

P.C. 667
PRIVY COUNCIL
CANADA

AT THE GOVERNMENT HOUSE AT OTTAWA
MONDAY, the 4th day of FEBRUARY, 1952.

PRESENT

HIS EXCELLENCY

THE ADMINISTRATOR IN COUNCIL:

WHEREAS by Order in Council P.C. 3951 of 31st July 1951 the Right Honourable James Lorimer Illesley, P.C., K.C., Chief Justice of Nova Scotia, was appointed a Commissioner to inquire into and report upon claims arising out of World War II that have been asserted by Canadians in respect of death, personal injury, maltreatment and loss of or damage to property;

AND WHEREAS requests have been made with respect to losses resulting from deaths or injuries for payment of interim compensation pending the completion of the investigation of all such claims;

AND WHEREAS the Commissioner was requested to submit an interim report on the practicability of making payments of interim compensation and by his interim report dated November 2, 1951, the Commissioner has recommended payment of interim compensation in certain cases.

THEREFORE, His Excellency the Administrator in Council, on the recommendation of the Secretary of State, is pleased to authorize and doth hereby authorize the Minister of Finance to make payment by way of advance on account of compensation that may finally be awarded with respect to war claims that the Treasury Board is satisfied are eligible for payment in accordance with the rules set out in the Schedule hereto, to be known as the "War Claims Interim Compensation Rules", the payments to be made out of moneys appropriated by Parliament to provide for miscellaneous, minor and unforeseen expenses or out of moneys provided by Parliament for the payment of war claims.

N. A. Robertson

Clerk of the Privy Council.

Schedule.

1. These rules may be cited as the "War Claims Interim Compensation Rules".

Interpretation.

2. In these rules,
 - (a) "act complained of" means the act of the belligerent armed forces or the maltreatment causing the death or injury in respect of which a claim is made;
 - (b) "Canadian domicile" means Canadian domicile within the meaning of the Immigration Act;
 - (c) "child" includes step-child, adopted child, grandchild and a person to whom the deceased or the claimant stood in loco parentis;
 - (d) "civilian" means a person who at the time of the death or act complained of, as the case may be, was not a member of any armed forces, police forces, organized group or other class to or in respect of all or some members of which benefits have been provided by way of pension, gratuity, or other compensation for injury or death arising out of service in World War II under

The Pension Act
The Women's Royal Naval Services and the
South African Military Nursing Service
(Benefits) Act
The Civilian War Pensions and Allowances Act
The Special Operators War Service Benefits Act
The Supervisors War Service Benefits Act

or any similar statute or regulation of Canada or Newfoundland or of any other country and notwithstanding that such pension, gratuity or compensation may not be payable to or in respect of that person, although he is a member of the class;

- (e) "Domicile" means "domicile" in accordance with the principles of the Common Law;
- (f) "enemy government" means the government of any of the German Reich, Hungary, Italy, Japan and Roumania;
- (g) "operations of war" means
 - (i) acts of actual warfare by belligerent armed forces, enemy, allied or Canadian, outside of Canada and Newfoundland, and
 - (ii) maltreatment in internment or detention by the civilian or military authorities of an enemy government;
- (h) "Parent" includes father, mother, grandfather, grandmother, step-father, step-mother, a person who adopted a child and a person who stood in loco parentis to the deceased or to the claimant;
- (i) "World War II" means
 - (i) in the case of the war against the German Reich, Hungary, Italy and Roumania, the period from September 1, 1939 until May 8, 1945; and
 - (ii) in the case of the war against Japan, the period from December 7, 1941, until September 2, 1945.

Canadian.

3. (1) For the purposes of these rules "Canadian"

means:-

(a) with respect to any time on and after the first day of January, 1947, a Canadian citizen within the meaning of the Canadian Citizenship Act, and

(b) with respect to any relevant time before the first day of January, 1947, means a person

(i) who was born in Canada and had not become an alien at the relevant time;

(ii) who was born outside of Canada and his father, or in the case of a person born out of wedlock, his mother,

(A) was born in Canada and had not become an alien at the time of that person's birth, or

(B) was, at the time of that person's birth, a British subject who had Canadian domicile

if at the relevant time that person had not become an alien and had either been lawfully admitted to Canada for permanent residence or was a minor;

(iii) who was granted or whose name was included in a certificate of naturalization granted in Canada and that person had not become an alien at the relevant time;

- (iv) who at the relevant time was a British subject who had Canadian domicile;
- (v) who being a woman other than a woman who comes within paragraph (iii) or (iv)
 - (A) before the relevant time was married to a man who at the time of the marriage possessed the qualifications set out in paragraphs (i), (ii), (iii) or (iv); and
 - (B) at the relevant time was a British subject and had been lawfully admitted to Canada for permanent residence; or
- (vi) who at the relevant time was a British subject having a domicile in Canada.

(2) For the purposes of these rules, Newfoundland shall be deemed at all times to have been part of Canada.

(3) Where any question arises under these rules as to whether a person had Canadian domicile or was or is a Canadian citizen within the meaning of the Canadian Citizenship Act at any time, or had domicile in Canada or was a British subject at any time, the Custodian appointed by the Revised Regulations respecting Trading with the Enemy (1943) or the Treasury Board may refer the question to the Deputy Minister of Citizenship and Immigration, the Under-Secretary of State for External Affairs or the Deputy head of any other Department having information with respect thereto for his opinion and advice and may request to be furnished with such information as may be available to him and the Deputy Minister, Under-Secretary or other Deputy head shall furnish such opinion, advice or information.

Interim Compensation.

4. Payment may be made of an amount not exceeding one-half of the amount that the Treasury Board is satisfied is the amount of the loss sustained by a claimant, or \$2,000, whichever is less, if the Treasury Board is satisfied

- (a) that the claimant is undergoing serious financial hardship at the time he makes his claim for payment, and
- (b) that the loss resulted from injury to the claimant or to his wife or child, or from the death of another person, caused by operations of war during World War II and the requirements of these rules are complied with.

5. Where a claim is for loss resulting from the death of a person payment may be made if the following requirements are met:

- (a) the claimant was a Canadian at the time of the act complained of, at the time of the death and at the time the claim is allowed;
- (b) the claimant was the spouse, parent or child of the deceased;
- (c) the deceased was a civilian at the time of the act complained of and at the time of the death;
- (d) the amount of the claim does not exceed the pecuniary loss suffered by the claimant as a result of the death of the deceased.

6. Where a claim is for loss resulting from personal injuries, payment may be made if the following requirements are met:-

- (a) the injury was sustained by the claimant or his wife or child;
- (b) the claimant was a Canadian at the time of the act complained of and at the time the claim is allowed;
- (c) the person injured was a civilian at the time of the act complained of;
- (d) the amount payable does not exceed the pecuniary loss to the claimant resulting from the injury, and in computing the pecuniary loss permanent impairment of earning capacity shall be included as a ground of loss, but earning capacity is not deemed to have been impaired during any period of internment or detention.

7. In computing the pecuniary loss under Section 5(d) or Section 6(d), no amount shall be allowed with respect to pain and suffering, loss of enjoyment of life, loss of consortium, or loss or diminution of expectation of life,

8. No interim compensation is payable if, in the opinion of the Treasury Board, the claimant is likely to receive or has received fair and reasonable compensation from another source in respect of the death or injury for which the claim is made.

9. It shall be a condition to the payment of interim compensation that the claimant undertake and agree to repay to His Majesty the amount paid by way of interim compensation if it is subsequently determined that the claimant is not eligible to receive any compensation, or such part of the amount paid as is in excess of the amount that it is subsequently determined that the claimant is eligible to receive, for the loss in respect of which the claim was made.

10. Where the claim has been made by or on behalf of an infant or other person under any legal incapacity, payment may be made to such a person and on such conditions as the Treasury Board may determine.

Procedure.

11. A claim for interim compensation under these rules shall be made to the Custodian appointed by the Revised Regulations respecting Trading with the Enemy (1943) in such form and manner as the Treasury Board may prescribe.

Ottawa, February 4, 1952.