

KUNIO HIDAKA AND ASSOCIATES

Economists and Social Scientists

NEW ADDRESS:
57 QUEEN ST. WEST
NEW TELEPHONE:
WAVERLEY 4258

200 BAY ST. :: TORONTO, ONT.
—
EMPIRE 3-5692

*Wartime Legal Status
of Persons of Japanese
Race -*

R E S E A R C H A N D C O N S U L T I N G S E R V I C E S

The Wartime Legal Status of Persons
of Japanese Race in Canada

by

Kunio Hidaka

Introduction

The Wartime Legal status of Japanese in Canada.

The purpose of this essay is to recite and comment on the various wartime laws determining the legal status of persons of Japanese race in Canada. This matter of legal status is not made important by the number of persons affected, but by the nature and qualities of the laws themselves. They are all related to civil rights and are based on race. As much as possible, I shall refrain from comment upon the wisdom of these measures and endeavour to have the remarks only explanatory. There are certain deficiencies in this approach for it will preclude any initiating of direction. It will leave out the important position of the present in the historical context and fail to provide an understanding of the past and future standing of the Japanese. I shall undertake to reveal the content of the law and its authority.

Laws concerned are legislative acts, orders in council and administrative regulations, which in their various ways regulate the lives of the people. Some mention is required of the theory and practice of the Anglo-Canadian system of law to understand these laws which determine status, and in particular, the theory of the sovereignty of Parliament.

In Canada, the federal system of government divides legislative power between the Dominion and provincial

authorities. Sections of the British North America Act, 1867, relevant to our discussion are the general clause of Section 91, which states that the Dominion Parliament may legislate for the peace, order and good government of Canada, and head 7 of section 91 which states that Militia, Military and Naval service and Defense come under Dominion authority. It is also stated in section 92 of the British North America Act, that property and civil rights are provincial matters. However during wartime these matters may be taken over by the Dominion authority.

Between them these two authorities may legislate on any topic ^{they} think advisable. In this we say they have sovereign powers. Since almost all powers concerned with the war are under Dominion jurisdiction, our discussion is confined to the powers and acts of that authority. Theoretically, the Government may interfere to any extent with the civil rights of any person or group so long as it has passed the required laws, within or without its boundaries. There are however some practical limitations to this unlimited power but that is aside from law. So long as the legislature is acting within its constitutional competence no person or body is recognized by the law as having a right to override, or set aside the legislation of Parliament. In Canada, courts do not have power to override or set aside legislation of the legislature if it is within the powers of the British North America Act or some

order made not contrary to its provisions.

The right or power of the authority extends to all areas over which it has jurisdiction. Provincial legislatures are restricted to the province but since 1931 and the Statute of Westminster, Canada may have extra territorial legislation. The matter of legal limits of either Dominion or Provincial legislative authority brings in the matter of political relations which are too involved to be discussed here.

The work of the courts may enter into discussions of civil rights but the authority of government to pass orders under the War Measures Act are too broad to preclude any act connected with the war effort to be considered ultra vires. For this reason it is very unlikely that any of the disabilities imposed upon persons of Japanese race can be declared void. Laws are legally binding no matter how repugnant the political theory underlying them may be so long as they fit the formal requirements. But the fact is conceded that any limitations are of the political order and not legal. It lies in a balance secured by contending political forces which are affected by these legislative measures. It is at once the matter of political sovereignty although in this case as in all minority cases which are politically weak, legal and political sovereignty have the

same bounds.

It has been argued that the legislative enactments of sovereign bodies must follow certain rules in order to be recognized as the will of the sovereign. Observation of these rules of procedure is a condition of the validity of legislation, which therefore places the rules in a logically superior position to the sovereign. But it may also be observed that the rules themselves are the creation of the sovereign body and are subject to suspension or modification at its discretion, and have authority only in so far as they are willingly accepted by that body. At times legislation may be considered invalid by an oversight of the sovereign body in not removing or modifying a rule of procedure to enable it to carry out its intentions. The peculiar nature of minority civil rights in wartime brings up at times this somewhat academic question.

The matter of whether the sovereign can bind himself, and to what extent, if any, he is to carry out his stated intentions, become relevant issues. To what extent are contracts and agreements binding when made by the sovereign body and to what extent can they be suspended or broken? And to what extent can the matter of competent jurisdiction be questioned. In wartime these powers take on special significance for the common law and the prerogative powers of the crown may be invoked at the discretion of the executive

and gain legal authority for all its acts. If there are any limitations they usually are to prescribe the manner in which acts may be done.

There are of course some internal limitations on legal supremacy, *which* these are implemented only when the supreme authority chooses to accept them, is forced to, or considers it expedient to do so. In minority group treatment, the controls are usually ignored, but when exercised are the result of consultation between the department concerned and the persons affected and interested. When controls are for general purposes and require Parliamentary enactment this prior contact between the department and the interests is found to be a way to get legislation through without making enemies *for* the Government and getting the bill passed with little debate. This is successful when there are no fundamental political differences involved and political relations are not concerned. It means that Government can no longer ignore organized public opinion but also means that in minority group treatment where there are deeprooted differences of opinion the Government will follow the more powerful or vociferous group. The general contention is that the exercise of law making power by Parliament is controlled almost exclusively by the Government of the day, but in some minority matters the Government may be forced to undertake some matters with reluctance should the

opposition to the action be weak. The coercive powers of non-official organizations such as Citizen's Defense Committees, Veteran's Organization, Boards of Trade, Federations of Industry, Trade Unions, professional and patriotic societies when united on an issue, cannot be underestimated.

In some cases these organizations are given semi-public advisory standing to formulate and carry out policy. Since 1918, the force of law delegated to these essentially private bodies is making them more and more important in administrative work. Some are acting only in consultative capacities, others have full authority of Government agencies. In some cases before the sovereignty of Parliament is involved on a particular measure and the internal administrative organization is set up, the Ministers seek the advice of the appropriate advisory committee. Delegated legislation of this type has changed and weakened somewhat the role of Parliament in Government, but without it, it is quite apparent that Parliament would find it impossible to carry on and give sanction to the large measure of positive activity carried on by the state. At the same time it shows the supremacy of the Administration over Parliament. Without this delegation the administrative organization of government would be unable to function.

Faced with this situation the political supremacy of Parliament is becoming more and more a fiction. It is rapidly being superseded by the administration acting on behalf of the Cabinet who are burdened with larger powers divested by the legislature which in actual operational terms is largely controlled by the Cabinet. Legislation is nevertheless usually a compromise measure on issues which arise from conflicting interests. The law making authority in this case whether Parliament or the Administration, is in a difficult position for it cannot conduct successful enforcement if the law created is a violation of the moral sense of either party. In matters with moral content, the conflict of (^{political} ^{authority} integrating powers) of the state and the influence of integrating ^{functions} ~~forces~~ of other institutions which ^{are bound up with motivation} ~~form a part of the person's personality~~ decide what action ^{the person} is to take.

In closing this general introduction which aims to give the general legal considerations before entering the laws affecting the legal status of the Japanese and imposing disabilities, it will be borne in mind that our so called rule of law has no fundamental law outside of statute and common law. The matter of enforcement of law by courts may or may not be provided. The judicial process may be short-circuited or some measure of judicial action mixed with administrative and legislative policy be

undertaken by public officials and prove equally as satisfactory.

The subject is hampered in seeking redress for wrongs committed by officials, for servants of the Crown are given special rights by statute and prerogative and in some cases their powers are almost unlimited when on matters of business. It therefore becomes imperative that trained and competent personnel be used at all times to carry out the positive activity^s of the state. Unfortunately, in dealing with minority groups this is not always considered essential and the extra complications arising from cultural differences and peculiar circumstances are not foreseen and met.

I do not propose to deal with the general legal status of persons of the Japanese race in Canada for this is done in an admirable study by Professor H. F. Angus published in the series "The Legal Status of Aliens in Pacific Countries" edited by Professor Norman MacKenzie. Nor do I intend to go into the intricate and complex details of the law of nationality for this arduous task is being undertaken by an advanced student at the University of Toronto Law School.

I shall first outline the provisions of the War Measures Act, Ch. 206, R.S.C. 1927, under which authority all these wartime laws affecting Japanese persons are passed. Thereafter I shall take up each of these regulations.

As previously stated by the general clause of section 91 of the British North America Act, peace, order and good government matters are placed under Federal jurisdiction, and the application of this clause has been given more precise definition by the Privy Council in cases such as *Russel v. the Queen*, the Board of Commerce case and the *Fort Frances Pulp and Paper v. Winnipeg Free Press*. These decisions have confirmed the claim that matters normally under provincial jurisdiction can be taken over by the Dominion government in time of war. Although the War Measures Act has not been tested in the courts it is not doubted that it will be placed under the general clause and upheld.

The act itself is very short and broad. It confers on the Governor in Council certain powers in event of war, invasion or insurrection. The Governor in Council may do and authorize such acts and things, and make subordinate regulations which it considers advisable or necessary for the security, defense, peace, order and welfare of Canada.¹

¹Section 3 paragraph 1 War Measures Act Ch. 206,
R.S.C. 1927.

For greater certainty the act lists a number of specific matters on which orders may be made. It also provides that when amendments are made the acts previously committed are not thereby made ultra vires.² The Governor in Council is also

² ibid paragraph 2.

given power to fix penalties.³

³ ibid section 4.

When property is appropriated under provisions of the act or by order in council and the compensation not agreed upon, the Minister of Justice is to refer the claim to a court.⁴

⁴ ibid section 7.

Subsequent orders in council cannot be contrary to the provisions of this act and remain valid. The procedure followed will be to state and examine each relevant order and give such comment as may be necessary for its understanding.

For purposes of convenience the regulations are divided under the following five heads:

- I. Legal status under the Defense of Canada Regulations.
- II. Control and disposal of fishing vessels.
- III. Road Camps and the Construction Corps.
- IV. Registration, control and Liquidation of Property by the Custodian of Enemy Property.
- V. Evacuation and Resettlement.

1. Legal Status Under the Defense of Canada Regulations.

The Defense of Canada Regulations are administered by the Minister of Justice and the Royal Canadian Mounted Police. Their primary aim is to ensure the public safety. While most of the Regulations have general application, some few deal specifically with persons of Japanese racial origin.

This section is therefore concerned with the treatment of Canadian residents of Japanese race whether nationals of Japan, of Canada by naturalization or by birth. It will not deal with external affairs such as the curtailing of trade between the Japanese Empire and Canada after September, 1941 or the placing of Canadian property and assets of residents of Japan under the Consolidated Regulations Respecting Trading with the Enemy (1939). It is the intention to deal with orders brought in subsequent to December 7, 1941.

It will be noted that the nationality laws themselves, of Canada, have not been changed since that date but by

implication they have been vastly modified. In general, and without going into the baffling intricacies of nationality law for working purposes a Japanese National is here interpreted as a person born in Japan and not naturalized, or if a woman, not married to a Canadian by naturalization or birth, or if a Canadian born or naturalized, women subsequently married to a Japanese national. A naturalized Canadian is a person naturalized under Canadian (or British) law in Canada, or ^{a woman} married to a Canadian national. A Canadian by birth is a person born in Canada. It will be noted that except ~~for~~ monthly enemy alien registration parole, the laws affect enemy alien and British subject alike. The laws are based entirely on race and not on nationality.

Section 1 of Part 1 General of the Defense of Canada Regulations (Consolidation) 1942 has the following general statement.

"The ordinary avocations 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 defense of Canada. The Departments of the Government, officers thereof, and other persons executing the following Regulations shall observe this general principle".

On December 17, 1941 Order in Council P.C. 9760 was passed. It was on the report of the Minister of Justice which stated that the Special Committee on Orientals in British Columbia, appointed on October 1, 1940 to investigate the position of persons of Japanese and Chinese

racial origin and to report on them from the point of view of national security, with particular reference to the question of military training had reported on December 2, 1940. It recommended inter alia that, both for the purposes of civil security and to deprive persons hostile to the Japanese, of a constant and effective ground for complaint, that there be a re-registration of the Japanese population in British Columbia.

This re-registration recommendation was carried out by an order in council, P.C; 117 of January 7, 1941 and allowed for voluntary registration in British Columbia of all persons of the Japanese race. A standing committee was appointed to assist the Government by overseeing the execution of the recommendation of the Special Committee as the Government may require. The Commissioner of the Royal Canadian Mounted Police was to provide staff and supervise such re-registration. The new Order P.C. 9760 of December 17, 1941 made registration compulsory and extended it throughout Canada.

The report of the standing committee stated that there existed a greater or less degree of suspicion of the Japanese as a people and a feeling that their racial solidarity was likely in an emergency to override their

loyalty to Canada and produce subversive or otherwise dangerous activities". It also reported that no concrete evidence had been adduced in justification of this sentiment and individual charges when further investigated had been found to be based on rumour and hearsay.⁵

⁵ H.F. Angus, The Effect of the War on Oriental Minorities in Canada, Vol. VII pp 506-516 Canadian Journal of Economics and Political Science.

The committee went on further to say "the suppression of public statements arousing antagonism against the Japanese in British Columbia should be an integral part of plans for civil security and national defense". It also said "popular fears would be greatly allayed by an official statement that the Government is satisfied that adequate precautions have been taken and will be continued against any dangerous elements in British Columbia". It observed that although the Japanese were the victims of discrimination, the seriousness of the situation lay in a possible attack on the Japanese; and the forestalling of any such attack made up the main body of the Committees recommendations. One such was this re-registration.

The main reason for this registration was to remove constant charges that many Japanese had entered Canada

illegally. Since that time it has been found that this registration has been a very effective device for controlling the whole population, for identification for travel permits, for ration books, for receiving cheques and for transporting from one area to another. With almost each application, the person is asked to produce his registration card whether it be to get a relief cheque or railway ticket. It also allows a file to be built up on the activity of each person to which interesting and relevant material can be added from time to time.

The registration itself was simple. Every person on the basis of race, over sixteen years was required to register with all documentary proofs of name, national status, address, single or married, place of birth, date of birth, sex, age, height, weight, hair, eyes, complexion and special marks of identification.

Other questions were ~~in~~ the following:

Date of entry to Canada	
Port of Entry	Ex S.S.
Father's name	Father's Serial No.
Mother's name	Mother's Serial No.
Name of Husband (Wife)	Serial No. of Husband (Wife)
Occupation	
Number and Type of Fishing License (if any)	
Property owned (Registration No. of Boat if any)	
Address of Wife (Husband)	
Number of children under 16 years of age	
Name Age Address	
Number and Date of Birth and/or Naturalization Certificate.	
Is Japanese Nationality claimed as well as Canadian Nationality?	

Is return to Japan contemplated?
If so for what reason?

A full face photo and right thumbprint were taken. A note was made of any police record. A space for a special memo to cover any information of interest, was provided. Each person registered was given an identification card with a serial number, photograph and right thumbprint.

Every person issued such a registration card is required to carry it with ~~him~~ at all times and must produce it for inspection upon reasonable demand to any peace officer, police officer or constable or to any other person designated for the purpose by the Attorney General of any province and in particular any person attending at any public meeting, place of public resort or entertainment, ticket or telegraph office, or post office, or being in or upon any car, train or steamboat, and for failure without good reason a penalty of twenty dollars is attached. This regulation is much the same as that for National Registration.

Under Part 11, Espionage and Acts likely to Assist the Enemy: Access to Certain Premises and Areas - Regulation 4 section (1) gives the Minister of National Defense with the concurrence of the Minister of Justice for security reasons power to define certain areas as a protected area

and under section (2) the Minister of Justice may make orders in relation to the following matters:

- (a) to require any or all persons to leave such prohibited area.
- (b) to prohibit any or all persons from entering, leaving or returning to such prohibited area except as pursuant to such order.
- (c) to impose upon any or all persons ordinarily resident or actually present in such prohibited area, such restrictions as may be specified in the order in respect to their employment or business, their movements or places of residence, their associations or communications with other persons, their activities in relation to the dissemination of news or the propagation of opinions or otherwise with respect to the conduct of any such persons.
- (d) to prohibit or restrict the possession or use by any or all persons in the prohibited area any specified articles and require these persons to deliver them up to appointed persons.
 - (ddd) a constable may search without warrant if he had reasonable grounds that the law was being violated.
- (e) to authorize the detention as and where he

(e) thinks fit or order from place to place any person ordinarily resident in the protected area.

(f) to release any person from detention or any orders imposed, or return goods seized.

It will be interesting to note the position of protected areas. In the 1939 regulations, once an area was declared protected, no person who was not resident in that area on the day the order was brought in could enter without permission, and any person could thereafter be ordered out by recognized authority. The first change in this regulation appeared in P.C. 365 of January 18, 1942 which restricted application of Regulation 4 to ~~many~~^{enemy} aliens and had no sections dealing with the issue of receipts for articles surrendered. The apparent error was soon realized when by P.C. 1486 of February 24, 1942, section 2 was amended to extend to any and all persons and not exclusively enemy alines. Had the paragraph remained it would have applied only to Japanese nationals and left untouched the Canadian citizens. With this change it was realized precisely that Canadians were not to receive any preferential treatment over enemy alien Japanese.

On January 29, 1942 by order of the Minister of National Defense, a protected area as required by

Regulation 4 was declared as that part of British Columbia west of the Cascades. However at that date the Amendments regarding enemy aliens had not been made to Regulation 4 so technically no resident on that date would be allowed to enter without permission. That meant that no person of any race could travel to Vancouver without permit from the Commissioner of the Royal Canadian Mounted Police. This regulation was, of course, not generally enforced.

On February 5, 1942, under Government Notice of the Minister of Justice an amendment was made to Regulation 4 which provided:

1. All male enemy aliens 18 to 45 years were to leave the protected area before April 1, 1942.
2. No male enemy alien was to enter, leave or return without R.C.M.P. permission.
3. No enemy alien was to have in his possession while in the protected area a camera, radio transmitter, radio short wave receiving set, firearm, ammunition or explosive.

As previously stated, on February 24, 1942 by P.C. 1466 a change was made in P.C. 365 of January 16, 1942 to extend Regulation 4 to any and all persons of Japanese race irrespective of nationality. An interesting thing took place that month. Pressure groups organized to get the entire Japanese population removed. They were led

by persons who had for the past thirty years, advocated discriminatory measures ^{Against} the Japanese. The differentiated treatment of Japanese enemy aliens and Canadians was violently attacked and insistence was made to have racial laws introduced. The Government had issued a statement of policy which provided for differential treatment. The Government capitulated to this racial legislation sentiment and brought in "any and all" to replace "any and all enemy aliens". It also eliminated the requirement that all persons coming into the protected area have permits as this would mean that a majority of the British Columbia population would be affected. Further changes were made by P.C. 1542 of February 26, 1942 in adding three subsections which gave further detail on delivered articles. Also on this same date came a Government Notice affecting only persons of the Japanese race. It provided:

1. A sunset to sunrise curfew was imposed.
2. All motor vehicles, cameras, radios, transmitters, firearms, ammunition, explosives were to be delivered up to the police.
3. Delivery was the duty of the possessor.
4. Receipts were to be issued for these articles.
5. Every person of the Japanese race was ordered to leave the protected area forthwith.

6. No person of the Japanese race could re enter the protected area except with R.C.M.P. permission.

On February 27, 1942, a notice of the Department of National Defense was issued defining another protected area under Regulation 4. The area is defined in precise detail and takes in the smelter and chemicalworks of the Consolidated Mining and Smelting Company at Trail. Japanese persons were required to move out of this area. This area is so located that it cuts off any movement of Japanese persons ~~from~~ ^{between} evacuation centres.

States that on A notice of March 4, 1942 of the Minister of Justice ~~on the~~ recommendation of the British Columbia Security Commission, ~~allowed for~~ ^{was to be allowed} the medical practitioners to use their automobiles in the course of their duties and to be out at night. However this law if strictly interpreted would not allow ~~for~~ ^{the} emergency cases ~~being~~ taken to hospitals. This same notice also stated that no Japanese person ordinarily resident in the protected area may leave the area except by order of the British Columbia Security Commission, and was to live only in places approved by the Commission. A person was thereby prohibited from taking up residence wherever he pleased.

When the first sounds of removal were in the air, a considerable number of Japanese nationals moved on their own accord outside the protected area to the town and rural

areas of interior British Columbia and these persons were by this notice brought under Commission control.

Regulation 14 of the Defense of Canada Regulations deals with the control of postal communications. Section (5) allows the Minister of National War Services to censor all mailable matter that passes through the post office in Canada. There is however no instruction in this paragraph as to what material is to be deleted.

Section (1) of Regulation 15 concerns the control of publications. The Minister may here also make provision by order for preventing or restricting the publication in Canada of any material which he considers to be prejudicial to the safety of the state and efficient prosecution of the war and may order that such material be subject to prior review.

Persons served with such orders may appeal to a committee appointed by the Minister of Justice. The recommendation of this committee would be advisory to the Minister of National War Services. Any notice requiring prior review must also inform the person that he may file an objection within fourteen days and the Minister is forthwith required to notify the committee and arrange a hearing.

Regulation 14 is applied to mail bearing Japanese names in most parts of Canada with the exception of some letters from Vancouver and vicinity where there are no Japanese and some points in eastern Canada. Letters from evacuation

centres are first sent to Vancouver and there opened. The chief objection is the inconvenience caused by delay. Mail from internment camps carry prisoner of war privileges and need no postage, however in Canada, unlike the United States, mail to the camps must carry postage but the stamps are removed before the addressee receives the letter.

During February of 1942 Japanese nationals were sent to road camps and immediately the mail of these men was opened with excessive delays. There were many complaints of letters not being received at all. At times when the men were on strike the mail was held up and no information was let out. Letters bearing Japanese names would not remain in the ~~pro~~^{file} review of the Department of National War Services but would be passed on to the British Columbia Security Commission for interest outside of public safety such as personal information and for their humour and literary value. In one evacuation^{center} a record is kept of all cheques and money orders received and counted as family income to be entered in relief calculations.

The only publication put out by Japanese persons is called "The New Canadian", a weekly ^{newspaper} published in interior British Columbia. All copy must be submitted to the press censor in Vancouver ^{be} before publication. ~~where~~ Any item critical of Government activity or any strong objection to treatment of Japanese is ordered deleted. The matters

seem to be deleted not because they are prejudicial to public safety but for their critical tone and could be included in any other newspaper. The press censor does not seem to be carrying out the recommendation of the Standing Committee on Orientals that "suppression of public statements arousing antagonism against the Japanese in British Columbia should be an integral part of plans for civil security and national defence". One daily in Vancouver has been outstanding in promoting a campaign ~~of~~ arousing antagonism against the Japanese by fabricated stories, but without official censure. On the other hand even an editorial, ~~in~~ "The New Canadian", indicating the ironical situation existing where enemy aliens are able to enjoy a more secure and privileged position than the nationals of the country, and that the Government chose such discrimination against its own people, was ordered deleted. At times words like "politician" because of their connotations have been ordered deleted.

Regulation 21 concerning restriction and detention orders have been used extensively. As a preventive measure the Minister of Justice may issue a detention order on any person who may act in a manner prejudicial to the safety of the state, by section (1) subsection (C) of Regulation 21 and direct that he be detained in such place, and under such conditions as he decides and such person is deemed to be in legal custody.

When persons of Japanese race were given seventy-two

hours to appear with all required baggage for transport to road camps in interior British Columbia or northern Ontario a number of them failed to appear. These people were rounded up and locked in the Immigration Shed in Vancouver under military guard. This was done without detention orders from the Minister of Justice, but while there detained, these orders were made out and when a trainload was recruited they were sent to the internment camp at Petawawa. The way these people looked at the matter was that they had the choice of either going to road camps or internment camp and during the summer about eight hundred persons chose the latter. Their stay in the Immigration shed was for varying periods up to a month and a half, depending on when they were picked up and how soon a party of about 200 persons was gathered. A fair number of persons evaded the police until the public authorities found out that they needed men for construction purposes to house the population to be evacuated. When these jobs were offered, they appeared and were sent inland. After the beginning of July the internment policy was changed and persons were sent to interior evacuation centres with their families for work, and not interned.. Reasons for choosing internment were various. Some were against evacuation in principle and saw no reason why they should be considered a national menace, others were holding out for family evacuation; others felt an attachment to Japan and thought it their duty to be interned, others saw

the advantages of prisoner of war status and the security and protection it offered, others the superior position of their families in regard to relief when classified as internee's families where the means test would be less rigid, and others simply because they did not want to work. Some persons wanted to be dependents ~~of~~ the Government because the government had evacuated them and deprived them of their ~~means of~~ livelihood and there was no proof that the government would feed them outside the internment camp. Others, fisherman, were so incensed over the ~~mis-~~ handling of their boats by the authorities and the treatment they received themselves at that time that out of sheer stubbornness they chose to be interned. Boats of these persons were taken away, impounded, and in some cases pilfered and damaged and sold at a ~~low~~ price. Other cases where the man had not yet clear title to the boat he suffered considerable loss.

What happened in regard to internment was that a person might be picked up on the street or in a hotel at night and taken to the Immigration shed. There he would be searched and checked in to join his confreres. He would send word to his family to have his clothing and blankets sent in. Whatever money or valuables he had would be lifted by the military police and placed to his credit in his account in the canteen of the internment camp where he could buy minor personal items like soap and tooth paste. While at the regular internment camp they could wear only their own under-

garments, and the outer garments were kept until their release to prevent escape.

At the outbreak of war on the Pacific some forty Japanese nationals were detained by the Royal Canadian Mounted Police on what appeared to be a basis of geographical selection, mainly to deter any criticism of the public that the police were not acute to what was taking place. However it appears that not a great deal of care was taken to determine the identity of persons and their relative subversive qualities. In one case an old man who was practically deaf and with failing eyesight and unable to work, who was living around bunkhouses in a logging camp was taken in because no one else seemed to be around as they were at work. Persons who knew the persons detained could see no reason for their being selected than they themselves. Within eleven months after being detained most of these persons were released and some even repatriated to Japan. Should they have been espionage agents, sending them ~~back~~ to Japan would be a very unwise move.

The families of some of these men were in difficult circumstances as no relief was provided. However friends and neighbours usually gave them assistance.

Section (1) of Regulation 22 provided Advisory Committees to which persons may file objections, and requires that reasons for detention be made known under section (4). Most persons were quite ignorant of this procedure, and those

who did could not get access to an advisory Committee. It appears that Japanese internment was handled by a procedure different from that provided in this Regulation. In the case of a young surgeon who was interned immediately the Pacific war started, the Department of Justice informed his friends who were appealing for a hearing on his behalf that he was interned not for anything he had done but because he was not incapable of committing subversive acts. However within a year he was released and is now staff surgeon in a Montreal hospital.

Without ~~their~~ ^{from them} appeal some men were released and returned to British Columbia, while other men were released on condition that they take employment in ~~the~~ northern Ontario pulp wood ~~cutting~~ camps.

There were ~~cases~~ ^{a number} of internment ^{acts were} when road camp men were told that they were being sent to interior evacuation towns to join their families but stopped en route to work ~~at~~ ^{of other centres.} construction. They refused to work unless allowed to proceed home first and make their visit and return. These men were interned. Another case was ^{when} two persons who headed the representative committee of a centre, ~~who~~ were held responsible for a minor disturbance with which they were neither remotely connected nor in the physical proximity. In none of these cases were summary proceedings held but the persons were interned forthright.

After ~~the beginning of~~ July, 1942, the evacuation policy of the British Columbia Security Commission changed to family evacuation and no more internment of persons who refused to appear for transportation took place. This was ^{caused by a)} the popularity of internment and ^{b)} the need for workers to build the centres. Indiscriminate internment was thereafter eased.

Early in the fall of 1942 the internees were moved from Petawawa to Angler which then became an all Japanese camp. After November, 1942, efforts were made to clear out the internees and to get the men back to work. Each month a placement officer from the Port Arthur National Selective Service office would make a visit to take applications for jobs and if the persons record was otherwise satisfactory he would be released within thirty days. At first there was organized opposition to persons leaving. At times young persons who had voiced this desire were flogged by their fellow internees. However, after a while, this resistance broke down and more and more persons left for bush work in Northern Ontario and industrial and agricultural work in western and central Ontario. Despite the fact that these camps were up to prisoner of war standards and under the scrutiny of the Y.M.C.A. Prisoner of War Services, the International Red Cross and the Protecting Power Commission these persons preferred to leave. Others preferred to remain.

Some persons ~~are carrying~~ on the study ^{of} the Japanese language under former language school teachers.

The attitude toward internment held by some persons is unique - one boy ~~wrote~~ to his brother in London who urged him to leave and not waste his time in the camp, that he thinks he will wait until spring when the weather is warmer ~~and it is more comfortable to travel~~ *is more comfortable.*

As Japanese nationals come in the category of enemy aliens, they are subject to provisions of Regulation 24. Section (1) states that so long as enemy aliens peacefully pursue their ordinary avocations, they shall be allowed to continue to enjoy the protection of the law and shall be accorded the respect and consideration due to peaceful and law-abiding citizens, and more specifically, shall not be arrested, detained or interfered with, provided they comply with all legal requirements and refrain from acting in a manner prejudicial to the public safety.

Section (2) of the same Regulation defines certain categories of enemy aliens who are to be arrested and detained. The following Section (4) supplies a ~~type~~ ^{type} of undertaking to be completed by persons who have been arrested and detained ~~on~~ their release, and requires them to report to some officer at periodic intervals. In actual practice Japanese nationals have not been arrested and detained for reasons stated in Section (2) yet are all ordered to comply with the undertaking in reporting with their parole permits each month. These persons may have been under technical arrest until the parole permits were secured but if otherwise, this parole requirement

may be illegal. Provisions of Section (2) mention persons who attempt espionage and are arrested and detained and subsequently released. None have been so convicted yet the requirements extend to all nationals. Persons who are naturalized Canadians or Canadian born even when released from internment camps are not required to report each month as provided in this Regulation, but are in the same position as other persons of the same category.

Regulation 25 deals with registration and internment. It requires every enemy alien (in this case Japanese nationals) to appear for registration at some place prescribed before February 7, 1942 or as soon thereafter as he becomes an enemy alien (e.g. by marriage). It will be noted that by P.C. 9591 of December 7, 1941, questions contained in the Japanese registration were extended to cover all enemy aliens.

By Section (6) enemy aliens are required to have an exeat from the Registrar General to leave Canada. Two convictions have taken place under this Section. Two men crossed the border at Niagara Falls during October, 1943 and were turned back by the U.S. Immigration inspector. They were thereafter arrested by the R.C.M.P. and convicted in Magistrate's Court and fined \$25.00 and costs totalling \$41.50 and sentenced to 15 days in jail.

In one area, the R.C.M.P. slightly confused by the meaning of enemy alien, try to require exeats of Canadian citizens and naturalized British subjects either from devotion

to duty and/or plain ignorance of the law. This matter of exerts may come in where prisoners of war and exchange of nationals and others takes place. Some sixty Japanese of different nationalities left Canada for Japan about the first of September, 1943 from New York harbour aboard the Gripsholm.

The question of nationality of these persons is affected by P.C. 10773 of November 26, 1942 Section (1a) which states that persons being repatriated or expatriated cease to be British subjects and/or Canadian nationals. This complicates further the complications of the law of nationality. It however does not affect persons who became British subjects under British law.

Sub-section (c) provides that a minor child shall not cease to be a British subject by reason only that his parent has ceased to be a British subject, unless he is included in his parents' application for repatriation and actually departs from Canada. This order brings to mind an incident of the summer of 1943 at Heart Mountain Relocation Centre in Wyoming which took place while the segregation of disloyal elements was taking place. It was popularly thought that the disloyal were being repatriated but actually it was to remove those persons who wanted to go to Japan. The reasons for their wanting to go ranged from sympathy and compassionate grounds like wanting to visit aged parents to more positive efforts

like missionary work among American prisoners of war in Japanese hands. While these persons were being sent off to Tule Lake Segregation Centre a number of young boys raised objection to leaving with their parents and standing the chance of losing American citizenship. This was solved by their being provided with affidavits from the Project Attorney ~~swearing~~^{swearing} their American loyalty.

Further, in this order in council, section 2a provides that when a British subject ^{who} makes application for protection to the Protecting Power (in this case Spain) or who asserts allegiance to Japan, or who makes application for repatriation but is not expatriated, may, in the discretion of the Secretary of State, be deprived of his status as a British subject. A large number of Japanese in Canada have applied for repatriation, some with the feeling that there is nothing to lose even if they are unable to go and are not aware of the possible loss of their British status.

By Regulation 26A, Regulation 24, re; arrest, detention and internment; 25 re: registration and internment and 26, re: release of enemy aliens, are made to apply to all persons who are not British subjects but of the Japanese race yet not citizens of the United States. It also applies to persons naturalized since September, 1922. The Registrar General may issue certificates of exemption from the previously stated provisions and provision is also made for persons to object

being arrested and detained.

Part 111 of the Defense of Canada Regulations which deals with public safety and order, authorizes the Minister of National Defence or the Minister of Pensions and National Health or other authorized persons to order the evacuation of areas and allow only specified persons with permits to remain, in case of actual or apprehended attack. Any person found in the area without such a permit at that time can be detained and removed.

Japanese evacuation was not undertaken pursuant to these powers as there is no provision for the removal of a section of the population or allowing a section to remain with permits. However, powers of general evacuation are herein given in case of enemy activity. Persons thus moved are under the Minister of Pensions and National Health and his agents who are to look after accommodation and maintenance and may include any general voluntary movement in anticipation of an attack, and may order a person to provide accommodation and food and assume certain responsibilities for the feeding and caring of children and the aged and infirm.

Japanese evacuation was first attempted under the Department of Justice and the Royal Canadian Mounted Police but later was transferred to the Department of Labour. Nothing of significance was done by the Department of Pensions and National Health.

Regulation 36 gives power to the Minister of National Defence to require inhabitants to remain indoors between

specified hours and prohibits persons being outside without permits. It was not pursuant to this Regulation that curfew was enforced on persons of Japanese race in the protected areas of British Columbia for this Regulation states that the order is for every person while the order of February 26, 1942 was restricted.

Prohibition of the possession or use of any firearm explosive or ammunition in any area is provided in Regulation 37 and Regulation 37A, which state that no Japanese National or person naturalized since September 1, 1922 may have explosives, ammunition and firearms. Persons outside these two categories may have these articles. By notice of February 26, 1942 all persons of Japanese race in the protected area were required to deliver up and get receipts for these articles. However with their movement outside of the area the non-nationals and those naturalized before September 1, 1922 will be able to have these articles.

The residence and premises of any person in this prohibited category may be searched without warrant by authorized persons on reasonable suspicion and if any offence is committed, the articles are forfeited to the Crown. However by Regulation 37B a registration with named public officials must be carried out and a certificate issued, one copy of which is forwarded to the Commissioner of the Royal Canadian Mounted Police, to permit him to retain such article. However if he or the Attorney General of the Province is not satisfied

that the retaining by the owner is not a national hazard, the certificate may be cancelled. It is doubtful that this latter point can be shown to satisfaction by anyone.

Under Regulation 39C a number of associations, societies groups and organizations were declared illegal. It will be noted that none of Japanese persons is included. However, with the outbreak of war all Japanese language schools were closed on order of the Minister of Education for British Columbia and would likely have been done by the Japanese population itself. *Newspapers too* the Japanese language press was banned immediately war started and one person from each of three newspapers was interned; among them ~~was~~ the oldest trade union daily on the North American continent, *which had its* whose business manager ~~was~~ interned. All property of these illegal organizations are subject to the control and management of the Custodian under Regulations respecting Trading with the Enemy and proceeds therefrom are to be dealt with by the Governor in Council as they direct at the termination of the war.

Further discussion on property will be given in another part of this essay.

Regulation 39D affects the assembly of Japanese Nationals and persons naturalized since September 1, 1922. It states that if a meeting of such persons was of such nature to give a constable reasonable grounds to believe that the gathering was not in the interest of the state, he may order the meeting

to disperse forthwith. This point is amply covered in the law of seditious conspiracy and would apply to all gatherings but usually finds difficulty in implementation as a preventive measure. However this Regulation does not specifically cover Canadians by birth nor persons naturalized previous to the specified date. The practice carried out quite voluntarily by the whole Japanese population while in the protected area, was to notify the police authorities prior to public meetings of the time and nature of business. Despite this Regulation, on one occasion the R.C.M.P. ordered the dispersing of a closed meeting of Canadian born who were assembled to discuss the methods and various problems of evacuation. They made no attempt to ascertain the nature of the business but entered the room and after asking what was going on ordered the meeting to break up.

In the matter of acquiring and holding land and growing crops under Regulation 393 no differentiation is made of national status. No conveyance is to benefit a person of the Japanese race if executed after February 24, 1942, except by permission of the Minister of Justice. This does not alter a persons claim to land or growing crops if held prior to this date, or if acquired subsequent to that date under terms of a contract or agreement executed prior to that date, or under a will or intestacy. Nor is a person of the Japanese race deprived of capacity to lease a building for a term not exceeding one year or from month to month or a lesser period. This

was changed on December 20, 1943 from "any building for residential purposes only" to "any building". The difference is not great but allows persons to take out leases for commercial and industrial uses. However, the change may have been made to allow persons to lease buildings for boarding houses which may or may not be included in the class "residential purposes only" as they are also a commercial venture as well and should this interpretation have held, it would have been very difficult for these persons to get living quarters. It still remains that only by licence can a person buy a house or a farm and should this condition remain its economic and sociological effects will be far reaching. Oddly enough, this regulation covers only persons who are wholly Japanese whereas usually persons partly of the Japanese race are covered if the Registrar of Enemy Aliens by notice in writing requires him to register as an enemy alien; and this does not take in Canadians whose one parent is wholly of the Japanese race.

Some general and supplementary provisions are given in Part IV. Regulation 52 gives power, without prejudice to any special provisions, to the Crown to ask any person to furnish or produce to the authority specified any such information or article which is considered necessary or expedient in the interests of the public safety and such article may be obtained and examined. In dealing with the Japanese population, a large number of questions are asked for various purposes, including

applications for relief, travel permits, blankets, clothes, etc.

By Regulation 53, a person who makes an order under these Regulations is required to give public notice of the order in such manner as considered best adapted to make it known. It is doubtful if this was carried out in regard to regulations effecting persons of Japanese race as some very ordinary things were made crimes and no public notice given and the acts were committed until persons were able to track down rumours and have them verified by police authorities.

11. Disposal of Fishing Vessels.

The actions of the Government relating to the impounding and disposal of fishing vessels are not as general as the Defence of Canada Regulations. All activity ~~taken~~ is a story of ~~the~~ part ^{the whole} ~~that~~ a ^{review} of the legislative provisions will be of some interest as they shed light on the legal status of persons of the Japanese race.

In the first place, it should be noted that fishing licences are issued only to British subjects. ^{Naturalized} ~~Persons who were~~ ~~naturalized~~ got their citizenship in most cases thirty and forty years ago. They were among the first fishermen in the industry and are responsible in goodly measure for the development of the industry. It was mainly due to their work that salteries and the herring industry were developed. Despite these features there has been a history of pressure from organized ^{groups} ~~interests~~ of white fishermen to get the Japanese fishermen

eliminated from the industry by a concerted legislative program which involved an annual reduction of licences.

On December 16, 1941 in P.C. 9781, the Minister of Justice reported that it was desirable because of the war with Japan, to control vessels used or operated by persons of the Japanese race. It was ordered that:

1. No person of the Japanese race was to use or operate a vessel on the west coast of Canada except with an R.C.M.P. permit.
2. Any vessel operated by such person without authority may be seized and detained by any officer of the Navy, R.C.M.P., Provincial Police, or the Department of Fisheries, or the Minister of Justice could release the vessel; and any seizures already made were to be covered retroactively by this order.

The penalty was on summary conviction, a fine up to \$500.00 or imprisonment up to one year or both fine and imprisonment.

Following this order the vessels were first immobilized and then impounded. Off the Fraser River mouth in southern British Columbia the fishermen were out after herring and dogfish, and some men, were not aware of the order, and were picked up off their boats and locked up at the nearest jail and their boats were seized. Some boats were brought in and pulled up on dry land. In some areas the boats were gathered together at

a wharf and left. In time a number of them filled with rain and sank but were no one's ^{was} responsibility and the owners were not allowed on them.

In the Skeena River area the fishermen had a more difficult time. They were ordered to take off all movable articles and proceed to the nearest cannery; but when they reached the cannery, contrary to their ~~plans~~ *plans to return* returning home, they were ordered down to Prince Rupert at the mouth of the River. There they found that the boats were to be towed to Vancouver. The men were without money, ~~for~~ bedding, ~~for~~ utensils as they had been told to remove these. A towline was made of the some 200 to 300 boats themselves and were towed by two halibut boats under naval escort. The men were without food except some tins of corned beef and bread but were without tools to open the tins or cut the bread. For a couple of days they experienced involuntary hunger until they reached Rivers Inlet and got aid from other Japanese settlers. At Millbank Sound the sea was playing havoc with the towline of gillnetters and with each heave the boats would seemingly fall apart. Men huddled together in the flimsy craft for warmth and with constant fear that with the next swell the boat would be swamped or crushed. One boat was swamped, damaged and towed some distance with only its cabin above water ~~and~~ eventually lost. However its owner was removed before it was sunk. Other boats were damaged.

It was finally got across to the Navy that the towing was not going to be satisfactory so the boats were unhitched and each put out on its own. Some of the more powerful ones got too far ahead so were fired on by the naval escort.

Shortly before the end of the year the boats reached Vancouver. There the men had to abandon their boats and had no further access to them. Men put in charge of them were inexperienced recruits from inland Canada and poor seamen. When the boats were later impounded at New Westminster they were pilfered for valuable parts by both passing fishermen and Naval guards. During this time engines were damaged and parts removed.

The men meantime were stranded in Vancouver with nothing but their work clothes. They were without money so had to borrow from friends or the canneries with which they carried on their trade. Somehow they managed to get home.

In other points on the west coast the story is similar. Boats were rounded up and the owners ordered around at the point of revolvers. In some places outboard motors which were stored in houses were taken away. Even rowboats were taken away, ^{but were kept} ~~however~~ in places where they were the only means of transport they remained.

During this time, on the legal front, on January 13, 1942 P.C. 251 was passed on the report of the Minister of Fisheries which stated that a conference was convened at

Ottawa under the chairmanship of the Honourable Ian MacKenzie, Minister of Pensions and National Health and Cabinet member from British Columbia, to consider the questions relating to the "Canadian Japanese" and Japanese Nationals in British Columbia. *with the British Columbia minister in charge* The conference appears to be concerned mainly with the politics of the situation rather than the more purely administrative matters. ~~as the B.C. Minister was in charge.~~ It recommended that during the war period for reasons of national defence and security, fishing or serving on fishing vessels be prohibited to all persons of Japanese race. The reason given in this case appears to be a rationalization based on race without due differentiation of the other relevant factors of culture and nationality and the conditioning elements of motor and reflective activity. This confusion is quite characteristic of the historical background of Canadian life.

In P.C. 288 of February 13, 1942 there is a further note that some 1, 100 boats and their equipment valued between \$2,000,000 and \$3,000,000 are impounded, of which 950 are at New Westminster and the rest at Prince Rupert, that the owners though of Japanese race were Canadian citizens whose productive power by virtue of ownership, contributed significantly to the fishing industry. It was recommended that the fishing vessels be put back to use in other hands than Japanese to maintain the food supplies of fish for the

Allies. These vessels were to be sold in a manner consistent with the needs of national defence and security and with due regard to the equity of the Japanese Canadian owners. A committee of three was appointed with stated functions to dispose of the vessels, one of these persons was a jurist, another was appointed by the Department of National Defence and a third was chosen to represent the Japanese Canadian owners.

The duties of the committee were as follows:-

1. to allow free negotiation between the owners and the prospective buyer for charters, leases, or sales, which the committee would review and approve if satisfactory;
2. to arbitrate disagreements on price to prevent advantage being taken of duress;
3. to report on claims which may be made on the Government for damage to or deterioration of, the vessels and equipment while under detention;
4. to report on claims which may be made on the government for the return of the detained vessels from their present storage place to places where they were picked up.

The committee was also instructed to find means of disposing of vessels no one wanted. The Navy had first choice for boats. They took a number of fish packers and seiners but it is doubted that their owners are getting the regular charter rates. In other cases a complete descriptive file was made of each boat and by going through the file a buyer

could select one he thought suitable and then contact the owner. If satisfactory price and terms could be reached the sale was sent to the committee for approval. During this period there are claims of loss, where boats were being sold at a third of their cost of two or three seasons previous. It is possible that these sales may have been negotiated in a hurry and outside the regular channels.

The personnel of the committee was good. The chairman was a judge of the British Columbia supreme Court who had previously specialized in marine law and was also a master mariner, a naval commander, and a Japanese who had been in fisheries processing and exporting. Most of the work was done by the executive secretary and his staff.

The committee made, by P.C. 987, a disposal charge of one per cent of all monies involved in transactions to cover expenses which were higher than estimated and for the large number of claims for damages to vessels while in custody. There were the fees of competent marine surveyors who were to appraise damages. By this system the owners were to pay into what amounted to an insurance fund from which owners would get benefits. In this manner they could be paying damages to themselves. However, these amounts were paid promptly to the Receiver General of Canada and included in the Consolidated Revenue Accounts. This matter of having what amounts to a sales tax for a specific purpose is not usually done unless recognized as an insurance contribution or a

service charge.

In P.C. 3737 of May 5, 1942 it was reported that the Fishing Vessels Disposal Committee had its marine surveyors examine the boats along with the Department of National Defence for Naval Services and reports were complete on conditions of boats. It was therefore recommended that a fair and equitable settlement of such damage claims follow general principles as stated:

- (a) Vessels sunk during impoundment. To cover cost of raising and reconditioning, to place machinery in running condition, to make hull reasonably watertight and to provide one priming coat of paint.
- (b) Other hull and engine damage. To cover cost of reconditioning on satisfactory assurance that damage occurred while under impoundment.
- (c) Equipment losses. Allowance based on a sufficiency for the safe operation of a vessel, also on condition that there is satisfactory evidence that such equipment was aboard, when the vessel was impounded. Due consideration was to be given to depreciated values.
- (d) Disallowed items. Claims for skiffs, life boats, or galley equipment and personal effects to be disallowed.

This committee was to make reports on claims and

settlements but the payments would be made on authority of the Minister of Fisheries as ordered in P.C. 3737. For this purpose a fund of \$80,000 was made available from War Appropriations.

The main idea behind this committee was to get the boats into productive employment as expeditiously as possible.

The question arises whether this method of settlement and disposal was in accord with the provisions of sections 7 and 9 of the War Measures Act. While this matter of fixing compensation will be treated later in the section on the disposal of real property by the Custodian it may be mentioned that under section 7 whenever property is appropriated by His Majesty a disagreement on compensation is to be referred by the Minister of Justice to the Exchequer Court, or to a Superior or County Court or to a judge of such a court. In this particular case it will be noted that the purchase was not ~~done~~ by the government but by a private party through a government agency, which was to arbitrate disputes on price. No provision is made in the War Measures Act for forced sales between one private party and another, therefore the legality of these forced sales is in doubt.

It will however be noted that the committee chairman was a judge but this would not fill the requirements of section 7 as he would have to act as one of a committee in decisions. Section 9 of the War Measures Act states that the courts may make its own rules to govern the procedure upon a case being

referred to it. In this case no mention is made as to governing rules of procedure but includes what matters are to be given consideration, but also states that some extraneous circumstances have governed the procedure. Furthermore the payments were not determined by this committee but its decisions unlike a court were advisory to the Minister of Fisheries.

In P.C. 6247 of July 20, 1942 it was reported that some 1,027 vessels of a total of 1,265 had been disposed by the committee. The remaining 238 which were the least useful and desirable, were to be turned over to the Custodian of Enemy Property who is administering other properties of persons of the Japanese race in British Columbia. This transfer of agency and responsibility was completed as a protective measure only on August 1, 1942 Section 2 of the order states that the Consolidated Regulations Respecting Trading with the Enemy, 1939, shall apply mutatis mutandis as if the property belonged to an enemy within the meaning of the said Regulations.

An order in council, P.C. 6787 of July 31, 1942 modified a previous order ⁶ and allowed claims for skiffs and lifeboats, galley equipment, and personal effects.

⁶ P.C; 3737, section (d) of May 5, 1942.

It was also decided to pay claims for impounded vessels whose owners were non-Japanese but which were detained because they had Japanese crews or no certainty existed of ownership.

111. The Construction Corps and Work Camps.

The next section deals with the proposed Construction Corps and work camps for Japanese nationals.

Although the Construction Corps did not ^{materialize} materialize, the provisions for it, made by Order in Council are of importance because they help to give some insight into the attitude of the authorities. The order has an attached schedule of penalties and duties but is lacking in a statement of rights and privileges.

On February 5, 1942 Japanese nationals were ordered to leave the protected area as defined on January 29, 1942. The order for all persons to evacuate came in on February 26, 1942. In between these dates, February 17, 1942, an order to set up a Construction Corps of Canadian citizens was passed. Work camps were to be organized to employ Japanese nationals at roadbuilding but nothing had been provided outside of industrial employment to correspond with military service for Canadian citizens. Expressions of a desire for more active participation in the war effort had been voiced in some quarters and communications had asked the Department of Labour to advise them on some form of service which would make the best use of their abilities. However, no direct replies ~~were~~ were received.

But by this order of February 17, 1942 the acting Minister of Labour reported that it was not found expedient to enlist such Canadians in unrestricted numbers in the armed forces. It was deemed opportune, having regard to the necessity for the full utilization of all available manpower to form the Construction

Corps of civilian Canadian nationals of Japanese racial origin. This was the limit of the response received by these persons.

This Corps was to be under the Department of Labour and was to be staffed with officers and civilian personnel. Enrollment was to be voluntary and for the duration of the war. In pay, the basic rate was not to be up to Canadian Army standards but one dollar per calendar day. Dependents allowances were to be equivalent to City of Vancouver relief but never more than one half those payable to dependents of men in the Canadian Army.⁷

⁷ P.C. 1271, section 7, February 17, 1942.

Furthermore, to qualify for dependents allowances a member of the Corps was required to assign not less than fifty per cent of his monthly pay to such dependents. A person would therefore have to assign \$15.00 out of his total \$30.00 and this amount would be supplemented to the relief payment. It is stated that these amounts will be payable but it is not stated that they shall be payable in every case. It seems to have been conceived as a relief measure, and if so the matter of distribution will enter before disbursements are made. Should a person not assign one half his pay, his dependents will receive no measure of relief.

On his discharge the person was to receive a gratuity of \$2.00 for each month completed in service, except on discharge for misconduct. It does not state that a clothing allowance will be provided although this gratuity will do little more than outfit a person with underwear and a pair of trousers.

Personnel were to receive accommodation, subsistence,

clothing and medical care but no mention is made of hospitalization which on strict interpretation would be excluded.⁸

⁸ P.C. 1271, section 10, February 17, 1942.

The Corps was to work on projects authorized by the Governor in Council to further the war effort. Offices of the Corps for enrollment were to be opened at Vancouver and at other points where considered necessary. Transportation was to be paid from the point of enrollment to the subsequent location but no provision was made for travel from the point of residence.

The Corps could be sent to any province for any work which would further the war effort of Canada under agreement with any corporation or individual. This meant that a private corporation could get one dollar a day labour which had signed for the duration.

A schedule of offences and penalties was drawn up. Members of officer rank when charged with any of the enumerated offences could be placed under arrest, thereafter the Commandant, should he so will, on receipt of the written charge, conduct an investigation and submit the evidence with findings and recommendations to the Minister of Labour for confirmation or otherwise. This depends on the choice of the Commandant and has no mandatory provision.

The other members of the Corps could be charged with the following offences: ⁹

⁹ P.C. 1271, Schedule A, February 17, 1942.

(a) Disobeying or refusing to obey the lawful command of,

- (a) or striking his superior in rank, or any other member of the Corps placed in authority over him.
- (b) Oppressive or tyrannical conduct to his inferior in rank or to any other member of the Corps over whom he exercises authority.
- (c) Intoxication, however slight.
- (d) Having intoxicating liquor illegally in his possession or concealed.
- (e) Mutinous or insubordinate conduct.
- (f) Leaving any post on which he has been placed as guard, or escort, or any other duty.
- (g) Being asleep, not alert, or inattentive whilst on tour of duty.
- (h) Deserting or absenting himself from his duties or quarters without leave.
- (i) Conduct, disorder, or neglect to the prejudice of morality or discipline, although not specified in any rule or regulation.
- (j) Violating any standing order, rule or regulation of the Corps.

Any such person may be placed under arrest and detention, and the Commandant when in receipt of the written charge may in summary way conduct an investigation and if proved on oath and to his satisfaction shall convict the offender who shall then be liable to five up to fifteen days pay or confinement to quarters

for a period up to thirty days or both fine and confinement or to reduction in rank or dismissal from the Corps.

Fortunately, the Corps did not materialize but the persons for whom it was intended were included under the identical provisions for Japanese nationals. By P.C. 2542 of the 21st of March, 1942 on the recommendation of the British Columbia Security Commission it was decided to defer the matter.

The first order setting up road camps for enemy aliens was P.C. 1348 of February 19, 1942 which was 14 days after the Government Notice of February 5, 1942 ordering out all enemy aliens between the ages of 18 and 45 years before April 1, 1942 and 7 days before the Government Notice of February 26, 1942 which ordered out all persons of Japanese race forthwith. By the first order concerning only work camps, the coverage was restricted to enemy aliens, including Japanese nationals, but did not take in Canadian citizens. This order was amended on July 31, 1942 by P.C. 6758 to cover, in addition Japanese nationals employed by the British Columbia Security Commission anywhere in Canada, which was set up under P.C. 1665 and 1666 of March 4, 1942 to handle the general evacuation. There was yet no order regulating the employment or authorization for work camps for Canadian citizens. By P.C. 8173 of September 11, 1942 another amendment was made to include, in addition to Japanese nationals, other persons of Japanese racial origin.

Although this order was brought in on September 11, 1942

Canadian citizens had been in road camps under identical circumstances since the beginning of April 1942, and were also employed by the British Columbia Security Commission since the middle of March, 1942 at Hastings Park Clearing Station and in evacuation camps.

The provisions of order in council P.C. 1348 of 19th February, 1942 are twice amended by P.C. 6758 of July 31, 1942 and P.C. 8173 of September 11, 1942. In their final application they authorized the movement of able-bodied male persons to road building projects on the Jasper, Blue River Highway, The Revelstoke-Sicamous area, and the Hope Princeton Highway in British Columbia and in Ontario to the Schreiber-White River division of the Trans-Canada Highway. Japanese nationals went to the Jasper-Blue River Highway and to Hope-Princeton, and the others went to the Sicamous-Revelstoke and Schreiber-White River areas.

Early in February some Japanese nationals were slated to be transported to pulp wood cutting operations in Northern Ontario around Chapleau but objection was raised by the Port Arthur Trades and Labour Council and the International Brotherhood of Pulp Sulphite and Paper Mill Workers of the Port Arthur area, so negotiations broke down. No further attempts were thereafter made to get men into private employment.

The first men went to areas in Jasper National Park where they lived in railway cars until the camps were built. They left at a time when it was not known what would happen to

their families. The actual handling of this work was done by the R.C.M.P. the camps were under the jurisdiction of the Department of Mines and Resources and the allocating of men was done by the Department of Labour.

The Department of Mines and Resources was authorized to establish work camps that would be of national benefit and make necessary arrangements for the maintenance, care and employment of all inhabitants who may be allocated to such camps by the Minister of Labour, and for the supervision of the work.

These projects were to be approved by the Minister of Labour with the concurrence of the Minister of Mines and Resources, and the Minister of Labour also had power to enter into agreements with other provinces, corporations and individuals for the employment of these persons under his terms and conditions with the concurrence of the Minister of Mines and Resources,

Their pay was twenty-five cents an hour for unskilled labour based on an eight hour day, and for other classifications pay was thirty and thirty-five cents. In evacuation centres deductions of two and one half cents per hour were made for housing. The Minister of Labour was given power to make regulations in respect to wage schedules, hours of labour, medical inspection and the degree of medical care, hospitalization, Unemployment insurance and workmen's compensation.

Deductions of one dollar per month were made for medical care and hospitalization, and income tax was deducted.

All persons with dependents were required to assign twenty dollars from their monthly pay for the maintenance of these dependents and the Minister of Labour at his discretion may pay in addition an allowance of five dollars for the first child and four dollars each for the following four children, under sixteen years of age, provided none were employed. Dependents in this case were supposed to be parents and brothers and sisters, and in some cases grand parents.

These persons were deemed to be employees within the meaning of the Government Employees Compensation Act but such compensation was not to cover temporary disabilities but to allow necessary first aid, medical and hospitalization expenses but no further compensation as usually provided which means that during periods of convalescence no provision outside of relief is allowed.

In cases of permanent disability compensation was to be no more than two thirds of the average weekly earnings regardless of any minimum rate of compensation. At 25 cents an hour, a person would get \$12.00 per week of 48 hours. His maximum compensation would be \$8.00 per week regardless of the severity of the disability. Actually he would not get this but the relief rate for himself and his family. In one case a man lost a leg as a result of an accident while road building. He received no compensation but only relief with the statement that a

settlement would be made at the end of the war.

In addition the Minister of Labour was authorized to take necessary measures to ensure the proper conduct and control of these persons. In the Jasper-Blue River area which was opened first, the men worked with some enthusiasm when building the camp but thereafter did not do a great deal of work. They brought up grievances at every opportunity and when their mail was held up for many weeks and when their wives did not get their assigned pay and allowances for about two months, they became openly hostile. Furthermore they knew little about their families and holding mail only added to ill-feeling. The men went on strikes often and when camp food was low from the foreman not ordering sufficient they bound the man and beat him up. At other times they set snares for moose and bears and spent their time ~~by~~ tormenting them with stones; ~~their~~ was a form of transference to release their emotional convulsions.

While at work they sat in the shade during the heat and if ordered to work they would chase away the foreman. In one case at Gosnell during a strike about sixteen men were interned. The usual guards were not sufficient so the militia were called in. The men were picked up and taken to the immigration shed in Vancouver and later interned.

At one camp at Solsqua the men claimed that errors had been made in their time and protested. Three of the men were

then picked up and sent to the Immigration Shed to be interned. However friends in Vancouver intervened and they were released.

In another case about the end of July it was decided to move all married men out of the road camps and send them to the evacuation camps to live with their families. En route a party was detained and ordered to build houses for evacuees at a place other than where their families were. They refused to work unless allowed to visit their families first, so were interned.

In the Schreiber-White River two to three hundred young men were sent in to build roads. As soon as they got there they were ordered not to be on any private property, not to fish and to have lights out by ten o'clock. They immediately went on strike in protest, so the order was modified. However when these men went on the river ^{drive} or ~~set~~ to bushwork these restrictions did not apply.

About the beginning of May these men outside of those employed in lumbering and bush work, were ordered down to Western Ontario sugar beet farms around Chatham, Glencoe, Dresden, Wallaceburg, Valetta etc. Here they lived in improvised farm buildings under R.C.M.P. guard, and were not allowed out except about six in a group under police escort. This practice was discontinued, however, as the summer progressed. About November they were transported up to Kaspuskasing for bush work.

1V. The Registration and Liquidation of Property by the Custodian of Enemy Property.

Previous mention has been made of Regulation 39E of February 24, 1942 of the Defense of Canada Regulations which prohibits the acquiring of property by persons of Japanese race. While the acquiring of property has been made impossible the disposal of property registered as a protective measure only has been continuing.

P.C. 2483 of March 27, 1942 states that under P.C. 1665 of March 4, 1942 the British Columbia Security Commission was in control of the planning, supervising, and directing of the evacuation and the placement of these people on a temporary basis for the duration of the war. The British Columbia Security Commission wanted a greater degree of protective control over persons of the Japanese race and their property. By this order more extensive control was gained over the Japanese. Regulation 11, section 2 of P.C. 1665 of March 4, 1942 was extended to cover all evacuated persons and provided for orders to be made for their conduct, activities and discipline.

Section 4 of P.C. 2483 repealed Regulation 12 of P.C. 1665 and substituted a more extensive order which placed property in any protected area in British Columbia delivered up to any person subsequent to an order of the Minister of Justice, or which is turned over to the Custodian by or on behalf of the owner, or any article left behind by the owner in the care of the Custodian. This property then was subject to the control

and management, as a protective measure only, of the Custodian as defined in the Regulations Respecting Trading with the Enemy, 1939, but no commission was to be charged for such management and control. However in sales of automobiles administrative charges were made which in some cases amounted to the sale price, in others netted the owner three dollars and fifty cents.

The Custodian was permitted to order that all or any property situated in any protected area of British Columbia, belonging to any person of the Japanese race shall, for the purpose of protecting the interests of the owner or any other person, be vested in the Custodian, and the Custodian would then have full power to administer such property for the benefit of all such interested persons and shall release such property upon being satisfied that the interests will not be prejudiced thereby.

This property was brought under the control and management of the Custodian as if the property belonged to an enemy within the meaning of the Consolidated Regulations. Property and other belongings left behind were considerable because statements were made that free baggage allowance was limited to 150 pounds per adult ticket and 75 pounds per child ticket, although in actual practice more was allowed. It was stated that freight and anything in excess would be charged and borne by the person. Another reason was because no persons had any idea what the future had in store and thought all accommodation and equipment

would be provided, consequently left their homes without personal effects and clothes. All their bedding, cooking utensils, dishes, food, etc., were left behind when they locked the door. They were able to have some of these things sent to them after being evacuated but many things were left behind and stolen. Other persons had to pay the freight charges on things such as bedding, cooking and laundry equipment, small items of furniture, garden tools, etc. This means that even with forced evacuation they had to meet partial costs and what was left behind was auctioned and returns credited to the owners account.

Persons were allowed to ask the Custodian for amounts of money for various reasons and if he thought the reason justified he could forward a certain amount. However these amounts were checked against relief payments as income and persons were expected to live on these assets.

A change of policy took place on June 29, 1942 with P.C. 5523. The protective measures only for the owners' interests were abandoned and on the report of the Minister of Mines and Resources and the Minister of Pensions and National Health an order in council was brought in which covered agricultural land, and stated a survey had been carried out to ascertain the actual number and condition of Japanese farms, to carry out an appraisalment of their fair present day value and to consolidate the control and disposition of these lands by sale, lease or otherwise. This was the first indication that the protective measure was interpreted as forced liquidation.

This forced liquidation of property in the protected area with the owners removed was advisable for the security, peace, order and welfare of Canada. It also meant that ownership in itself even without power of control and management was in itself a force to disturb the safety of the state. One is led to doubt the good faith of this move.

To carry this out the order stated that the approval of the Director of the Soldier Settlement Board was required, and only subject to his conditions was it possible for a person to purchase, lease or otherwise acquire agricultural land formerly held by a person of the Japanese race, and no person of Japanese race was to sell, lease or otherwise dispose of land except under the above conditions. These leases and sales were made out between the purchaser or lessee on the one part and the Soldier Settlement Board on the other without the owner figuring in at all; but amounts accrued to the owners account.

The Director was given power in his sole discretion to approve or refuse to approve any agreement of sale or to stipulate the terms of the transaction. Furthermore the Director could order the appraisal of any agricultural lands and report on them to the Minister. In the course of appraisal an authorized inspector was given powers to enter at all reasonable times to inspect any agricultural land belonging to a person of the Japanese race and any person may be required to furnish information and any documents asked for by the inspector, and any refusal, on summary conviction was to bring a penalty of a

relinquish any property or proceeds. Some persons receive amounts at periodic intervals under this clause ¹³.

¹³ Ibid. Regulations 38 and 39.

V. Evacuation and Temporary Resettlement.

The next section deals with the evacuation and temporary resettlement of persons from the protected area of the west coast. After December 7, 1941, 21,300 persons of Japanese race were expelled. By September 28, 1943, 5,786 of this number were living outside of British Columbia, of whom 2,861 were in Alberta, 84 in Saskatchewan, 1,074 in Manitoba and 1,570 in Ontario and 191 in Quebec. This leaves about 17,000 in British Columbia, of whom about 12,000 were in government supervised evacuation camps. Of the 5000 outside of these camps a certain number are in road camps and others in scattered towns in agricultural and industrial work.

The first part of evacuating men by the R.C.M.P. was poorly done. It was not conceded that the work was entirely different from policing. Men were ordered out on threat of internment without any provision made for the care of families or consideration given to the persons usefulness in the community. Widowers with small children were ordered out without anyone to care for the children, and some cases of active V.D. were sent to places where there were no facilities for treatment. One medical doctor was ordered to a road camp. With this total inability to understand the nature of the work undertaken the role of the R.C.M.P. in

fine up to one thousand dollars and/or six months imprisonment. The burden of proof was on the accused. Nothing in the order was to affect enemy property as defined in the Consolidated Regulations Respecting Trading with the Enemy, 1939. Yet the converse was true, as stated in P.C. 2483 of March 27, 1942 amending Regulation 12, section 3 of P.C. 1665 of March 4, 1942, that for purposes of control and management by the Custodian the Consolidated Regulations shall apply mutatis Mutandis to the same extent as if the property belonged to an enemy within the meaning of the regulations.

It will be noted that in section 3 of this order it is stated that the Director may in his sole discretion, refuse to approve or approve, either unconditionally or subject to such terms or conditions which to him seem to be fair and reasonable, the purchase, lease, etc. But it will be further noted that all these provisions are subject to section 7 of the War Measures Act⁹ which states that in any case where property is

⁹ Chapter 206, R.S.C. 1927

appropriated by His Majesty and compensation is not agreed upon the claim shall be referred by the Minister of Justice to the Exchequer Court, or to a superior or to a county court of the province or to a judge of such court. It may be argued that the section purporting to give the Director sole discretion is invalid. This is upheld in the Supreme Court of Canada in the reference as to the validity of the Regulations Respecting Chemicals and the Order No. C.C. 2-B of the

Controller of Chemicals (1943 S.C.R. 1) ¹⁰ .

¹⁰ p. 235, Special Course of Lectures on Wartime
Emergency Orders and Administrative Tribunals.

In this judgement the Chief Justice points out that powers granted to the Controller must be exercised in good faith for the purposes for which they are given. Section 4 of the Chemical Controllers Regulations was held invalid because they purported to authorize in some cases for the Minister of Munitions and Supply and the Controller jointly to fix compensation for any chemicals taken by the Controller. This was contrary to the provisions of section 7 of the War Measures Act.

In regard to the forced disposal of land it may be argued that this selling does not promote or affect the security of the state and therefore not an act of good faith, and therefore invalid.

An order, P.C. 6885 of August 4, 1942 modified slightly P.C. 5523 of June 29, 1942 by naming an alternate to act in the absence of the Director. It has been found that leases when carried through by the Director of the Soldier Settlement Board were very unsatisfactory and usually took about five months. Even at that late date the owner did not know where the matter stood except through his attorney who reported on matters and reviewed the terms of the lease.

On January 19, 1943, P.C. 469 came into effect and revoked P.C. 5523 of June 29, 1942 amending order P.C. 6885

of August 4, 1942 which covered agricultural land. This previous order required that all transactions come under the soldier settlement Board. These orders were revoked.

Since some doubt was expressed of the authority of the Custodian to take over the unfinished business of the Fishing Vessels Disposal Committee under P.C. 6247 of July 20, 1942, paragraphs 3 and 4, they were rescinded and the following substituted therefore. It was in doubt whether the Custodian was to take on powers in regard to disposing of fishing vessels which exceeded those of the Committee. The Committee was not able to force sales but the Custodian under the substituted paragraphs, when he considered it advisable was able to liquidate, sell or otherwise dispose of these vessels and equipment on his own terms, and any such document or agreement of the Custodian dated after August 1, 1942 was to have full legal validity. By substituted paragraph ~~and~~ all unfinished business of the Committee was transferred to the Custodian. In regard to property the Custodian by this order was authorized to control and manage any and all property of evacuated persons of Japanese race and this was to include powers to liquidate etc., and for these purposes the Consolidated Regulations were to apply mutatis mutandis as if the property belonged to an enemy within the meaning of the said Regulations. The standing of this paragraph when owners do not give consent may run afoul of section 7 of the War Measures Act as stated above.

Almost all orders in council dealing with property mention the Consolidated Regulations Respecting Trading with the Enemy (1939). These were introduced in P.C. 3959 of August 21, 1940. By P.C. 8526 of November 13, 1943 the previous Consolidated Regulations were cancelled and a new set substituted. The term 'enemy' is defined quite extensively but no specific definition brings in persons of Japanese racial origin, except section 8 of Regulation 1 which might apply. It takes any person declared by the Governor in Council to be an enemy, but even this is by individual definition of a person. This section seems to be countermanded by a special general clause which provides that being an enemy subject is insufficient reason, which covers Japanese nationals.

By Regulation 6, paragraph 1, the Custodian is appointed by the Secretary of State to receive, hold, manage, release or dispose of or otherwise deal with all property which is reported to him. When persons of Japanese race left the protected area, they reported their belongings to the Custodian and he thereafter assumed these powers.

All enemy property is vested in the Custodian under Regulation 21, paragraph 1, and is subject to his control whether or not the property has been disclosed to the Custodian as required by the Regulations. This means that if evacuated Japanese are classed as enemies the treatment of their property in the protected area is identical with enemy property even when

it is not reported. One would think that the specific requirement of protective measure would limit the acts of the Custodian in handling this property, but under the Regulations themselves the Custodian may act in such manner as he in his sole discretion may decide.¹¹ It is also stated that once property

¹¹ P.C. 8526 of November 13, 1943, Regulation 21 (2).

is so vested the owner shall thereafter have no rights or remedies against any person in respect to such property; which means that a Japanese person who had property for example a house or a marine engine in the protected area, would not be able to stop pilfering. All rights and remedies are instead vested in the Custodian who is supposed to protect the property.¹²

¹² Ibid, Regulation 22 (1) and (2).

When real property was liquidated the Custodian asked the owners to send him the title but they refused. Provision is made in Regulation 23, paragraphs (1), (2), (3) and (4) whereby the Custodian may issue a certificate stating that such property is vested in him and it may thereupon be registered at the Land Titles Office or registration office of the district, and upon the Custodians written request the transfer of title takes place from the owner to the Secretary of State of Canada without further proceedings. This procedure is deemed sufficient and no possession is required of document relating to title; and thereafter the former owners interests in the property cease.

The Custodian may liquidate any property vested in him and may deal with the proceeds in the usual way, or may

evacuation was changed to more formal police activity.

On March 4, 1942 by P.C. 1665 the British Columbia Security Commission composed of three members and an advisory committee of 20 representative citizens was appointed, with headquarters in Vancouver, to evacuate all persons. The members of the Commission were Austin C. Taylor, ranking West Coast industrialist as chairman, Assistant Commissioner (now Deputy Commissioner) J.N. Mead, Royal Canadian Mounted Police and head of the Criminal Investigation Bureau and Assistant Commissioner John Shivas of the B.C. Provincial Police. This Commission was set up under the Minister of Labour and had powers to make its own by-laws, with the approval of the Minister, which were not contrary to the provisions of the order to cover the direction, conduct and government of its business.

It was the duty of this Commission to plan, supervise and direct the evacuation of all persons of the Japanese race. It was to determine the time and order of the evacuation of such persons, to decide on their mode of transport and all matters relative to their placement. It was to provide for the housing, feeding, care and protection of such persons in so far as the same may be necessary.

The Commission had almost full control over the life of any person of the Japanese race and by order could require him to remain in his place of residence or to leave his place of residence and to proceed to any other place within or without

the protected area at such time and in such manner as the Commission may prescribe by order, or to order the detention of any such person and it could also nominate the person who was to enforce the order. By these regulations¹⁴ a person could

¹⁴ P.C. 1665, Regulation 11, paragraph 1, March 4, 1942
be detained with little reason available and none need be given. The Commission could also make other orders respecting the conduct, activities and discipline of evacuated persons.

Provision was also made for the custody of Japanese property as a protective measure only ¹⁵ which was to include

¹⁵ Ibid, Regulation 12, paragraph 1,2,3.
all property which the evacuee was unable to take with him; but not to include fishing vessels ¹⁶ deposits of money, shares of stock, debentures bonds or other securities. However this
¹⁶ subject to P.C. 288 of January 13, 1943 and amendments.
section of the Regulation was ignored and questions respecting these items were asked and replies reported on the forms.

In the evacuation all departments and agencies of the government were to assist the Commission by lending required personnel, furnishing medical aid, hospitalization, food, clothing, transportation use of land, buildings, equipment, utilities and other supplies and services, as they were available. In particular the Royal Canadian Mounted Police was to compile information on persons to be evacuated and segregated and to concentrate these persons, if so required for the public safety. Transportation

was to be arranged through the Department of Transport for priority rights in requisitioning trains and coaches, for hauling lumber and materials etc. and the Department of National Defence was to furnish personnel to look after housing, feeding and clothing of evacuated persons, and the Department of Munitions and Supply was to arrange priorities for housing, supplies, food and services. The Royal Canadian Mounted Police were to protect the evacuees and maintain the public safety and the Department of Labour was to look after employment. After a while the Commission developed its own extensive staff to handle all this work but had the R.C.M.P. do a part of it. For an extended period, until the beginning of July there seemed to be rivalry between the two bodies as to who was to have superior authority in various matters. Permits issued by one body would be cancelled by the other with no apparent good reason. For a while also there were two official heads of Hastings Park Clearing Station where persons from coastal areas were impounded before being transported, one was an R.C.M.P. Superintendent and the other was a Commission representative. It appeared that neither official had confidence in the powers and methods of the other. Gradually but effectively the R.C.M.P. was forced to relinquish control by the British Columbia Security Commission, and their work became restricted to formal police work and the issuing of temporary travel permits.

Other agencies had very little to do with the evacuation.

The Commission's own staff looked after welfare, transportation and placement, but as is always the case the Department of Finance exercised a great deal of power and the Treasury were constantly on guard. The Department of National Defence was in close cooperation when people were in Hastings Park Clearing Station ^{not in military mensurals but in men facilities + spitting of toilets} ^{alterations} modifications were made to equip the place as Army barracks when the Japanese were moved. Another reason was while detained the Japanese got fairly good food, up to Army standards as the place was visited by the Protecting Power Commission and the International Red Cross. It is reported that after one such visit the food was improved, when a check was made of all supplies used and the weight of garbage thrown out was estimated to compute the amount used.

The penalty for contravening or failing to comply with any of these regulations or by-laws was upon summary conviction a fine not exceeding five hundred dollars, or imprisonment for a term not exceeding twelve months or both fine and imprisonment. However no persons were tried, except for breaking curfew when they were sentenced to thirty days in jail, but rather were interned, which was more summary than summary conviction and all formalities of evidence could be dispensed with.

The final regulation of this order states that nothing contained herein was to be construed to limit or derogate from the powers conferred on any authority other than the

Commission by the Defence of Canada Regulations or any other statute or law. This would obviously lead to conflicts of laws if applied literally. National Selective Service Regulations were not applied during this period nor were unemployment insurance benefits payable. Old Age Pensions, Workmen's Compensation Allowances were stopped without legal authorization. Children of high school standing were forced to pay for correspondence courses and school instruction if they entered schools. The provisions of the Dependents Maintenance Act were in some cases foisted upon persons without court orders. At the same time other laws like traffic laws had to be obeyed as well.

There are points where these regulations and Administrative orders exceed the provisions of the Defence of Canada Regulations which makes one doubt if they were designed purely as security measures.

P.C. 3213 of April 21, 1942 was passed on representations made to the Minister of Justice that it was desirable that the Commission be empowered to enter agreements with the government of any province relative to the placement of persons of Japanese race in the province as a temporary measure for the duration of the war and these persons were to be removed upon the termination of the state of war. It was thereby provided that the original P.C. 1665, Regulation 10 have an additional paragraph (7) authorizing these agreements for the placing of these persons while the state of war lasts.

Alberta and Manitoba wanted families of workers for sugar beet fields but on a temporary basis only, while there was a manpower shortage. To meet this need, about 2800 persons moved to Alberta and another 1100 went to Manitoba.

It will be noted that no provision was made for education in evacuation centres, which was a contentious issue. For a long period none was provided except what could be bought by parents or arranged by voluntary efforts. The Commission assumed no responsibility at first and the local areas were obviously unable to handle the sudden influx of students and the province furthermore contended that these people were moved under dominion authority so therefore educational costs should be borne by that authority. Rather belatedly, the Commission conceded education as its responsibility and started on school buildings where no other schools were available and hired non-accredited teachers from amongst the evacuees. Schools were opened during the Spring of 1943. In Alberta the Commission undertook to give grants to cover partial costs to school districts for primary education, but secondary education had to be bought by the parents for the pupils.

P.C. 3903 of May 11, 1942 provided a sum of \$100,000 from the War Appropriation (1942-1943) as a grant to the Province of Ontario for recruiting, transporting and placing on farms male and female workers from other provinces and urban centres for farm work in the Farm Service Force. Part

of this plan was to employ persons of Japanese race who were sent to Northern Ontario road camps on the sugar beet and tobacco farms. A special grant of \$15,000 was set aside for the movement, placement, housing and policing and care of these persons. These were the persons who were shipped down to the small town fair grounds and placed under R.C.M.P. guard. However by the time the baseball season started and the circus came to the town they were free to move about.

In P.C. 3213 of April 21, 1942 amending P.C. 1665 of March 4, 1942 by adding paragraph (1) to Regulation 10 the Commission could make agreements with any province for the placement of persons of Japanese race. Attached to P.C. 4615 of June 2, 1942 is the agreement between the British Columbia Security Commission and the Province of Alberta.

This agreement has some importance because it is an instrument which may be fairly permanent, and because it is a two party agreement it cannot be changed on the sole volition of the Government of Canada. Its changes would have to be agreed upon by both parties. For this reason it will be dealt with at length. It may be assumed that agreements with other provinces are substantially the same.

The Commission found that it had to remove some 21000 persons of Japanese race but had no place to send them, and they had no intention to start large new centres like the Americans planned. To Alberta, the Commission undertook to send

only persons who were agricultural workers, their wives and families. The Commission was to meet all costs of transporting and was to oversee living quarters to see that persons were properly housed. The Commission and the R.C.M.P. were to exercise strict supervision over all persons of Japanese race during the entire period of their residence in Alberta and the R.C.M.P. were to take over all police duties in the districts where these persons of Japanese race were settled.

The Commission agreed that no person so moved, would become a charge on the province or any city, town, village or municipality, for relief, medical services, medicine, hospitalization or otherwise. It was further agreed that should any person require hospitalization, medical or dental care and thereafter should fail to pay as required, the Commission would pay the amount incurred to such public body.

The Commission also agreed to maintain supervision over all Japanese to ensure that they remain on the farms to which they were allocated and not move into or reside in any city in Alberta.

In regard to schools it agreed that should the school authorities of any municipality or school district object to the presence of Japanese children, the Commission would provide such education for these children as it considered requisite under the circumstances.

The parties declared that it was their desire that the

workers get the prevailing contract rate of pay for agricultural work in the area and that each family so placed be provided with a house and garden plot and be permitted to improve the house for the winter and occupy it until employment is terminated. However there is nothing in this clause which gives the person any security. The clause is declaratory of intention and not mandatory. In one case, a man and family built a house on the land of his employer while employed on the farm as no other was available. When it was completed his employer dispensed with his employ and ordered him to vacate. Under the agreement the worker had no claim to his house nor to any other place to live.

The conduct, activities and discipline of these people was to be under Commission orders and the R.C.M.P. was to look after enforcement. It was also able to move these people around as it desired without regard for the preferences of the persons so moved, and should the Council of any municipality want any Japanese removed, the Commission agrees to move them within a reasonable period of time. Thereby they were deprived of all rights of residence. Should the province want these persons removed from the province at the end of the war, the Commission is bound to do so.

On December 3, 1942, P.C. 1/11037 was passed appointing George Collins, Assistant Deputy Minister of Public Works for the Province of Manitoba as General Supervisor of Japanese

Evacuation and Maintenance to take effect from November 1, 1942 who was to take over the work of the three man commission.

Order in Council P.C. 1665 of March 4, 1942 was revised on February 5, 1943 by P.C. 946. The original commission was dissolved and its members made an advisory board. The position of commissioner of Japanese placement was created to work under the deputy Minister of Labour in all matters concerning Japanese. The Commissioner took over the work of the short lived general supervisor of Japanese Evacuation and Maintenance by a change of title. The staff of the Commission was retained. The enabling orders were consolidated and extended, the powers provided were as follows:¹⁷

¹⁷ P.C. 946 February 5, 1942 Regulation (3) of paragraph 1.

The Minister could determine the time and mode of evacuation from any protected area and decide on the place where these persons could reside. He could take measures thought advisable for the transportation, feeding, care, protection, employment and welfare of such persons. Further he could employ persons of the Japanese race on jobs and at rates suitable to him, which turned out to be about one half or less of the rate for white workers. He could refuse to allow a Japanese worker to leave a job should he so choose, which amounted to a form of forced labour.

In regard to dependents allowance he could provide these

allowances for persons employed by the Minister or in road camps or make deductions or force assignments from wages. Direct relief, including medical services was to be given to any indigent person.

He had full control over the movement of persons by power to require, by order, any person of the Japanese race in any place in Canada to proceed to any other place in Canada at such time and in such manner as he may prescribe ¹⁶.

¹⁶ Ibid. paragraph 1 (V11).

He was thereby given more extensive discretionary powers, of almost phenomenal extent over the life of human beings. He could make orders, rules or regulations respecting the conduct, activities or discipline of persons of the Japanese race as defined in these Regulations, or of other persons resident anywhere in Canada who are wholly of the Japanese race, or who have a father or a mother who is or was wholly of the Japanese race, and these persons may be prohibited from engaging in any activities, employment or business or in any specified activities, employment or business in Canada, from moving or travelling anywhere in Canada or from associating or communicating with any person, except subject to permit issued by or on behalf of the minister, etc.

No change was made to Regulation 12 on the custody of Japanese property of P.C. 1665 of March 4, 1942. An addition was made in the New Regulation 17 with paragraph (2) which states that all National Selective Service regulations shall apply to

persons of Japanese race except in so far as such direction is inconsistent with the order of the Minister, in which event the specific orders of the Minister shall prevail.

It would be of interest to review the Administrative orders of, first, the British Columbia Security Commission, and second, the Commission of Japanese Placement to get a better idea of detail.

The Commission had forty-six orders in all. Of these one prohibited fishing, hunting and trapping, one prohibited the purchase and possession of liquor in British Columbia, one prohibited leave from Hastings Park during the twenty-four hour period prior to evacuation. Two orders concerned the registration of male persons over eighteen years and up to 50; this was prelude to evacuation notices. One was on detention of persons failing to obey orders to appear for transportation. Two defined specific restricted areas in the City of Vancouver. One prohibited public meetings but was not enforced, yet police broke up meetings. One prohibited Japanese from entering, remaining on docks, wharves railway platforms, etc. another was on work camp regulations which was not enforced. Nineteen were on evacuation of specific areas which later were declared prohibited areas. Fishing was prohibited a second time, and included persons under eighteen years, in response to an objection to fishing from an interior fishing club located fifty miles from a Japanese settlement. One prohibited use of short-wave radio

and cameras and movement from any place without permit; one prohibited smoking in farm and other reconverted buildings at Fourteen Mile Ranch (one of the evacuation camps). Another prohibited gambling within Hastings Park Clearing Station where life earnings were lost and small fortunes were made. Another restricted travel, for a second time, from point to point without a permit. One restricted communication in British Columbia by long distance telephone or telegraph without permit and another prohibited possession or use of cameras in British Columbia within ten miles of a railroad.

There are only three orders of the Commissioner of Japanese Placement whose orders came in when the British Columbia Security Commission was dissolved. The orders of the Commission are now revoked and only the three new orders remain. The first concerns travel. A person must get an R.C.M.P. travel permit if he wants to enter a protected area, to cross a provincial boundary, change residence, visit for longer than thirty days or if in British Columbia, travel more than fifty miles. It has been intimated that the Defence Department objected to persons being absent for thirty days in British Columbia and have wanted it reduced to eight days. However this change has not yet been made.

The second order states that no person may fish in British Columbia, and the third that no one in British Columbia is to communicate by long distance telephone or telegraph without

permission from the Officer of the Department of Labour, the R.C.M.P. or the British Columbia Provincial Police.

In concluding this study no review or comment on the provisions which make up the Wartime Legal status of persons of Japanese race is offered. One observation is tendered. Most provisions exceed by far the powers conferred under the Defence of Canada regulations which have been thought adequate for the security of the state. It therefore brings doubt to mind, that the bulk of these regulations are for purposes of security. A person is tempted to believe that other factors are not excluded. However such speculation must await a more extensive study for verification. In the meantime the words of Sir Cecil Thomas Carr give us some direction for our thought

-- "In the eternal dispute between government and liberty, crisis means more government and less liberty.... while the Anglo-Saxon tradition keeps alive historic suspicions of legislation by an encroaching executive, there is also the possibility of tyranny by the legislature itself. Free people, when they temporarily surrender freedom, will expect to see their inheritance restored to them when the storm is over. There will be two questions - how large will the question be, and how soon will the restoration come? Intensive regimentation and restriction impatient suppression of heterodox views, internment of dissentients, and other phenomena likely to be visible in times of grave stress are steps towards dictatorship, even

"..when taken along a lawful and constitutional road.

The most successful dictator is he who gains his power without forsaking that road. Hence the anxiety. Yet laws and constitutions are but the paper safeguards of liberty. A people must have the will to be free".¹⁹

¹⁹ p. 92 Concerning English Administrative Law,

Sir Cecil Thomas Carr.

And may it be further stated, that the will to be free is culturally conditioned and hence a greater anxiety.

Bibliography

1. Orders in Council mentioned.
2. Canadian Journal of Economics and Political Science
Vol. 7.
 - a. H.F. Angus The Effect of War on Oriental Minorities in Canada p. 506.
 - b. Forrest E. La Violette. The American-born Japanese and the World Crisis p. 517.
3. The Legal Status of Aliens in Pacific Countries edited by Norman Mackenzie.
 - H.F. Angus The Legal Status in British Columbia of Residents of Oriental Race and their Descendants. p. 77
4. Concerning Administrative Law. Sir Cecil Thomas Carr - Columbia University Press - 1941.

KUNIO HIDAKA AND ASSOCIATES

Economists and Social Scientists

NEW ADDRESS:
57 QUEEN ST. WEST

NEW TELEPHONE:
WAVERLEY 4258

200 BAY ST. :: TORONTO, ONT.

—
EMPIRE 3-5692

R E S E A R C H A N D C O N S U L T I N G S E R V I C E S