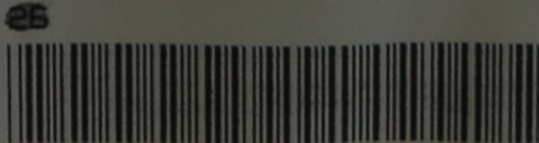


Contents
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Vol. 1663

8 January 1946

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TO HIS EXCELLENCY



Major-General the Right Honourable the Earl of Athlone, Knight of the Most Noble Order of the Garter, a Member of His Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Order of the Bath, Grand Master of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Royal Victorian Order, Companion of the Distinguished Service Order, one of His Majesty's Personal Aides-de-Camp.

GOVERNOR GENERAL AND COMMANDER IN CHIEF
OF THE DOMINION OF CANADA

Report of a Committee of the Privy Council ON MATTERS
OF STATE.

PRESENT

The RIGHT HONOURABLE

H. MITCHELL

A. FOURNIER

E. BERTRAND

J. JEAN

L. CHEVRIER

D. C. ABBOTT

J. J. MCCANN

H. F. G. BRIDGES

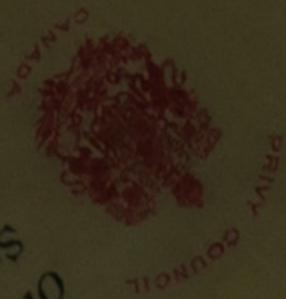
W. McL. ROBERTSON

APPROVED.

8 JANUARY 1946

May it please Your Excellency

GOVERNMENT
His Majesty
Victorian Order
Saint Michael and
Order of the Bath
Honourable Privy Council
Major-General the Right Hon
the Most Noble Order of th
TO HIS EXCEL



*The Proceedings of a Meeting of the Committee
of the Privy Council held on the eighth day of
January, 1946, contained in this Report, comprising
items numbered:*

P.C. 7423
P.C. 7524
P.C. 4
P.C. 15
P.C. 29
P.C. 30
P.C. 31
P.C. 33
P.C. 34
P.C. 35
P.C. 36
P.C. 37
P.C. 38
P.C. 39
P.C. 41
P.C. 42
P.C. 43
P.C. 44
P.C. 45
P.C. 46
P.C. 47
P.C. 48
P.C. 49

are submitted for Your Excellency's approval.

Approved
Athlone.
8. 1. 46.

Submitted for Your Excellency's information.

P.C. 40

AT THE GOVERNMENT HOUSE AT OTTAWA

TUESDAY, the 8th day of JANUARY, 1946.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS Section 3 of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, provides as follows:

"3. The Governor in Council may do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada; and for greater certainty, but not so as to restrict the generality of the foregoing terms, it is hereby declared that the powers of the Governor in Council shall extend to all matters coming within the classes of subjects hereinafter enumerated, that is to say:-

- (a) Censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
- (b) Arrest, detention, exclusion and deportation;
- (c) Control of the harbours, ports and territorial waters of Canada and the movements of vessels;
- (d) Transportation by land, air, or water and the control of the transport of persons and things;
- (e) Trading, exportation, importation, production and manufacture;
- (f) Appropriation, control, forfeiture and disposition of property and of the use thereof.

2. All orders and regulations made under this section shall have the force of law, and shall be enforced in such manner and by such courts, officers and authorities as the Governor in Council may prescribe, and may be varied, extended or revoked by any subsequent order or regulation; but if any order or regulation is varied, extended or revoked, neither the previous operation thereof nor anything duly

*The Canada Gazette,
Jan. 12/46. P. 139.*

....

-2-

done thereunder, shall be affected thereby, nor shall any right, privilege, obligation or liability acquired, accrued, accruing or incurred thereunder be affected by such variation, extension or revocation."

AND WHEREAS on the fifteenth of December, 1945, Orders were made by the Governor in Council under the authority of the War Measures Act (P.C. 7355, P.C. 7356 and P.C. 7357, certified copies annexed hereto) which Orders provided, amongst other things, for the removal pursuant to the authority thereof of nationals of Japan and other persons of the Japanese race;

AND WHEREAS these Orders were made only after a suitable arrangement had been made with General MacArthur as set out in the dispatches of which copies are annexed hereto;

AND WHEREAS the Acting Minister of Justice reports that representations have been made to him, by and on behalf of a number of Canadian organizations and societies expressing the opinion based on advice of legal counsel that the Orders in Council are ultra vires and requesting a reference to the Supreme Court of Canada to test the question;

That an action has been commenced by Utaka Shimoyama and Yae Nasu against the Attorney General of Canada for a declaration that the Orders in Council are ultra vires, illegal and void;

That an Order was made by the Governor in Council on the 28th of December, 1945, (P.C. 7414, certified copy annexed hereto), pursuant to Section 4 of The National Emergency Transitional Powers Act, 1945 ordering that all orders and regulations lawfully made under the War Measures Act in force immediately before the day The National Emergency Transitional Powers Act, 1945 came into force (January 1st, 1946) shall, while that Act is in force, continue in full force and effect; and

That in these circumstances it is urgently required in the public interest that the opinion of the Supreme Court of Canada upon the question of the validity of the Orders in Council aforesaid be obtained with the least possible delay which question is in the opinion of the Acting Minister of Justice, an important question of law touching the interpretation of Dominion legislation;

THEREFORE His Excellency the Governor General in Council, on the recommendation of the Acting Minister of Justice and under and by virtue of the authority conferred by Section 55 of the Supreme Court Act, is pleased to refer and doth hereby refer the following question to the Supreme Court of Canada for hearing and consideration, namely:

.....

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

Joseph Glean

Approved.

Athlone

JAN 8 1946

RZ.45- a 20.
Order in Council re deportation of Japanese.

P.C. 7355.

AT THE GOVERNMENT HOUSE AT OTTAWA
SATURDAY, the 15th day of DECEMBER, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS during the course of the war with Japan certain Japanese nationals manifested their sympathy with or support of Japan by making requests for repatriation to Japan and otherwise;

AND WHEREAS other persons of the Japanese race have requested or may request that they be sent to Japan;

AND WHEREAS it is deemed desirable that provisions be made to deport the classes of persons referred to above;

AND WHEREAS it is considered necessary by reason of the war, for the security, defence, peace, order and welfare of Canada, that provision be made accordingly;

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Labour, concurred in by the Secretary of State for External Affairs, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to make and doth hereby make the following Order,-

O R D E R -

1. In this Order, unless the context otherwise requires:

- (a) "deportation" means the removal pursuant to the authority of this Order of any person from any place in Canada to a place outside Canada;
- (b) "deported" means removed or sent from Canada pursuant to the authority of this Order;
- (c) "Minister" means the Minister of Labour;
- (d) "request for repatriation" means a written request or statement of desire, to be repatriated or sent to Japan.

2./

2. (1) Every person of sixteen years of age or over, other than a Canadian national, who is a national of Japan resident in Canada and who,
 - (a) has, since the date of declaration of war by the Government of Canada against Japan, on December 8th, 1941, made a request for repatriation; or
 - (b) has been in detention at any place in virtue of an order made pursuant to the provisions of the Defence of Canada Regulations or of Order in Council P.C. 946, of the 5th day of February, 1943, as amended by P.C. 5637, of the 16th day of August, 1945, and was so detained as at midnight of September 1st, 1945;may be deported to Japan.
 - (2) Every naturalized British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation may be deported to Japan: Provided that such person has not revoked in writing such request prior to midnight the first day of September, 1945.
 - (3) Every natural born British subject of the Japanese race of sixteen years of age or over resident in Canada who has made a request for repatriation may be deported to Japan: Provided that such person has not revoked in writing such request prior to the making by the Minister of an order for deportation.
 - (4) The wife and children under sixteen years of age of any person for whom the Minister makes an order for deportation to Japan may be included in such order and deported with such person.
3. Subject to the provisions of section 2 of this Order, a request for repatriation shall be deemed final and irrevocable for the purpose of this Order or any action taken thereunder.
4. The Minister may
- (a) make orders for the deportation of any persons subject to deportation;
 - (b) take such measures as he deems advisable to provide or arrange for the deportation of such persons, and for their transportation, detention, discipline, feeding, shelter, health or welfare, pending their deportation;
 - (c) make such orders, rules or regulations as he deems necessary for the purpose of carrying out the provisions of this Order;
 - (d) subject to the approval of the Governor in Council, employ such officers and other employees as are necessary to assist him in carrying out this Order and fix their remuneration;
 - (e) authorize from time to time any person to exercise on his behalf any power vested in him under paragraph (b) of this section.
5. An order for deportation made by the Minister shall be in force and effect from the date of the order.
-

P.O. 7355.

6. (1) Any person for whom an order for deportation is made or who, having made a request for repatriation, is proceeding to Japan without the issue of such an order, shall be entitled, in so far as circumstances at the time permit

(a) at or immediately prior to the time of his deportation from Canada, to purchase suitable foreign exchange to the extent of any money in his possession or standing to his credit in Canada or advanced to him by the Minister pursuant to section seven and to take such foreign exchange out of Canada with him;

(b) to deposit any money in his possession or standing to his credit in Canada with the Custodian of Enemy Property, who shall provide such person with a receipt therefor and purchase foreign exchange therewith, and transfer the same, less transfer charges, to such person whenever reasonably possible following upon his deportation;

(c) at the time of his deportation to take with him such other personal property belonging to him as may be authorized by the Minister;

and the Foreign Exchange Control Board shall do such things and issue such permits as may be required to implement these provisions.

(2) Where real or personal property of a person who has been deported to Japan or who, having made a request for repatriation, has proceeded to Japan without the issue of an order for deportation, has not been sold or otherwise disposed of prior to departure such real and personal property shall, as of the date of deportation of such person, be vested in the Custodian of Enemy Property, who shall sell the same as soon as in his opinion it is reasonably practicable to do so, and in the meantime he may take such measures as he deems proper for the care, maintenance and safeguarding of such property, and the net proceeds realized from such sale, after the deduction of reasonable charges of handling shall be placed to the credit of such person and dealt with as provided in paragraph (b) of subsection (1) of this section.

7. (1) The Minister may at or immediately prior to the time of departure advance to or for a person who is being deported to Japan or who, having made a request for repatriation, is proceeding to Japan without the issue of an order for deportation, an amount in suitable foreign exchange equivalent to the following:

(a) Where such person is sixteen years of age or over and does not possess at least two hundred dollars, the difference between the amount he possesses and two hundred dollars which shall be paid to such person;

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

(2) Any amount advanced as provided for in subsection (1) of this section shall be recoverable from the person to whom it is paid, from any money to the credit of such person with the Custodian of Enemy Property.

.....

P.C. 7355

8. (1) The Minister may make arrangements with any department or agency of the Government of Canada to assist him in carrying out the provisions of this Order.

(2) The Department of National Defence shall provide any military guard personnel which may be required in carrying out the provisions of this Order.

(3) The Commissioner of the Royal Canadian Mounted Police shall give all assistance which may be required of him by the Minister in the carrying out of the provisions of this Order.

9. Any person for whom an order for deportation is made and who is detained pending deportation or who is placed under restraint in the course of deportation by virtue of any order or measure made or taken under Section 4 of this Order shall, while so detained or restrained, be deemed to be in legal custody.

10. Any person who resists or obstructs or attempts to resist or obstruct any peace officer or other person from carrying out his duties with respect to any order made pursuant to the provisions of this Order shall be guilty of an offence against this Order.

11. Any person who contravenes or omits to comply with any of the provisions of this Order or any order made or given pursuant thereto is guilty of an offence and liable upon summary conviction to a fine not exceeding Five Hundred Dollars or to imprisonment for a term not exceeding twelve months or to both such fine and such imprisonment.

12. Every document purporting to be or to contain or to be a copy of an order, certificate or authority made or given by the Minister in pursuance of the provisions of this Order and purporting to be signed by the Minister shall be received as evidence of such order, certificate or authority without proof of the signature or of the official character of the person appearing to have signed the same and without further proof thereof.

GENERAL

13. The costs involved in the administration of this Order shall be paid from the amounts allotted from the war appropriation to the Department of Labour for Japanese administration.

Certified to be a true copy

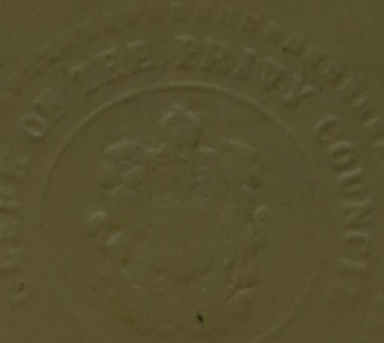
A. M. Hill

A. M. HILL

Ass't. Clerk of the Privy Council.

A.D.P. Heeney,

Clerk of the Privy Council.



Order in Council revoking naturalization
of persons deported in pursuance of Order
in Council P.C. 7355, 15th December, 1945.

P.C. 7356

AT THE GOVERNMENT HOUSE AT OTTAWA
SATURDAY, the 15th day of DECEMBER, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS by Order in Council P.C. 7355 of 15th December, 1945, provision is made for the deportation of persons who, during the course of the war, have requested to be removed or sent to an enemy country or otherwise manifested their sympathy with or support of the enemy powers and have by such actions shown themselves to be unfit for permanent residence in Canada;

THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Secretary of State (concurred in by the Secretary of State for External Affairs) and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows:

1. Any person who, being a British subject by naturalization under the Naturalization Act, Chapter 138, R.S.C. 1927, is deported from Canada under the provisions of Order in Council P.C. 7355 of 15th December, 1945, shall, as and from the date upon which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national.
2. The Secretary of State shall publish in the Canada Gazette the names of all persons who have ceased to be British subjects or Canadian nationals by virtue of this Order.

Certified to be a true copy

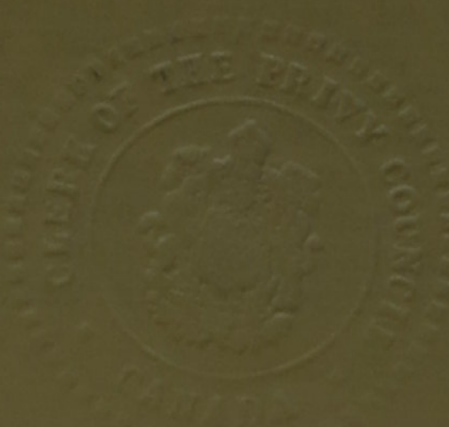
A. M. Hill

A. M. HILL

Ass't. Clerk of the Privy Council.

A.D.P. Heeney,

Clerk of the Privy Council.



Order in Council re Commission to inquire
into conduct during the war of persons of
the Japanese race, etc.

P.C. 7357

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 15th day of DECEMBER, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS during the war particular measures with regard to persons of the Japanese race in Canada were made necessary by reason of their concentration along the Pacific coast of Canada;

AND WHEREAS experience during the war in the administration of Order in Council P.C. 948 of February 5, 1943, providing for the control of persons of the Japanese race has indicated the desirability of determining whether the conduct of such Japanese persons in time of war was such as to make the deportation of any of them desirable in the national interest;

AND WHEREAS it is deemed advisable to make provision for the appointment of a Commission to institute the investigation referred to above;

THEREFORE His Excellency the Governor General in Council, on the recommendation of the Prime Minister, and under the authority of the War Measures Act, Chapter 206 of the Revised Statutes of Canada, 1927, is pleased to order and doth hereby order as follows:

1. A Commission consisting of three persons shall be appointed to make inquiry concerning the activities, loyalty and the extent of co-operation with the Government of Canada during the war of Japanese nationals and naturalized persons of the Japanese race in Canada in cases where their names are referred to the Commission by the Minister of Labour for investigation with a view to recommending whether in the circumstances of any such case such person should be deported.

2. Notwithstanding anything contained in the provisions of Order in Council P.C. 7355 of the 15th day of December, 1945, the Commission may, at the request of the Minister of Labour, inquire into the case of any naturalized British subject of the Japanese race who has made a request for repatriation and which request is final under the said Order in Council and may make such recommendations with respect to such case as it deems advisable.

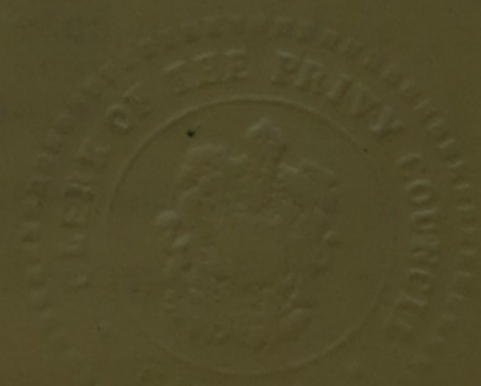
3./

P.C. 7357

3. The Commission shall report to the Governor in Council.
4. Any person of the Japanese race who is recommended by the Commission for deportation shall be deemed to be a person subject to deportation under the provisions of Order in Council P.C. 7355 of the 15th day of December, 1945, and the provisions thereof shall apply, mutatis mutandis, to such person.
5. Where any person is recommended for deportation pursuant to this Order he shall, as and from the date on which he leaves Canada in the course of such deportation, cease to be either a British subject or a Canadian national.
6. The Commission shall, for the purpose of all inquiries and investigations made pursuant to this Order, have all the powers and authority of Commissioners appointed under Part One of the Inquiries Act.
7. The Commission is authorized to engage the services of such clerks, reporters, assistants and counsel as they deem advisable to aid and assist in the performance of their duties.
8. The Commissioners shall be paid such remuneration, allowances and expenses as the Governor in Council may fix.
9. All expenses incurred in connection with the inquiries and investigation of the Commission pursuant to this Order, including the remuneration, allowances and expenses of the commissioners, shall be paid from amounts allowed from the War Appropriation to the Department of Labour for such purpose.

Certified to be a true copy
A. M. Hill
A. M. HILL
Ass't. Clerk of the Privy Council.

A.D.P. Heeney,
Clerk of the Privy Council.



P.C. 45-d.
C O P Y

Teletype Message

From The Secretary of State for External Affairs, Ottawa
To: The Canadian Ambassador to the United States, Washington,
Ottawa, September 17th, 1945.

No. EX-3366
SECRET
CYPHER

Please ask United States authorities to transmit the following message by the most appropriate channel from Canadian Government to General MacArthur as Supreme Commander for the Allied Powers.
Begins:

There are approximately 24,000 people of Japanese origin now resident in Canada. About 10,000 (including dependents) have expressed a desire to be repatriated to Japan. There are also about 500 Japanese nationals now interned whom it will probably be desired to deport. At a later date it is probable that there will be some additional deportees and voluntary repatriates who will also have to be removed. The Canadian Government is anxious to proceed with repatriation and deportation as soon as this can be done without causing you embarrassment. It is difficult to proceed with redistribution and relaxation of control over Japanese remaining in Canada until repatriates and deportees are removed.

It is proposed that repatriates and deportees from Canada should be given free transportation for themselves and their effects and provided with a maintenance grant upon repatriation sufficient to take care of their immediate needs, also that they be permitted to transfer remainder of their funds to Japan.

You will appreciate the desire of the Canadian Government to proceed with these plans as soon as possible. The Canadian Government would be grateful for your advice as to the earliest date on which you would be prepared to have these people arrive in Japan. Ends.

For your own information the whole difficult subject of repatriation and relocation of persons of Japanese race is under consideration by a special Cabinet Committee. It would obviously simplify the problem if we were able to proceed immediately to return to Japan the elements referred to in the above message and we would be obliged if you would let us know what action is contemplated by U.S.

-2-

authorities in this connection. It occurs to us that if the United States have it in mind to repatriate any considerable numbers of disloyal Japanese simultaneous arrangements might be made which might expedite and simplify the problems involved.

Secretary of State for External Affairs.

P.C. 45-2

20.

COPY

TELETYPE

From The Canadian Ambassador to the United States
To The Secretary of State for External Affairs, Canada

CYPHER

TELETYPE

WA-5545

WASHINGTON, October 29th, 1945.

WA-5545. Further my Wa-5323 of October 15th and in reply to Mr. Wrong's letter to Mr. Pearson of October 27th respecting repatriation to Japan of persons of Japanese race in Canada. I have been advised this morning by State Department that a reply has been received from General MacArthur.

2. The reply is to the effect that he authorizes the immediate repatriation of some 160 special cases now held in the United States. In addition, repatriation of all Japanese now held in the United States and Canada who desire to return, or whose return is desired by the two Governments, is authorized subject only to provision of shipping.

3. State Department are proceeding immediately with the repatriation of the special cases and intend to hold a meeting within the next week to review the situation respecting the balance of the persons to be repatriated. A representative of the Embassy will attend the meeting and I would appreciate the following:

(a) Most recent figure on the Number of Japanese in Canada who will be involved;

(b) Whether any representative may offer to assist by the provision of transportation, and, if so, to what extent.

CHARGE D'AFFAIRES.

P.C. 45-1

50.

Order in Council continuing after the 31st day
of December, 1945, in full force and effect
Orders and Regulations made under the War
Measures Act.

P.C. 7414

AT THE GOVERNMENT HOUSE AT OTTAWA

FRIDAY, the 28th day of DECEMBER, 1945.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS The National Emergency Transitional Powers Act, 1945 comes into force on the first day of January, 1946 and by its terms provides that on and after that day the war shall for the purposes of the War Measures Act be deemed no longer to exist;

AND WHEREAS under section 4 of The National Emergency Transitional Powers Act, 1945 the Governor in Council may, without prejudice to any other power conferred by that Act, order that orders and regulations lawfully made under the War Measures Act or pursuant to authority created thereunder in force immediately before the day The National Emergency Transitional Powers Act, 1945 comes into force shall, while that Act is in force, continue in full force and effect subject to amendment or revocation thereunder;

AND WHEREAS section 12 of the Interpretation Act provides that where an Act is not to come into operation immediately on the passing thereof and confers power to make any order, that power may, unless the contrary intention appears, so far as may be necessary or expedient for the purpose of making the Act effective at the date of the commencement thereof, be exercised at any time after the passing of the Act, subject to this restriction, that any such order shall not come into operation until the Act comes into operation;

AND WHEREAS it is necessary and expedient for the purpose of making The National Emergency Transitional Powers Act, 1945 effective at the date of the commencement thereof that those orders and regulations made under the War Measures Act or pursuant to authority created thereunder in force immediately before the first day of January, 1946 should be in full force and effect from such commencement and that there should be no cessation in the operation of such orders and regulations resulting from the War Measures Act (sections 3, 4 and 5 thereof) ceasing to operate;

NOW, THEREFORE, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the powers conferred by The National Emergency Transitional Powers Act, 1945, is pleased to order and doth hereby order that all orders and regulations lawfully made under the War Measures Act or pursuant to authority created under the said Act in force immediately before the day The National Emergency Transitional Powers Act, 1945 comes into force shall, while that Act is in force, continue in full force and effect subject to amendment or revocation under that Act.

Certified to be a true copy

A. M. Hill
A. M. HILL
Ass't. Clerk of the Privy Council.

A. D. P. Heeney,
Clerk of the Privy Council.