorari would lie if there was an absence of jurisdiction. In this connection, I would refer you to the passage in the Cheateau Thierry case which you cite on page 930 in which it is said "in the event of it being disputed that the subject

of a deportation order is an alien, the matter must be determined by the Court, and unless it is proved that the person is an alien, the order must be quashed as made without jurisdiction. I am not aware of any other ground upon which such an order may be quashed."

It is clear from this language, that the Court was of the opinion that certeorari was a proper remedy where the existence of some collateral fact was in issue, as for example in our case as to whether the person affected was a Japanese National or of the Japanese race and whether he had made a request for repatriation and whether or not such request was legally binding, or had been obtained by misrepresentation or duress.

I am afraid however, that even in this case, the authority of the Vericoff case might be held to be conclusive against you.

In view of the language in Mr. Justice Hudson's Judgment, it seems to me to be obviously preferable, that proceedings should be taken by way of Habeas Corpus.

The matter of the contribution of the fees to the Privy Council is one which I will take up with our Committee. I have not personally been giving any consideration to the fees.

We have not yet received from the Government, a date for the attendance of the delegation, but we expect to hear at any time.

In the last paragraph on page 2 of your letter of February 25th, you state that the possibility of success in Habeas Corpus or certeorari appears to turn upon the question as to whether the powers of a minister are purely administrative.

We believe that you are quite correct in this statement so far as certeorari is concerned, but we do not think this question arises on an application for Habeas Corpus so long as the detention is illegal. We believe Habeas Corpus is available even though the detention be under a purely ministerial order; on the other hand, if the powers of the Minister are purely ministerial it would probably not be open on the return of the Writ for Habeas Corpus to object to the procedure by which the Minister arrived at the decision to make the order. You would probably be confined to collateral facts affecting his power to make an order such as those mentioned in Mr. Justice Hudson's Judgment.

In regard to your practical problem as to serving the person in whose custody the person to be deported is, we suggest that it might be enough to serve the Minister as soon as any detention took place, as the orders indicate that any detention

would be by some agent or officer of his.

As soon as the Minister was served, the strongest representations could be made to require the Minister to halt any action until the application for Habeas Corpus was dealt with. We hope to be able to send you the Peasons for Judgment under separate cover within the next day or so. They are being copied, but are extremely long.

Yours very truly,

FAB:HC

SM[illegible] RAE GREER & CARTWRIGHT
BARRISTERS, SOLICITORS, ETC.

G. LARRATT SMITH, K.C.
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March 8th, 1946.

F. A. Brewin, Esq.,
Barrister etc.,
372 Bay Street,
Toronto 1.

Dear Mr. Brewin:- re: Reference as to the validity of Orders-in-Council.

Thank you very much for sending me the reasons for Judgment of the Supreme Court which I have read with interest. I cannot but feel that some of our arguments should perhaps have been given more weight by the Court but as you say there is a good deal in the reasons which is helpful to our client's cause.

Yours faithfully,

J. R. Cartwright

JRC/D.

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Counsel
Clifford Forster
Staff Counsel

March 18, 1946

Mr. F. A. Brewin
Sterling Tower Building
Toronto, Canada

Dear Mr. Brewin:

Would you be good enough to let me have a copy of the Canadian Supreme Court decision upholding deportation of Japanese-Canadians?

Very sincerely yours,

Clifford Forster

Clifford Forster
Staff Counsel

cf:rs