Co-operative Ctte on Japanese Canadians
Submission to Parliament, 1946

1000 copies

CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

To the Honourable the Members of Senate of the House of Commons of Canada.

1. The Co-operative Committee on Japanese Canadians is an informal committee of Canadian citizens and organizations who have co-operated to oppose injustice to Canadians of Japanese origin. Branches of the organization exist in Vancouver, Edmonton, Calgary, Lethbridge, Regina, Saskatoon, Winnipeg, Ottawa, Montreal, Toronto, Guelph, Brantford, Hamilton and London.

Organizations which have lent their support to the Committee include:

The Canadian Council of Churches, representing
Member Churches:
The Church of England in Canada

The Baptist Convention of the Maritime Provinces

The Baptist Convention of Ontario and Quebec

The Western Baptist Union

The Churches of Christ (Disciples)

The Evangelical Church

The Presbyterian Church in Canada

The United Church of Canada

The Salvation Army

The Society of Friends

Affiliated Members:

The National Council of Y.W.C.A.

The National Council of Y.M.C.A.

Student Christian Movement of Canada

Civil Liberties Association of Toronto

Canadian Welfar Council

Canadian Association of Social Workers

United Nations Organization - National Executive
Vancouver Branch
Toronto Branch

Religious Eduction Council of Canada

National Young People's Board

Canadian Jewish Congress

Ontario Federation of Labour

Toronto Labour Council

Toronto District Trades and Labour Council

Moosejaw and District Trades and Labour Council

Co-operative Commonwealth Federation

United Steel Workers of America

Japanese Canadian Organizations:

Citizenship Defense Committees

Japanese Canadian Committee for Democracy

National Council of Women

National Council of Y.W.C.A.

Dominion Conference of Anglican Young People's Association

United Church of Canada Young People's Union

Presbyterian Young Peoples

Northern Alberta Young People's Union

Women's Associations and Missionary Societies of all leading Denominations - local and Provincial

University Student Organizations.

Individuals who have lent their support to the Committee include:

Rev. J. H. Arnup	Toronto, Ont.
Joseph E. Atkinson	Toronto, Ont.
Rev. W. F. Barfoot	Edmonton, Alta.
Dr. N. F. Black	Vancouver, B.C.
Mme. Pierre Casgrain	Montreal, P. Q.
M. J. Coldwell M.P.	Ottawa
Rev. C.L.Cowan	Hamilton, Ont.
David Croll,M.P.	Ottawa
The Hon.T.C.Douglas	Regina, Sask.
John Elliott	London, Ont.
George V. Ferguson	Winnipeg, Man.
Dr.W.J.Gallagher	Toronto, Ont.
Mrs. E. R. Hardy	Ottawa, Ont.
Dr. J. H. Hiltz	Toronto, Ont.
Canon W.W. Judd	Toronto, Ont.
W.L. MacTavish	Vancouver, B.C.

Dr. W. C. Machum	St.John, N. B.
Lady Marler	Montreal, P. Q.
Mrs. John T. McCay	Vancouver, B. C.
Rev. A.E. McQuillen	Toronto, Ont.
Geo. J. A. Reany	Hamilton, Ont.
Senator A.W. Roebuck	Toronto, Ont.
Capt. E.C. Royle	Arundel, P. Q.
B. K. Sandwell	Toronto, Ont.
E. J. Tarr K.C.	Winnipeg, Man.
Miss Bessie Touzell	Toronto, Ont.
Senator Cairine Wilson	Ottawa
Dr. Geo. Wilson	Halifax, N. S.

They represent the widespread feeling of concern by Canadians of every walk of life, political party and province, that the proposed deportation would be a grave blot upon Canada's record.

2. The Governor in Council passed three Orders-in-Council on December 15th 1945. These orders provided for the "deportation" to Japan of five different classes of people.

1. Japanese Nationals who signed requests for repatriation.

2. Naturalized persons of the Japanese Race who signed a request and did not revoke it before September 1, 1945.

3. Canadian born citizens of the Japanese Race who did not revoke the request before the making of orders for deportation.

4. Wives and children under 16 of any to be deported under the above classes.

5. Japanese Nationals or naturalized persons of the Japanese Race recommended by the Loyalty Commission (not yet appointed by the Government) to be deported after inquiry as to their activities, loyalty and extent of co-operation with the Government of Canada.

3. These orders-in-council were passed under the authority delegated to the Governor-in-Council by Parliament under the war Measures Act, to make orders and regulations deemed necessary by reason of war.

The War Measures Act ceased to have effect on the 1st

of January 1946, but the orders remained in force by reason of the National Transitional Emergency Powers Act which permitted the Governor-in-Council to continue Orders made under the War Measures Act. The Governor-in-Council accordingly passed P. C. 8418 continuing all Orders-in-Council in effect.

4. The legality of this order was referred by the Government to the Supreme Court of Canada who decided by a majority that the Orders-in-Council were invalid insofar as they applied to the wives and children of those concerned. A majority of the Court, however, held that they were valid in respect to the other classes, to be deported.

On November 21, 1945 the Minister of Labour made an announcement to Parliament that there were a total of 10,347 involved in the voluntary requests for repatriation. Of this number, 6844 actually signed requests, and the remainder (3503) were dependent children under the age of 16, of those who signed. Of the 6844, 2923 were Japanese Nationals, 1461 naturalized Canadians, and 2460 Canadian born.

The Co-operative Committee have entered an appeal to the Privy Council.

5. The orders are not sub judice in any respect except as to the narrow question of legal power.

As the Judgments in the Supreme Court of Canada make abundantly clear, the Courts are only concerned with the legality of the Orders and not with the plicy or the moral justice of the policy. For this the Government are responsible subject to control of Parliament itself and the fact that the Courts are considering the legality of the orders does not absolve the Government or Parliament from this responsibility. Attention is called to the Judgment of the Chief Justice of Canada, in which quoting the language of Chief Justice Duff he states "The final responsibility for the acts of the Executive Government rests upon Parliament. Parliament has not abdicated its general legislative powers nor abandoned its control. The subordinate instrumentality which it has created for exercising the powers remains responsible directly to Parliament and depends upon the Will of Parliament for the continuance of its official existence. Parliament has not effaced

itself and has full power to amend or repeal the War Measures Act or to make ineffective any of the Orders-in-Council passed in pursuance of its provisions, and if at any time Parliament considers that too great a power has been conferred upon the Governor-in-Council, the remedy lies in its own hands."

It is respectfull submitted that Parliament must assume its full responsibility for the decision whether Canadian citizens of the Japanese Race are to be deported.

The Committee respectfully submits that Parliament should exercise its duty by calling on the Government to withdraw the Orders-in-Council.

The history of the Orders-in-Council must be carefully considered in this connection.

In The original Bill 15 to continue the extraordinary powers of the Governor-in-Council after the end of hostilities, an express clause was inserted giving the Governor-in-Council power to make Orders for deportation and the cancellation of naturalization.

Owing to the widespread expression of disapproval of this proposed power throughout the country, this clause was withdrawn, and the National Transitional Emergency Powers Act which was passed by the House of Commons on the 8th of December, omitted any reference to such powers. The Act, however, did give to the Governor-in-Council, the power to continue what had been done under the War Measures Act, and the War Measures Act was to stay in effect until the 1st day of January 1946.

Availing itself of this gap, the Governor-in-Council passed the Orders in question on the 15th day of December, and then continued them after the 1st of January by P. C. 8418.

Parliament has therefore never had the opportunity to disapprove of these orders and in fact by implication from the ommission of the power of deportation from the new Act, withheld the power of deportation from the Governor-in-Council.

It is urgently submitted that the Orders-in-Council are wrong and indefensible and constitute a grave threat to the rights and liberties of Canadian citizens, and that Parliament as guardian of these rights and the representative of the people, should assert

its powers and require the Governor-in-Council to withdraw the Orders, for the following reasons.

1. The Orders-in-Council provide for the exile of Canadian citizens.

The power of exile has not been employed by civilized countries since the days of the Stuarts in England. So seriously was it then viewed that the Habeas Corpus Act makes it a serious offense for any official to exile a British Subject.

2. The Orders and the proposed exile of Canadian citizens constitute a violation of International Law and as Mr. Justice Kellock and Rand have stated, the bolster invasion of another's territory, and the violation of sovereign rights.

The Congress of the United States has no power to exile citizens, and the British Parliament has not even in the gravest emergency, found it necessary to assume such a power.

3. The Order-in-Council put the value of Canadian citizenship into contempt. They cancel naturalization in a wholesale manner, and without any reason.

At this time when the Parliament of Canada will be considering legislation designed to enhance the value and dignity of Canadian citizenship, these orders will have precisely the opposite effect.

4. The Orders-in-Council are based upon racial discrimination. Deportation on racial grounds has been defined as a crime against humanity, and the war criminals of Germany and Japan are being tried for precisely this offense, amongst others.

5. The proposed deportations are in no way related to any War emergency.

The necessity of removing persons of Japanese origin from the coastal regions during the war, was referrable to the emergency, but now that hostilities have ceased for some time, it cannot possibly be suggested that the safety of Canada requires the injustice of treating Canadian citizens in the manner proposed.

The Prime Minister has himself made it clear that no instances of sabotage can be laid at the door of Japanese Canadians.

If any of those concerned have been disloyal, there is ample power under the Immigration and Naturalization Acts for their deportation after proper inquiry into individual cases.

6. The Orders for deportation purport to be based on alleged requests to be sent to Japan. It is suggested that the signing of these requests indicated disloyalty. This is far from the truth. The signing of the forms was encouraged as an act of co-operation with the Government of Canada. The very form used, implied that the Government approved and sought the signing of these forms. Those who refused to sign were described as unco-operative, and denied privileges accorded to those who did sign. For the Government, which through its agents obtained and sought the signing of these forms, to claim now that they indicated disloyalty, would be to implicate the Government itself in the encouragement of a disloyal attitude.

7. The Orders constitute a threat to the security of every minority in Canada.

8. The Orders cannot be enforced without grave injustice and inhumanity to innocent persons.

9. The effect of these orders will be to cause lasting hostility to Canada throughout the Orient where racial discrimination is deeply resented. The future of Canada's international relationship may depend upon the revocation of these orders.

10. The orders are directly in contradiction of the language and spirit of the United Nations Charter, subscribed to by Canada as well as the other nations of the world and are an adoption of the methods of Nazism.

Respectfully submitted this 26th day of March 1946.

The Civil Liberties Association of Toronto

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Sent

Memorandum for the Members of the House of Commons

on

The Japanese Consul prepared deputation of Japanese Canadians

Democracy In Wartime

and particularly on the Defence of Canada and Censorship Regulations

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May 1940

Democracy In Wartime

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The Civil Liberties Association of Toronto

A few weeks before the general election a group of Toronto citizens addressed a letter[1] to the leaders of the political parties in Canada, asking for some public assurance that they would undertake to have the Defence of Canada and Censorship Regulations submitted to a systematic revision by a Parliamentary Committee as soon as possible.

The Citizens Group was greatly encouraged by the response of the party leaders[2] and particularly by the warm assurance of the Prime Minister, The Right Honourable W. L. Mackenzie King, that it was his intention to submit the Regulations to such a Committee as soon as a new Parliament was summoned.

The Civil Liberties Association was formed by the Group; a further study of the Regulations was made, and specific objections to particular sections of the Regulations were noted in the hope that, when the Parliamentary Committee proposed by the Prime Minister was formed, it might find such a specific record helpful in its work of revision. The news of the calling of Parliament prompts the Civil Liberties Association to offer this record now.

Signed for the Council,

B. K. SANDWELL,
President.

INTRODUCTORY REMARKS

The first of these Regulations provides that "the ordinary associations of life and enjoyment of property will be interfered with as little as may be permitted by the exigencies of the measures which may be required to be taken for securing the public safety and the defence of Canada." We believe that almost all of the Defence of Canada Regulations are necessary and proper for the purpose of the due prosecution of the war. However, certain of these Regulations and, in particular, Numbers 21, 27, 39, 39A, 62 and 63 appear both in theory and, as recent events have shown, in practice to be unduly restrictive of our liberties and capable of misuse.

We make the following comments:

(a) Regulations similar to those criticized herein are in force in England but in an amended form which, in nearly every instance, meets the objections we are raising, and these amendments were obtained in England as a result of a Parliamentary debate and the consequent appointment of a Committee of Revision. A full knowledge of the English debate, which is reported in the British Hansard, Volume 352, pages 1829 to 1902, would be of the greatest assistance to those interested in consideration of these Regulations.

(b) These Regulations, if not amended, are a weapon in the hands of unscrupulous persons who

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(1) A copy of the letter appears at page 6 of this brief.

(2) Copies of the responses of the party leaders appear at pages 6 and 7 of this brief.

may in the future be in charge of their enforcement and a temptation to over-zealous officials.

(c) In their present form these Regulations are giving and will continue to give undue publicity in the United States of America to the dangers to democratic institutions and traditions inherent in this war. American public opinion is important to us and the effect produced thereon by these Regulations is a real danger.

REGULATION NUMBER 21

This Regulation, which is copied in full at page 7 of this brief, confers on the Minister of Justice the power to detain persons without trial on the ground that such persons may act in a manner prejudicial to the safety of the state. No relief can be obtained against such a detention order from the courts by means of the ancient legal weapon of habeas corpus. Not only may such detention orders be made but also orders may be made restricting a person's movements, residence, associations, communications and activities in relation to the dissemination of news and the propagation of opinion. We respectfully submit that experience has shown that this Regulation, which is such a direct threat to civil liberties, is not required by the situation in Canada. We submit it should be repealed.

The Interdepartmental Committee on Emergency Legislation which drafted the Regulations was not unanimous as to the necessity of this Regulation. Some members of the Committee felt that persons of hostile internationalist affiliations might attempt to impede the war effort of the nation and that this Regulation was necessary to cope with such attempts. Other members of the Committee were not prepared to recommend the adoption of such a Regulation, as they felt that it was an unnecessary interference with the liberty of the subject.

In Great Britain a Regulation expressed in similar terms was most vigorously attacked in the British House of Commons and was substantially amended.

As we have already said, we believe that this Regulation is not necessary, but if Parliament thinks otherwise, at least the restrictions contained in the British Act should be introduced and, above all, we strongly urge that the right of habeas corpus be restored.

REGULAR NUMBER 27

Section 27, dealing with sabotage, should contain the same proviso as does section 29 preserving the right of labour. We believe that these Regulations are not intended to restrict the ordinary rights of labour, nor should it be possible to use them as weapons in an industrial dispute.

REGULATIONS NUMBERS 39[1], 39A and 39B

These Regulations, which affect freedom of expression more than any other of the Regulations, have already been substantially amended since they were originally passed but under their terms at least seventy prosecutions have already taken place in Canada. We suggest a comparison between our Regulations and the British Regulations dealing with the expression of opinion in war time[2] and we recommend the adoption of the British Regulations. It will be noted first that the British Regulations deal only with endeavours to influence public opinion, while the corresponding Canadian Regulations have enabled the prosecution and punishment of persons for chance remarks made in private gatherings without serious intent.

The British Regulations avoid the phrase "cause disaffection" and substitute for it "seduce from their duty persons in His Majesty's service." Thus, they avoid the possibility that the section might be held to apply to complaints of inefficiency. The Canadian Regulations punish statements not only intended to have the result set out in the section but statements likely to have such results. It has further been held by the Ontario Court of Appeal that it is not necessary to prove any guilty intent (*Rex v. Stewart*, 1940 O. W. N. page 96). On the other hand, in order to constitute an offence under the British Regulations, there must be a false statement, false document or false report, and it is a defence to prove that the accused had a reasonable cause to believe that the statement, document or report in question was true.

If the Defence of Canada Regulations had been modified in the same way as the British Regulations, a large number of the convictions registered under sections 39 and 39A in Canada would have been impossible.

Section 39B passed on January 17, 1940, does provide two useful safeguards. The first is that prosecutions for offences under Regulations 39 and 39A should only be instituted with the consent of counsel representing the Attorney General of Canada or of the Provinces. We suggest that, for the sake of uniformity of treatment of offences throughout the Provinces (a uniformity which has been conspicuous for its absence hitherto), this clause should restrict the right to institute prosecution to counsel representing the Attorney General of Canada.

We are aware that the administration of the criminal law is in the hands of the Provincial authorities. We point out, however, that these Regulations are not part of the ordinary Criminal Law but involve questions of policy in wartime which are the special responsibility of the Dominion authorities.

By subsection (2) of Regulation 39B it is provided that it is a defence to a person accused that he intended in good faith merely to criticize the Government of Canada, or of any Province, or either House of Parliament, or any Legislature, or the administration of justice. This restriction is useful but does not go far enough. It would not affect criticisms of other Governments than the Government of Canada, nor would it provide

[1] See page 9.

[2] See page 9.

a defence for perfectly bona fide statements of opinion or of policy which were not framed in the form of criticism of the Canadian Government, etc.

REGULATION NUMBER 62(2)

This subsection provides that the court may order a secret trial. By the term "court" in the cases of summary trial is meant the presiding magistrate. We suggest that this application should only be taken upon the application of the Attorney General of Canada. Publicity of trial is an important safeguard and should only be sacrificed when the necessity for so doing is abundantly clear.

REGULATION NUMBER 62(5) (a)

We call attention to the clause in this section which enacts that once an organization has been declared illegal every person who advocates or defends the acts, principles or policies of such illegal organization shall be guilty of an offence. It is submitted that this is far too broad. If a person who advocates or defends the acts or principles of an illegal organization is guilty of a separate offence against the Regulations in so doing, he may be prosecuted. The Regulation as worded would penalize the most bona fide efforts to defend those accused of offences under these Regulations and the advocacy of perfectly innocent or indifferent principles which might be amongst the principles advocated by the illegal organization.

REGULATION NUMBER 63

This Regulation provides for penalties for offences. A person guilty of an offence is liable on summary conviction to a fine not exceeding $500 or to imprisonment for a term not exceeding twelve months, or to both fine and imprisonment; but such person at the election of the Attorney General of Canada or one of the Attorneys General of the Provinces may be prosecuted upon indictment, and if convicted shall be liable to a fine not exceeding $5,000, or to imprisonment for a term not exceeding five years, or to both the fine and the imprisonment. The most questionable features of this Regulation are not apparent on their face. Under its terms 99 cases out of 100 of prosecutions under these Regulations will be on summary trial. So far, *Rex v. Stewart* is the only case which has been prosecuted by indictment. The effect of provisions whereby almost all such cases are tried summarily is to deprive accused persons of the right to elect a trial by jury and to limit their appeal to a right of rehearing before a county judge. On these difficult questions in which fundamental rights are concerned, Canadian subjects should not be made subject to severe penalties without the right to trial by jury and without the right to take their case on appeal to the higher courts.

It will also be noted that the penalties imposed by this section are more than twice as severe as the penalties thought necessary in Great Britain.

It is submitted that the penalty which can be imposed on summary conviction should be reduced to a maximum of one month or $100 and in all other cases the offence should be made an indictable offence and that, on indictment, the maximum penalty imposed by the English Act of two years and $2,000 is quite sufficient.

CENSORSHIP

By the provisions of Regulation 15 the Secretary of State is empowered to make orders preventing and restricting the publication of matter deemed to be prejudicial to the safety of the state and the efficient prosecution of the war.

The Censorship Regulations were passed on September 1, 1939, under the provisions of the War Measures Act and copies were distributed to the printers and publishers of newspapers and other publications. These Regulations have never been printed in the *Canada Gazette*, and no copies appear to have been available in any official form until February, 1940, when a volume containing proclamations and orders-in-council passed under the War Measures Act was printed by the King's Printer. These Regulations are inconsistent with the Defence of Canada Regulations. They purport to create a new offence punishable by imprisonment for five years or a fine of $5,000, or both. This offence is that of "having in one's possession prohibited matter." "Prohibited matter" includes not only all the documents which fall within the prohibitions of Regulation 39A but other material as well. For example, by 6(j) "prohibited matter" is said to include "any talking machine record or other recording . . . which is calculated to arouse antagonism towards any of the measures taken for the prosecution of the war." Furthermore, these regulations do not contain the safeguards against abuse which have been introduced into the Defence of Canada Regulations by Regulation 39B.

All that we have said in criticism of Regulations 39 and 39A applies to these regulations *a fortiori*.

In our submission the orders made by the Secretary of State under Regulation 15 should deal solely with administrative matters. In addition, all censorship provisions which create penalties should be incorporated in the Defence of Canada Regulations so that the latter should form a complete and accessible code on the subject. Regulation 15 should be more explicit and should make it an offence against the Regulations to print or publish any matter which has been banned by order of the Secretary of State made in pursuance of this Section.

The Censorship Regulations should then be revised and shoud be restricted to administrative details. All sections purporting to create an offence should be struck out. Part 1, which deals with the taking over of property by the Government for the purpose of cable, radio, telegraph and other forms of communication, should provide for compensation. In Parts 2 and 3, the only sections which remain and, subject to revision, are necessary would be sections 8 and 9 which

deal with powers of the Postmaster General to prevent the distribution of prohibited matter, and Section 11 which confers on the Secretary of State power to appoint censors who are given certain rights to require copy to be submitted before publication.

THE WAR MEASURES ACT

One of the gravest dangers inherent in legislation by Regulation is the lack of adequate publicity. We therefore recommend that the War Measures Act be amended so as to provide, as does the Emergency Powers Act of Great Britain, that each Regulation passed under it must be laid before Parliament as soon as possible and that either House may, within twenty-eight days after receiving it, by resolution annul it. There should also be provision for publication of all regulations in the *Canada Gazette* and elsewhere. In this connection we have already drawn attention to the grave difficulties which have hitherto surrounded the problem of discovering what censorship regulations were in force and by whom they were promulgated.

PARLIAMENTARY COMMITTEE

Generally we would recommend that a permanent Parliamentary Committee be set up to review the Defence of Canada Regulations and the Censorship Regulations and to secure and consider records and other information on all prosecutions and proceedings thereunder.

Respectfully submitted by the Civil Liberties Association of Toronto, May 1st, 1940.

Appendix

COPY OF THE LETTER TO THE PRIME MINISTER

February 5, 1940.

The Right Honourable W. L. M. King,
Prime Minister of Canada,
House of Commons,
Ottawa, Ontario.

Dear Prime Minister:—

In War, the duty of Governments is to be vigilant to suppress sabotage and other forms of assistance to the enemy.

For this purpose emergency powers are necessary and regulations are passed which must incidentally interfere with the traditional liberties of democracy.

But this interference should not be more than is needed for the efficient prosecution of the war. Thus regulations should not, by vagueness of expression and unwise application, become a means to the unnecessary curtailment of democratic rights.

This has been most clearly recognized in Great Britain, where freedom of expression has been substantially retained. When emergency regulations came before the British Parliament, they were criticized from all sides of the House and were submitted by the Government for revision to a Committee of all parties. As re-enacted, they carefully define the powers and offences involved so as to safeguard personal freedom and freedom of expression.

We believe that Canada should follow the British example.

Defence of Canada and Censorship Regulations have been passed in Canada under the War Measures Act but have not been submitted for Parliamentary revision.

The regulations, if applied without moderation and good sense, will cause bitterness and divisions which would impair the prosecution of the war and reconstruction thereafter.

Furthermore, the good will of the United States and its citizens towards the British Empire as a whole may be prejudiced if it appears that the totalitarianism we are combatting in Europe is making inroads in Canada.

We therefore respectfully urge that you, as the leader of one of Canada's political parties, should publicly undertake that, upon election, you will take steps to have all Defence of Canada and Censorship Regulations submitted for systematic revision to a Committee of Parliament as soon as possible.

Respectfully submitted on behalf of a group of Toronto citizens, a list of whose names I have the honour to enclose.

(Signed) WM. C. GRANT,
Secretary.

COPY OF LETTER RECEIVED FROM THE PRIME MINISTER

February 8th, 1940.

Dear Mr. Grant:—

I wish to acknowledge your letter of February the 5th, with which you enclose a letter of the same date, addressed to me, over your own signature, on behalf of a group of Toronto citizens, regarding the Defence of Canada and Censorship Regulations.

May I say at once that my colleagues and I fully appreciate the great importance of safeguarding the traditional liberties of democracy under wartime conditions. I wish to assure you, and the members of the group associated with you, that so long as this administration holds office, every precaution will be taken to ensure that the greatest degree of freedom, consonant with our belligerent status, will be preserved.

With reference to your suggestion that the Defence of Canada and Censorship Regulations be submitted to a Committee of Parliament, I may say that it has always been the intention of the Government that these Regulations, indeed all legislation enacted under the War Measures Act, should be subject to study and consideration by a Committee of Parliament, and I may assure you that if our administration is returned to office it is our intention that this procedure be followed, when a new Parliament is summoned.

(Signed) W. L. MACKENZIE KING.

COPY OF LETTER RECEIVED FROM DR. MANION

7th February, 1940.

Wm. C. Grant, Esq.,
28 Wellington Street West,
Toronto, Ontario.

Dear Mr. Grant:—

I have read with interest your letter to me of the 5th instant, as well as the letter enclosed therewith signed by yourself and a number of other prominent citizens.

I have no hesitation whatever in setting forth to you and to your friends my view that in wartime there should be no infringement of individual liberty or of our traditional freedom of press, of speech or of assembly, which is not absolutely essential in the public interest.

Further, it is my belief that Parliament, not the Government, is the proper body to determine what is or is not essential in the public interest. In my opinion any regulations made by the Government which infringe in any way upon the rights to which I have referred should be submitted for Parliamentary review at the earliest possible time.

Summed up, my attitude is this: What value can be attached to our fighting abroad for liberty, freedom and justice, if at the same time those principles perish at home?

(Signed) R. J. MANION.

COPY OF LETTER RECEIVED FROM MR. WOODSWORTH

Winnipeg, Feb. 7, 1940.

Dear Mr. Grant:—

Let me thank you for sending me the statement re civil liberties. I may say that our C.C.F. group has been deeply concerned about this matter and had placed on the Order Paper — or if the session had not been terminated so abruptly, was making arrangements to bring before the House, urgent representations along the lines you suggest.

If elected I shall take immediate action — and I believe I can speak for my group — to seek an immediate revision of all Defence of Canada and Censorship Regulations. I am not quite sure that your suggestion that this should be done by a Committee of Parliament is the best means of effecting the end in view. These Regulations are not statutory but have been passed by Order-in-Council and may be changed at any time — indeed emergencies might arise when changes are desirable. I think we ought to have a law on our statute books clearly defining and limiting the powers of government in matters of this kind. Possibly a committee such as you suggest might be helpful in bringing in a report offering certain recommendations. These, I take it, should then be incorporated into a government bill.

Let me assure you that in the forthcoming election we shall take every opportunity of bringing to the attention of the public the necessity of maintaining our British traditions of freedom of speech, freedom of assembly, freedom of the press, and I think I should add a free Parliament.

(Signed) J. S. WOODSWORTH.

Comparison of British and Canadian Defence Regulations

CANADIAN REGULATIONS

15. (1) The Secretary of State of Canada may make provision by order for preventing or restricting the publication in Canada of matters as to which he is satisfied that the publication, or, as the case may be, the unrestricted publication, thereof would or might be prejudicial to the safety of the State or the efficient prosecution of the war, and an order under this paragraph may contain such incidental and supplementary provisions as may appear to the Secretary of State to be necessary or expedient for the purposes of the order including provisions for securing that documents, pictorial representations, photographs or cinematograph films shall, before publication, be submitted or exhibited to such authority or person as may be specified in such order.

(2) Where any person is convicted on indictment of an offence against this Regulation by reason of his having published a newspaper, the court may by order direct that, during such period as may be specified in the order, that person shall not publish any newspaper in Canada.

ANALOGOUS BRITISH REGULATIONS

39B. (2) If at any time the Secretary of State is satisfied that it is necessary to prevent or restrict the publication in the United Kingdom of matters of which the publication or unrestricted publication, as the case may be, would or might, in his opinion, be prejudicial to the relations between the United Kingdom and any country outside the United Kingdom, or to any transactions in process of being effected, or proposed to be effected, between His Majesty's Government in the United Kingdom and persons in any other country, he may by order bring this paragraph into operation, and while this paragraph is in operation the Secretary of State may give such directions as appear to him necessary or expedient for the purpose of prohibiting the publication of any such matters as aforesaid specified in the directions except with the permission of such authority or person as may be so specified and subject to any conditions which may be imposed by that authority or person.

21. (1) The Minister of Justice, is satisfied, that with a view to preventing any particular person, from acting in any manner prejudicial to the public safety or the safety of the State it is necessary so to do, may notwithstanding anything in these Regulations, make an order:—

(a) prohibiting or restricting the possession or use by that person of any specified articles;

(b) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his movements or place of residence, in respect of his association or communication with other persons, or in respect of his activities in relation to the dissemination of news or the propagation of opinions;

(c) directing that he be detained in such place, and under such conditions, as the Minister of Justice may from time to time determine;

and any person shall, while detained by virtue of an order made under this paragraph, be deemed to be in legal custody.

(2) If any person is in any place or area in contravention of an order made under this Regulation, or fails to leave any place or area in accordance with the requirements of such an order, then, without prejudice to any proceedings which may be taken against him, he may be removed from that place or area by any constable or by any person acting on behalf of His Majesty.

22. (1) For the purposes of the preceding Regulation, there shall be one or more advisory committees consisting of persons appointed by the Minister of Justice, and the chairman of any such committee shall be a person who holds or has held high judicial office.

(2) The functions of any such committee shall be to consider, and make recommendations to the Minister of Justice with respect to, any objections against an order under the preceding Regulation which are duly made to the committee by the person to whom the order relates.

(3) The Minister of Justice may make rules as to the manner in which objections against such an order as aforesaid may be made to such an advisory committee, and such rules shall contain provisions for enabling any person in respect of whom an order is made under the preceding Regulation to make objections against the order either in person or by counsel, solicitor or agent; and it shall be the duty of the Minister of Justice to secure that every such person is informed of his right to make objections under this Regulation.

18B. (1) If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.

(2) At any time after an order has been made against any person under this Regulation, the Secretary of State may direct that the operation of the order be suspended subject to such conditions:

(a) prohibiting or restricting the possession or use by that person of any specified articles;

(b) imposing upon him such restrictions as may be specified in the direction in respect of his employment or business, and in respect of his association or communication with other persons;

as the Secretary of State thinks fit; and the Secretary of State may revoke any such direction if he is satisfied that the person against whom the order was made has failed to observe any condition so imposed, or that the operation of the order can no longer remain suspended without detriment to the public safety or the defence of the realm.

(3) For the purposes of this Regulation, there shall be one or more advisory committees consisting of persons appointed by the Secretary of State; and any person aggrieved by the making of an order against him, by a refusal of the Secretary of State to suspend the operation of such an order, by any condition attached to a direction given by the Secretary of State or by the revocation of any such direction, under the powers conferred by this Regulation, may make his objections to such a committee.

(4) It shall be the duty of the Secretary of State to secure that any person against whom an order is made under this Regulation shall be afforded the earliest practicable opportunity of making to the Secretary of State representations in writing with respect thereto and that he shall be informed of his right, whether or not such representations are made, to make his objections to such an advisory committee as aforesaid.

(5) Any meeting of an advisory committee held to consider such objections as aforesaid shall be presided over by a chairman nominated by the Secretary of State and it shall be the duty of the chairman to inform the objector of the grounds on which the order has been made against him and to furnish him with such particulars as are in the opinion of the chairman sufficient to enable him to present his case.

(6) The Secretary of State shall make a report to Parliament at least once in every month as to the action taken under this Regulation (including the number of persons detained under orders made thereunder) and as to the number of cases, if any, in which he has declined to follow the

advice of any such advisory committee as aforesaid.

(7) If any person fails to comply with a condition attached to a direction given by the Secretary of State under paragraph (2) of this Regulation that person shall, whether or not the direction is revoked in consequence of the failure, be guilty of an offence against this Regulation.

(8) Any person detained in pursuance of this Regulation shall be deemed to be in lawful custody and shall be detained in such place as may be authorised by the Secretary of State and in accordance with instruction issued by him.

39. No person shall —

(a) spread reports or make statements intended or likely to cause disaffection to His Majesty or to interfere with the success of His Majesty's forces or of the forces of any allied or associated powers or to prejudice His Majesty's relations with foreign powers;

(b) spread reports or make statements intended or likely to prejudice the recruiting, training, discipline, or administration of any of His Majesty's forces; or

(c) spread reports or make statements intended or likely to be prejudicial to the safety of the State or the efficient prosecution of the war.

39A. No person shall print, make, publish, issue, circulate or distribute any book, newspaper, periodical, pamphlet, picture, paper, circular, card, letter, writing, print, publication or document of any kind containing any material, report or statement,

(a) intended or likely to cause disaffection to His Majesty or to interfere with the success of His Majesty's forces or of the forces of any allied or associated powers, or to prejudice His Majesty's relations with foreign powers;

(b) intended or likely to prejudice the recruiting, training, discipline or administration of any of His Majesty's forces; or

(c) intended or likely to be prejudicial to the safety of the State or the efficient prosecution of the war.

39B. (1) A prosecution for an offence against either Regulation 39 or 39A of these Regulations shall not be instituted except by, or with the consent of, counsel representing the Attorney-General of Canada or of the Province.

(2) It shall be a defence to any prosecution for an offence against Regulations 39 or 39A to prove that the person accused intended in good faith merely to criticize, or to point out errors or defects in, the Government of Canada or any province thereof, or in either House of Parliament of Canada or in any legislature, or in the administration of justice.

39A. (1) No person shall —

(a) endeavour to seduce from their duty persons in His Majesty's service or engaged under any public authority in the performance of functions in connection with the defence of the realm or the securing of the public safety, or to cause among such persons disaffection likely to lead to breaches of their duty, or

(b) with intent to contravene, or to aid, abet, counsel or procure a contravention of, subparagraph (a) of this paragraph, have in his possession or under his control any document of such a nature that the dissemination of copies thereof among any such persons as aforesaid would constitute such a contravention.

39B. (1) No person shall —

(a) endeavour by means of any false statement, false document or false report to influence public opinion (whether in the United Kingdom or elsewhere) in a manner likely to be prejudicial to the defence of the realm or the efficient prosecution of war, or

(b) do any act, or have any article in his possession, with a view to making, or facilitating the making of, any such endeavour.

A prosecution in respect of a contravention of this paragraph shall not be instituted in England or Northern Ireland except with the consent of the Attorney General, and it shall be a defence to any prosecution in respect of a contravention of this paragraph to prove that the person by whom the contravention is alleged to have been committed had reasonable cause to believe that the statement, document or report in question was true.

62. (2) In addition, and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence against any of these Regulations or the proceedings on appeal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be likely to assist the enemy or to prejudice the public safety, the safety of the State or the efficient prosecution of the war, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect but the passing of sentence shall in any case take place in public.

No such regulation as to secret trial appears in the British Regulations.

(4) Where any act is committed by or on behalf of or in the name of any association, organization or society which if committed by an individual person would constitute an offence against the provisions of Regulations 39 and 39A of these Regulations, each officer, or person acting or professing to act or holding himself out as an officer or otherwise performing or purporting to perform any executive or official work or duty for or on behalf of any such association, organization or society shall be deemed to have committed such act and be guilty of such offence unless he proves that the act constituting the offence took place without his knowledge or consent or that he exercised all due diligence to prevent the commission of such act.

The British Regulations contain a Regulation 91 which corresponds with Regulation 62(3) making directors of a corporation liable when offence is committed by corporation unless they prove act done without their concurrence. The British, however, have no such regulations as 62(4) (5) by which a society may be declared illegal and anyone defending its principles made guilty of an offence.

(5) (a) On the conviction of any person on indictment pursuant to the provisions of paragraph (4) of this Regulation the Court may, in its discretion, if it sees fit, declare the association, organization or society by or on behalf of or in whose name such act was committeed to be an illegal organization, and in that event every person who thereafter continues to be or becomes an officer or member thereof or professes to be such, or who advocates or defends the acts, principles, or policies of such illegal organization shall be guilty of an offence against this Regulation.

(b) A person convicted on indictment pursuant to the provisions of the said paragraph (4), or an executive officer of the association, organization or society involved, may appeal to the Court of Appeal against a declaration as aforesaid, and the Attorney General of Canada or of the Province may appeal likewise against a refusal to make such a declaration.

(c) The procedure upon such an appeal and the powers of the Court of Appeal shall, *mutatis mutandis* and so far as the same are applicable to such an appeal, be similar to the procedure provided and the powers given by sections 1012 to 1021, inclusive, of the Criminal Code and the Rules of Court passed pursuant thereto and to section 576 of the Criminal Code.

(d) The court of appeal on the hearing of any such appeal may

(i) allow the appeal and set aside the declaration or make a declaration as aforesaid, as the case may require; or

(ii) dismiss the appeal.

63. (1) Every person who contravenes or fails to comply with any of these Regulations, or any order, rule, by-law, or direction, made or given under any of these Regulations, shall be guilty of an offence against that Regulation.

(2) Where no specific penalty is provided, such person shall be liable on Summary Conviction to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding twelve months, or to both fine and imprisonment; but such person may, at the election of the Attorney-General of Canada, be prosecuted upon indictment, and if convicted shall be liable to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding five years, or to both fine and imprisonment.

92. If any person contravenes or fails to comply with any order, rule or by-law made under these Regulations, or any direction given or requirement imposed under any of these Regulations, he shall be guilty of an offence against that Regulation, and, subject to any special provisions contained in these Regulations, a person guilty of an offence against any of these Regulations shall —

(a) On summary conviction be liable to imprisonment for a term not exceeding three months or to a fine not exceeding £100, or both such imprisonment and such fine, or

(b) On conviction on indictment be liable for a term not exceeding two years or to a fine not exceeding £500 or to both such imprisonment and such fine.

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CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

To the Honourable the Members of the Senate of the House of Commons of Canada

Draft Memorandum for the Members of the House of Commons on the proposed deportation of certain classes of Canadians.

1. The Co-Operative Committee on Japanese Canadians is an informal committee of Canadian Citizens and Organizations who have co-operated to oppose injustice to Canadians of Japanese origin. Branches of the organization exist in Toronto, ~~etc.~~ Vancouver, Winnipeg, Montreal, Edmonton, Saskatoon, Lethbridge, London, Hamilton, Guelph

Organizations which have lent their support to the Committee include:

(List as many as possible of church, labour and other organizations supporting the Committee)

Special reference should be made to the organization of the Japanese Canadians themselves which it is affiliated with.

Individuals who have lent their support to the Committee include:

They represent the widespread feeling of concern by Canadians of every walk of life publicly expressed at the proposed deportation which would be a grave blot upon Canada's record.

2. The Governor in Council passed three Orders in Council on December 15th 1945. These orders provided for the "deportation" to Japan of five different classes of people.

1. Japanese Nationals who signed requests for repatriation.

2. Naturalized ~~Japanese~~ persons of the Japanese Race who signed a request and did not revoke it before September 1, 1945.

3. Canadian born citizens of the Japanese Race who did not revoke the request before the making of orders for deportation.

4. Wives and children under 16 of any to be deported under the above classes.

5. Japanese Nationals or naturalized persons of the Japanese Race recommended by the Loyalty Commission (not yet appointed, by the Government) to be deported after inquiry as to their activities, loyalty and extent of co-operation with the Government of Canada.

3. These orders-in-council were passed under the authority delegated to the Governor-in-Council by Parliament under the War Measures Act, to make orders and regulations deemed necessary

by reason of war.

The War Measures Act ceased to have effect on the 1st of January 1946, but the orders remained in force by reason of the National Transitional Emergency Powers Act which permitted the Governor-in-Council to continue Orders made under the War Measures Act. The Governor-in-Council accordingly passed P. C. 8418 continuing all Orders-in-Council in effect.

4. The legality of this order was referred by the Government to the Supreme Court of Canada who decided by a majority that the Orders-in-Council were invalid insofar as they applied to the wives and children of those concerned. A majority of the Court, however, held that they were valid in respect to the other classes to be deported.

On November 21, 1945 the Minister of Labour made an announcement to Parliament that there were a total of 10,347 involved in the voluntary requests for repatriation. Of this number, 6844 actually signed requests, and the remainder (3503) were dependent children under the age of 16, of those who signed. Of the 6844, 2923 were Japanese Nationals, 1461 naturalized Canadians, and 2460 Canadian born.

The Co-operative Committee have entered an appeal to the Privy Council.

5. As the Judgments in the Supreme Court of Canada make abundantly clear, the Courts are only concerned with the legality of the Orders, and were in no way concerned with the policy or the moral justice of the policy. For this the Government are responsible subject to the control of Parliament itself.

6. In regard to the responsibility in Parliament, attention is called to the Judgment of the Chief Justice of Canada, in which quoting, the language of Chief Justice Duff he states "the final responsibility for the acts of the Executive Government rests upon Parliament. Parliament has not abdicated its general legislative powers nor abandoned its control. The subordinate instrumentality which it has created for exercising the powers remains responsible directly to Parliament and depends upon the will of Parliament for the continuance of its official existence. Parliament has not effaced itself and has full power to amend or repeal the War

Measures Act or to make ineffective any of the Orders-in-Council passed in pursuance of its provisions, and if at any time Parliament considers that too great a power has been conferred upon the Governor-in-Council, the remedy lies in its own hands."

It is respectfully submitted ~~by the Committee to Parliament~~, that ~~it~~ Parliament must assume full responsibility for ~~considering whether or not it desires that at the present time the power to order the deportation~~ deciding whether of Canadian citizens of the Japanese Race ~~is a power which it desired to commit to Parliament~~ are to be deported.

The Committee respectfully submits that Parliament should exercise its duty by calling on the Government to withdraw the Orders-in-Council.

The history of the Orders-in-Council must be carefully considered in this connection.

~~In~~ In the original Bill 15 to continue the extraordinary powers of the Governor-in-Council after the end of hostilities, an express clause was inserted giving the Governor-in-Council power to make Orders for deportation and the cancellation of naturalization.

Owing to the widespread expression of disapproval of this proposed power throughout the country, this clause was withdrawn, and the National Transitional Emergency Powers Act which was passed by the House of Commons on the 8th of December, omitted any reference to such powers. The Act, however, did give to the Governor-in-Council, the power to continue what had been done under the War Measures Act, and the War Measures Act was to stay in effect until the 1st day of January 1946.

Availing itself of this gap, the Governor-in-Council passed the Orders in question on the 15th of December, and then continued them after the 1st of January by P. C. 8418.

Parliament has therefore never had the opportunity to disapprove of these orders and in fact, by implication from the omission of the power of deportation from the new Act, withheld such power from the Governor-in-Council.

It is urgently submitted that the Orders-in-Council are wrong and indefensible and constitute a grave threat to the rights and liberties of Canadian citizens, and that Parliament as guardian of these rights and the representatives of the people, should assert

its powers and require the Governor-in-Council to withdraw the Orders, for the following reasons.

1. The Orders-in-Council provided for the exile of Canadian citizens.

The power of exile has not been employed since the days of the Stuarts in England by civilized countries. So seriously was it viewed that the Habeas Corpus Act makes it a serious offense for any official to exile a British Subject.

2. The Orders and the proposed exile of Canadian citizens constitutes a violation of International Law and as Mr. Justice Kellock and Rand stated, the bolster invasion of another's territory, and the violation of sovereign rights.

The Congress of the United States has no power to exile citizens, and the British Parliament has not even in the gravest emergency, found it necessary to assume such a power.

3. The Order-in-Council put the value of Canadian citizenship into contempt. They cancel naturalization in a wholesale manner, and without any reason.

As this time when the Parliament of Canada will be considering legislation designed to enhance the value and dignity of Canadian citizenship, ~~the effect of the enforcement of these orders would be to rob new legislation of its effect.~~

4. The Orders-in-Council are based upon racial discrimination. ~~Wholesale~~ deportation on racial grounds has been defined as an ~~International~~ crime against humanity, and the war criminals of Germany and Japan are being tried for precisely this offense, amongst others.

5. The proposed deporations are in no way related to any War emergency.

The necessity of removing persons of Japanese origin from the coastal regions during the war, was referrable to the emergency, but now that hostilities have ceased for some time, it cannot possibly be suggested that the safety of Canada requires the injustice of treating Canadian citizens in the manner proposed.

The Prime Minister has himself made it clear that no instances of sabotage can be laid at the door of Japanese Canadians.

If any of those concerned have been disloyal, there is ample power under the Immigration and Naturalization Acts for their deportation after proper inquiry into individual cases.

6. The Orders for deportation purport to be based on alleged requests to be sent to Japan. It is suggested that the signing of these requests indicated disloyalty. This is far from the truth. The signing of the forms was encouraged as an act of co-operation with the Government of Canada. The very forms used, implied that the Government approved and sought the signing of these forms. Those who refused to sign were described as unco-operative, and denied privileges accorded to those who did sign. For the Government, which through its agents ~~who~~ obtained and sought the signature of these forms, to claim now that they indicated disloyalty, would be to implicate the Government itself in the encouragement of a disloyal attitude.

7. The Orders constitute a threat to the security of every minority in Canada.

8. The Orders cannot be ~~in force~~ enforced without grave injustice and inhumanity to innocent persons.

Respectfully submitted this 21st day of March 1946.

9. The effect of this order will be to cause hurling hostility to Canada throughout the Orient whose racial discrimination is deeply resented. The future of Canadian international relationships ~~both~~ may depend upon the revocation of these orders.

10. The orders are devoid on contradiction of the language & spirit of the United Nations Charter subscribed to by Canada as well as further mention of the words & use in adoption of its methods of Nazi ism.

Croll
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