9809 91 Avenue,
Edmonton, Alta., T6E 2S9
August 8, 1989

Art Miki
President, NAJC,
782 Corydon Avenue,
Winnipeg, Manitoba,
R3M OY1

Dear Art,

Thank you for the use of the enclosed photographs. Since they were your personal property and since the black and white photos of the rally are protected by the photographer's copyright, I only took photocopies of them so I could order my own copies from the photographer.

I also requested and used photo's from the Prime Minister's Office, which were quickly provided. I have added most of those to this package so that the NAJC has photos other than your own, if the need arises. (The PMO has a photo division. I dealt with Pamela Mann at 613 - 990 - 6179. Each of the PMO pictures is marked with a number should you wish to order copies for distribution to all the member centres. This might be a good PR move and I think the PMO will provide them without charge.) The extra picture of Art and Gerry Weiner was provided to me by my M.P., Scott Thorkelson.

Yours truly,

M. Ann Sunahara

Source: Nikkei National Museum, 2018-16-4-3-2
www.nikkeimuseum.org

NATIONAL ASSOCIATION OF JAPANESE CANADIANS

July 21, 1989

Ms. Ann Sunahara
9809 91 Avenue
Edmonton, Alberta
T6E 2S9

Dear Ann:

Enclosed please find some photos, as requested.

They are as follows:

1. Canon Nakayama and Hon. Tom Siddon - Hastings Park Internment Plaque, Vancouver, April 1, 1989.

2. Hon. Gerry Weiner and Art Miki - signing of the Japanese Canadian Redress Foundation Agreement, March 29, 1989.

3. Prime Minister Mulroney and Art Miki - signing of the Redress Agreement, Ottawa, September 22, 1988.

4. Prime Minister Mulroney and Art Miki - shaking hands at signing of Redress Agreement, Ottawa, September 22, 1988.

5. Prime Minister Mulroney and 2 Ottawa citizens affected by the evacuation and internment.

6. Ottawa Rally, April 14, 1988.

7. Harold Hirose (Winnipeg) - a JC veteran of WW2, Ottawa Rally, April 14, 1988.

Could you please make a copy of the photos and return them, as soon as possible, since they are Art's own personal copies.

I hope these pictures are appropriate for your display.

Sincerely,

Caroline Yamashita

Caroline Yamashita
NAJC Executive Secretary

Encls.

Source: Nikkei National Museum, 2018-16-4-3-3
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2S9
September 9, 1988

Art Miki
President, NAJC,
735 Ash Street,
Winnipeg, Manitoba,
R3N 0R5

Dear Art,

Please find enclosed:

(a) a report from the War Measures Act Committee. I consulted with Cassandra before proposing the Legal Affairs Committee at the end of the report. I have also volunteered to be on that committee;

(b) a cheque for $210.80, which I think is the amount that the NAJC reimbursed me on the Vancouver forum. I never added the two cheques up to determine the total for which I was reimbursed. Please advise me if this sum is not correct.

Yours truly,

M. Ann Sunahara.

Encl.

Source: Nikkei National Museum, 2018-16-4-3-4-1
www.nikkeimuseum.org

Report on the War Measures Act Committee

To: National Association of Japanese Canadians

From: M. Ann Sunahara

The War Measures Act Committee had the following active members in the past year:

Cassandra Kobayashi, Vancouver, B.C.,
Shin Imai, Toronto, Ontario,
Maryka Omatsu, Toronto, Ontario,
Roy Miki, Vancouver, B.C.,
Ann Sunahara, Edmonton, Alberta.

In the past year we have seen the demise of the War Measures Act and the enactment of a less draconian replacement, the Emergencies Act. The War Measures Act Committee, in the name of the National Association of Japanese Canadians, played a major role in securing amendments to the new Act to ensure that it did not repeat the errors of the War Measures Act.

In the autumn of 1987 Cassandra Koybayashi called for criticisms from Committee members of the proposed new Act in order to formulate a position from which to advise the NAJC. Maryka Omatsu was the first to respond with succinct suggestions for an overall policy. Ann Sunahara, who was in the process of preparing a manuscript on emergency measures, prepared a more lengthly analysis using the history of Japanese Canadians to show that the new Act, as originally drafted, was not practical and contained many of the flaws in the War Measures Act. Cassandra Koybayashi and Shin Imai both provided valuable critical comments on Ann Sunahara's draft. Ann Sunahara then rewrote the analysis in the form of a 65 page submission to the Legislative Committee on Bill C-77 (the Emergencies Act), taking the Cassandra and Shin's criticisms into account, and adjusting for the amendments introduced by the government in response to the criticisms of the Bill from the Canadian Bar Association and the Canadian Civil Liberties Association.

It is to be noted that the comments of the National Association of Japanese Canadians were materially different from those of other groups. The CBA and the CCLA concentrated on including within the Bill controls to prevent false declarations of emergency. They also sought to tighten up the broad definitions of emergencies in the initial version, definitions which would have made just about anything out of the ordinary a national emergency. The War Measures Act Committee, while also pointing out the same flaws addressed by the CBA and the CCLA, were primarily

Source: Nikkei National Museum, 2018-16-4-3-4-2
www.nikkeimuseum.org

concerned with the type of situation that Japanese Canadians faced in 1942: a legitmate emergency (a war) during which the government improperly used its emergency powers to try to effect a political objective that had no connection to the emergency; ie, expelling Japanese Canadians from Canada. The submission placed before the Legislative Committee used the Orders in Council made against Japanese Canadians, and the several instances of the misrepresentation of those orders to Parliament by the King government, to show the Members of Parliament on the Legislative Committee (none of whom were lawyers) that the Parliamentary safeguards in the new Act were totally inadequate.

The National Association made its submission to the Legislative Committee on March 15, 1988. We were almost denied the opportunity to appear. The initial response in the Conservative dominated committee was that, if they heard us, they would have to hear every ethnic group. Advocacy on our behalf by Dan Heap and Derek Blackburn of the New Democrats and David Kilgour of the Conservatives resulted in an invitation being extended, albeit with 5 days notice.

Since Art Miki could not leave his employment to appear, Roy Miki was delegated to present the NAJC position, assisted by Ann Sunahara as Legal Counsel. Roy's presentation was written by Cassandra Kobayashi in a superhuman effort in the short time between the extension of the invitation and Roy's trip to Ottawa. The presentation was very well received. Ann Sunahara was advised afterward by Dan Heap that the Legislative Committee had been intending to begin a clause by clause final review of the Bill at the next meeting, but in view of the NAJC presentation and the concerns we raised, the committee had decided after hearing us to adjourn for three weeks to allow the government to bring in further amendments to meet the bulk of our concerns. In that three weeks Ann Sunahara was in constant contact with the executive assistant of Derek Blackburn, who had been delegated the task of drafting the 61 amendments that the New Democrats would be seeking. Subsequently the Legislative Committee adopted 76 amendments, radically altering the Bill.

At third reading, on April 25, 1988, the National Association of Japanese Canadians was specifically praised for their assistance to the Legislative Committee: see Commons Debates, April 25, 1988, at pp. 14765, 14769, 14772. A great deal was made of the amendment to clause 4 that specifically denies the Cabinet in time of emergency the power to detain, imprison or intern Canadian citizens or landed immigrants on the basis of race, nationality or ethnic origin, colour, religion, sex age or mental or physical disability. The purpose of the section the government speaker, Bud Bradley, stated was to "remove the last vestige of the legal underpinnings to that regrettable

Source: Nikkei National Museum, 2018-16-4-3-4-3
www.nikkeimuseum.org

episode of Canadian history" and to be "sure that no conceivable situation could arise in which Bill C-77 could be used to empower a future Government to do anything resembling what was done to Japanese Canadians": at p. 14765.

Not all of the amendments sought by the NAJC were secured. Specifically, the Submission had pointed out that, on the basis of the law arising out of the War Measures Act, the Emergencies Act might be giving the Cabinet the power to override Charter rights by Order-in-Council in time of emergency. The New Democrats were not successful in obtaining an amendment that would expressly remove this possibility. In presenting the Bill on third reading the government spokesman placed great emphasis on the Charter as a bulwark for ensuring that the rights of Canadians would not be abused in emergencies: at p. 14766.

In view of the government's refusal to include a clause expressly preventing the Cabinet from overriding Charter rights by Order in Council, the War Measures Act Committee took two steps:

(a) a letter was drafted for Art Miki's signature requesting a reference of the issue to the Supreme Court of Canada, and,

(b) Ann Sunahara was sent to Ottawa to testify before the Senate in Committee on June 21, 1988 on this point. The NAJC's request to testify was assisted and promoted by Senator Lorna Marsden.

However, although the government's witnesses admitted that there was some uncertainty about whether the Cabinet could revoke Charter rights by Order in Council (See Senate Debates, June 8, 1988, p. 3626 and May 31, 1988 at 3541), the Senate did not make the necessary amendment. Nor has the government made the requested reference to the Supreme Court of Canada.

Finally, on July 21, 1988 the Emergencies Act was signed by the Governor General, Jeanne Sauve, and proclaimed in force. Clause 80 of that Act repealed the War Measures Act.

The War Measures Act is dead, and it will be difficult in future for groups of Canadians to be abused as Japanese Canadians were. However, as long as the Cabinet has, or thinks it has, the power to pass emergency orders that override Charter rights, the rights of every individual resident of Canada remain in grave danger. If Canadians must wait for an emergency to test whether this power exists, then someone, and possibly a lot of people, are going to be grievously hurt before their case can grind its way through the courts to the Supreme Court of Canada. If

Source: Nikkei National Museum, 2018-16-4-3-4-4
www.nikkeimuseum.org

Ann Sunahara's analysis is correct, then the Supreme Court would find that the Cabinet does have that power. (See Appendix for Ann's analysis.) It is the stated intention of the present government of Canada that the Cabinet should not have that power. If that intention is genuine then the matter should be determined once and for all in time of peace by a reference, so no Canadian need suffer to prove or disprove the point.

The alternative is to challenge the validity of the Emergencies Act on the basis of a possible delegation of Charter override powers. A challenge is expensive. A reference would be paid by the government.

It would be in the interests of all Canadians for the National Association of Japanese Canadians to assume a leadership role in seeking a reference of this matter to the Supreme Court of Canada.

RECOMMENDATION

In view of the flaws in the Emergencies Act important legal issues potentially affecting Japanese Canadians as individuals if not as a group remain unresolved. It is in order, therefore to continue a committee of lawyers and other interested people to guide and act for the NAJC in legal matters. The credibility of Japanese Canadians and their potential influence on the government is far greater than their numbers. Accordingly we suggest that a Legal Affairs Committee be struck to continue the effort to correct the flaws in the Emergencies Act and the work on the Davis and Co. proposal. We offer the attached resolution.

Source: Nikkei National Museum, 2018-16-4-3-4-5
www.nikkeimuseum.org

RESOLUTION

WHEREAS unresolved legal issues affecting the civil and human rights of Canadians in time of emergency remain outstanding; and,

WHEREAS legal actions arising from the treatment of Japanese Canadian during the Second World War may still be possible; and,

WHEREAS it is desireable that the National Association of Japanese Canadians have a committee qualified to monitor, promote and advise upon these and other legal matters;

BE IT RESOLVED THAT a Legal Affairs Committee be struck, which committee shall be charged with:

(a) evaluating and monitoring the proposed law suit advocated by Davis and Co. of Vancouver;

(b) the promotion and, if successful, the coordination of a reference to the Supreme Court of Canada of the issue of a Charter overide in the Emergencies Act; and,

(c) such other legal issues affecting Japanese Canadians as may from time to time be referred to the Committee by the President of the NAJC.

Source: Nikkei National Museum, 2018-16-4-3-4-6
www.nikkeimuseum.org

NATIONAL ASSOCIATION OF JAPANESE CANADIANS

National Executive Office: 735 Ash Street, Winnipeg, Manitoba R3N 0R5

October 15, 1988

Ann Sunahara
9809 - 91 Avenue
Edmonton, Alta.
T6E 2T5

Dear Ann:

At the NAJC Annual General Meeting held in Montreal on October 8-10, 1988, the NAJC Council unanimously passed a motion to write to you expressing our appreciation for the outstanding work you have done for the NAJC over the past two years.

Your outstanding work on the repeal of the War Measures Act and the new Emergencies Act was recognized by Council with a resounding round of applause.

We look forward to your continued involvement with the NAJC, and thank you for the dedicated effort you have generously given to the NAJC.

Sincerely yours,

Arthur Miki
NAJC President

Source: Nikkei National Museum, 2018-16-4-3-5
www.nikkeimuseum.org

NATIONAL ASSOCIATION OF JAPANESE CANADIANS

National Executive Office: 735 Ash Street, Winnipeg, Manitoba R3N 0R5

May 1, 1988

Ann Sunahara
9809 - 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ann:

On behalf of the National Association of Japanese Canadians and the National Council, I wish to express our gratitude and thanks for your involvement concerning the drafting of recommendations and criticisms for the new Emergency Power's Act (Bill C-77).

It appears that the Legislative Committee made many amendments to Bill C-77 based on the presentations and recommendations from NAJC and other organizations. The news release by Hon. Perrin Beatty specifically identifies NAJC as one of the organizations who contributed to the modifications of the Bill.

We appreciated your efforts in assisting the NAJC and the other legal advisors in preparing the extensive report and appearing before the Committee on our behalf. We welcomed the opportunity to work cooperatively towards ensuring the future protection of minority rights.

Ann, I'm glad to see that we had such an impact on the process.

Sincerely yours,

Arthur Miki
President

Source: Nikkei National Museum, 2018-16-4-3-6
www.nikkeimuseum.org

FOR YOUR INFORMATION

CANADA

DAVID KILGOUR, M.P.
EDMONTON STRATHCONA

EDMONTON (403) 469-9890 OTTAWA (613) 995-8695

· COMMONS
ES COMMUNES
NADA

.GOUR, M.P.
n Strathcona

CONSTITUENCY OFFICE:
Suite 309, Mill Creek Place
9119-82 Ave.
Edmonton, Alberta
T6C 0Z4
(403) 469-9890

OTTAWA, April 26, 1988

The Hon. Perrin Beatty, P.C., M.P.
Minister of National Defence
707 Confederation Bldg.
House of Commons
Ottawa, Ontario

Dear Perrin,

Re: C-77

Attached is a copy of two self-explanatory letters about the above received from Ann Sunahara.

Yesterday, I approached Bud Bradley and Bill Snarr in the government lobby with a view to obtaining a copy of the legal opinion in issue. They didn't appear to have any objection in principle, but the final decision is yours.

Please advise in a form which I might share with Ann Sunahara. Thank you.

Sincerely,

David Kilgour, M.P.
Edmonton Strathcona

DK:ba
Encls.

cc: Ann Sunahara
9809 - 91 Avenue
Edmonton, Alberta
T6E 2T5

Source: Nikkei National Museum, 2018-16-4-3-7
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
July 7, 1988

Roy Miki,
2995 West 15th Avenue,
Vancouver, B.C.
V6K 3A2

Dear Roy,

Attached please find my airline receipt for $210.80. This is higher than the seat sale ticket I first told you about ($184.40 round-trip Edmonton-Vancouver-Edmonton) because I was totally unable to use that ticket when I had to fly back to Edmonton a day early. I am never going to book a seat sale ticket for business purposes again since I now have to eat that $184.40.

As you know I came to Vancouver directly from Ottawa. That means that the ticket I submitted to Art for my Senate appearence expenses is about $100.00 higher than it should have been if I had flown Edmonton-Ottawa-Edmonton. If he objects to paying the extra I shall let you know since $310.00 is still cheaper than the regular round trip Edmonton-Vancouver- Edmonton fare ($376 + 12% tax)

I have just been informed by my publisher that they have only 371 of my books left in print. Is the National or the Hastings Park Foundation interested in obtaining them. I can get them at about $8.00 per book if necessary and turn them over to the NAJC. If you would like more we could consider printing a cheap edition.

Thank you for including me in your forum (even if Gordon did take up allthe time). If the government doesn't object to paying my way for 15 minutes of performance, why should I complain?

Yours truly

Ann Sunahara

P.S. I apologize for the horrible typing. There is something wrong with the way this machine shifts the paper on carriage return.

Source: Nikkei National Museum, 2018-16-4-3-8-1
www.nikkeimuseum.org

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1. As used in this contract "ticket" means this passenger ticket and baggage check of which these conditions and the notices form part, "carriage" is equivalent to "transportation", "carrier" means all air carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage. "WARSAW CONVENTION" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw 12th October 1929, or that Convention as amended at The Hague 28th September 1955, whichever may be applicable.

2. Carriage hereunder is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not "international carriage" as defined by that Convention.

3. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.

4. Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, conditions of carriage, regulations or timetables; carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket; the agreed stopping places are those places set forth in this ticket or as shown in carrier's timetables as scheduled stopping places on the passenger's route; carriage to be performed hereunder by several successive carriers is regarded as a single operation.

5. An air carrier issuing a ticket for carriage over the lines of another air carrier does so only as its agent.

6. Any exclusion or limitation of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives.

7. Checked baggage will be delivered to bearer of the baggage check. In case of damage to baggage moving in international transportation complaint must be made in writing to carrier forthwith after discovery of damage and, at the latest, within 7 days from receipt; in case of delay, complaint must be made within 21 days from date the baggage was delivered. See tariffs or conditions of carriage regarding non-international transportation.

8. This ticket is good for carriage for one year from date of issue, except as otherwise provided in this ticket, in carrier's tariffs, conditions of carriage, or related regulations. The fare for carriage hereunder is subject to change prior to commencement of carriage. Carrier may refuse transportation if the applicable fare has not been paid.

9. Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch. Times shown in timetable or elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity. Schedules are subject to change without notice. Carrier assumes no responsibility for making connections.

10. Passenger shall comply with Government travel requirements, present exit, entry and other required documents and arrive at airport by time fixed by carrier or, if no time is fixed, early enough to complete departure procedures.

11. No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

CARRIER RESERVES THE RIGHT TO REFUSE CARRIAGE TO ANY PERSON WHO HAS ACQUIRED A TICKET IN VIOLATION OF APPLICABLE LAW OR CARRIER'S TARIFFS, RULES OR REGULATIONS.

2018.16.4.3.9.2

Source: Nikkei National Museum, 2018-16-4-3-9-2-3
www.nikkeimuseum.org

AIR CANADA INVOICE/*FACTURE*

FOR YOUR RECORDS ONLY

7002422

PLEASE WRITE THIS NUMBER ON THE BACK OF YOUR CHEQUE
VEUILLEZ PORTER CE NUMÉRO AU VERSO DE VOTRE CHÈQUE

NAME OF PASSENGER / *NOM DU PASSAGER*	AMOUNT DUE / *MONTANT DÛ*	DATE OF ISSUE / *DATE D'ÉMISSION*
SUNAHARA/A MS	184.40	D/J M Y/A 01/06/88YEG

THE ENCLOSED TICKETS ARE MAILED ON THE UNDERSTANDING THAT PAYMENT WILL BE MAILED WITHIN 3 DAYS.

PLEASE FORWARD YOUR CHEQUE WITH A COPY OF THIS INVOICE IN THE ENCLOSED ENVELOPE.

LE PAIEMENT DES BILLETS CI-JOINTS DOIT ÊTRE EFFECTUÉ PAR LA POSTE DANS LES TROIS JOURS DE LEUR RÉCEPTION.

VEUILLEZ, DANS L'ENVELOPPE CI-JOINTE, NOUS ADRESSER VOTRE CHÈQUE ET LA COPIE DE LA FACTURE.

FOR YOUR RECORDS ONLY

DO NOT DESTROY TICKETS IF NOT REQUIRED FOR TRAVEL.
THEY SHOULD BE RETURNED TO CREDIT THE ACCOUNT.
LES BILLETS INUTILISÉS NE DOIVENT PAS ÊTRE DÉTRUITS.
MAIS RENVOYÉS AFIN QUE LE COMPTE EN SOIT CRÉDITÉ.

CUSTOMER'S COPY
EXEMPLAIRE DU CLIENT

COURIER
MS A SUNAHARA
9809 91 AVE
EDMONTON ALTA

CREDIT CARD No. (IF PAYMENT BY CREDIT CARD).
NUMÉRO DE CARTE DE CRÉDIT (LE CAS ÉCHÉANT).

CA 519 2217 0368 82626

Source: Nikkei National Museum 2018-16-4-3-3-3
www.nikkeimuseum.org

2018.16.4.3.9.3

August 10th/88

Dear Ann -

Rick Beardsley called to say the grant money from Sec State finally came in for the Pacific Rim conference. Art was in town for a few days holiday and said that you and Gordon were sent cheques for the airfare receipts you submitted to me and copies of which I sent on to Art. Now the money has to go in the opposite direction! As soon as Rick reimburses you and Gordon, both of you should reimburse the NAJC for the amount sent. This is a lot of shuffling of funds, but I wasn't sure when and if the funds would ever arrive from Sec State and I didn't want you to be left stranded. Can you give Gordon a call and ask him to reimburse the NAJC too? If there are any problems, let me know.

I'm absolutely delighted and relieved by the passage of the US Redress bill!! It's a precedent that our own government has got to acknowledge, don't you think? I feel an intense sympathy for the Japanese Americans who have worked so bloody hard for so many years -- and now they reached their goal!!

Joy and I, with her Dad, my family, even my mother, were in Kaslo (August 5-6 weekend) to perform and to attend the unveiling of a plaque commemorating JCs interned in the area. You probably heard about this -- there was a article in the Globe and another in the Vancouver Sun. Wow, let me tell you, that community sure appreciated our performance, and the plaque is the first of its kind, put up by a non-JC community. I drafted the wording and it was used with only one minor change, so the wording, I think, is both accurate and strong. There should be a story in the JCCA Bulletin's next issue, September; also one in the Nikkei Voice.

Hope everything's fine with you (up) there.

all the best,

Roy

Rick B. rushed
these 2 pages thru
on to you.
Hope all's well.

Roy

Ann - Too rushed for
more words right
now — Joe Tse cuss

Source: Nikkei National Museum, 2018-16-4-3-10
www.nikkeimuseum.org

NATIONAL ASSOCIATION OF JAPANESE CANADIANS

National Executive Office: 735 Ash Street, Winnipeg, Manitoba R3N 0R5

Ann Sunahara -
Could you prepare a report on Emergency Act replacement of War Measures Act.

MEMO TO : Committee Chairpersons

FROM: Art Miki, President

RE: NAJC Annual General Meeting

DATE: August 16, 1988

---

1. Each Chairperson should prepare a written report for their committee and submit it to the National Office by September 15, 1988.

2. The report should consist of the following information:

a) The names of the members of the committee if you had others involved.

b) A list of activities undertaken during the past year with the dates and locations.

c) Make a recommendation whether the committee should be continued or not. If the committee is to be continued this should be written in a form of a resolution. List other resolutions your committee may have .

All the resolutions will be presented and discussed during the Resolutions portion of the agenda. These adopted resolutions will provide the direction for the next Executive.

Source: Nikkei National Museum, 2018-16-4-3-11
www.nikkeimuseum.org

The Secretary of State of Canada | Le Secrétaire d'État du Canada

CANADA

MAR 24 1988

Ms. M. Ann Sunahara
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara:

Thank you for your letter of February 3 regarding the Emergencies Act. I also appreciate receiving a copy of your overview of the Bill and your curriculum vitae.

As you know, the legislation was tabled in the House of Commons by the Minister of National Defence. I am, therefore, sending a copy of your letter and attachments to the Honourable Perrin Beatty for his consideration. I will also ensure that the Honourable Ray Hnatyshyn, the Minister of Justice and Attorney General of Canada, is made aware of your views.

Again, thanks for writing. You have my assurance that your comments are being given careful consideration.

Sincerely,

David Crombie

David Crombie

cc: The Honourable Perrin Beatty, P.C., M.P.
The Honourable Ray Hnatyshyn, P.C., M.P.

Ottawa, Canada K1A 0M5

Source: Nikkei National Museum, 2018-16-4-3-12
www.nikkeimuseum.org

The Canadian Bar Association
L'Association du Barreau canadien
50 O'Connor, Suite 902, Ottawa, K1P 6L2 (613) 237-2925
Fax: 613-237-0185 CBANET/LEXABAR: CBA OTTAWA Telex: 055-61399 CBA OTTAWA MTL

April 26, 1988

M. Ann Sunahara
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara:

Thank you for your recent letter to me accompanying the letter from the National Association of Japanese Canadians to the Honourable Perrin Beatty. I have now circulated a copy of Mr. Miki's letter to all members of the National Executive Committee of the Canadian Bar Association in the event that our opinion is solicited by the Minister of National Defence.

Yours truly,

John Giokas

John Giokas,
Director
Legislation and Law Reform.

JG/ag

Source: Nikkei National Museum, 2018-16-4-3-13
www.nikkeimuseum.org

Department of External Affairs

Canada

Ministère des Affaires extérieures

Ottawa

24 August, 1983

Dear Mrs. Sunahara,

I am pleased to inform you that after some searching we have finnally run to ground the first two volumes of file 773-B-40 contents which had been divided among a number of related files when the original file(773-B-40) was closed. The documents which you wanted are now located on file 3464-B-40(vol.1) and I am enclosing copies of ~~een~~eyside's letter of Jan.3,'42 to General Pope, acknowledging receipt of a copy of General Alexander's report to the Vice-Chief of the General Staff(Pope) together with a copy of the Minutes of the Jan.8/9th 1942 Conference.

I have not been able to find any reply by General Pope to Keenleyside's letter but since it contained only comments & suggestions for a reply it would probably not have required one. If I do come across anything more I shall send it along.

With best wishes,

Yours sincerely,

Dacre P. Cole

Dacre P. Cole
Historical Division

Source: Nikkei National Museum, 2018-16-4-3-14
www.nikkeimuseum.org

CNCP LASERCOURIER SERVICE

FROM/DE

WAR AMPUTATIONS OF CANADA
2827 RIVERSIDE DRIVE
OTTAWA ON

90M-OOC309 03:58 PM EDT 88-09-23

TO/A

ANNE SUNAHARA
9809-91 AVENUE
EDMONTON AB
T6E 2T5

90M-CBA601 01:58 PM MDT 88-09-23

Purolator

Source: Nikkei National Museum, 2018-16-4-3-15-1
www.nikkeimuseum.org

OC309 72 TLM TDGG OTTAWA ON 23 1556

ANNE SUNAHARA
9809-91 AVENUE
EDMONTON AB
T6E 2T5

With reference to your comments that aired September 23rd 1988 on CBC Radio Commentary concerning redress for Japanese Canadians:
Please be aware that it is the policy of the Hongkong Veterans Association to neither approver or disapprove the decision of the Canadian Government to provide compensation to Japanese Canadians in light of their internment in this country during World War II.

H. Clifford Chadderton
Chief Executive Officer
War Amputations of Canada
Patron of the Hongkong Veterans Association of Canada

Source: Nikkei National Museum, 2018-16-4-3-15-2
www.nikkeimuseum.org

THE SENATE OF CANADA LE SÉNAT DU CANADA

O T T A W A,
12 August 1988.

Ms. M. Ann Sunahara
Barrister & Solicitor
9809 - 91 Avenue
EDMONTON, Alberta
T6E 2T5

Dear Ms. Sunahara:

Thank you again for appearing before our Committee of the Whole on Bill C-77, the Emergencies Bill.

I am pleased to enclose a copy of the Debates of the Senate for Tuesday 21 June 88, giving the verbatim report of your presentation and of the subsequent questioning by Senators.

You will note that we have added as appendices to the Debates, your letter of 2 June 88 addressed to me, along with the enclosures and the fact sheet that was submitted by Emergency Preparedness Canada. These are now therefore in the permanent records of the Senate in their entirety.

As you can see from the extended questioning, your presentation was of great interest to the Senate and was most useful.

Sincerely yours,

Gildas Molgat

c.c. Mr. Art Miki

Senator — Ste. Rose, Manitoba Sénateur — Ste-Rose, Manitoba

Source: Nikkei National Museum, 2018-16-4-3-16
www.nikkeimuseum.org

THE SENATE OF CANADA LE SÉNAT DU CANADA

ROOM 216, EAST BLOCK
PARLIAMENT BUILDINGS
OTTAWA, ONTARIO
K1A 0A4
(613) 992-3106

June 30, 1988

Ms. M. Ann Sunahara
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ann:-

I wonder if you have seen the attached press release which arrived on my desk since I last wrote to you?

The Bill has now passed Parliament and I regret that your amendment was not included in those amendments which we put forward.

Yours sincerely,

Lorna Marsden

Source: Nikkei National Museum, 2018-16-4-3-17
www.nikkeimuseum.org

FACT SHEET
FEUILLET DE DOCUMENTATION

Emergency Preparedness Canada | Protection civile Canada

LE PROJET DE LOI C-77 TIENT COMPTE DES RECOMMANDATIONS DE L'ASSOCIATION DE LA NATIONAL ASSOCIATION OF JAPANESE CANADIANS

Le projet de loi C-77 a été adopté à l'unanimité par la Chambre des Communes, le 27 avril 1988. Dans sa forme actuelle, il tient compte des recommandations proposées par la National Association of Japanese Canadians (NAJAC), lors de sa comparution devant le comité législatif. Les principales propositions de la NAJAC et les dispositions correspondantes du projet de loi C-77 figurent ci-dessous en parallèle:

Recommandations de la NAJAC	Dispositions correspondantes du projet de loi C-77
Le Parlement, en tout temps, doit être capable d'amender ou de révoquer n'importe quelle déclaration de situation d'urgence.	L'article 59 dans sa forme actuelle inclut cette proposition.
Le parlement doit être capable en tout temps d'amender ou de révoquer n'importe quel décret ou règlement du Cabinet;	L'article 61 répond à cette demande.
Tout décret ou règlement émis au titre de la législation d'urgence doit être directement relié à la résolution d'une situation d'urgence particulière.	Tous les décrets ou règlements doivent "être fondés en en l'occurrence".
Même si les décrets et règlements sont, en faits, reliés directement à un état d'urgence, une cour de justice doit être capable de les juger comme tels. Et, c'est le gouvernement qui doit apporter la preuve d'une telle situation.	Le gouvernement doit avoir "des motifs raisonnables" pour émettre tous les décrets et règlements. Ceux-ci pourront être révisés par les cours, lorsqu'une personne ou une organisation fait appel.

.../2

Canada

Source: Nikkei National Museum, 2018-16-4-3-18-1a
www.nikkeimuseum.org

Recommandations de la NAJAC	Dispositions correspondantes du projet de loi C-77
"Une crise nationale" devrait être définie.	Il en est ainsi à l'article 3.
Toute délégation de pouvoirs d'urgence par le Parlement au Cabinet devrait porter sur une menace concernant la survie du Canada lui-même.	Une situation d'urgence nationale doit menacer "gravement la capacité du gouvernement du Canada de garantir la souveraineté, la sécurité et l'intégrité territoriale du pays". Art. 3(b)
Les décrets et règlements en en temps de guerre doivent être limités aux mesures strictement nécessaires et directement réliés à l'urgence en question.	Les décrets et règlements en temps de guerre devraient être limités à des mesures qui sont "fondées en l'occurrence" et "nécessaires ou opportunes" pour faire face à la crise.
Le poids de la preuve que les décrets ou règlements sont strictement nécessaires et directement reliés à la crise repose sur le gouvernement.	Tel sera le cas. Il appartiendra au gouvernement de démontrer que les mesures étaient "fondées en l'occurrence".

.../3

Source: Nikkei National Museum, 2018-16-4-3-18-1b
www.nikkeimuseum.org

Recommandations de la NAJAC	Dispositions correspondants du projets de loi C-77
Aucun ordre ou réglement ne prendra effet avant d'être approuvé par le Parlement.	Les articles 61 et 62 incluent des dispositions requérant une telle approbation, mais force est de constater que de vouloir différer une intervention en situation d'urgence pourrait entraîner la perte de vies humaines.
La mise en application de tous les décrets et règlements doit être approuvée par un comité spécial du Parlement.	L'article 62 se fait l'écho de cette demande.
Il ne pourrait être mis fin à un débat sur une motion de ratification ou d'amendement d'un décret ou règlement.	Un tel débat se poursuit nécessairement et la procédure de clôture des débats ne saurait s'appliquer.
Dans toute révision de l'utilisation des pouvoirs d'urgence ou de n'importe quelle poursuite d'un accusé au titre de la législation d'urgence, le pois de la preuve doit reposer sur le Cabinet.	Le gouvernement doit avoir des "motifs raisonnables" pour déclarer une situation de crise nationale et doit être tenu d'en apporter la preuve devant les cours.

.../4

Source: Nikkei National Museum, 2018-16-4-3-18-2a
www.nikkeimuseum.org

Recommandations de la NAJAC	Dispositions correspondantes du projet de loi C-77
Toute législation d'urgence doit spécifiquement empêcher toute dérogation à la Charte canadienne des droits et des libertés.	La Charte elle-même l'interdit.

-30-

21 juin 1988

Source: Nikkei National Museum, 2018-16-4-3-18-2b
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
The operation of all orders and regulations must be subject to the review of a Special Parliamentary Committee.	S.62 provides for just such review.
Debate upon a motion to amend or revoke an order or regulation shall be without closure.	Such debate must be "without interruption" and closure is not provided for.
In any review of the use of emergency powers, or in any trial of an accused charged under an emergency order, the onus of proving that the emergency exists and the order is reasonable must rest with the Cabinet.	Government must have "reasonable grounds" for invocation and would be required to demonstrate this before the courts.
Any emergency legislation must expressly deny the power to override rights guaranteed in the Charter of Rights and Freedoms.	The Charter itself prohibits this.

June 21, 1988

Source: Nikkei National Museum, 2018-16-4-3-18-3
www.nikkeimuseum.org

FACT SHEET
FEUILLET DE DOCUMENTATION

Emergency Preparedness Canada | Protection civile Canada

BILL C-77 INCORPORATES NATIONAL ASSOCIATION OF JAPANESE CANADIANS RECOMMENDATIONS

Bill C-77, the Emergencies Act, was passed unanimously by the House of Commons on April 27, 1988. In its current form it incorporates almost all of the changes proposed by the National Association of Japanese Canadians (NAJC) when it appeared before the legislative committee. Key NAJC proposals and the corresponding provisions of Bill C-77 appear below:

NAJC Recommendation	Corresponding Provisions of Bill C-77
Parliament, at all times, must be able to revoke or modify any declaration of an emergency; and,	S.59 in its amended form incorporates this proposal.
Parliament must at all times be able to amend or revoke any order or regulation made by the Cabinet.	S.61 provides for this.
All orders and regulations made under emergency powers must be directly related to alleviating the particular emergency.	All orders and regulations must be "necessary for dealing with the emergency."
Whether emergency orders and regulations are, in fact, directly related to the emergency must be reviewable at all times in a court of law, and the burden of proving the direct relationship shall rest with the government.	Government must have "reasonable grounds" for issuing all orders and regulations. This would be reviewable by courts, upon application by any individual or organization which had standing.

.../2

Canada

Source: Nikkei National Museum, 2018-16-4-3-18-4a
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
"National emergency" should be defined.	Defined in S.3
Any delegation of emergency powers by Parliament to the Cabinet must be predicated upon a threat to the continued existence of Canada itself.	National emergencies must "seriously threaten the ability of the government of Canada to preserve the sovereignty, security and territorial integrity of Canada". S.3(b)
Orders and regulations for war must be limited to measures strictly necessary and directly related to the emergency in question; and,	Orders and regulations for war would be limited to measures which on "reasonable grounds" are "necessary or advisable" for dealing with the emergency.
The burden of proving that the orders are strictly necessary and directly related to the emergency must rest with the Government.	This would be the case. The onus would be on government to divulge its "reasonable grounds" to court.
No order or regulation should take effect before it is approved by Parliament.	S.61 and 62 include provisions requiring approval, but to delay immediate action when necessary in an emergency could cost lives.

.../3

Source: Nikkei National Museum, 2018-16-4-3-18-4b
www.nikkeimuseum.org

Proposed Amendments to C-77 - National Association of Japanese Canadians

Limitation:

Nothing in this Act shall be construed as granting to the Governor in Council the power to make orders or regulations that overide the rights and freedoms set out in the Charter of Rights and Freedoms

Definition of National Emergency:

A National Emergancy is an urgent situation of a temporary nature that threatens the life, independance or continued sovereignity of Canada of such intensity that it cannot be dealt with using the existing or amended laws and institutions.

Parliamentary Supervision:

(a) Within three days of the proclamation of an emergency the Steering Committees of the House of Commons and the Senate shall appoint an all-party Special Parlimentary Committee to monitor the implementation of the orders passed by the Cabinet under its emergency powers and to make motions to Parliament for the amendment or revocation of orders or regulations;

(b) To carry out its mandate the Special Committee shall have full power to investigate the implementation of the orders including the right to compel testimony from Ministers of the government and all servants and agents of the Crown and all military personnel;

(c) Debate upon a motion to amend or revoke an order or regulation shall be without closure;

(d) A vote on a motion to amend or revoke an order or regulation affecting civil or human rights shall be a free vote.

(e) Testimony before the Special Committee may, upon order of the Committee, may be heard in camera where the Committee in of the opinion that it is in the interests of national security and Cabinet confidentiality to do so.

(f) A motion to amend or revoke an order or regulation under this Act shall be taken up and considered by Parliament within 6 sitting days.

Source: Nikkei National Museum, 2018-16-4-3-19-1
www.nikkeimuseum.org

Compensation:

46(1) The Special Parliamentary Committee shall appoint a Superior Court Judge in each province and in the territories to adjudicate claims for compensation from any person who suffers loss or injury as a result of anything done, or purported to be done under any part of this Act or any proclamation, order or regulation issued or made thereunder.

46(4) In any adjudication under this section the onus shall be upon the Crown to prove on a balance of probabilities that the act done, or purported to be done, or the proclamation, order or regulation was strictly necessary to meet the emergency and that there existed an emergency to support the making of the order or regulation.

46(5) For the purpose of adjudicating this Act the Superior Court Judge shall have the same powers of inquiry as the Special Committee and, at his discretion, may hear evidence in camera.

Onus of Proof:

In any proceeding in a court of law brought in relation to this Act the onus shall be upon the Crown to prove on a balance of probabilites in the case of a civil proceeding, and beyond reasonable doubt in the case of a criminal proceeding, that an emergancy exists to support any contested order or regulation and that the said order or regulation is strictly necessary in the circumstances.

Source: Nikkei National Museum, 2018-16-4-3-19-2
www.nikkeimuseum.org

The Canadian Bar Association
L'Association du Barreau canadien
50 O'Connor, Suite 902, Ottawa, K1P 6L2 (613) 237-2925
Fax: 613-237-0185 CBANET/LEXABAR: CBA.OTTAWA Telex: 055-61399 CBA OTTAWA MTL

June 13, 1988

M. Ann Sunahara
Barrister and Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara:

Re: The Emergencies Act and Charter Override

Thank you for your letter to me of May 26, 1988 with enclosed copies of the correspondence between Mr. Art Miki and The Honourable Perrin Beatty. As I mentioned to you in my earlier letter to you of April 26, 1988, the issue which you raise in this correspondence has been placed before the National Executive Committee of the CBA. The President and table officers are still considering the matter.

I will now circulate your most recent letter and the copies of the correspondence between Mr. Miki and Mr. Beatty to the National Executive Committee in time for our upcoming meeting in Ottawa on June 17 and 18. I trust that this is satisfactory to you.

Yours very truly,

John Giokas

John Giokas
Director
Legislation and Law Reform

JG/ag

Source: Nikkei National Museum, 2018-16-4-3-20-1
www.nikkeimuseum.org

The Canadian Bar Association
L'Association du Barreau canadien
50 O'Connor, Suite 902, Ottawa, K1P 6L2 (613) 237-2925
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John Giokas

John Giokas
Director
Legislation and Law Reform

JG/ag

Source: Nikkei National Museum, 2018-16-4-3-20-2
www.nikkeimuseum.org

The Canadian Bar Association
L'Association du Barreau canadien
50 O'Connor, Suite 902, Ottawa, K1P 6L2 (613) 237-2925
Fax: 613-237-0185 CBANET/LEXABAR: CBA.OTTAWA Telex: 055-61399 CBA OTTAWA MTL

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Yours very truly,

John Giokas

John Giokas
Director
Legislation and Law Reform

JG/ag

Source: Nikkei National Museum, 2018-16-4-3-20-3
www.nikkeimuseum.org

The Canadian Bar Association
L'Association du Barreau canadien
50 O'Connor, Suite 902, Ottawa, K1P 6L2 (613) 237-2925
Fax: 613-237-0185 CBANET/LEXABAR: CBA.OTTAWA Telex: 055-61399 CBA OTTAWA MTL

April 26, 1988

M. Ann Sunahara
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara:

Thank you for your recent letter to me accompanying the letter from the National Association of Japanese Canadians to the Honourable Perrin Beatty. I have now circulated a copy of Mr. Miki's letter to all members of the National Executive Committee of the Canadian Bar Association in the event that our opinion is solicited by the Minister of National Defence.

Yours truly,

John Giokas

John Giokas,
Director
Legislation and Law Reform.

JG/ag

file copy

Source: Nikkei National Museum, 2018-16-4-3-20-4
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alberta,
T6E 2T5
(403) 433 - 8104

The Canadian Bar Association,
50 O'Connor Street,
Suite 902,
Ottawa, Ontario,
K1P 6L2

Attention: John Giokas,
Director,
Legislation and Law Reform

Dear Sir:

Thank you for your letter of April 6, 1988 on the question of the constitutional questions raised in the Submission to the Legislative Committee on Bill C-77 by the National Association of Japanese Canadians.

As you are no doubt aware by now, many of the concerns we both raised in our submissions were addressed by the Committee and the Bill in now much improved. However, there still remain some aspects of the Bill which may be unconstitutional. Particularly there remains the issue of a possible Charter override.

The National Association of Japanese Canadians is of the view that any doubts about a Charter override should be resolved now, in normal times, rather than later, in a time of emergency. Accordingly, our President, Art Miki, has requested that this issue, of vital importance to all Canadians, be resolved as soon as possible by way of a reference to the Supreme Court of Canada. A reference would afford the opportunity for a definitive decision rather than leaving the matter to the speculation of lawyers and possible abuse by a future government.

Enclosed please find a copy of the request by our President. Should the opinion of the Canadian Bar Association be solicited, we invite you, in the interest of all Canadians, to endorse our request.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-20-5
www.nikkeimuseum.org

The Canadian Bar Association
L'Association du Barreau canadien
50 O'Connor, Suite 902, Ottawa, K1P 6L2 (613) 237-2925
Fax: 613-237-0185 CBANET/LEXABAR: CBA.OTTAWA Telex: 055-61399 CBA OTTAWA MTL

April 6, 1988

M. Ann Sunahara
9809 91 Avenue
Edmonton, Alberta
TGE 2T5

Dear Ms. Sunahara:

Re: Bill C-77, the Emergencies Act

Thank you for your letter to the Canadian Bar Association to the attention of Louise Shaughnessy on March 17, 1988. Ms. Shaughnessy passed on your letter and the submission prepared by you, both of which I read with considerable interest. I have taken the liberty of making a photocopy of your brief and sending it to the Chairman of the Legislation and Law Reform Committee of the Canadian Bar Association.

With respect to the constitutional question which you raise in your letter and in your submission, I have referred it to a number of constitutional experts both within and outside the CBA. I have also broached the matter with the Chairman of the Legislation and Law Reform Committee. It is the opinion of all involved that it would be inappropriate for the Canadian Bar Association to recommend at this time a direct reference to the Supreme Court of Canada. This opinion, however, does not in any way detract from the valid and interesting point made in this regard in your brief.

In closing, I thank you once again for sending your brief to us and look forward to seeing amendments in Bill C-77 which will reflect the points made in both of our submissions.

Yours truly,

John Giokas

John Giokas
Director
Legislation and Law Reform.

JG/ag
cc Vic Paisley

Source: Nikkei National Museum, 2018-16-4-3-20-6
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
March 17, 1988.

Canadian Bar Association,
50 O'Connor Street,
Suite 902,
Ottawa, Ontario,
K1P 6L2

Attention: Louise Shaunessy,

Dear Ms. Shaunessy,

Further to our telephone conversation today, please find enclosed a copy of the Submission of the National Association of Japanese Canadians to the Legislative Committee on Bill C-77, prepared by myself.

As I stated earlier, one of our principal concerns is the possibility that the broad wording of the Act would give the Governor in Council a Charter overide in any or all of the types of emergencies. In this submission I discuss it in terms of a war emergency only, but have since begun to consider that the wording in the other types is as general and that an overide power is intended there too. Indeed, my concerns are reinforced by the fact that some of the powers requested might well be useless without a Charter overide; for example, the power to prohibit public assemblies in section 17(1)(a). The Minister's comments that he does not intend to revoke habeus corpus, similarly make no sense without a Charter overide: Minutes of the Legislative Committee on Bill C-77, February 23, 1988.

As I argue at pages 32 - 35, there is support for a Charter overide in the cases that determined the power of Parliament under the War Measures Act. In view of this fact, and the fact that the Charter does not prohibit the delegation of Parliament's powers under Section 33 of the Charter, it may be necessary to get the Supreme Court of Canada to rule on this question. A reference to the Supreme Court in time of non-emergency and before the Act is passed would be best to minimize the panic that inevitably attends a decision in the heat of an emergency. We will certainly be urging this upon the government, but it might be more effective coming from the Canadian Bar Association.

Source: Nikkei National Museum, 2018-16-4-3-20-7
www.nikkeimuseum.org

We would naturally appreciate your views and comments. I also thank you in advance for the copy of your brief which you informed me you would be sending to me.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-20-8
www.nikkeimuseum.org

M. Ann Sunahara
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

April 19, 1988

Ms. Alexandra Chyczij,
Civil Liberties Commission,
Ukrainian Canadian Committee,
2118A Bloor Street West,
Toronto, Ontario,
M6S 1M8

Dear Ms. Chyczij,

Thank you for your letter of April 4, 1988. I delayed answering until I had had an opportunity to see the latest amendments to the proposed Emergencies Act and to consult with the rest of the War Measures Act subsection of the National Association of Japanese Canadians.

I can now advise that we are requesting that the Bill be referred to the Supreme Court of Canada for a ruling on whether it gives a Charter override to the Cabinet. I have been in touch with the Canadian Bar Association and they are also monitoring this matter.

At this point we are urging the Minister and the leaders of all three parties to make a reference as soon as possible for the greater protection of all Canadians. Please find enclosed a copy of a letter the President of the NAJC will be sending within the next few days.

We invite the Ukrainian Canadian Committee to join our request and to pass our mutual concerns onto those in Ottawa in a position to recommend the course of action set out in Mr. Miki's letter.

If you have any suggestions about who we should approach etc, please do not hesitate to contact me. This issue is important to all Canadians.

Sincerely yours,

M. Ann Sunahara

cc. Art Miki, President,
N.A.J.C.

Source: Nikkei National Museum, 2018-16-4-3-20-9
www.nikkeimuseum.org

Ms. Alexandra Chyczij
Civil Liberties Commission
Ukrainian Canadian Committee
2118A Bloor St. W.
Toronto, Ontario M6S 1M8

4 April 1988

Ms. Ann Sunahara
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara,

Further to your letter to Mr. A. Hluchowecky of our Ottawa Bureau dated 17 March 1988 and our meeting in Ottawa on 15 March 1988, kindly advise whether you have taken any steps with respect to the direction of a reference to the Supreme Court of Canada.

We would be pleased to assist the NAJC in any way possible and would ask that you keep us advised of your plans. If you are planning to be in the Toronto area at any time in the near future, I would be pleased to meet with you to discuss this matter further.

I look forward to hearing from you.

Yours truly,

Alexandra Chyczij
CLC-UCC

AMC:11

cc: Dr. D. Cipywnyk, President, Ukrainian Canadian Committee
Mr. J.B. Gregorovich, Civil Liberties Commission, UCC
Mr. A. Hluchowecky, UCC Information Bureau

Source: Nikkei National Museum, 2018-16-4-3-20-10
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
March 17, 1988.

Canadian Rights and Liberties Federation,
c/o 430 Sparton Road,
Victoria, British Columbia,
V8X 3V3

Attention: Ross Lambertson,
President.

Dear Mr. Lambertson,

Further to your request of March 15, 1988, please find enclosed a copy of the Submission of the National Association of Japanese Canadians to the Legislative Committee on Bill C-77, prepared by myself.

As you are aware from our presentation, one of our principal concerns is the possibility that the broad wording of the Act would give the Governor in Council a Charter overide in any or all of the types of emergencies. In this submission I discuss it in terms of a war emergency only, but have since begun to consider that the wording in the other types is as general and that an overide power is intended there too. Indeed, my concerns are reinforced by the fact that some of the powers requested might well be useless without a Charter overide; for example, the power to prohibit public assemblies in section 17(1)(a). The Minister's comments that he does not intend to revoke habeus corpus, similarly make no sense without a Charter overide: Minutes of the Legislative Committee on Bill C-77, February 23, 1988.

As I argue at pages 32 - 35, there is support for a Charter overide in the cases that determined the power of Parliament under the War Measures Act. In view of this fact, and the fact that the Charter does not prohibit the delegation of Parliament's powers under Section 33 of the Charter, it may be necessary to get the Supreme Court of Canada to rule on this question. A reference to the Supreme Court in time of non-emergency and before the Act is passed would be best to minimize the panic that inevitably attends a decision in the heat of an emergency. We will certainly be urging this upon the government.

Source: Nikkei National Museum, 2018-16-4-3-20-11
www.nikkeimuseum.org

Should the Canadian Rights and Liberties Federation wish to pursue the issues we raise further, please do not hesitate to contact the NAJC. We would naturally appreciate your views and comments. It is, after all, in the interests of all Canadians that the emergency powers of the executive be exercised properly.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-20-12
www.nikkeimuseum.org

Linda L. Long, LL.B.
Barrister & Solicitor

7224 - 95 Avenue,
Edmonton, Alberta T6B 1B2
Telephone: Bus. (403) 465-6587
Res. (403) 469-4047

24 February 1988

Anne Sunahara
9809 - 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Anne,

Thank you for agreeing to be the speaker for the Constitutional and International Law sub-section of the Northern Alberta branch of the Canadian Bar Association for March, 1988.

We have arranged for a notice to be sent to our membership indicating that your topic will be the constitutional implications of the new federal emergencies legislation from the historical perspective of the Japanese-Canadian experience.

Arrangements have been made to have the meeting at the offices of the Canadian Bar Association, Suite 2001, IPL Tower, 10201 Jasper Avenue, Edmonton at 6:30 P.M. March 16, 1988, with your presentation to commence at 7:00 P.M., and adjournment by 8:30 P.M. We would ask that you plan to field questions for at least 30 minutes at the end of your remarks.

We usually have between six and ten members at our meetings, therefore you may plan for an informal presentation rather than a large formal group. Should we have an unexpectedly large response we will advise you.

Although our coffers are somewhat empty, we are pleased to offer you dinner without charge, and our sincere appreciation for your efforts in planning your presentation. Please advise Maureen Bracke at 428-1230 that you will attend the meal.

We look forward to your remarks March 16th.

Linda L. Long

Linda L. Long
Section Chairperson

Source: Nikkei National Museum, 2018-16-4-3-20-13
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta, T6E 2T5,
March 18, 1988

Mr. Frank R. Addario,
11 Prince Arthur Avenue,
Toronto, Ontario,
M5R 1B2

Dear Frank,

As you rushed for your flight to Toronto you asked me to raise with Dan Heaps the problem that your group had failed to request reimbursement of the cost of your flight. I regret that I did not get the chance to speak with Mr. Heaps as the closed meeting went on for some time. I note however that claims must be made within two weeks.

I am informed by Derek Blackburn's Assistant, Paul Howard (996-7265), that the result of our presentations was that the scheduled clause by clause review of the Bill set to commence on March 17, 1988 was postponned until March 29, 1988 in order to give the government time to present more amendments to the Committee to meet our concerns.

I also drew Mr. Howard's attention to the misdrafting of the penalty provisions in Parts I through III that you mentioned. He has the task of preparing the amendments for the NDP in anticipation of the government's amendments and in anticipation that a clause by clause review of the Bill may commence immediately after the new amendments are presented. If the clause by clause review does not commence immediately it cannot be done until after Parliament reconvenes on April 12, 1988.

I have written for copies of those new amendments as soon as they are available. Your group might be interested in doing the same and in using the media to publicize your remaining concerns. I suggest the media because the NDP will have to walk a careful line. While trying for the best possible Bill they must avoid giving the Conservatives the opportunity to claim that the NDP are obstructing an opportunity to get rid of the War Measures Act.

If you are interested in discussing the amendments when they are available, please call (403 - 433 - 8104 home or 403 - 421 - 8660 work).

Yours truly,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-20-14
www.nikkeimuseum.org

OTTAWA OFFICE:
House of Commons
Ottawa, Ontario
K1A 0A6
(613) 995-8695

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

DAVID KILGOUR, M.P.
Edmonton Strathcona

DAVID KILGOUR, M.P.
EDMONTON STRATHCONA

454-S
HOUSE OF COMMONS,
OTTAWA, ONTARIO.
K1A 0A6
(613) 995-8695

CONSTITUENCY OFFICE:
SUITE 309, MILL CREEK PLACE
9119-82 AVE.
EDMONTON, ALBERTA T6C 0Z4
(403) 469-9890

EDMONTON, February 22, 1988

REPLY, PLEASE, TO THE EDMONTON OFFICE

Arnold Malone, P.C., MP
Chairman
Alberta Caucus
158 Confederation Building
HOUSE of COMMONS
OTTAWA, Ontario.
K1A OA6

Dear Arnold:

Re: next meeting of Alberta Caucus in Edmonton

Ann Sunahara of Edmonton, whose book Politics of Racism won a non-fiction award in our province, would like to be heard by our caucus at the next meeting in the province on two subjects: redress for Japanese Canadians and Bill C-77. Having met with her Thursday last, I'd recommend strongly that we all listen to what she has to say on both subjects.

Please advise.

Thank you.

Yours sincerely,

David Kilgour, MP
Edmonton Strathcona

DK:ld

cc Ann Sunahara, 9809 - 91 Avenue, Edmonton, Alberta.
T6E 2T5

Source: Nikkei National Museum, 2018-16-4-3-20-15
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
Narch 17, 1988.

Ukrainian Canadian Committee (National),
251 Laurier Avenue West,
Suite 1102,
Ottawa, Ontario,
K1P 5J6

Attention: Andrij Hluchowecky,

Dear Mr. Hluchowecky,

Further to your request of March 15, 1988, please find enclosed a copy of the Submission of the National Association of Japanese Canadians to the Legislative Committee on Bill C-77, prepared by myself.

From the presentations of March 15th, I understand that we share a concerns about the possibility that the broad wording of Bill C-77 would give the Governor in Council a Charter overide in any or all of the types of emergencies. In this submission I discuss it in terms of a war emergency only, but have since begun to consider that the wording in the other types is as general and that an overide power is intended there too. Indeed, my concerns are reinforced by the fact that some of the powers requested might well be useless without a Charter overide; for example, the power to prohibit public assemblies in section 17(1)(a). The Minister's comments that he does not intend to revoke habeus corpus, similarly make no sense without a Charter overide: Minutes of the Legislative Committee on Bill C-77, February 23, 1988.

As I argue at pages 32 - 35, there is support for a Charter overide in the cases that determined the power of Parliament under the War Measures Act. In view of this fact, and the fact that the Charter does not prohibit the delegation of Parliament's powers under Section 33 of the Charter, it may be necessary to get the Supreme Court of Canada to rule on this question. A reference to the Supreme Court in time of non-emergency, and before the Act is passed, would be best to minimize the panic that inevitably attends a decision in the heat of an emergency. We will certainly be urging this upon the government.

Source: Nikkei National Museum, 2018-16-4-3-20-16
www.nikkeimuseum.org

Should the Ukrainian Canadian Committee wish to pursue the issues we raise further, please do not hesitate to contact the NAJC. We would naturally appreciate your views and comments. It is, after all, in the interests of all ethnocultural groups that the emergency powers of the executive be exercised properly.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-20-17
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
March 17, 1988.

Canadian Ethnocultural Council,
251 Laurier Avenue West,
Suite 1100,
Ottawa, Ontario,
K1P 5J6

Attention: Louis Musto,

Dear Mr. Musto,

Further to your request of March 15, 1988, please find enclosed a copy of the Submission of the National Association of Japanese Canadians to the Legislative Committee on Bill C-77, prepared by myself.

As you are aware from our presentation, one of our principal concerns is the possibility that the broad wording of the Act would give the Governor in Council a Charter overide in any or all of the types of emergencies. In this submission I discuss it in terms of a war emergency only, but have since begun to consider that the wording in the other types is as general and that an overide power is intended there too. Indeed, my concerns are reinforced by the fact that some of the powers requested might well be useless without a Charter overide; for example, the power to prohibit public assemblies in section 17(1)(a). The Minister's comments that he does not intend to revoke habeus corpus, similarly make no sense without a Charter overide: Minutes of the Legislative Committee on Bill C-77, February 23, 1988.

As I argue at pages 32 - 35, there is support for a Charter overide in the cases that determined the power of Parliament under the War Measures Act. In view of this fact, and the fact that the Charter does not prohibit the delegation of Parliament's powers under Section 33 of the Charter, it may be necessary to get the Supreme Court of Canada to rule on this question. A reference to the Supreme Court in time of non-emergency and before the Act is passed would be best to minimize the panic that inevitably attends a decision in the heat of an emergency. We will certainly be urging this upon the government.

Source: Nikkei National Museum, 2018-16-4-3-20-18
www.nikkeimuseum.org

Should the Canadian Ethnocultural Council wish to pursue the issues we raise further, please do not hesitate to contact the NAJC. We would naturally appreciate your views and comments. It is, after all, in the interests of all ethnocultural groups that the emergency powers of the executive be exercised properly.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-20-19
www.nikkeimuseum.org

Minister of Justice
and Attorney General of Canada

CANADA

Ministre de la Justice
et Procureur général du Canada

July 27, 1988

Ms. M. Ann Sunahara
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara:

I have received a copy of your letter of February 3, 1988, to the Honourable David Crombie, the former Minister of State for Multiculturalism, relating to the Emergencies Bill. I regret that I was unable to reply earlier.

I understand that your letter has been referred to the Honourable Perrin Beatty, the Minister Responsible for Emergency Preparedness, and thus, the Minister responsible for this bill. Nevertheless, let me assure you that, throughout the preparation of this bill, I and officials of the Department of Justice have remained conscious of the concerns to which you refer.

As well, the number of amendments to the Emergencies Bill accepted by the Government during its recent consideration by a committee of the House of Commons may be viewed as further evidence of the Government's sensitivity to these and other related concerns.

With kindest regards, I remain,

Yours sincerely,

Ray Hnatyshyn

Ottawa, Canada K1A 0H8

Source: Nikkei National Museum, 2018-16-4-3-21-1
www.nikkeimuseum.org

M. ANN SUNAHARA

[redacted]

January 24, 1991

Dear Charlotte,

It was good to talk to you the night before last.

Enclosed please find:

a) the NAJC Submission

b) a copy of the Emergencies Act with the added amendments as of April 12, 1988. They added 10 more amendments on April 25, 1988 during the third reading and passing of the bill by the House of Commons. The Senate also added to amendments on June 28, 1988.

c) a copy of the paper I wrote in 3rd year law school on the War Measures Act. It's footnotes should save you some searching for cases and articles if you do something on the WMA.

If you decide to do a history of the development of the Emergencies Act the above material should be augmented by the Minutes of the Legislative Committee on Bill C-77 which are included in the report of that committee submitted to the House of Commons on the day of the third reading of the bill. York library should have it. If not, I will be coming to Toronto on the evening of the 14th of February (to swear my oath and be called to the bar of Ontario on the 15th - they don't schedule these things so out-of-towners can fly in, they have to come down the night before to be at Osgoode Hall at 9 AM!!!) and staying the weekend and can brong my copies of the Minutes. However, they are my only copies and I am a little paranoid about them so you will have to swear on a stack of bibles to return them.

Good luck and keep in touch.

Source: Nikkei National Museum, 2018-16-4-3-21-2
www.nikkeimuseum.org

THE WAR MEASURES ACT: CAN ITS USE BE CONTROLLED?

The Japanese Canadian Case

In times of real or apprehended war, invasion or insurrection Canada is governed by the executive under the powers of the War Measures Act.[1] By that Act a hastily conceived, broadly drafted instrument passed virtually without debate,[2] Parliament surrenders its prerogative to the Executive for an indefinite period of time. The War Measures Act is unique among emergency legislation in that it contains none of the traditional safeguards.[3] Nor does it permit Parliament to annul orders in council passed by the executive under its powers.[4] Parliament can debate the proclamation of the emergency and by a majority of both the House of and the Senate revoke it, but only during the ten days following the date on which the proclamation declaring the emergency to exist is laid before Parliament.[5] After that ten day period Parliament can only control the actions of the executive under the War Measures Act by criticism and by the extreme

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[1]R.S. ch. W-2.
[2]Only one Member of Parliament responded to the government's request for comment. Oliver Pugsley, an opposition Liberal, objected to a clause which prohibited examination by the courts of the facts in any order or regulation made under the Act. That clause was subsequently withdrawn. See D.E. Smith, "Emergency Government in Canada", (1969) 50 **C.H.R.** 429 at 431 - 432 and J.A. Carrothers, "The Great War and Canada's Enemy Alien Policy", 4 **Queen's L.J.** 43 at 55 - 56.
[3](i) that the emergency be declared according to a constitutional form by persons who will **not** administer the emergency power, and (ii) that the duration of the administration of emergency power must be strictly limited. M.P. O'Boyle, "Emergency Situations and the Protection of Human Rights", (1977) 28 **N.I.L.Q.** 160.
[4]In the latter aspect it stands in stark contrast to the British legislation, the Emergency Powers (Defence) (No. 2) Act, 1940, 3 & 4 Geo 6, c. 45 (U.K.), which was not only subject to annual renewal by Parliament but required that each order in council be laid before it as soon as possible and that such orders could be annuled by *either* House within 28 days.
[5]War Measures Act, supra, s. 6.

Source: Nikkei National Museum, 2018-16-4-3-21-3
www.nikkeimuseum.org

measure of bringing down the government by invoking censure or a vote of want of confidence. The probability of that extreme measure being taken in time of emergency is in the words of Canada's foremost expert on Parliamentary procedure, Senator Eugene A. Forsey, "extremely unlikely".[6] In times of emergency, therefore, the Canadian executive governs restrained only by the personal moral standards and sense of justice of its members, the influence of the media, pressure groups and public opinion, the vigilance of the Parliamentary opposition, and the residual power of the ballot box.[7]

While a presumption exists that the executive will not abuse its emergency powers,[8] recent evidence suggests that that presumption is no longer valid. Using the government's own documents this paper contends that the treatment meted out to Japanese Canadians in the Second World War constituted an abuse of its powers under the War Measures Act by the government of the day. The paper demonstrates that the political ambitions and personal prejudices of a minority of the executive motivated the implementation of repressive polices against a defenseless ethnic minority. Given this abuse and the absence of safeguards noted above, the paper then explores the past and possible roles of the courts in protecting individual and collective liberties in situations such as that faced by Japanese Canadians in World War II. To accomplish the latter objective the paper reviews and hypothetically relitigates the legal issues arising from the orders in council affecting Japanese Canadians. This paper is offered as a hypothetical test of whether the laws of Canada are truely capable of protecting the rights and freedoms of Canadians. It is also offered in the hope that neither the extreme circumstances chronicled herein, nor anything remotely like them, will recur in Canada.

I: THE FACTS

Between 1941 and 1949 over 20,000 Canadian residents of Japanese ancestry, 76% of whom were Canadian citizens, were uprooted from their homes in British Columbia, confined in detention camps, stripped of their real and personal property, and forced to disperse across Canada or be shipped to a starving Japan. Although opposed by those among the military and the police who were responsible for Canada's national

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[6]Interview with the author, March 6, 1983.
[7]O'Boyle, supra, 165.
[8]**Reference as to the Validity of the Regulations in Relation to Chemicals** [1943] S.C.R. 1 at 19 – 20.

Source: Nikkei National Museum, 2018-16-4-3-21-4
www.nikkeimuseum.org

security,[9] those policies were implemented by orders in council under the War Measures Act ostensibly for reasons of national security. While over thirty orders in council pursuant to the War Measures Act affected Japanese Canadians[10] this analysis is concerned only with the most important three: P.C. 1486, February 24, 1942 which authorized the uprooting and detention of Japanese Canadians; P.C. 469, January 19, 1943 which authorized the sale of Japanese owned property; and P.C. 7355, December 15, 1945 empowering the deportation of 10,000 Japanese Canadians. It is not within the scope of this paper to trace the evolution of even these three orders in council in detail. That has been done elsewhere.[11] Rather this analysis presents only sufficient background to set the scene and the main evidence now available that supports or contradicts the "national security" and "emergency" justifications of the government of the day.

(a) The Background

The policies affecting Japanese Canadians can be viewed as an extension of the government's policies with respect to enemy aliens in both World Wars. In World War I enemy alien policy, like most policies of the government of Robert Borden, was characterized by restraint. While over 80,000 enemy aliens were registered with the police, the Borden government resisted demands for their mass internment. Rather only unemployed[12] or trouble-making aliens were interned prior to 1916. After 1916 conflicts between the manpower demands of the war industries and the intolerance of the public produced a seesaw policy in which some internees would be released to satisfy the demands of employers followed by the internment of a similar number to satisfy public prejudice stimulated by the propaganda of new and politically powerful veterans groups.[13] The Borden government's quiet but firm resistance to the demands of the Great War Veterans' Association for the internment of all enemy aliens only served to reinforce the

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[9]A.G. Sunahara, **The Politics of Racism: The Uprooting of Japanese Canadians in World War II**, 1981: Lorimer, 31 –33. For full documentation of the facts in this essay the reader is referred to this reference.
[10]See **Senate Committee Proceedings** (1950) pp. 277 – 279 for a list of these orders.
[11]Sunahara, supra.
[12] Unemployment among enemy aliens became such a problem during the economic depression of 1913 to 1916 that the Borden government initiated an internment policy in part to prevent starvation among enemy aliens. The plight of unemployed enemy aliens was aggrevated by the abrogation of their legal rights which left them without recourse to the courts. See Carruthers, supra, at 69 – 75, 85 – 89.
[13]Ibid, 104 – 105.

Source: Nikkei National Museum, 2018-16-4-3-21-5
www.nikkeimuseum.org

general impression that an executive operating under the War Measures Act would interfere with individual liberty only where absolutely necessary.

One of the risks of emergency power, however, is that those who administer it come to view its use as acceptable, and even normal, and apply emergency powers to meet a marginal situation instead of less efficient and less drastic alternatives.[14] In the Second World War the Cabinet of William Lyon Mackenzie King was not as reluctant as the Borden Cabinet had been to use its powers to the fullest. Many of those expanded powers were necessary to meet the demands of a war very different from that faced by Borden. This growing use of emergency power bothered some members of the Cabinet[15]. For others it was an opportunity to get things done without having to answer for them. Into this latter group fell the principal architect of Japanese Canadian policy, Capt. the Hon. Ian Alistair Mackenzie, K.C., Member of Parliament for Vancouver Centre and Minister of Pensions and Health. To Mackenzie, the political strategist behind the Liberal Party's traditionally anti-Asian election campaigns in British Columbia, the war and the War Measures Act afforded a carte blanche to implement "Damn the Japs" policies he boasted would win the Liberals every seat in British Columbia[16]. His attitude is best shown by his reply in 1942 to a fellow Minister who queried the legality of stripping Japanese Canadians of their property. Mackenzie wrote: "[W]e should not be deterred by any representations by Japanese. Any action we take under the War Measures Act cannot be challenged in the courts"[17]. Mackenzie's attitudes were important because as the Cabinet's "expert" on Asians, a purely secondary matter in a busy Cabinet that believed the government should follow the status quo in racial matters[18], Mackenzie virtually dictated Japanese Canadian policy.

A second risk in the exercise of emergency powers is that the public comes to view restrictions on civil liberties as justifiable. So long as the vast majority of the public is not directly and adversely affected by their exercise, and in the absence of contradicting evidence, the public will presume that the implemented measures were both necessary and

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[14]O'Boyle, supra, 164.
[15]Notably C.G. Power, J.L. Ilsley, and T.A. Crerar. See R. Cook, "Canadian Freedom in Wartime" in W.H. Heick and R. Graham (eds), **His Own Man:Essays in Honour of Arthur Reginald Marsden Lower**, 1974:McGill-Queens, p. 45 and Sunahara, supra, 108 - 109, 149.
[16]**Macleans**, April 15, 1946, pp. 65 - 66.
[17]I.A. Mackenzie to N.A. McLarty, June 5, 1942, Ian Mackenzie Papers, Vol 25, P.A.C.
[18]Humphrey Mitchell, Minister of Labour, as quoted in **Nisei Affairs**, August 28, 1945.

Source: Nikkei National Museum, 2018-16-4-3-21-6
www.nikkeimuseum.org

valid[19]. The restraint of the King government in its enemy alien policies of 1939 and 1940 reinforced that image. The male leadership of German and Italian fascist organizations had been interned (along with some communists whose detention is open to question) but the government had resisted public pressure in the spring of 1940 for the internment of massive numbers of German and Italian Canadians. As the experience of the First World War had shown public hysteria [20] soon receded. The public was left with the impression that the government had the situation under control and would only act where valid grounds existed. That impression was so strong that two weeks before the Pearl Harbor attack the editor of a Japanese Canadian newspaper confidently assured his readers that in the event of war between Japan and Canada "inflamed public opinion will probably be far more serious and more injurious than official government policy"[21].

The public, particularly in British Columbia, was also desensitized by historical discrimination against Asians. Asians had been the scapegoats of organized labour and politicians for seventy years. With the growing power of Imperial Japan and the economic success of Japanese immigrants in Canada, the Japanese became the main candidates for discriminatory regulation[22]. In the dying days of white supremacy the fact that they were non-white and relatively successful as a group made it easy to portray them as a social and economic threat. Japanese Canadians were supposed to be inferior but had proved themselves equal, if not superior, in the workforce. Disliked and socially isolated, the fact that they were different made them suspicious; the fact that they were racially the same as an enemy made it easy to convert suspicion into fear, a fear that stifled any uneasiness about government policies affecting Japanese Canadians.

A third difficulty with the exercise of emergency powers is the indirect way in which such powers increase the influence of politically powerful interest groups by silencing their opposition. At a time of censorship and possible imprisonment for "sedition", however defined, it takes a brave man to oppose the proposals of powerful

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[19]This phenomenon was common in Germany in the period before the Nazi concentration camps became overt death camps. See Bruno Bettleheim, **The Informed Heart**, 1960:Free Press, pp. 164 - 165.

[20]Hysteria at that time was fanned by the revelation of the role of German undercover agents and "quislings" in the occupation of the Low Countries and of Norway lending force to allegations of fifth column activities among German and Italian Canadians.

[21] **The New Canadian**, November 21, 1941.

[22]For example in the 1920's and 1930's the federal government tried to drive Japanese Canadians from the fishing industry by denying licences, cut back Japanese immigration to a maximum of 150 persons annually, and refused to enfranchise Canadian-born Japanese.

Source: Nikkei National Museum, 2018-16-4-3-21-7
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groups, especially groups like political or veterans associations which have traditionally clothed themselves with the mantle of public protectors. [23] Opposition is all the more difficult when the traditional moderating bodies, the official Opposition and the churches, remain silent. When the powerful interest groups are also anti-Asian and the potential victim is a disenfranchised and hence politically impotent Asian, the victim is quickly isolated and open to attack.

In Canada in 1941 Japanese Canadians were in an extremely difficult position. They faced a Cabinet willing to use its war powers to their fullest, a public desensitized by the reasonableness of past policy and by laws which traditionally discriminated against Asians, and politically powerful anti-Asian interest groups willing and able to agitate for repressive measures.

(b) PC 1486: Removal and Detention

Order in Council P.C. 1486 did not contain the word "Japanese". Rather that order was directed at "any or all persons ordinarily or actually resident" within any area of Canada defined as a "protected area" by the Minister of Justice. It empowered that Minister to control everyone's movement, employment, residence, freedom of association and communication, and their right to possess any specified article. It also authorized the Minister to order any and all persons to leave the area in question and to detain them "in any place and under such conditions as he may from time to time direct"[24]. While the order in council was broad enough to affect every resident of Canada, the ministerial order made under it on February 26, 1942 was directed only at "persons of the Japanese race". The government's rationale for the order was "national security". The removal of Japanese Canadians, Prime Minister King told the House of Commons, was necessary to safeguard the defences of the Pacific Coast[25]. Later the government would claim that Japanese Canadians had been uprooted only to protect them from the hysterical public of British

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[23]For instance critical remarks about the finding of a Royal Commission into the tragedy of the Canadian Forces at Hong Kong was sufficient for charges of "making statements prejudicial to the war effort" to be laid against Ontario's Conservative leader, Lt. Col. George Drew. See Cook, supra, 42.
[24]**Canada Gazette** February 27, 1942.
[25]Canada, House of Commons, **Debates**, February 25, 1942, p. 180.

Source: Nikkei National Museum, 2018-16-4-3-21-8
www.nikkeimuseum.org

west coast racists who were seeking to build a power base on an anti-Japanese platform. In 1940 the R.C.M.P. officer responsible for west coast security, Asst. Comnr. F.J. Mead had reported that

> No fear of sabotage need be expected from the Japanese in Canada. I feel this is a broad statement, at the same time I know it to be true. ... The greatest danger lies in the provocative and at times like these, downright dangerous agitation of [certain named politicians]. [32]

. The R.C.M.P. had responded to the threat with informal arrangements with the press about the publicity to be given to the activities and allegations of such men. For the most part the media exercised remarkable restraint, especially when compared to the vitriolic lies being pumped out in the same period by the anti-Asian Hearst press in the United States[33]. To Canada's security experts the way to defuse the possibility for civil disorder was to take action against those inciting the riot, not their potential victims[34].

Apart from a statement in support of Japanese Canadian loyalty on the day after the Pearl Harbor attack, no attempt was made by the Cabinet or any B.C. politician[35], to defuse the anti-Japanese fears that could produce a riot. Quite the contrary, by shutting down the Japanese Canadian fishing industry[36], where all fishermen were Canadians, registering **all** Japanese Canadians like enemy aliens, ordering the removal of adult male aliens for reasons of national security[37], and, on the politicians part, publicly demanding the removal of all Japanese Canadians, the Cabinet and politicians only aggravated the fears and insecurities of British Columbians. Silence in politics, if not in law, is agreement and confirmation.

In Ottawa there were sharp divisions between the professionals and the politicians over the "Japanese question". The military, the R.C.M.P. and senior civil servants from the department of external affairs were of the opinion that Japanese Canadians were loyal and that measures already in force for the internal defence of the Pacific Coast were adequate. External affairs was also afraid that further repression against Japanese

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[32]F.J. Mead, Asst Comnr, to S.T. Wood, Comnr R.C.M.P., August 21, 1940, RG 24, vol 2730, file HQS-5199x, P.A.C.
[33]For the American situation see Roger Daniels, **Concentration Camps U.S.A.**, 1971: Holt, Rinehart and Wilson.
[34]H.L. Keenleyside, Assistant Under-Sectretary of State for External Affairs, to Lt. Gen. Maurice A. Pope, Vice Chief of General Staff, January 3, 1942, with Pope's agreement, file 773-B-40, DEA
[35]except the single C.C.F. politician, Angus MacInnis
[36]P.C. 288, January 13, 1942.
[37]P.C. 365, January 16, 1942.

Source: Nikkei National Museum, 2018-16-4-3-21-9
www.nikkeimuseum.org

Canadians might make matters worse for Canadians captured at Hong Kong or trapped in Japan[38]. To B.C. politicians the loyalty of Japanese Canadians was immaterial. The possibility of riots, however caused, and the "heaven sent opportunity to rid themselves of the Japanese **economic** menace for ever more"[39] were all that mattered.

The opinion of the professionals may never have reached the Cabinet as a whole. The Cabinet's principal avenue of information was Ian Mackenzie. Even in his report of a January conference on the issue of Japanese Canadians Mackenzie omitted the opinion of the professionals. Instead he played up the possiblility of riots while moderating, in vocabulary if not in content, the more blatant demands of the B.C. politicians[40]. In place of the views of the R.C.M.P. and Ottawa's senior military officers Mackenzie substituted the views of the senior officer on the west coast, Maj. Gen. R.O. Alexander who, following private discussions with B.C. politicians, proposed three weeks after Pearl Harbor that adult male Japanese Canadians be interned to prevent riots he thought might follow scheduled anti-Japanese demonstrations, a proposal rejected by his superiors.[41]. In subsequent Cabinet discussions Mackenzie, ignoring the counsel of the R.C.M.P. and the virtual pleas of external affairs, continually pushed the argument that all Japanese Canadians, both citizens and aliens, were disloyal. [42]

Mackenzie was helped by Prime Minister King. In 1942 King was highly suspicious of the military who wanted conscription to meet Canada's overseas committments. Aware that conscription could destroy the Liberal party in Quebec, King wanted to avoid conscription at all costs. The need for home defence was King's main argument against

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[38]Conference on Japanese Problems, **Minutes**, p. 6, Dept. of External Affairs file 773-B-40C.
[39] Maurice A. Pope, **Soldiers and Politicians**, 1962: University of Toronto Press, p. 177. Pope's emphasis. The "economic menace" comment arises from the fact that for seventy years B.C. politicians had blamed the province's economic woes on non-whites whose lower wages were portrayed as undermining white living standards. The same politicians, however, were unwilling to pass legislation requiring equal pay for equal work.
[40]Conference on the Japanese Problem in B.C., **Report**, Ian Mackenzie Papers, vol. 32, file x-81, P.A.C.
[41]Ibid and n. 34. For the complete proposal see Maj. Gen. R.O. Alexander to Chief of General Staff, December 30, 1941, file 322.009(D358), Department of National Defense. Alexander was removed from his command within three weeks of the order uprooting Japanese Canadians.
[42]See Sunahara, supra, 41. While making these charges Mackenzie was trying to organize a Civilian Service Corps for Japanese Canadian males, a corps he presumed they would join to prove their loyalty.

Source: Nikkei National Museum, 2018-16-4-3-21-10
www.nikkeimuseum.org

conscription, and instability on the Pacific coast only helped that argument[43]. Where the advice of the military conflicted with King's political needs that advice would be ignored.

Mackenzie was also helped by the Americans. On February 19 President Roosevelt signed Executive Order 9066 permitting any designated military commander to exclude any and all persons from any designated area under his command. On the 20th the Secretary of War, Henry L. Stimson gave those powers to General John L. DeWitt of the Western Defense Command setting in motion the uprooting by American military of 110,000 Japanese Americans. News of the American action reached Ottawa on February 22nd, the same day that Mackenzie obtained the agreement of Cabinet to enlist all male Japanese Canadians in a Civilian Service Corps. Upon learning of the American plans to include women, children and the aged, the Cabinet readily assented to P.C. 1486.

Canada's senior military officers made one final protest. On February 26th they refused to carry out the uprooting of Japanese Canadians[44]. In the eyes of the military the matter was a political and hence a civilian problem, not a national security problem. As a consequence the task fell to the equally reluctant Royal Canadian Mounted Police and to a civilian agency, the British Columbia Security Commission, who between March and November 1942 supervised the removal of 20,881 men, women and children from their homes on the Pacific coast to detention camps in the mountains of British Columbia.

(c) P.C. 469: Dispossession

The process of stripping Japanese Canadians of their property by means of P.C. 469 began only seven weeks after P.C. 1486 authorized their uprooting. Realizing that Japanese farms in the Frazer Valley were ideal for postwar veteran resettlement[45], Mackenzie immediately took steps to acquire them thereby effecting two political coups: appealing for veteran's votes with good, cheap farms, and giving early proof to his pledge of April 4, 1942 that as long as he remained in public office Japanese Canadians would never return to the Pacific coast[46]. His plans went smoothly. Since the Veterans Land Act under which he intended to buy the farms was not yet law he arranged for the sale of

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[43]W.L.M. King Diary, February 20, 1942.
[44]Canada, War Cabinet Committee, **Minutes**, February 26, 1942, RG 2/16, vol. 8, P.A
[45]Ian Mackenzie to T.A. Crerar, Minister of Mines and Resources, April 14, 1942, Ian Mackenzie Papers, MG27IIIB5, Vol. 25, 70-25-3, PAC.
[46]Vancouver **Province**, April 4, 1942.

Anne
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Source: Nikkei National Museum, 2018-16-4-3-21-11
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Japanese-owned farms to be frozen[47], had them surveyed by Soldier Settlement Board appraisers using criteria which minimized their apparent value[48], and took on the task of persuading the Secretary of State, Norman A. McLarty, to amend the powers of the Custodian of Enemy Property to permit the sale of Japanese property[49]. Mackenzie was assisted by Humphrey Mitchell, the Minister of Labour, who supported the sale of Japanese Canadian property as a means of raising money on which Japanese Canadians could live while confined unemployed in government detention camps, and from which the inmates could repay the relief they had already accepted to support themselves while so confined. Making Japanese Canadians pay for their own incarceration would minimize the government's expenses and avoid charges by the Conservative opposition that the government was "pampering" Japanese Canadians[50].

P.C. 469 of January 19, 1943 makes no mention of any of these reasons. Rather that order states that the Custodian's powers were being amended to enable him to handle the continuing sale of Japanese Canadian fishing vessels[51], and to assume the former duties of the Soldier Settlement Board with respect to the frozen farms[52]. The assumption of these duties, the order continues, made it "necessary to provide facilities for liquidation of property in appropriate cases." Accordingly the powers of the Custodian were deemed to have included from the date of the vesting of Japanese property "the power to liquidate, sell or otherwise dispose of such property" and that for the purpose of such sales the Consolidated Regulations Respecting Trading With the Enemy would apply "mutatis mutandis as if the property belonged to an enemy"[53].

In fact the words "appropriate cases" meant "every case". Over the next four

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[47]P.C. 5523, June 29, 1942. That order required that sales of Japanese farms be approved by the Director of the Soldier Settlement Board ostensibly to protect Japanese Canadians from exploitation. Approval was seldom given by that official who in August became the Director of the Veteran's Land Act Administration and purchaser of the farms on behalf of the government.

[48]Sunahara, supra, p. 103.

[49]Japanese property had been vested in The Custodian of Enemy Property "as a protective measure only" at the time of the uprooting. P.C. 1665, March 4, 1942, s. 12.

[50] Cabinet Committee on Japanese Questions, **Minutes**, January 11, 1943, Ian Mackenzie Papers, Vol. 24, P.A.C. This policy reduced government expenses on Japanese Canadians to $700. per year per family of 5. The U.S. government spent $10,000 per year per family of five.

[51]The sale of the fishing fleet had formerly been handled by the Japanese Fishing Vessel Disposal Committee set up under P.C. 288, January 13, 1942.

[52]See note 47

[53] P.C. 469, January 19, 1943, s. 2.

Source: Nikkei National Museum, 2018-16-4-3-21-12
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years, while the courts reserved judgement on the legality of the order[54], the Custodian disposed of an estimated $11.5 million of Japanese Canadian property for $5,373,317.64 [55]. These figures represented all Japanese Canadian property, real and personal, within 100 miles of the Pacific Coast.

(d) P.C. 7355: Deportation

The circumstances surrounding P.C. 7355[56], of December 15, 1945, authorizing the deportation of 10,000 Japanese Canadians, illustrate the real powerlessness of Parliament when the War Measures Act is administered by an executive determined to get its way. The first and more draconian version of this order had been produced on September 2, 1945 by a Special Cabinet Committee[57] dominated by Ian Mackenzie and Humphrey Mitchell. Their intention was to have that committee rubber-stamp the order and its companions, to rush them through Cabinet and deport the affected Japanese Canadians before the War Measures Act was replaced four months later by the National Emergency Transitional Powers Act of 1945 (N.E.P.T.A.)[58]. The purpose of N.E.P.T.A., about to be put before Parliament, was to continue certain emergency powers, in particular economic controls, to facilitate the transition of the Canadian economy from strict wartime controls to normal peacetime conditions. However, opposition from within the committee, plus a delay in the necessary approval of the Supreme Allied Commander in Occupied Japan for the shipment of civilians to that starving country, frustrated their plans.

The manner in which the government overcame this frustration illustrates its acumen and the arrogance with which it viewed its emergency powers. First the Cabinet attempted to expand its powers under N.E.P.T.A. by inserting a clause in the draft bill that gave the Governor in Council exclusive power over "entry into Canada, exclusion and

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[54]**Nakashima et al** v. **The King** [1947] Ex.C.R. 486.
[55]Estimated by the the Office of the Custodian of Enemy Property. G.W. MacPherson to Dr. E. H. Coleman, January 19, 1943, RG117, Vol T95, P.A.C.. Cash realization from as of March 31, 1947 from Memorandum to Cabinet, Ian Mackenzie Papers, Vol. 79, P.A.C.
[56]P.C. 7355 was the cornerstone of a trilogy of orders in council intended to (i) effect the deportation of 10,000 Japanese Canadians (P.C. 7355), (ii) to strip naturalized Japanese Canadians so deported of their Canadian status (P.C. 7356) and (iii) to set up a Loyalty Commission to determine which additional Japanese Canadians the Minister of Labour should recommend for deportation (P.C. 7357).
[57]on Repatriation and Relocation. See Sunahara, supra, p. 124 for composition.
[58]S.C. 9 & 10 George 6, c. 25.

Source: Nikkei National Museum, 2018-16-4-3-21-13
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deportation, and revocation of nationality"[59]. The ensuing uproar in Parliament, assisted by the fact that the deportation of citizens had been declared a war crime by the United Nations, forced the Justice Minister, Louis St. Laurent, to withdraw the offending section, s. 3(g), pledging as he did so to consult Parliament on any future deportation legislation[60].

Unfortunately in its relief over the removal of section 3(g) and bolstered by St. Laurent's pledge, the Commons failed to appreciate the significance of N.E.P.T.A.'s section 4. Section 4 authorized the Governor in Council to order the continuation in full force under the authority of N.E.P.T.A. of all orders in council existing on December 31, 1945. Orders passed under the War Measures Act and continued under the authority of N.E.P.T.A., however, could not be annuled by Parliament under section 2(3) as orders passed pursuant to N.E.P.T.A. could be. To defy Parliament with impunity the Cabinet simply waited until N.E.P.T.A. was passed by Parliament before it created P.C. 7355 in the dying days of the War Measures Act.

P.C. 7417[61] continuing all existing orders rendered Parliament impotent. Despite the subsequent conclusion of the Chief Justice of Canada that "Parliament has not effaced itself, and has full power to amend or repeal the **War Measures Act** or to make ineffective any Order in Council passed in pursuance of its provisions"[62], there was only one mechanism by which Parliament could "make ineffective" an order it had explicitly rejected: it could bring down the government. In December of 1945, however, the probable success of a vote of want of comfidence was minimal. Not only did the recently re-elected government have a majority which could be depended upon to support the party when the whips were on, but the Conservative Members from British Columbia, who were as traditionally anti-Asian as their Liberal counterparts, were not about to see themselves accused of precipitating an election through supporting the rights of Japanese Canadians. Those who wished to stop the deportation of Japanese Canadians could look only to a public opinion or to a legal solution to the problem.

P.C. 7355 states as the reason for its existence the fact that certain Japanese Canadians have made "a written request or statement of desire to be repatriated or sent to

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[59]Bill 15, October 5, 1945, s. 3(g).
[60]**Debates**, December 6, 1945.
[61]December 28, 1945
[62] **Reference as to the Validity of Orders in Council of the 15th Day of December 1945, in Relation to Persons of the Japanese Race** [1946] S.C.R. 248, Rinfret C.J. at 264. (Hereafter **Reference re Japanese Canadians**)

Source: Nikkei National Museum, 2018-16-4-3-21-14
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Japan" and hence that it was deemed desireable to deport them. The order creates four classes of deportees: (i)Japanese nationals who had either requested to be repatriated or were still interned at the end of the war, (ii) naturalized Japanese Canadians who failed to withdraw their requests before the surrender of Japan on September 1, 1945, (iii) Canadian-born Japanese who did not revoke their "repatriation" [sic][63] requests before the Minister made the order for their deportation, and (iv) the wives and minor children of the above males regardless of whether they had requested to be sent to Japan. The order gave the impression, later presumed by the courts[64], that the government was merely trying to facilitate the journey to Japan of those who had *voluntarily* requested to be sent there. The government's own records show how erroneous, in fact, that impression is.

The "written request or statement of desire" referred to above was, in most cases, a document signed in April or May 1945 under stressful and compromising circumstances. At that time plans of the federal government were disrupted when the United States Supreme Court ruled that the detention of loyal Japanese Americans was unconstitutional and that they must be allowed to return to their homes on the Pacific Coast[65]. Unwilling to extend the same right to Japanese Canadians, the government forced Japanese Canadians to choose between immediate dispersal east of the Rocky Mountains or deportation to Japan at some future date. Those who chose Japan would be deemed disloyal and deportable.

The survey was deliberately slanted to encourage the confused, poverty stricken and demoralized inmates of the government's detention camps to choose Japan. The inmates were told that those who chose Japan could retain their jobs in B.C. or if unemployed could receive a relief allowance without any further depletion of their capital in the hands of the Custodian of Enemy Property[66]. They could keep the shacks they had improved at their own expense, and, if they had no capital left from supporting themselves in the camps, they would be guaranteed a resettlement allowance of $200 and free transportation. In contrast, inmates who chose Canada were to lose their jobs and be immediately shipped to rotting tenements of the Kaslo detention camp where they would

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[63]The "patria" of Canadian-born Japanese is Canada.
[64]See Estey J. in **Reference re Japanese Canadians**, supra, at 318, 320.
[65]**Ex Parte Mitsue Endo** (1944) 323 U.S. 283.
[66]Normally Japanese Canadians with capital from the sale of their property in the hands of the Custodian could not recieve relief until that capital was depleted.

Source: Nikkei National Museum, 2018-16-4-3-21-15
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remain until sent to a job east of the Rocky Mountains. The suitability of that job was to be determined by the government, and there was no guarantee that it would last for more than a few weeks. There was also no guarantee that the move eastward would be permanent. The inmates were told that the government was offering "such generous terms ... to those who come to the conclusion that conditions might be too difficult for them in Canada and the opportunity might be better in Japan"[67], because only Saskatchewan's C.C.F. government had expressed a willingness to accept Japanese Canadians.

The survey was attended by confusion, fear and turmoil. The government's records show that the inmates were told that signing for "repatriation" was not an indication of disloyalty and that they could revoke at a later date. The records also show that the government knew of the factors vitiating voluntary choice but rationalized that the survey "was fair in terms of what is politically feasible at the moment"[68]. To keep their jobs, to hide from the hostile outer world, in despair and confusion, under pressure from family and neighbours, 6,884 Japanese Canadians over the age of 16 signed the "repatriation" forms. If they and their 3,500 dependents were deported, while the rest were shipped east, Ian Mackenzie would accomplish his objective of ridding B.C. of Japanese Canadians.

In the end P.C. 7355 was never used. Upheld by the courts [69] it was defeated by the people of Canada. The court cases were fought only to buy time to mount an anti-deportation campaign. The churches, civil liberties groups, and the press, no longer fettered by censorship, were finally able to tell the Canadian people what was being done to Japanese Canadians. In the greatest outburst of public opinion in the long career of Prime Minister King, ordinary people all across Canada, including British Columbia, told their government to stop abusing Japanese Canadians. P.C. 7355 was revoked, under protest from Ian Mackenzie and Louis St. Laurent, on January 27, 1947, although the civil rights of Japanese Canadians continued to be restricted until April 1, 1949.

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[67]R.G. Robertson to W.L.M. King, April 23, 1945, W.L.M. King Papers, Vol. 36, C249590, P.A.C.
[68]Norman Robertson to W.L.M. King, February 21, 1945, W.L.M. King Papers, Vol. 361, C249584, P.A.C.
[69]**Reference re Japanese Canadians**, supra, and **Cooperative Committee on Japanese Canadians et al.** v. **Attorney General of Canada et al.** [1947] 1 D.L.R. 577 (P.C.).

Source: Nikkei National Museum, 2018-16-4-3-21-16
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Date 12/7/88 Time 1

To _____

While You Were Out

M Eddie Austyn

of Montreal Gazette

Phone 1-514-282-2818
area code number ext

Telephoned		Please call	
Called for Appointment		Will call again	
Wants to see you		Urgent	
Returned your call			

Message Re Energy Act

Editorial Writer

Think Safety

906-156

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NAJC. MAS p9-10

M ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5
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July 13, 1988

The Ukrainian Canadian Committee,
The Civil Liberties Commission
2118A Bloor Street West
Toronto, Ontario,
M6S 1M8

Attention: Ms. Alexandra M. Chyczij,
Legal Counsel

Re: Emergencies Act

I regret to advise that despite representations from the National Association of Japanese Canadians to the Senate in Committee on Bill C-77, the Senate chose not to amend Bill C-77 to include an express declaration that the Act did not authorize Orders-in-Council that invoke section 33 of the Charter.

The Emergencies Act, which became law on July 11, 1988, therefore, may licence the Cabinet to make orders and regulations that violate the fundamental freedoms and the political and equality rights of all Canadians.

As you are aware from my earlier letters, the National Association of Japanese Canadians has requested a reference of this legal issue to the Supreme Court of Canada. The Minister responsible has thus far refused stating that there is "very little concern" for a Charter override. The NAJC considers this to be too great a risk.

We ask that your organization write immediately to the Prime Minister and the Minister responsible, with copies to the other political parties, urging that a reference be undertaken.

I also take this opportunity to thank you for your pamphlet, "A Time for Atonement". I shall make reference to it in the bibliography of the manuscript I am preparing on emergency legislation. Please also advise Professor Luciuk of two other sources that I have found useful which he may find interesting: James R. Carruthers, "The Great War and Canada's Enemy Alien Policy", 4 Queen's L. J. 43; and, D.E.

Source: Nikkei National Museum, 2018-16-4-3-23-1
www.nikkeimuseum.org

Smith, "Emergency Government in Canada" (1969) 50 C.H.R. 429.

It is important that the facts about past abuses of Canada's emergency legislation are kept before the public if we are to avoid repeating past mistakes. Keep up the good work!

Yours truly,

M. Ann Sunahara

cc. Art Miki,
President NAJC

Source: Nikkei National Museum, 2018-16-4-3-23-2
www.nikkeimuseum.org

On the letterhead of your organization please send letters like the one below to:

The Rt. Hon. Brian Mulroney,
Prime Minster of Canada,
House of Commons,
Centre Block
Ottawa, Ontario,
K1A 0A4

The Rt. Hon. John Turner,
Leader of the Opposition,
House of Commons,
Centre Block
Ottawa, Ontario,
K1A 0A4

The Hon. Edward Broadbent
Leader, New Democrats,
House of Commons,
Centre Block
Ottawa, Ontario,
K1A 0A4

The Hon. Perrin Beatty,
Minister for Emergency Preparedness
House of Commons,
Centre Block
Ottawa, Ontario,
K1A 0A4

Senator Gildas Molgat,
Chairman, Senate Committee on Bill C-77
252N Centre Block,
Houses of Parliament,
Ottawa,Ontario,
K1A 0A4

Senator Alan MacEachern,
Senate Liberal Leader
Centre Block,
Houses of Parliament,
Ottawa,Ontario,
K1A 0A4

Dear Sirs,

Re: The Emergencies Act and Charter Override

The National Association of Japanese Canadians has drawn to our attention their concern that the new Emergencies Act might empower the Governor in Council to use

Source: Nikkei National Museum, 2018-16-4-3-24-1
www.nikkeimuseum.org

Parliament's powers to override Charter rights in time of national emergency.

While we are aware that the Minister responsible, Perrin Beatty, feels on the basis of a legal opinion that "there is very little basis for concern", we, the members of the undersigned organization, also feel that this is too important a matter to be left to the opinion of lawyers. Any possibility of such powers passing to the executive is too important a question to be left unresolved.

We join the National Association of Japanese Canadians in their request to the Minister to refer this matter to the Supreme Court of Canada for a definitive ruling and in their alternative request that Bill C-77 be immediately amended to expressly remove all possibility that a future executive could make Orders in Council that override Charter Rights.

Yours truly,

_____
Name,
President,
Name of your organization

cc. Art Miki, President,
National Association of Japanese Canadians,
735 Ash Street,
Winnipeg, Manitoba,
R3N 0R5

Source: Nikkei National Museum, 2018-16-4-3-24-2
www.nikkeimuseum.org

The danger of the executive receiving Parliaments powers to make laws contrary to the Charter can be removed by amending section 4 of Bill C-77 to read (amendment underlined):

> "4. Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations
>
> (a) altering the provisions of this Act; or,
>
> (b) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the **Immigration Act, 1976** on the basis of race, national or ethnic origin, colour, religion, sex or mental or physical disability; or,
>
> (c) invoking section 33 of the **Canadian Charter of Rights and Freedoms** and the powers thereunder to declare in any order or regulation that the order or regulation, or any other order or regulation or Act of Parliament, or any provision thereof, shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of the **Charter**."

Source: Nikkei National Museum, 2018-16-4-3-24-3
www.nikkeimuseum.org

506 Orkney Lane
Ottawa K2C 3M7
7th July, 1988.

Dear Ms. Sunahara,

I have just read, with growing admiration, your appearance before the Senate Committee of the Whole on the Emergencies Power Bill. I am sorry the Senators did not amend the bill to provide against Charter override by delegated legislation. It is possible that the Courts will treat Section 33 of the Charter as sui generis but I incline to your view. You certainly had the better of the exchanges with the officials on the matter.

It is always possible, too, that the Senators wanted the Crown to have the power in the Class IV emergency to be able to override the Charter.

I was also disappointed to see that clause 40 was not amended to deal with taxation and appropriation by delegated legislation. Despite the Savants - and begging your pardon - Section 53 of the Constitution Act is

Ms. M. Ann Sunahara,
Barrister & Solicitor,
Edmonton, Alberta.

Source: Nikkei National Museum, 2018-16-4-3-25-1
www.nikkeimuseum.org

nothing to the point. It only provides for the pre-emission of the Commons and a Royal message where the Bill procedure is used. And the Bill of Rights only prohibits prerogative taxation by proclamation not delegated taxation.

I remain convinced by all I have read on the Bill in my opposition to any emergency powers legislation. It will only serve to habituate the official mind to the idea that emergency powers, and this we are routine and normal. Far better that emergency powers be exercised in the knowledge that they will need sanctioning later by Parliament legislation. That at least concentrates the mind on what really needs to be done and not on the maximum use of powers already granted.

I was particularly glad that you made the point that the taking of powers to act in the lesser emergencies is a blatant intrusion on provincial

Source: Nikkei National Museum, 2018-16-4-3-25-2
www.nikkeimuseum.org

responsibilities.

Should you be speaking to Professor Christian I shall be glad if you will kindly pass on my regards — he sent me useful ideas years ago when I used to act as counsel to the Statutory Instruments Committee.

Thank you on behalf of all our fellow countrymen in laying matters out to the Senate so clearly. They and posterity have been clearly warned.

Yours sincerely

G. C. Eglington.

Source: Nikkei National Museum, 2018-16-4-3-25-3
www.nikkeimuseum.org

NAJC.MAS p1-2

M ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5
(403) 433 - 8104

July 5, 1988

Art Miki,
President,
National Association of Japanese Canadians,
National Executive Office,
735 Ash Street,
Winnipeg, Manitoba,
R3N 0R5

Re: Charter Override - Senate Appearance

As you are aware I appeared before the Senate on June 21, 1988 to seek an amendment of Bill C-77 to expressly exclude all possibility of a Charter override. Enclosed please find a transcript of the proceedings as reported in Hansard.

I regret to advise, however, that while the reception of the sponsoring Senator, Lorna Marsden, and others was very positive, the Senate did not amend the Bill as we requested. I have been informed by the Deputy Clerk of the Senate that only two minor amendments were made by the Senate when they dealt with the Bill on Tuesday the 28th of June, 1988.

The Bill will now go back to the House for acceptance of the Senate amendments and then become law. The only way to protect the rights of Canadians under it now is a reference or a challenge to the courts on the grounds that it is unconstitutional for Parliament to delegate its Charter powers to the executive.

In the interest of securing a reference I recently appeared as a guest speaker at a multicultural forum here in Edmonton. I told the forum about the override concerns and asked the leadership of the multicultural groups to write the government and Minister seeking a reference. Enclosed please find a copy of the letter I requested they send.

I am very afraid that our request for a reference will be ignored. To be effective we may need to tie it to the redress issue and seek the support of the members of the National Coalition on Redress. If the supporting groups also request a reference, we are more likely to get it.

Source: Nikkei National Museum, 2018-16-4-3-26-1
www.nikkeimuseum.org

If you are agreeable, please ask the Toronto office to provide me with the names and mailing addresses of the Coalition members in order that I might alert them to the seriousness of this matter and request that they write in support of a reference.

Please also find enclosed my travel receipts. I stayed with friends who are supportive of the redress issue. They will be as disappointed as I that the Senate did not grant our request.

Yours truly,

M. Ann Sunahara.

Encl.
cc. Cassandra Kobayashi

Source: Nikkei National Museum, 2018-16-4-3-26-2
www.nikkeimuseum.org

EXPENSES FOR SENATE APPEARENCE:

Airfare	$1031.00		$1031.00
Taxis - To airport		30.00	
- To Ottawa house		15.00	
- From Senate		6.50	
- To airport bus		5.50	
Airport bus (Ottawa)		5.50	
		62.50	62.50
Total;:"			$1093.50

Source: Nikkei National Museum, 2018-16-4-3-26-3
www.nikkeimuseum.org

THE SENATE OF CANADA LE SÉNAT DU CANADA

ROOM 216, EAST BLOCK
PARLIAMENT BUILDINGS
OTTAWA, ONTARIO
K1A 0A4
(613) 992-3106

June 23, 1988

Ms. M. Ann Sunahara
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ann:-

Thank you very much for sending me so quickly your complete analysis of Bill C-77. It is very interesting as was your testimony in front of our Committee of the Whole.

It was a pleasure to meet you and I hope that we have that opportunity again in the near future.

Yours sincerely,

Lorna Marsden

Source: Nikkei National Museum, 2018-16-4-3-27-1
www.nikkeimuseum.org

THE SENATE OF CANADA

LE SÉNAT DU CANADA

HON. JOYCE FAIRBAIRN

Ottawa, Ontario
K1A 0A4
(613) 996-4382

16 June 1988

Ms. M. Ann Sunahara
Barrister & Solicitor
9809 91 Avenue
Edmonton, Alberta
T6E 2T5

Dear Ms. Sunahara:

On behalf of the Honourable Joyce Fairbairn I wish to acknowledge receipt of your letter dated June 2, 1988 and enclosures regarding Bill C-77.

You may be assured this correspondence will be brought to the Senator's attention.

Sincerely,

L. Wilkins

Linda Wilkins
Secretary to the Honourable
Joyce Fairbairn

Source: Nikkei National Museum, 2018-16-4-3-27-2
www.nikkeimuseum.org

THE SENATE CHAMBER
CHAMBRE DU SÉNAT

SECOND SESSION, THIRTY-THIRD PARLIAMENT, 1986-88
DEUXIÈME SESSION, TRENTE-TROISIÈME LÉGISLATURE, 1986-88

HONORABLE SENATORS:
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52 **TURNER** (London)	34 **KENNY** (Rideau)	16
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45 **BOSA** (York-Caboto)	27 **HASTINGS** (Palisser-Foothills)	9 **PERRAULT** (North Shore-Burnaby)
44 **LUCIER** (Yukon)	26 **LANGLOIS** (Grandville)	8 **FRITH** (Lanark)
43 **MCELMAN** (Nashwaak Valley)	25 **PETTEN** (Bonavista)	7 **MACEACHEN** (Highlands-Canso)
42 **LEWIS** (St. John's)	24 **COTTREAU** (South Western Nova)	6 **ARGUE** (Regina)
41 **STEUART** (Prince Albert-Duck Lake)	23 **BONNELL** (Murray River)	5 **AUSTIN** (Vancouver South)
40 **EVERETT** (Fort Rouge)	22 **NEIMAN** (Peel)	4 **CROLL** (Toronto-Spadina)
39 **DAVEY** (York)	21	3 **OLSON** (Alberta South)
38 **SPARROW** (Saskatchewan)	20 **MOLGAT** (Ste. Rose)	2 **HICKS** (The Annapolis-Valley)
37 **CORBIN** (Grand-Sault)	19	1 **RIEL** (Shawinegan)
36 **RIZZUTO** (Repentigny)	18	
35 **WOOD** (Montarville)	17 **GRAHAM** (The Highlands)	

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BARRE

Gentleman Usher of the Black Rod

Gentilhomme huissier de la Verge noire

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GUY CHARBONNEAU
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66 **LANG** (South York)	84 **GIGANTES** (De Lorimier)	102 **GRAFSTIEN** (Metro Toronto)
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58 **ROBLIN** (Red River)	76 **MACQUARRIE** (Hillsborough)	94 **ROSSITER** (Prince Edward Island)
57 **FLYNN** (Rougemont)	75 **BALFOUR** (Regina)	93 **COCHRANE** (Newfoundland)
56 **WALKER** (Toronto)	74 **MACDONALD** (Halifax)	92 **BAZIN** (De la Durantaye)
55 **BÉLISLE** (Sudbury)	73 **ROBERTSON** (Riverview)	91 **OTTENHEIMER** (Waterford-Trinity)
54	72 **BAROOTES** (Regina-Qu'Appelle)	90
53 **ASSELIN** (Stadacona)	71 **DOYLE** (North York)	89
70 **THÉRIAULT** (Baie du Vin)	88 **HÉBERT** (Wellington)	
69 **KIRBY** (South Shore)	87 **COOLS** (Toronto Centre)	

April 18, 1988

Le 18 avril 1988

Source: Nikkei National Museum, 2018-16-4-3-27-3a
www.nikkeimuseum.org

April, 1988 / avril 1988

Desk Pupitre	Senators Sénateurs	Designation Divisions sénatoriales	Political Affiliation politique
	NEWFOUNDLAND / TERRE NEUVE (6)		
93	COCHRANE, Ethel	Newfoundland	P.C.
60	DOODY, C. William	Harbour Main-Bell Island	P.C.
42	LEWIS, Philip Derek	St. John's	Lib.
64	MARSHALL, Jack	Humber-St. George's-St. Barbe	P.C.
91	OTTENHEIMER, Gerry	Waterford-Trinity	P.C.
25	PETTEN, William	Bonavista	Lib.
	NOVA SCOTIA / NOUVELLE ÉCOSSE (10) 1 vacancy/vacance		
24	COTTREAU, Ernest	South Western Nova	Lib.
17	GRAHAM, Alasdair	The Highlands	Lib.
2	HICKS, Henry D.	The Annapolis Valley	Lib.
69	KIRBY, Michael	South Shore	Lib.
74	MACDONALD, Finlay	Halifax	P.C.
62	MACDONALD, John	Cape Breton	P.C.
7	MACEACHEN, Allan J.	Highlands-Canso	Lib.
63	MUIR, Robert	Cape Breton-The Sydneys	P.C.
50	STEWART, John B.	Antigonish-Guysborough	Lib.
	NEW BRUNSWICK / NOUVEAU BRUNSWICK (10) 1 vacancy/vacance		
46	ANDERSON, Margaret	Northumberland-Miramichi	Lib.
37	CORBIN, Eymard	Grand-Sault	Lib.
15	LEBLANC, Roméo	Beauséjour	Lib.
43	MCELMAN, Charles	Nashwaak Valley	Lib.
73	ROBERTSON, Brenda	Riverview	P.C.
11	ROBICHAUD, Louis-J.	L'Acadie-Acadia	Lib.
81	SHERWOOD, Cyril B.	Royal	P.C.
99	SIMARD, Jean-Maurice	Edmundston	P.C. Ind.
70	THÉRIAULT, L. Norbert	Baie du Vin	Lib.
	PRINCE EDWARD ISLAND / ÎLE-DU-PRINCE-ÉDOUARD (4)		
23	BONNELL, M. Lorne	Murray River	Lib.
76	MACQUARRIE, Heath	Hillsborough	P.C.
61	PHILLIPS, Orville	Prince	P.C.
94	ROSSITER, Eileen	Prince Edward Island	P.C.
	QUÉBEC (24) 3 vacancies/vacances		
53	ASSELIN, Martial	Stadacona	P.C.
92	BAZIN, Jean	De la Durantaye	P.C.
*	CHARBONNEAU, Guy	Kennebec	P.C.
97	COGGER, Michel	Lauzon	P.C.
98	DAVID, Paul. P.	Bedford	P.C.
68	DE BANÉ, Pierre	De la Vallière	Lib.
10	DENIS, Azellus	La Salle	Lib.
57	FLYNN, Jacques	Rougemont	P.C.
84	GIGANTES, Philippe D.	De Lorimier	Lib.
88	HÉBERT, Jacques	Wellington	Lib.
48	KOLBER, E. Leo	Victoria	Lib.
82	LAFOND, Paul C.	Golfe	Lib.
26	LANGLOIS, Léopold	Grandville	Lib.
31	LEBLANC, Fernand-E.	Saurel	Lib.
104	LEFEBVRE, Thomas	De Lanaudière	Lib.
65	MOLSON, Hartland de M.	Alma	Ind.
1	RIEL, Maurice	Shawinegan	Lib.
36	RIZZUTO, Pietro	Repentigny	Lib.
77	TREMBLAY, Arthur	Les Laurentides	P.C.
33	WATT, Charles	Inkerman	Lib.
35	WOOD, Dalia	Montarville	Lib.
	ONTARIO (24) 1 vacancy/vacance		
96	ATKINS, Norman K.	Markham	P.C.
55	BÉLISLE, Rhéal	Sudbury	P.C.
45	BOSA, Peter	York-Caboto	Lib.
87	COOLS, Anne C.	Toronto Centre	Lib.
4	CROLL, David A.	Toronto-Spadina	Lib.
39	DAVEY, Keith	York	Lib.
71	DOYLE, Richard J.	North York	P.C.
8	FRITH, Royce	Lanark	Lib.
102	GRAFSTEIN, Jerahmiel S.	Metro Toronto	Lib.
12	HAIDASZ, Stanley	Toronto-Parkdale	Lib.
80	KELLY, William M.	Port Severn	P.C.
34	KENNY, Colin	Rideau	Lib.
66	LANG, Daniel	South York	Ind.
51	MARSDEN, Lorna	Toronto-Taddle Creek	Lib.
59	MURRAY, Lowell	Grenville-Carleton	P.C.
22	NEIMAN, Joan	Peel	Lib.
83	PITFIELD, P. M.	Ottawa-Vanier	Ind.
49	SINCLAIR, Ian	Halton	Lib.
28	STANBURY, Richard	York Centre	Lib.
47	STOLLERY, Peter	Bloor & Yonge/Toronto	Lib.
101	THOMPSON, Andrew	Dovercourt	Lib.
52	TURNER, Charles	London	Lib.
56	WALKER, David	Toronto	P.C.
	MANITOBA (6)		
40	EVERETT, Douglas	Fort Rouge	Lib.
13	GUAY, Joseph-Philippe	St. Boniface	Lib.
20	MOLGAT, Gildas L.	Ste. Rose	Lib.
78	NURGITZ, Nathan	Winnipeg North	P.C.
58	ROBLIN, Duff	Red River	P.C.
95	SPIVAK, Mira	Manitoba	P.C.
	SASKATCHEWAN (6)		
6	ARGUE, Hazen	Regina	Lib.
75	BALFOUR, James	Regina	P.C.
72	BAROOTES, E.W. (Staff)	Regina-Qu'Appelle	P.C.
29	BUCKWOLD, Sidney L.	Saskatoon	Lib.
38	SPARROW, Herbert O.	Saskatchewan	Lib.
41	STEUART, David Gordon	Prince Albert-Duck Lake	Lib.
	ALBERTA (6) 1 vacancy/vacance		
79	BIELISH, Martha P.	Lakeland	P.C.
103	FAIRBAIRN, Joyce	Lethbridge	Lib.
27	HASTINGS, Earl A.	Palliser-Foothills	Lib.
85	HAYS, Daniel	Calgary	Lib.
3	OLSON, H.A. (Bud)	Alberta South	Lib.
	BRITISH COLUMBIA / COLOMBIE BRITANNIQUE (6)		
5	AUSTIN, Jack	Vancouver South	Lib.
100	BELL, Ann Elizabeth	Nanaimo-Malaspina	Ind.
86	LAWSON, Edward M.	Vancouver	Ind.
67	MARCHAND, Len	Kamloops-Cariboo	Lib.
9	PERRAULT, Raymond	North Shore-Burnaby	Lib.
30	VAN ROGGEN, George	Vancouver-Point Grey	Lib.
	NORTHWEST TERRITORIES / TERRITOIRES DU NORD-OUEST (1)		
32	ADAMS, Willie	Northwest Territories	Lib.
	YUKON TERRITORY / YUKON (1)		
44	LUCIER, Paul	Yukon	Lib.

* Speaker/Président

Source: Nikkei National Museum, 2018-16-4-3-27-3b
www.nikkeimuseum.org

Emergency Preparedness Canada
Executive Director

Protection civile Canada
Directeur exécutif

1003-2

March 31, 1988

Mr. Art Miki
President
National Association of
Japanese Canadians
National Executive Office
735 Ash Street
Winnipeg, Manitoba
R3N OR5

Dear Mr. Miki:

The Legislative Committee on C-77 (the Emergencies Act) has completed clause by clause consideration of Parts I to IV of the Bill, and will cover the remaining Parts V to VII after the Easter break. I thought you might be interested in being informed immediately of the changes the Committee has made to the Bill so far. The amendments are considerable in number, and respond to a wide variety of concerns raised during the Committee's hearings.

I have enclosed a summary of the amendments approved by the Committee, along with their full exposition in a "side-by-side" format so that comparisons with the original Bill can easily be made. I have also included a summary and side-by-side display of the further amendments the government will be proposing. Additional amendments are expected to be raised by the Committee.

Yours sincerely,

W. B. Snarr

Enclosures: 2

cc: Ms. Ann Sunahara,
Edmonton, Alberta

Canada

Source: Nikkei National Museum, 2018-16-4-3-28-1
www.nikkeimuseum.org

SUMMARY OF AMENDMENTS TO C-77, PARTS I TO IV

Approved by Legislative Committee March 29, 1988

Purpose	Clauses affected
1. Revise the definition of "national emergency" and relocate it from the Preamble to the main body of the Act.	Preamble new Clause 3
2. Change the definition of "public welfare emergency" so that "a breakdown in the flow of essential goods, services or resources" is not a primary cause justifying the declaration of an emergency.	Clause 3
3. Specify that the GinC cannot alter the Act by order or regulation.	New Clause 4
4. Change "...in the opinion of the Governor in Council..." to "...on reasonable grounds, the Governor in Council believes that...", so that executive judgments can be challenged in the courts.	Subsections 4(1), 6(1), 10(1), 10(2), 11(1)b), 15(1), 17(1), 21(1), 21(2), 22(1)(b), 26(1), 28(1), 32(1), 32(2), 36(1), 38(1), 41(1), 41(2), 58(2)
5. Reduce the sunset periods for Parts II to IV to 30, 60 and 120 days respectively.	16(2), 21(1), 27(2), 32(1), 37(1), 41(1)
6. Permit Governor in Council to revoke a declaration arbitrarily.	Sections 9, 20, 31, 40.
7. Require that "reasonable" compensation be paid for commandeered services.	Subsections 6(1)(d), 17(1)(d),28(1)(e), 38(1)
8. Clarify the provision that a province's ability to deal with a concurrent provincial emergency will not be unduly impaired.	New subsections 6(3)(a)(i), 17(3)(a), 28(2)(a)(i)

.../2

Source: Nikkei National Museum, 2018-16-4-3-28-2
www.nikkeimuseum.org

9. Require that, to the extent possible, federal powers should be exercised in concert with the provinces.	New subsections 6(3)(a)(ii), 17(3)(b), 28(2)(a)(ii),38(3)
10. Clarify that travel restriction in a public welfare emergency be limited to the "protection of the health and safety of individuals".	Section 6(1)(a)
11. Clarify that Part I cannot be used to terminate a labour dispute.	New Subsection 6(3)(b)
12. Narrow the scope of the power to regulate public assembly in Part II to assemblies "that may reasonably be expected to lead to a breach of the peace."	Subsection 17(1)(a)(i)
13. Change the definitions of "international emergency" and "war emergency" to narrow application and add "...and is so serious as to be a national emergency".	Clauses 25, 35.
14. Confine the application of Part III inquiry and search and seizure powers to the enforcement of laws dealing with defence contracts and to the prevention of hoarding or black marketing.	Subsections 28(1)(c) 28(1)(d)
15. Clarify that Part III powers do not extend to censorship.	New Subsection 28(2)(b)
16. Revise penalties sections to specify separate maximums for summary conviction and for indictment.	Subsections 6(1)(j), 17(1)(e),28(1),38(2).

Source: Nikkei National Museum, 2018-16-4-3-28-3
www.nikkeimuseum.org

SUMMARY OF AMENDMENTS TO C-77, PARTS V TO VII

Government Proposals

Purpose	Clauses affected
1. Make the compensation provisions of Part V mandatory rather than discretionary.	Subsection 46(1), New Subsection 46(2), Subsections 47(d), 47(j), 49(1), 68.
2. Delete the section permitting exclusion of classes of persons from compensation.	Subsection 47(j)
3. Include orders and regulations in a motion to continue an emergency declaration.	Section 58(1), (2), (3), (4).
4. Permit one House alone to revoke a declaration.	Subsection 57(3)
5. Extend the time limit on Parliament's revocation of orders from 20 to 60 days.	Subsection 59(3)
6. Require Parliamentary Review Committee to report to Parliament at least every 60 days, and in any case whenever a declaration is continued or revoked.	Subsection 60(5)
7. Provision for a post-event inquiry.	Section 61

Source: Nikkei National Museum, 2018-16-4-3-28-4
www.nikkeimuseum.org

FACT SHEET
FEUILLET DE DOCUMENTATION

Emergency Preparedness Canada | Protection civile Canada

BILL C-77 INCORPORATES NATIONAL ASSOCIATION OF JAPANESE CANADIANS RECOMMENDATIONS

Bill C-77, the Emergencies Act, was passed unanimously by the House of Commons on April 27, 1988. In its current form it incorporates almost all of the changes proposed by the National Association of Japanese Canadians (NAJC) when it appeared before the legislative committee. Key NAJC proposals and the corresponding provisions of Bill C-77 appear below:

NAJC Recommendation	Corresponding Provisions of Bill C-77
Parliament, at all times, must be able to revoke or modify any declaration of an emergency; and,	S.59 in its amended form incorporates this proposal.
Parliament must at all times be able to amend or revoke any order or regulation made by the Cabinet.	S.61 provides for this.
All orders and regulations made under emergency powers must be directly related to alleviating the particular emergency.	All orders and regulations must be "necessary for dealing with the emergency."
Whether emergency orders and regulations are, in fact, directly related to the emergency must be reviewable at all times in a court of law, and the burden of proving the direct relationship shall rest with the government.	Government must have "reasonable grounds" for issuing all orders and regulations. This would be reviewable by courts, upon application by any individual or organization which had standing.

.../2

Canada

Source: Nikkei National Museum, 2018-16-4-3-29-1a
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
"National emergency" should be defined.	Defined in S.3
Any delegation of emergency powers by Parliament to the Cabinet must be predicated upon a threat to the continued existence of Canada itself.	National emergencies must "seriously threaten the ability of the government of Canada to preserve the sovereignty, security and territorial integrity of Canada". S.3(b)
Orders and regulations for war must be limited to measures strictly necessary and directly related to the emergency in question; and,	Orders and regulations for war would be limited to measures which on "reasonable grounds" are "necessary or advisable" for dealing with the emergency.
The burden of proving that the orders are strictly necessary and directly related to the emergency must rest with the Government.	This would be the case. The onus would be on government to divulge its "reasonable grounds" to court.
No order or regulation should take effect before it is approved by Parliament.	S.61 and 62 include provisions requiring approval, but to delay immediate action when necessary in an emergency could cost lives.

.../3

Source: Nikkei National Museum, 2018-16-4-3-29-1b
www.nikkeimuseum.org

NAJC Recommendation	Corresponding Provisions of Bill C-77
The operation of all orders and regulations must be subject to the review of a Special Parliamentary Committee.	S.62 provides for just such review.
Debate upon a motion to amend or revoke an order or regulation shall be without closure.	Such debate must be "without interruption" and closure is not provided for.
In any review of the use of emergency powers, or in any trial of an accused charged under an emergency order, the onus of proving that the emergency exists and the order is reasonable must rest with the Cabinet.	Government must have "reasonable grounds" for invocation and would be required to demonstrate this before the courts.
Any emergency legislation must expressly deny the power to override rights guaranteed in the Charter of Rights and Freedoms.	The Charter itself prohibits this.

June 21, 1988

Source: Nikkei National Museum, 2018-16-4-3-29-2
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

Mr. Art Miki,
President, NAJC,
735 Ash Street,
Winnipeg, Manitoba,
R3N 0R5

Ms. Cassandra Kobayashi,
Barrister & Solicitor,
3245 West 12th Avenue,
Vancouver, B.C.,
V6K 2R8

Ms. Maryka Omatsu,
Barrister & Solicitor,
27 Howland Avenue,
Toronto, Ontario,
M5R 3B2

Mr. Shin Imai,
Barrister & Solicitor,
150 Simcoe Street,
Toronto, Ontario,
M5H 3G4

Dear Confreres,

Re: the Emergencies Act and the Charter Override

Another update!

I have now met with the Dean of the Faculty of Law at the University of Alberta, Tim Christian, and reviewed with him our concerns about a possible Charter override in the Emergencies Act. He, as a constitutional lawyer, agrees with my position that it is entirely possible that the Act gives override powers to the executive. He also agrees that the issue must be brought to the attention of the legal community and a reference made to the Supreme Court of Canada. Indeed, he is prepared to make himself available to argue it if necessary. He also suggested that it might be necessary to initiate a challenge to the Act as soon as it becomes law.

In accordance with his advice, I am in the process of putting the argument into a form suitable for the Canadian Lawyer magazine and for submission to the Canadian Bar Review.

Source: Nikkei National Museum, 2018-16-4-3-30-1
www.nikkeimuseum.org

I think it is also advisable that we look into the matter of a constitutional challenge and in particular whether we can get funding from the federal government and other groups for a challenge of this type. If any of you have looked into how one goes about tapping the Justice department fund for Charter challenges, or knows of someone who has tapped that fund, please tell me about it.

After I spoke with Dean Christian it struck me that there was still one more opportunity to get Bill C-77 amended to expressly exclude a Charter override -- the Senate. (How accustomed we are to ignore this body!) After discussing this tactic with Art, and at his suggestion, I contacted the offices of Senator Jerry Grafstein and Alan MacEachern for the names of the Senators responsible for Bill C-77 or Senators who would be responsive to our concerns. In accordance with the advice I received, I have written to Senators Grafstein, MacEachern, Marsden, Stewart, Neiman, Nurgitz and Molgat, the last of whom is the Chairman of the Senate Committee on Bill C-77. Attached please find a copy of my letter to Senator Molgat. My letters to the others are essentially the same. (What did we do before word processing programs?!!)

Senator MacEachern's office also advised me that the Senate sat on this Bill as a Committee as a whole on the evening of June 1, 1988, at which time the Minister addressed them. However, the Committee made no decisions as to how the Senate will handle this Bill. In view of this fact, I think submissions to the Senate are timely.

Again, please let me know any suggestions or comments you have. I have put a call-forward on the telephone number given above so that calls can reach me regardless of where I am working.

Sincerely yours,

M. Ann Sunahara.

cc. Art Miki

Source: Nikkei National Museum, 2018-16-4-3-30-2
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

June 2, 1988,

Senator Joyce Fairburn,
The Senate, Centre Block,
Parliament Hill,
Ottawa,Ontario,
K1A 0A4

Dear Senator Fairburn,

Re: The Emergencies Act and Charter Override

I am writing at the suggestion of Chris Pierce, the Liberal candidate for the new Edmonton South-east riding. Chris advises me that you are most concerned with issues that can affect the liberties of Canadians. Accordingly, I am seeking your assistance in amending the proposed Emergencies Act to prevent potentially grave abuses to the liberties of Canadians in time of emergency.

I am a legal counsel to the National Association of Japanese Canadians with respect to their submission to the Legislative Committee on Bill C-77 and their ongoing concerns with the new Emergencies Act, now before the Senate.

As you may be aware from our correspondence with Liberal leader John Turner, part of our submission was concerned with the possibility that that Act might empower the Governor in Council to use Parliament's powers to override Charter rights. In response to our concerns the Minister responsible, Perrin Beatty, assured us that he had a legal opinion to the contrary on which he was relying.

The Minister has now provided us with a summary of that opinion. We are forced to conclude that it is seriously flawed and that there remains the distinct possibility that fundamental freedoms and legal rights could be overridden by Order in Council in time of emergency.

The National Association of Japanese Canadians finds this possibilty unacceptable and has requested the Minister to refer this matter to the Supreme Court of Canada for a definitive ruling.

Source: Nikkei National Museum, 2018-16-4-3-31-1
www.nikkeimuseum.org

The better solution, of course, is to amend Bill C-77 to expressly remove all possibility that a future executive could make Orders in Council that override Charter Rights. That objective can be accomplished by amending section 4 to read (amendment underlined):

> "4. Nothing in this Act shall be construed or applied so as to confer on the Governor in Council the power to make orders or regulations
>
> (a) altering the provisions of this Act; or,
>
> (b) providing for the detention, imprisonment or internment of Canadian citizens or permanent residents as defined in the **Immigration Act, 1976** on the basis of race, national or ethnic origin, colour, religion, sex or mental or physical disability; or,
>
> (c) invoking section 33 of the **Canadian Charter of Rights and Freedoms** and the powers thereunder to declare in any order or regulation that the order or regulation, or any other order or regulation or Act of Parliament, or any provision thereof, shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of the **Charter**."

The Minister responsible has stated that no Charter override is intended. It is in the interest of all Canadians that that intention be set out in the Act so that it binds future governments and the courts. Only with an amendment like that above will Canadians know for certain the extent of the legislative powers of the executive in time of national emergency.

Accordingly, the National Association of Japanese Canadians seeks your help in placing before the Senate a request that the Senate amend Bill C-77 to expressly exclude any possibility of the exercise of Parliament's Charter override powers by the executive.

For your information please find enclosed a copies of:

(a) pages 32 through 35 of our submission to the Legislative Committee on Bill C-77 which outline our concerns;

(b) the initial request of the President of the NAJC for a reference of this matter to the Supreme Court of Canada;

(c) a letter from the Minister Responsible for Emergency Preparedness outlining his reasons for believing that "there is very little basis for

Source: Nikkei National Museum, 2018-16-4-3-31-2
www.nikkeimuseum.org

concern" about a Charter override in the Emergencies Act;

(d) the response of the President of the National Association of Japanese Canadians; and,

(e) a copy of my opinion referred to in the President's response.

The Minister's reasons appear to rest on the argument that Parliament cannot delegate its constitutional powers. This argument is directly contrary to the rulings in cases dealing with Orders in Council made under the War Measures Act, cases which determined that Parliament could delegate legislative powers to the executive and that, in the War Measures Act, Parliament had in fact delegated "plenary powers of legislation as large as and of the same nature as those of Parliament": Chemicals Reference, [1943] S.C.R. 1 at 17.

The National Association of Japanese Canadians is of the view that any possibility of a Charter override is too great a threat to Canadian civil and human rights to be left unresolved. The NAJC is very concerned that the government is looking to a flawed legal opinion for its belief that the Emergencies Act has not given the Governor in Council the power to exercise Parliament's override powers under s.33 of the Charter. The possibility that this power could be used in secret Orders in Council is particularly worrying.

We ask for your support for an amendment to Bill C-77 like that set out above. If you have any questions or comments please do not hesitate to contact me.

Sincerely yours,

M. Ann Sunahara.

cc. Art Miki, President, NAJC,

Source: Nikkei National Museum, 2018-16-4-3-31-3
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
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Ms. Cassandra Kobayashi,
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Barrister & Solicitor,
27 Howland Avenue,
Toronto, Ontario,
M5R 3B2

Mr. Shin Imai,
Barrister & Solicitor,
150 Simcoe Street,
Toronto, Ontario,
M5H 3G4

Dear Confrere,

Re: the Emergencies Act and the Charter Override

This letter is to bring you up to date.

Please find enclosed copies of:

(a) a letter from the Minister Responsible for Emergency Preparedness outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act;

(b) the response of the President of the National Association of Japanese Canadians; and,

(c) a copy of my opinion referred to in the President's letter.

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Source: Nikkei National Museum, 2018-16-4-3-32-1
www.nikkeimuseum.org

nature as those of Parliament": Chemicals Reference, supra at 17.

I confess that I was shocked by the Minister's reasons. Whoever is advising him (he is not a lawyer) appears to have made some fundamental errors. I had expected ~~that~~ an argument based on a requirement that powers must be specifically delegated with some cases I may not have found (as unlikely as that is) in support. I did not expect to be rebutting something that should have been understood from first year Constitutional Law!

The irony is that if the Minister is correct, then his own Act is without force and effect (as are the Acts that empower the governments of the Yukon and Northwest Territories!).

I have forwarded, with Art's permission, copies of these enclosures to the Canadian Bar Association, to Alan Borovay of the Canadian Civil Liberties Association, and to the Ukrainian Canadian Committee. Dean Christian of the University of Alberta Law Faculty, a constitutional lawyer, has also expressed an interest. I will be meeting with him this week to discuss the issue and his opinion of my concern about a Charter override. I shall keep you posted.

What disturbs me most about the Minister's reasons is that ny civil liberties are resting on such a flawed view of the law. While we have succeeded in getting collective Orders on the basis of race etc excluded, that victory will be pyrrhic if we can be picked off as individuals by Orders that restrict or revoke our fundamental freedoms or legal rights, especially secret orders!

Please provide some feedback, in particular suggestions as to who we should contact for some support for our request.

Sincerely yours,

M. Ann Sunahara.

cc. Art Miki

Source: Nikkei National Museum, 2018-16-4-3-32-2
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
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Ms. Cassandra Kobayashi,
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Ms. Maryka Omatsu,
Barrister & Solicitor,
27 Howland Avenue,
Toronto, Ontario,
M5R 3B2

Mr. Shin Imai,
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150 Simcoe Street,
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M5H 3G4

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Source: Nikkei National Museum, 2018-16-4-3-32-3
www.nikkeimuseum.org

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Please provide some feedback, in particular suggestions as to who we should contact for some support for our request.

Sincerely yours,

M. Ann Sunahara.

cc. Art Miki

Source: Nikkei National Museum, 2018-16-4-3-32-4
www.nikkeimuseum.org

asked to rate
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of its past support.

It is entering this campaign down 22 points from the 41 per cent share of the vote it won in the 1966 election. Significantly, 47 per cent of respondents said they would "definitely not" support the NDP.

left. Only 12 per cent said they were attracted to the party by his resignation.

The leaders of both opposition parties were considered capable of doing a good job of leading Manitoba, but Carstairs scored substantially higher.



—CP photo
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Two ethnic groups say emergencies act would abuse rights

By Paul Gessell
Citizen staff writer

Representatives of two ethnic groups interned during wartime under the War Measures Act came to Parliament Tuesday saying proposals to revamp that law would not prevent the recurrence of the human rights abuses they suffered.

The National Association of Japanese-Canadians and the Ukrainian-Canadian Committee urged a Commons committee either to scrap the proposed Emergencies Act, otherwise known as Bill C-77, or to amend it substantially.

"In our opinion, Bill C-77... would not prevent a recurrence of the injustices suffered by Japanese-Canadians," Roy Miki, a spokesman for the Japanese-Canadian group, told an all-party committee of MPs studying the bill.

Historians generally agree that racism and xenophobia, rather than genuine security considerations, were largely responsible for the internment of about 20,000 Japanese-Canadians during the Second World War and of about 5,000 Ukrainian-Canadians during the First World War. In both cases, the federal government had invoked the War Measures Act, essentially stripping these citizens of their civil rights.

In some ways, said a brief from the Japanese-Canadian group, the Emergencies Act could be even more repressive than the War Measures Act, which was last invoked to deal with the Front de Liberation du Quebec during the 1970 October Crisis in Quebec.

"The proposed Emergencies Act permits the cabinet to treat Canadians worse than the (Mackenzie) King cabinet treated Japanese-Canadians and neither Parliament nor the Canadian public would ever know anything about it."

The brief says the proposed act, unlike the 74-year-old War Measures Act, permits secret orders and regulations to be passed under all types of emergencies and at the sole discretion of cabinet.

The brief also complains that the definition of an emergency, which must occur for the act to be invoked, is too broad and that provisions for compensation for those ill treated are too weak.

The Ukrainian-Canadian Committee also recommended several amendments, including a specific prohibition against civilian internment camps.

Conservative MP Patrick Crofton, from the British Columbia riding of Esquimalt-Saanich, appeared to suggest at one point that wartime internment camps may be necessary for the "protective custody" of ethnic groups, such as Japanese-Canadians, when they are the target of racists.

[redacted] groups, Ann [redacted], legal advisor to the Japanese-Canadian group, told reporters that would be like incarcerating all women to prevent their rape by men.

Crofton later explained in an interview he was just playing "the devil's advocate" and was not trying to justify the internment of Japanese-Canadians.

The Ukrainian-Canadian Committee also asked that the Emergencies Act be changed to provide special protection for people of East European descent who may unwillingly have citizenship in the Soviet Union.

This situation could result in up to one million Canadians being considered as "enemy aliens" during a war between Canada and the Soviet Union, the Ukrainian-Canadian Committee said in a brief.

Ottawa Citizen 16/3/88 A4

Bourassa defends decision to seek War Measures Act

QUEBEC (CP) — Premier Robert Bourassa said Tuesday he was right to ask the federal government to proclaim the War Measures Act during the October Crisis in 1970, saying it was necessary to protect public security.

Bourassa told a news conference he had no alternative but to ask for the crackdown after militant separatists kidnapped British trade commissioner James Cross and Quebec labor minister Pierre Laporte.

"I had the responsibility as premier of Quebec, after two kidnappings after seven years of political violence in [redacted] I had the responsibility to give police the means to break the impasse," Bourassa told a news conference.

"That is the choice of a leader during a period of crisis," said Bourassa who asked then-prime minister Pierre Trudeau in a letter to invoke the draconian law which gave police sweeping powers of search, seizure and arrest.

The normally media-shy Bourassa met reporters after being grilled in the legislature by Parti Québécois member Gerald Godin about recently published excerpts from the diary of Donald Jamieson, who served in Trudeau's cabi-

Source: Nikkei National Museum [redacted]
www.nikkeimuseum.org

Unjustly convicted to get payouts

Stephen Bindman
Citizen staff writer

SASKATOON — The federal and provincial governments have adopted a new set of rules to allow people wrongfully convicted of crimes to receive up to $100,000 for their "pain and suffering."

The guidelines, the first-ever in Canada, would also allow these people to receive unlimited compensation for their loss of income and property while they were wrongfully imprisoned.

"We are moving to fill a gap in our justice system," Justice Minister Ray Hnatyshyn told reporters following a meeting with his provincial and territorial counterparts here.

"We trust and hope (these cases) will not occur very often, but on those unusual circumstances ... these people will now have these guidelines."

Justice officials say there are no rules governing compensation for people wrongfully convicted and imprisoned and each case is decided on an individual basis.

Although the new rules are not legally binding, officials say all the provinces have agreed to them and are "expected" to follow them.

Donald Marshall, the Nova Scotia Indian who spent 11 years in prison for a murder he didn't commit, was originally awarded $270,000 by the federal and provincial governments.

Norman Fox, who spent eight years behind bars after being wrongfully convicted of rape in 1976, was given $275,000 by the federal and British Columbia governments.

Under the rules unveiled Thursday, the federal or provincial government would appoint a judicial or administrative inquiry to study each request for compensation. The federal government has agreed to pay half the cost of any award.

In order to apply for compensation, a person must have served time for a crime that he was later shown not to have committed. The person must also have received a pardon from the federal government in order to seek compensation.

"All available appeal remedies must have been exhausted and a new or newly discovered fact has emerged, tending to show that there has been a miscarriage of justice," the guidelines say.

Such people are eligible for up to $100,000 for the "loss of liberty and reputation," for the interruption of family relationships and for the "physical and mental harshness and indignities" of life in prison.

Officials say $100,000 is the limit imposed by the Supreme Court of Canada in most libel cases for "pain and suffering."

There is no ceiling on the amount of damages the person can receive for the loss of property, earnings and "future earning abilities" as a result of the wrongful conviction.

However, the guidelines state that the person's "blameworthy conduct" which contributed to the conviction must be taken into account in determining the amount of compensation.

The federal and provincial ministers also adopted Thursday a 10-point "statement of principles" for victims of crime.

The statement says victims should be fully informed about court proceedings and should receive "prompt and fair redress" for the harm they have suffered.

"Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system."

The federal government has already introduced a bill in Parliament providing greater rights for victims, including a requirement that judges order criminals to compensate their victims for property loss and personal injury. Judges would also be allowed to impose a "fine surcharge" of $10,000 to be used for victims' programs and services.

The bill is now being studied by a Commons committee.

New abortion law can't be delayed, says Hnatyshyn

By Stephen Bindman
Citizen staff writer

SASKATOON — The federal government won't wait for a Law Reform Commission report before

the Ontario Supreme Court, cautioned these are preliminary views and must still be approved by the five-member commission.

Hnatyshyn, here for a two-day meeting with his provincial coun-



Across Canada

Citizen news services

NATIONAL

Canada, France open fish talks

Canada and France began talks Thursday on the fishing and maritime boundary dispute between the two countries. A Canadian government spokesman stressed that the two days of talks are not formal negotiations. The dispute concerns fish quotas in waters off Newfoundland and French claims to a large area of water south of the French islands of St-Pierre-Miquelon.

Shellfish producers to get federal help

The government will announce a program today to help East Coast shellfish producers recover from the effects of the toxic mussel scare, Fisheries Minister Tom Siddon said Thursday. Siddon would not elaborate on the announcement. Producers and distributors have been trying to convince the federal government to compensate them for money lost as a result of the Dec. 11 health alert on several types of shellfish from various areas of Atlantic Canada.

ONTARIO

Developer fined under safety act

OSHAWA — A Toronto developer has received the longest jail term possible for work-safety violations under the Occupational Health and Safety Act, an Ontario Labor Ministry spokesman says. Carmelo Zambri, 27, was sen-

Source: Nikkei National Museum, 2018-16-4,3-33-2
www.nikkeimuseum.org

Citizen 18/3/88 P A4

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

May 26, 1988,

The Canadian Civil Liberties Association,
403 - 229 Younge Street,
Toronto, Ontario,
M5B 1N9

Attention: Alan Boravoy,
Legal Counsel

Dear Mr. Boravoy,

Re: The Emergencies Act and Charter Override

I am a legal counsel to the National Association of Japanese Canadians with respect to their submission to the Legislative Committee on Bill C-77 and their ongoing concerns with the new Emergencies Act.

As you may be aware, part of our submission was concerned with the possibility that the Act might empower the Governor in Council to use Parliament's powers to override Charter rights. In response to our concerns the Minister responsible assured us that he had a legal opinion to the contrary on which he was relying.

The Minister has now provided us with a summary of that opinion. We are forced to conclude that it is seriously flawed and that there remains the distinct possibility that fundamental freedoms and legal rights could be overridden by Order in Council in time of emergency.

The National Association of Japanese Canadians has requested the Minister to refer this matter to the Supreme Court of Canada for a definitive ruling. We seek the support of your organization for such a reference.

For your information please find enclosed a copies of:

(a) pages 32 through 35 of our submission to the Legislative Committee on Bill C-77 which outline our concerns;

Source: Nikkei National Museum, 2018-16-4-3-34-1
www.nikkeimuseum.org

(b) the initial request of the President of the NAJC;

(c) a letter from the Minister Responsible for Emergency Preparedness outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act;

(d) the response of the President of the National Association of Japanese Canadians; and,

(e) a copy of my opinion referred to in the President's response.

The Minister's reasons appear to rest on the argument that Parliament cannot delegate its constitutional powers. This argument is directly contrary to the rulings in Re Gray (1919) 57 S.C.R. 150 and The Chemicals Reference [1943] S.C.R. 1. which determined that Parliament could delegate legislative powers to the executive and that, in the War Measures Act, Parliament had in fact delegated "plenary powers of legislation as large as and of the same nature as those of Parliament": Chemicals Reference, supra at 17.

The National Association of Japanese Canadians is of the view that any possibility of a Charter override is too great a threat to Canadian civil and human rights to be left unresolved, particularly where the government is looking to a flawed legal opinion for support for the proposition that the Emergencies Act has not given the Governor in Council the power to exercise Parliament's override powers under s.33 of the Charter. The possibility that this power could be used in secret Orders in Council is particularly worrying. The Canadian people will only know the true extent of the Cabinet's emergency powers when this issue is clarified.

We ask that your organization join in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the Emergencies Act gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,

M. Ann Sunahara.

cc. Art Miki, President, NAJC,

Source: Nikkei National Museum, 2018-16-4-3-34-2
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

May 26, 1988,

The Canadian Bar Association,
50 O'Connor Street,
Suite 902,
Ottawa, Ontario,
K1P 6L2

Attention: John Giokas,
Director, Legislation and Law Reform.

Dear Mr. Giokas,

Re: The Emergencies Act and Charter Override

Please find enclosed a copies of:

(a) a letter from the Minister Responsible for Emergency Preparedness outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act;

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The National Association of Japanese Canadians is of the view that any possibility of a Charter override is too great a threat to Canadian civil and human rights to be left unresolved, particularly where the government is looking to a flawed legal opinion for support for the proposition that

Source: Nikkei National Museum, 2018-16-4-3-35-1
www.nikkeimuseum.org

the Emergencies Act has not given the Governor in Council the power to exercise Parliament's override powers under s.33 of the Charter. The Canadian people will only know the true extent of the Cabinet's emergency powers when this issue is clarified.

We again ask you to consider joining in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the Emergencies Act gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-35-2
www.nikkeimuseum.org

M. ANN SUNAHARA
Barrister & Solicitor
9809 91 Avenue,
Edmonton, Alta.,
T6E 2T5
(403) 433 - 8104

May 26, 1988,

The Civil Liberties Commission,
Ukrainian Canadian Committee,
2118A Bloor Street West.
Toronto, Ontario,
M6S 1M8

Attention: Alexandra Chyczij,
Legal Counsel

Dear Ms. Chyczij,

Re: The Emergencies Act and Charter Override

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Source: Nikkei National Museum, 2018-16-4-3-36-1
www.nikkeimuseum.org

the Emergencies Act has not given the Governor in Council the power to exercise Parliament's override powers under s.33 of the Charter. The Canadian people will only know the true extent of the Cabinet's emergency powers when this issue is clarified.

We ask that your organization join in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the Emergencies Act gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-36-2
www.nikkeimuseum.org

National Association of Japanese Canadians
National Executive Office
735 Ash Street,
Winnipeg, Man.,
R3N 0R5

May 25, 1988,

The Right Honourable Brian Mulroney,
Prime Minister of Canada,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Sir,

Please find enclosed a copy of a letter I have forwarded today to the Minister of National Defence together with a copy of the Minister's letter outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act.

The National Association of Japanese Canadians is of the view that any possibility of a Charter override is too great a threat to Canadian civil and human rights. Further, our legal counsel is of the view that the Minister's reasons are flawed in law.

We invite you to join in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the Emergencies Act gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,
The National Association of
Japanese Canadians

per: Art Miki,
President.

Source: Nikkei National Museum, 2018-16-4-3-37-1
www.nikkeimuseum.org

National Association of Japanese Canadians
National Executive Office
735 Ash Street,
Winnipeg, Man.,
R3N 0R5

May 25, 1988,

The Honourable Edward Broadbent,
Leader, The New Democrats,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Sir,

Please find enclosed a copy of a letter I have forwarded today to the Minister of National Defence together with a copy of the Minister's letter outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act.

The National Association of Japanese Canadians is of the view that <u>any</u> possibility of a Charter override is too great a threat to Canadian civil and human rights. Further, our legal counsel is of the view that the Minister's reasons are flawed in law.

We invite you to join in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the <u>Emergencies Act</u> gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,
The National Association of
Japanese Canadians

per: Art Miki,
President.

cc: Derek Blackburn, M.P.

Source: Nikkei National Museum, 2018-16-4-3-37-2
www.nikkeimuseum.org

National Association of Japanese Canadians
National Executive Office
735 Ash Street,
Winnipeg, Man.,
R3N 0R5

May 25, 1988,

The Honourable John Turner,
Leader of the Opposition,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Sir,

Please find enclosed a copy of a letter I have forwarded today to the Minister of National Defence together with a copy of the Minister's letter outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act.

The National Association of Japanese Canadians is of the view that <u>any</u> possibility of a Charter override is too great a threat to Canadian civil and human rights. Further, our legal counsel is of the view that the Minister's reasons are flawed in law.

We invite you to join in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the <u>Emergencies Act</u> gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,
The National Association of
Japanese Canadians

per: Art Miki,
President.

Source: Nikkei National Museum, 2018-16-4-3-37-3
www.nikkeimuseum.org

National Association of Japanese Canadians
National Executive Office
735 Ash Street,
Winnipeg, Man.,
R3N 0R5

May 25, 1988,

The Honourable Edward Broadbent,
Leader, The New Democrats,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Sir,

Please find enclosed a copy of a letter I have forwarded today to the Minister of National Defence together with a copy of the Minister's letter outlining his reasons for believing that "there is very little basis for concern" about a Charter override in the Emergencies Act.

The National Association of Japanese Canadians is of the view that <u>any</u> possibility of a Charter override is too great a threat to Canadian civil and human rights. Further, our legal counsel is of the view that the Minister's reasons are flawed in law.

We invite you to join in our request to the Minister for an immediate reference to the Supreme Court of Canada on the question of whether the <u>Emergencies Act</u> gives the Governor-in-Council the power to override the Charter. It is in the interest of all Canadians that this question be decided now, in time of calm and peace, rather than later, in time of emergency.

Sincerely yours,
The National Association of
Japanese Canadians

per: Art Miki,
President.

cc: Derek Blackburn, M.P.

Source: Nikkei National Museum, 2018-16-4-3-37-4
www.nikkeimuseum.org

SHIN IMAI
Barrister & Solicitor

150 Simcoe Street
Toronto, Ontario
Canada M5H 3G4
Tel: (416) 598-0103
Fax: (416) 598-3484

Iler, Campbell & Associates:
Charles Campbell, M.A.,LL.B.
Shin Imai, B.A.,LL.M.
Paul Reinhardt, M.A.,LL.B.
Brian Iler, LL.B.
Murray Klippenstein, B.A.,LL.B.
Bruce D. Woodrow, B.Math.,LL.B.

April 22, 1988

Ann Sunahara
9809 91 Ave.
Edmonton, Alberta
T6E 2T5

Dear Ann:

Thank you for your letter of March 6. I would like to congratulate you on the brief. It appears that you did an excellent job in analyzing the Act and the presentation appears to have been very well received.

I appreciate your efforts to keep me updated on new developments.

Yours truly,

Shin Imai

SI:cc

Source: Nikkei National Museum, 2018-16-4-3-38
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
March 18, 1988,

The Honourable Perrin Beatty P.C., M.P.,
Minister of National Defence,
707 Confederation Building,
House of Commons,
Ottawa, Ontario,
K1A 0A6

Dear Mr. Beatty,

I am the consultant to National Association of Japanese Canadians on Bill C-77 and the author of the NAJC Submission to the Legislative Committee on C-77 presented on March 15, 1988.

I understand that there are to be further amendments to Bill C-77 and that those amendments will be available on March 29, 1988. Could you please have forwarded to me a copy of those amendments as soon as they are available in order that I may review them on behalf of the National Association of Japanese Canadians.

Yours truly,

M. Ann Sunahara

cc. Art Miki, President, NAJC,
David Kilgour, M.P.

Source: Nikkei National Museum, 2018-16-4-3-39
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2T5
March 18, 1988,

Emergency Preparedness Canada,
2nd Floor, Gillin Building,
141 Laurier Avenue West,
Ottawa, Ontario, K1A OW6,

Attention: Mr. Bill Snarr,

Dear Mr. Snarr,

I am the consultant to National Association of Japanese Canadians with whom you discussed the NAJC concerns with Bill C-77. I confirm that I received from your Edmonton office the Amendments to Bill C-77 of which we spoke on that occasion and incorporated them into our Submission to the Legislative Committee presented on March 15, 1988.

I understand that there are to be further amendments to Bill C-77 and that those amendments will be available on March 29, 1988. Could you please forward a copy of those amendments to me as soon as they are available in order that I may review them on behalf of the National Association of Japanese Canadians.

Yours truly,

M. Ann Sunahara

cc. Art Miki,
President, NAJC

Source: Nikkei National Museum, 2018-16-4-3-40
www.nikkeimuseum.org

Supply and Services Canada

Approvisionnements et Services Canada

541-0415950

BATCH/LOT-0239 DAO/BCM- 11-APR/AVR -1988 Stub No. - Talon Nº

HOUSE OF COMMONS OF CANADA * CHAMBRE DES COMMUNES DU CANADA 067

Particulars - Détails	Amount - Montant
WITNESS EXP MARCH 15 88	1242.11
BATCH/LOT-0239(0239) REQ-53351 TOTAL	1242.11

SEE REVERSE

AU VERSO

Source: Nikkei National Museum, 2018-16-4-3-41-1
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2S9,
March 18, 1988

Ms. Santosh Sirpaul,
Clerk of the
Legislative Committee on Bill C-77
Room 630, 180 Wellington Street,
Ottawa, Ontario,
K1A 0A6

Dear Ms. Sirpaul,

Please find enclosed my witness expense claim for my appearence before the Legislative Committee on Bill C-77 on Tuesday March 15, 1988.

I would like to receive copies of the Minutes of all meetings of the Legislative Committee on Bill C-77 together with copies of the Submissions of each of the presenters. Would you please advise me of how, where and when they can be obtained. I also understand that further amendments to C-77 will be presented by the government on March 29, 1988. I would also like to obtain a copy of those amendments when they are available.

I would like to take this opportunity to thank you for your assistance and advice to myself and Mr. Miki and for your patience with us given the fact that everything had to be done at the last minute. The Committee is most fortunate to have a Clerk of your calibre.

Yours truly,

M. Ann Sunahara.

cc. Art Miki,
President, NAJC

Source: Nikkei National Museum, 2018-16-4-3-41-2
www.nikkeimuseum.org

COMMITTEES AND PRIVATE LEGISLATION BRANCH – WITNESS EXPENSE CLAIM /

DIRECTION DES COMITÉS ET DE LA LÉGISLATION PRIVÉE – DEMANDE DE REMBOURSEMENT DES FRAIS DES TÉMOINS

Committee / Comité: LEGISLATIVE COMMITTEE ON C-77

NAME OF WITNESS AND ORGANIZATION AND ADDRESS: / NOM DES TÉMOINS ET ORGANISATION ET ADRESSE:
NATIONAL ASSOCIATION OF JAPANESE CANADIANS
M. ANN SUNAHARA
9809 91 AVENUE EDMONTON AB T6E 2T5

DATE OF APPEARANCE: / DATE DE COMPARUTION: 15/3/88

Please read guidelines on the back of this form before itemizing expenses. / Veuillez lire les directives au dos de ce formulaire avant de spécifier les frais.

EXPENSES CLAIMED / DÉPENSES RÉCLAMÉES

– A –		– B –	
AIR:	$ 946.00	ROOM / CHAMBRE:	$ 171.10
BUS / AUTOBUS:	$	MEALS / REPAS:	$ 30.01
PERSONAL VEHICLE / VÉHICULE PRIVÉ:	$	PHONE CALLS / APPELS TÉL:	$
TAXI:	$ 95.00	OTHERS / AUTRES:	$
TRAIN:	$	SUB / SOUS-TOTAL:	$
SUB / SOUS-TOTAL	$	GRAND TOTAL (A+B)	$ 1242.11

I hereby certify that I have expended the amounts indicated; that the account stated herein is correct and final in all respects; and that the expenses were incurred as a result of appearing before the above committee. / Je certifie par la présente que j'ai dépensé les montants indiqués; que ces derniers sont exacts et finals à tout point de vue; et que ces frais sont directement afférents à cette comparution devant le comité susmentionné.

Signature of Witness / Signature du témoin: [signature]

APPEARANCE CERTIFICATION / ATTESTATION DE COMPARUTION

Certified that this witness appeared before the Committee and the claim is inaccordance with House of Commons' policy for Committee witness' expenses. (Certified in accordance with Section 27 of the Financial Administration Act). / Attesté que ce témoin a comparu devant le comité et que la réclamation est conforme à la politique de la Chambre des communes concernant les dépenses de témoin de comité. (Attesté conformément à l'article 27 de la loi sur l'administration financière)

Rec'd 18/4/88

Committee Chairman / Président du Comité

Clerk of the Committee / Greffier du comité

FINANCIAL CODING / CODAGE FINANCIER

Source: Nikkei National Museum, 2018-16-4-3-41-3
www.nikkeimuseum.org

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Passenger Ticket and Baggage Check
Billet de passage et Bulletin de Bagages

PASSENGER COUPON
COUPON DU PASSAGER

FROM / TO / DESTINATION
YEG/YEG

6099070 14MAR88
CDN AIRLINES
EDMONTON CAN
15/05 XTA

NAME OF PASSENGER / NOM DU PASSAGER
TANAKA A MR

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BAGGAGE CHK'D / BAGAGES ENR. (PCS / NOMBRE, WT / POIDS, UNCK. WT NON ENR.)

CAD 896.00 YXD CP YOW 448.00
CP YXD 448.00 CAD 896.00 END

EQUIV. FARE PAID / TARIF EQUIV. VERSE
CAD 50.00CA
TAX / TAXE
TAX / TAXE
TOTAL
CAD 946.00
A L'ORD / RENSEIGNEMENTS CIE AERIENNE

CPN / COUPON 018 TICKET NUMBER / BILLET 4456495701 CK / CONTROLE

CHECK DIGIT / CHIFFRE DE CONTROLE 2217036882626

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Amount $4.00 Date 14/3/88

From Radisson

To Holiday Inn Markham

Cab No. _____ Driver _____

THANK YOU

BLUE LINE TAXI CO. LTD.

RECEIPT FOR CAB FARE

Amount 3.50 Date Mar 15/88

From H.I.D

To 180 Wellington

Cab No. 53 Driver _____

THANK YOU

RECEIPT / REÇU

Amount / Montant $15.50 Date 14/3/88

From / Départ Airport

To / Terminé Radisson

Cab No. / Auto No. 249 Driver / Chauffeur

THANK YOU - MERCI

RECEIPT **RECU**

AMOUNT / MONTANT 26.00 DATE 14-3 19

FROM / DE 9:00 9:45

TO / DESINATION Airport

DRIVER / CHAUFFEUR _____ UNIT NO. 105

– An All Canadian Company –

RECEIPT FOR CAB FARE

Amount 17.00 Date 15.3.88

From _____

To _____

Cab No. 456 Driver M. BN

THANK YOU

BLUE LINE TAXI CO. LTD.

RECEIPT **RECU**

AMOUNT / MONTANT 25.00 DATE March 16 1988

FROM / DE _____

TO / DESINATION _____

DRIVER / CHAUFFEUR Stan UNIT NO. 422

– An All Canadian Company –

RECEIPT FOR CAB FARE

Amount $4.00 Date March 15-88

Source: Nikkei National Museum, 2018-16-4-3-41-4
www.nikkeimuseum.org

12	Sunahara	13	81
CLERK	ADDRESS		DEPARTURE
CITY		POSTAL / ZIP CODE	ARRIVAL
FIRM			ADULTS/CHILDREN

Holiday Inn®

350 DALHOUSIE ST.
OTTAWA, ONTARIO K1N 7E9
PHONE (613) 236-0201

OTTAWA MARKET SQUARE

28295

CLERK	NO. GUEST	C.R.	ROOM NO.	CHECK IN TIME	DATE	FOLIO NO.
2	1	2	112	19:16	03/16/93	282958

REMARKS

FROM FOLIO. _____

TO FOLIO. _____

THIS ACCOUNT WILL BE SETTLED BY

- ☐ CASH
- ☐ CREDIT CARD _____
- ☐ TRAVELLER'S CHEQUES
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I AGREE THAT MY LIABILITY FOR THE CHARGES IS NOT WAIVED AND AGREE TO BE HELD PERSONALLY LIABLE IN THE EVENT THAT THE INDICATED PERSON, COMPANY OR ASSOCIATION FAILS TO PAY FOR ANY PART OR THE FULL AMOUNT OF SUCH CHARGES.

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CITY

PROVINCE OR STATE POSTAL CODE

ATTENTION

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GUEST SIGNATURE

1½% PER MONTH (18% PER ANNUM) ADDED TO OUTSTANDING BALANCE ON OVERDUE ACCOUNTS

CREDIT AUTHORIZATION

SUNAHARA 51

03/14 2368	BALANCE-	.00
	LONG DST	.50
03/14 2535	BALANCE	.50
	ESUP-D/1	81.00
	TAX	4.05
03/14 2710	*BALANCE	85.55
	DINING 546232	5.83
	TEL-PHON	.50
03/15 3206	BALANCE	91.38
	ESUP-D/1	81.00
	TAX	4.05
03/15 4233	*BALANCE	176.93

FOLIO 282958 SETTLED
CHK OUT 176.93
TOTAL 176.93

MASTERCARD
FOLIO # 284657 POSTED
RM 3802 MA CK 282958
MAST CHG 176.93
C1 112 05:36 03/16/93 MI 44409

Hotel 176.93
meals 5.83
171.10

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RECEIPT FOR CAB FARE

Amount $4.00 Date March 15-93

From west block

To H. E. Dalhousie

Cab No. 155 Driver _____

THANK YOU

BLUE LINE TAXI CO. LTD.

Source: Nikkei National Museum, 2018-16-4-3-41-5
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta,
T6E 2T5
March 8, 1988
17

Mr. Art Miki,
President,
National Association of Japanese Canadians,
735 Ash Street,
Winnipeg Man.,
R3N OR5

Dear Art,

Enclosed please find 4 bound copies of the Submission on Bill C-77 and an unbound copy. I am sending these to you in the hope that you will use them, and more that you might make from the unbound copy, to urge other groups to join our Submission by writing to the Chairman of the Legislative Committee, and to the leaders of all three parties.

I have been advised by Derek Blackburn's Assistant that the Committee will meet again on March 29, 1988, at which time the government will be submitting further amendments to the bill on the basis of these hearings. The Easter break starts on March 31, 1988 and the next sitting does not start until April 12th. However, the government may try to get the clause by clause review done between the 29th and the 31st.

The NDP is in the process of preparing amendments of its own and will have to make a political judgement after it sees the government's amendments, whether to fight for more or go with what is offered. Their concern is that they do not want to be seen as defenders of the War Measures Act. That is, they do not want the Conservatives to be able to say in an election campaign that "we are trying to get rid of the War Measures Act and the NDP are trying to block us." The Conservatives want this bill passed before an election because they expect it will get them votes in Quebec where the WMA is such an anathema.

Mr Blackburn's assistant will be making the NPD amendments available to me so we can promote them among our supporting groups, if we agree with them. I will write to Emergency Preparedness Canada and the Minister of National Defence for copies of their new amendments so I can analyse them. I will also write the Clerk of the Committee for copies of all the presentations and briefs, which are printed as appendicies to the Minutes.

Source: Nikkei National Museum, 2018-16-4-3-42-1
www.nikkeimuseum.org

15/3/89
AM

We should be drawing the attention of some groups to the remarks that have been made by the Conservative members of the Committee. One B.C. member unwisely suggested that the government needed the power to declare an emergency if 100,000 people were to participate in an anti-nuclear demonstration that interferred with shipping in Vancouver harbour, as he obviously expects to happen during the visits of nuclear powered ships from the U.S. Navy later this year. I am sure that the anti-nuke groups would be most interested in this possibility. The same member stated that a prohibition on Canadians leaving Canada might be necessary to prevent Canadians going to join an "enemy" army (Given the definition of international emergency presumably this term would also apply to an army which is the "enemy" of an ally too). This is a threat to anyone with dual citizenship, which will no doubt disturb Ukrainian Canadians, or to Sikh Canadians or Palestian Canadians or anyone else who is likely to be characterized as potentially joining irregular forces like the PLO, the Tamil Tigers, or the Sikh extremists in the Punjab. (Or, in view of today's developments in Honduras, the regular forces of Nicaragua.)

I met with the local Constitutional subsection of the Canadian Bar Association last night. They were most intrigued by the Submission and were of the view that before this Act is passed into law, a Reference should be made by the Government to the Supreme Court of Canada on the question of the Charter overide. They will be approaching their provincial council with this matter to see if they can get the CBA to endorse our position and to recommend a reference. I have also discussed this matter with the Ottawa office of the CBA who are charged with the task of putting the CBA position to the government.

As requested I have also sent copies of our Submission to the Canadian Bar Association, the National Ukrainian Canadian Committee, the Canadian Rights and Liberties Federation, and the Canadian Ethnicultural Council. Mr Blackburn's Assistant also asked for a second copy since Mr Blackburn has already marked his up. We should be sending one to the Liberal's too although they will have got one through their member on the Committee. However, that member seems to be more absent than not and therefore it might be better to approach the Liberals through someone else. What do you think? Would Lloyd Axworthy be interested? Or Shelia Copps - Hamilton also being a very ethnic area.

I am also going to try to have this issue raised as a provincial rights issue in the local Legislature. The powers over property that this Act gives to the feds should be shocking to a province as paranoid over its natural resources as this one. Also, provinces cannot halt a declaration of an emergency if they feel it no longer

Source: Nikkei National Museum, 2018-16-4-3-42-2
www.nikkeimuseum.org

exists. For example, a public order emergency could be over in a few days. The provinces, however, are powerless to do anything until the sunset limitation is reached after 60 days. Provinces also do not have the power to have orders or regulations amended or revoked, nor are they asked to approve them.

I think our presentation in Ottawa went well. Roy is so good at putting arguments in a form that is understandable to everyone, and is very good with the media. I think we shocked the Committee. They definitely thought that hearing from us was a formality until they realized the content of what we were saying. One Conservative member told me as he left the closed session early, that the Committee had been scheduled to begin clause by clause analysis of the Bill on March 17, 1988, but would be adjourning it in view of our presentation because they wanted to consider carefully what we had said.

The delay is also to our advantage. We should try to give this issue as much publicity as we can between now and the rally. This issue really reinforces redress because it emphasizes the need for reform to protect all Canadians. Roy's address to the Committee should be published and the general media invited to write on the matter.

Sincerely yours,

M. Ann Sunahara.

cc. Roy Miki
Cassandra Kobayashi
Maryka Omatsu
Shin Imai

Source: Nikkei National Museum, 2018-16-4-3-42-3
www.nikkeimuseum.org

TUESDAY, MARCH 15, 1988
(cont'd)

LEGISLATIVE COMMITTEE ON BILL C-77 (7)

269 WB/ÉO 1100
Tel: 2-6324 1530

Bill C-77, An Act to authorize the taking of special temporary measures to ensure safety and security during national emergencies and to amend other Acts in consequence thereof.

WITNESSES:

At 11:00 a.m.:

From the Ukrainian Canadian Committee:

Alexandra Chyczij,
Chairperson, Legal Section
Civil Liberties Commission;

Professor Peter Rosenthal,
University of Toronto
Toronto, Ontario.

At 3:30 p.m.:

Representatives from the The Law Union of Ontario:

From the National Association of Japanese Canadians:

Ann Sunahara, Legal Advisor,
Edmonton;

Roy Miki,
Member of Strategy Committee,
Vancouver.

AGRICULTURE (49)

308 WB/ÉO 1530
Tel: 2-1147

In Camera

Briefings concerning the Washington visit.

COMMUNICATIONS AND CULTURE (74)

112-N 1530
Tel: 6-4996

In Camera

Future Business.

LE MARDI 15 MARS 1988
(suite)

COMITÉ LÉGISLATIF SUR LE PROJET DE LOI C-77 (7)

Projet de Loi C-77, Loi visant à autoriser à titre temporaire des mesures extraordinaires de sécurité en situation de crise nationale et à modifier d'autres lois en conséquence.

TÉMOINS :

À 11 h 00 :

Du Comité ukrainien-canadien :

Alexandra Chyczij, présidente,
section juridique de la
Commission des libertiés civiles;

Professeur Peter Rosenthal,
Université de Toronto,
Toronto, (Ontario).

À 15 h 30 :

Représentants de "The Law Union of Ontario".

De l'Association nationale des canadiens japonais :

Ann Sunahara, conseillère
juridique, Edmonton;

Roy Miki,
Membre du comité de stratégie,
Vancouver.

AGRICULTURE (49)

À huis clos

Séance d'information au sujet de la visite à Washington.

COMMUNICATIONS ET CULTURE (74)

À huis clos

Travaux futurs.

Source: Nikkei National Museum, 2018-16-4-3-43a
www.nikkeimuseum.org

TUESDAY, MARCH 15, 1988
(cont'd)

LE MARDI 15 MARS 1988
(suite)

GOVERNMENT OPERATIONS (26)

208 WB/ÉO 1530
Tel: 6-4816

Main Estimates 1988-89: Vote 10 under SUPPLY AND SERVICES.

WITNESSES:

From Statistics Canada:

Dr. Ivan P. Fellegi,
Chief Statistician of Canada;

Officials from the Department.

ADMINISTRATION DU GOUVERNEMENT (26)

Budget des dépenses principal 1988-1989 : crédit 10 sous APPROVISSIONNEMENTS ET SERVICES.

TÉMOINS :

De Statistique Canada :

Dr Ivan P. Fellegi,
Statisticient en chef du Canada;

Hauts fonctionnaires du ministère.

ELECTIONS, PRIVILEGES AND PROCEDURE (26)

307 WB/ÉO 1530
Tel: 6-4815

Future business of the Committee.

ÉLECTIONS, PRIVILÈGES ET PROCÉDURE (26)

Travaux futurs du comité.

FINANCE AND ECONOMIC AFFAIRS (145)

209 WB/ÉO 1530
Tel.: 6-1817

In Camera

Business of the Committee.

1) Draft Report on the Goods and Services Tax;

2) Discussion Paper on Bank Service Charges.

FINANCES ET AFFAIRES ÉCONOMIQUES (145)

À huis clos

Travaux du Comité.

1) Ébauche de rapport portant sur la taxe sur les biens et services;

2) Document de travail portant sur les frais de services bancaires.

LEGISLATIVE COMMITTEE ON BILL C-89 (9)

Room/Pièce 701
151 Sparks 1530
Tel: 3-6724

Bill C-89, An Act to amend the Criminal Code (victims of crime).

Clause-by-clause consideration.

APPEARING:

Richard Grisé, M.P.
Parliamentary Secretary to the Minister of Justice.

COMITÉ LÉGISLATIF SUR LE PROJET DE LOI C-89 (9)

Projet de loi C-89, Loi modifiant le Code criminel (victimes d'actes criminels).

Considération article-par-article.

COMPARAÎT :

Richard Grisé, député,
Secrétaire parlementaire du Ministre de la Justice.

CANCELLED
CONTREMANDÉE

Source: Nikkei National Museum, 2018-16-4-3-43b
www.nikkeimuseum.org

NATIONAL ASSOCIATION OF JAPANESE CANADIANS

National Executive Office: 735 Ash Street, Winnipeg, Manitoba R3N 0R5

PRESS RELEASE - FOR IMMEDIATE RELEASE
Tuesday March 15, 1988, OTTAWA

At 3:30 today, Dr. Roy Miki represented the National Association of Japanese Canadians (NAJC) before the Legislative Committee on Bill C-77, the proposed Emergencies Act. Dr. Miki told the Committee that Japanese Canadians would like to ensure that what happened to them in the 1940s under the War Measures Act cannot be repeated. Legislative change is an important element in the NAJC's Redress proposal, which also calls for an official acknowledgement of the injustices committed, and compensation to the individuals affected.

ABUSES UNDER THE WAR MEASURES ACT:

He reminded the Committee that Japanese Canadians were uprooted from the coast, despite advice from the Canadian and American military, RCMP and FBI that incarceration of the whole community was not necessary. He pointed out that sale of real estate and personal belongings was not a security measure, but was intended to destroy the Japanese Canadian community on the coast. Although the war ended in 1945, Japanese Canadians would not be permitted to return to the west coast until April 1, 1949, four years later. Instead, in 1945, there was a move to exile 10,000 Japanese Canadians. Before public protest stopped the expulsion orders, 4,000 were sent to Japan, over half of whom were Canadian-born.

SUBMISSIONS AND RECOMMENDATIONS:

The NAJC questions the necessity for emergency legislation, and calls for the immediate abolition of the War Measures Act. The NAJC believes that there are so many problems with Bill C-77 that it should be withdrawn. The drafting of new emergencies legislation should be referred to the Law Reform Commission of Canada to balance emergency powers with civil liberties. The NAJC fears that Bill C-77 will be pushed through the House before Canadians realize that everything that happened to Japanese Canadians could happen again.

In his presentation, Dr. Miki could only touch on some of the problems with the Bill, which are discussed in more detail in a 60-page written submission which includes 20 recommendations to amend Bill C-77. Among the points covered by Dr. Miki are the following.

BILL C-77 VIOLATES CHARTER:

- The powers given to Cabinet are too broad. For example, in an international emergency, section 28 gives Cabinet the power to prevent Canadians from leaving Canada. This is a violation of

Source: Nikkei National Museum, 2018-16-4-3-44-1
www.nikkeimuseum.org

section 6 of the Charter of Rights and Freedoms which says "Every citizen has the right to enter, remain in and leave Canada."

CHARTER RIGHTS NOT SAFEGUARDED:

- In a war emergency, Cabinet has all the power of Parliament, including the power to invoke section 33 of the Charter, the so-called override section. This means Cabinet could suspend our fundamental and legal rights, including the right not to be arbitrarily detained or imprisoned, the right of habeas corpus, the right to be presumed innocent, and the right not to be subject to cruel and unusual treatment. As well, individuals would no longer be guaranteed equality before the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or physical or mental disability.

VIOLATION OF INTERNATIONAL COVENANT:

- The powers given to Cabinet in an "international emergency" violate the International Covenant on Civil and Political Rights to which Canada is a signatory. Bill C-77 would allow rights to be suspended if, for example, there was a threat to the security of a Canadian ally, whereas the Covenant does not permit the abrogation of rights unless there is a threat to the existence of Canada as a nation.

SECRET ORDERS:

- The NAJC objects to Section 59(2) which gives Cabinet a general power to make secret orders in any emergency. If there is a threat to Canada's security, Cabinet already has sufficient power to make secret orders through the operation of the Canadian Security Intelligence Service. Secret orders are an invitation to abuse of power and would permit Cabinet to commit injustices greater than those suffered by Japanese Canadians in the 1940s, all without the knowledge of Parliament or the Canadian public.

- The provisions for review of secret orders are completely unacceptable because section 60 empowers Cabinet to set up a Parliamentary Review Committee, but does not require that one be established. This means there is no assurance that any review will ever take place.

PROPOSED REVIEW MECHANISMS INADEQUATE:

- The review mechanisms proposed by Bill C-77 are blatantly inadequate. In order to amend or revoke an order, section 59 requires a motion to be signed by at least 30 MPs or 15 Senators and filed within 20 days, after which only three hours of debate is allowed. After 20 days, no matter what evidence comes to light, Parliament cannot touch the orders already approved.

- The NAJC recommended that Canadians should have the right to challenge the declaration of an emergency through the courts. In order to be meaningful, the onus of proving an emergency exists

Source: Nikkei National Museum, 2018-16-4-3-44-2
www.nikkeimuseum.org

and that the orders are reasonably related to the emergency must lie with Cabinet who control all the documents. Japanese Canadians had to wait 30 years before they were able to see the documents which proved they were the innocent victims of the abuse of emergency powers.

PRINCIPLE OF COMPENSATION ESTABLISHED:

Dr. Miki said the NAJC is pleased that the Government recognizes the principle that compensation is appropriate for the abuse of emergency powers. However, Section 46 leaves the payment of compensation to the discretion of the Cabinet, in other words, to the politicians who were responsible for the wrongs. Under Bill C-77, the victims of an injustice would be in the same position as Japanese Canadians are in today: waiting for the heart of government to open.

PREVENTION THROUGH CHARTER AMENDMENT:

The NAJC believes that one way to prevent a recurrence of the injustices suffered by Japanese Canadians is to amend the Charter of Rights so that equality rights can never be overridden, and discrimination on the basis of race is never allowed. This would also fulfill Canada's obligations under the International Covenant on Civil and Political Rights.

NEGOTIATED SETTLEMENT AS PREVENTION:

More importantly, the NAJC believes that a negotiated settlement with Japanese Canadians will stand as a warning to future governments that Canada will not tolerate the abuse of individual rights. Even if Bill C-77 is amended to strengthen the compensation provisions, the Act could be scrapped at any time. On the other hand, Dr. Miki said, a negotiated settlement with Japanese Canadians will remain a beacon and measuring rod for the preservation of human rights in our country.

Ann Gomer Sunahara prepared the 61-page written submission for the NAJC and also appeared before the Committee. She is the author of "The Politics of Racism", which first exposed the government documents which proved the unjust treatment of Japanese Canadians was motivated by hope of political gain, and not because of a threat to national security. Ms. Sunahara, a lawyer and historian, has been studying emergency legislation from around the world for the past five years.

Dr. Roy Miki chairs the Redress Committee of the Japanese Canadian Citizens' Association of Greater Vancouver, one of 15 centres on the NAJC Council.

Source: Nikkei National Museum, 2018-16-4-3-44-3
www.nikkeimuseum.org

SCHEDULE A

RECOMMENDATIONS

RECOMMENDATION 1.

Emergency powers legislation must be based on the following principles:

1. No special powers shall be given to the Cabinet until and unless the Cabinet demonstrates a real need for such powers; that is, demonstrates that Canada faces a threat to her continued existence which cannot be handled using existing or amended laws and institutions.

2. Parliament, at all times, must be able to:

(i) revoke or modify any declaration of an emergency; and,

(ii) amend or revoke any order or regulation made by the Cabinet under emergency powers.

3. All orders and regulations made under emergency powers must be directly related to alleviating the particular emergency.

4. Whether emergency orders and regulations are, in fact, directly related to the emergency must be reviewable at all times in a court of law, and the burden of proving the direct relationship shall rest with the government.

5. Any emergency legislation must expressly deny the power to override rights guaranteed in the Charter of Rights and Freedoms.

RECOMMENDATION 2.:

"National emergency" should be defined as a threat to the life or independence of Canada of such intensity that the normal administrative institutions have failed, have been rendered incapable of continuing to function, or are unable to handle the specific threat.

RECOMMENDATION 3:

Source: Nikkei National Museum, 2018-16-4-3-45-1
www.nikkeimuseum.org

Since there is no demonstrated need for special "public welfare emergency" powers such powers should not to be included in any emergency powers legislation. Rather such emergencies should be handled under normal criminal and regulatory legislation and by federal-provincial agreements.

RECOMMENDATION 4:

The "public order emergency" section of this act should be withdrawn and criminal aspects within it be dealt with by way of amendment of the Criminal Code or the C.S.I.S. Act.

RECOMMENDATION 5:

Any delegation of emergency powers by Parliament to the Cabinet must be predicated upon a threat to the continued existence of Canada itself.

RECOMMENDATION 6:

The "international emergency" part of this Act should be withdrawn. The usual practice of having Parliament deal with each international emergency as it occurs should be retained.

RECOMMENDATION 7:

Any delegation of emergency powers by Parliament to the Cabinet must be predicated upon a threat to the Hcontinued existence of Canada itself.

RECOMMENDATION 8:

"War emergency" powers should be limited to economic and administrative powers. Parliament should retain any powers that could be used to abrogate civil and human rights.

RECOMMENDATION 9:

If war emergency powers are to be granted to the Cabinet, then:

(a) the orders and regulations exercising such powers must be limited to measures strictly

Source: Nikkei National Museum, 2018-16-4-3-45-2
www.nikkeimuseum.org

necessary and directly related to the emergency in question; and,

(b) the burden of proving that the orders are strictly necessary and directly related to the emergency must rest with the Cabinet.

RECOMMENDATION 10:

The Emergencies Act must expressly state that the powers delegated to the Cabinet do not include the power to make laws overriding Charter rights.

RECOMMENDATION 11:

No order or regulation should take effect before it is approved by Parliament;

RECOMMENDATION 12:

Parliamentary debate on any order or regulation affecting Charter rights of individuals or any group definable on the basis of age, race, ethnicity, sex, language, religion, or national or social origin must not be subject to closure;

RECOMMENDATION 13:

Any order or regulation must be able to be revoked at any time upon a motion by a Special Parliamentary Committee.

RECOMMENDATION 14:

The operation of all orders and regulations must be subject to the review of a Special Parliamentary Committee with full powers of investigation and a duty to report all misuse and abuses to Parliament and to make motions to amend or revoke orders being abused or misused.

RECOMMENDATION 15:

Secret orders and regulations must never be permitted under emergency powers.

RECOMMENDATION 16:

Source: Nikkei National Museum, 2018-16-4-3-45-3
www.nikkeimuseum.org

Review of the use of emergency powers must be independent of the Cabinet.

RECOMMENDATION 17:

(a) Within three days of the proclamation of an emergency the Steering Committees of the House of Commons and the Senate must appoint an all-party Special Parlimentary Committee to monitor the implementation of the orders passed by the Cabinet under its emergency powers and to make motions to Parliament for the amendment or revocation of orders or regulations;

(b) To carry out its mandate the Special Committee shall have full power to investigate the implementation of the orders including the right to compel testimony from Ministers of the government and all servants and agents of the Crown and all military personnel;

(c) Debate upon a motion to amend or revoke an order or regulation shall be without closure;

(d) A vote on a motion to amend or revoke an order or regulation affecting civil or human rights must be a free vote.

RECOMMENDATION 18:

In any review of the use of emergency powers, or in any trial of an accused charged under an emergency order, the onus of proving that the emergency exists and the order is reasonable must rest with the Cabinet.

RECOMMENDATION 19

Compensation must be determined by a tribunal, headed by a Superior Court Judge, which tribunal is appointed independently of the Cabinet by the Special Parliamentary Committee for the Review of Orders and Regulations Under the Emergenies Act

RECOMMENDATION 20

There must be no limitation on the time for making a claim for compensation under the Emergencies Act.

Source: Nikkei National Museum, 2018-16-4-3-45-4
www.nikkeimuseum.org

THE CHARTER OF RIGHTS AND FREEDOMS: AN OVERVIEW

s.52 Charter is supreme law - inconsistent laws of no force and effect

s.32 Application - Provincial and federal government and law

s.33 "notwithstanding" clause

GENERAL LIMITATIONS AND EXCEPTIONS

s.1 "reasonable limits prescribed by law" - limits all rights and freedoms

s.33 - legislative declaration - "notwithstanding the Charter" - 5 years life

s.15(2) - affirmative action exempted
s.32(2) - not in force until 1985

s.4(2) - wartime extension of Parliament

s.6(3)(4) - provincial laws, affirmative action exempted

RIGHTS AND FREEDOMS

s.2 Freedoms
- religion
- speech
- assembly
- association

ss.7-14 Legal Rights
7 - life, liberty, security
8 - secure from search and seizure
9 - no arbitrary detention
10 - arrest and detention rights
11 - rights when charged
12 - cruel and unusual punishment
13 - self-crimination
14 - interpreter

s.15 Equality Rights
- equal before, under law and equal protection and benefit without discrimination

ss.3-5 Democratic Rights
3 - vote in elections
4.5 - sittings of Parliament

s.6 Mobility Rights
- movement, pursue livelihood

ss.16-23 Language Rights
16-18 - use of both official languages in Parliament, N.B. Legislature, government institutions
19 - court proceedings in federal courts, N.B. courts
20 - communication and services with federal government, N.B. courts
21 - language rights in Quebec, Manitoba continued

ss.22, 25, 26, 27, 28, 29 Continuing Guarantees
22 - existing third language rights continued
25 - aboriginal and treaty rights, future land claims assured
26 - all common law rights preserved
27 - multicultural interpretation
28 - equal rights (men and women) interpretation
29 - separate school rights continued

s.24(2) Exclusion of evidence where admission brings administration of justice into disrepute

s.24 Enforcement, Remedies
- anyone denied rights may apply to proper court "to obtain such remedy as the court considers appropriate and just in the circumstances".

Source: Nikkei National Museum, 2018-16-4-3-46
www.nikkeimuseum.org

Proposed Amendments to C-77 - National Association of Japanese Canadians

Limitation:

Nothing in this Act shall be construed as granting to the Governor in Council the power to make orders or regulations that overide the rights and freedoms set out in the Charter of Rights and Freedoms

Definition of National Emergency:

A National Emergancy is an urgent situation of a temporary nature that threatens the life, independance or continued sovereignity of Canada of such intensity that it cannot be dealt with using the existing or amended laws and institutions.

Parliamentary Supervision:

(a) Within three days of the proclamation of an emergency the Steering Committees of the House of Commons and the Senate shall appoint an all-party Special Parlimentary Committee to monitor the implementation of the orders passed by the Cabinet under its emergency powers and to make motions to Parliament for the amendment or revocation of orders or regulations;

(b) To carry out its mandate the Special Committee shall have full power to investigate the implementation of the orders including the right to compel testimony from Ministers of the government and all servants and agents of the Crown and all military personnel;

(c) Debate upon a motion to amend or revoke an order or regulation shall be without closure;

(d) A vote on a motion to amend or revoke an order or regulation affecting civil or human rights shall be a free vote.

(e) Testimony before the Special Committee may, upon order of the Committee, may be heard in camera where the Committee in of the opinion that it is in the interests of national security and Cabinet confidentiality to do so.

(f) A motion to amend or revoke an order or regulation under this Act shall be taken up and considered by Parliament within 6 sitting days.

Source: Nikkei National Museum, 2018-16-4-3-47-1
www.nikkeimuseum.org

Compensation:

46(1) The Special Parliamentary Committee shall appoint a Superior Court Judge in each province and in the territories to adjudicate claims for compensation from any person who suffers loss or injury as a result of anything done, or purported to be done under any part of this Act or any proclamation, order or regulation issued or made thereunder.

46(4) In any adjudication under this section the onus shall be upon the Crown to prove on a balance of probabilities that the act done, or purported to be done, or the proclamation, order or regulation was strictly necessary to meet the emergency and that there existed an emergency to support the making of the order or regulation.

46(5) For the purpose of adjudicating this Act the Superior Court Judge shall have the same powers of inquiry as the Special Committee and, at his discretion, may hear evidence in camera.

Onus of Proof:

In any proceeding in a court of law brought in relation to this Act the onus shall be upon the Crown to prove on a balance of probabilites in the case of a civil proceeding, and beyond reasonable doubt in the case of a criminal proceeding, that an emergancy exists to support any contested order or regulation and that the said order or regulation is strictly necessary in the circumstances.

Source: Nikkei National Museum, 2018-16-4-3-47-2
www.nikkeimuseum.org

MEMO TO: The Strategy Committee (Art Miki, Roger Obata, Maryka Omatsu, Bryce Kambara, Roy Inouye, Roy Miki); Ann Sunahara, Audrey Kobayashi, Shin Imai, Alan Hoyano, Kim Kobayashi, Art Shimizu, Don Rosenbloom

FROM: Cassandra Kobayashi, (604) 731-8455/ w:731-0311
3245 West 12th Ave., Vancouver, B.C. V6K 2R8

RE: Bill C-77, the Emergencies Act, proposed to replace the War Measures Act

DATE: March 14, 1988

First, I wish to apologize for a number of omissions on my part. First, I did not mail out Maryka Omatsu's memo dated February 15, 1988. In my ongoing discussions with Ann Sunahara, I learned that she had received a copy of Maryka's memo, and I assumed that copies were sent to the entire distribution list. However, I should have realized that Maryka was sending me a copy to distribute to everyone else because I had said I would do that in my previous memo.

I did send out a Memo dated November 24, 1987 from Shin Imai, along with a copy of a column by Jeffrey Simpson. However, I neglected to attach a covering note, so some of you may not have realized where that memo came from.

Since then, Shin has produced another memo, dated February 10, 1988. I was going to send this out, along with Maryka's memo when we learned that the Committee would allow us to appear on Tuesday March 15th. Since that moment, I have been very busy.

Because the Committee allows only 45 minutes for each group, I drafted an oral presentation to complement the excellent 61-page written submission prepared by Ann Sunahara for the NAJC. Art Miki could not obtain permission to miss more work, so Roy Miki was volunteered to go to Ottawa, along with Ann who is the expert in emergency legislation. Roy could answer questions about the NAJC Redress campaign, and the very successful Redress Rally held in Vancouver on Sunday March 13th -- the Japanese Hall on Powell Street was full to overflowing, (including a bus party from Vancouver Island) and we received excellent media coverage.

I also drafted a press release which is a brief synopsis of the NAJC concerns. You may be able to use it in educating your community about the shortcomings of the legislation being proposed to replace the War Measures Act. Enclosed is a copy of Maryka's memo, Shin's Feburary memo, a Globe & Mail editorial (Mar. 12) and article about the Ukranian-Canadian Committee submission on Bill C-77, the oral presentation to the Committee, a copy of the press release, and our program for the Vancouver Rally. Happy spring equinox!

Cassandra Kobayashi

Source: Nikkei National Museum, 2018-16-4-3-48
www.nikkeimuseum.org

NATIONAL ASSOCIATION OF JAPANESE CANADIANS

National Executive Office: 735 Ash Street, Winnipeg, Manitoba R3N 0R5

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Tuesday March 15, 1988, OTTAWA

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www.nikkeimuseum.org

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www.nikkeimuseum.org

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Source: Nikkei National Museum, 2018-16-4-3-49-3
www.nikkeimuseum.org

The Globe and Mail

The subject who is tr

R. HOWARD WEBSTER, Honorary Chairman
A. ROY MEGARRY, Publisher
NORMAN WEBSTER, Editor-in-chief
GEOFFREY STEVENS, Managing Editor
SHIRLEY SHARZER, Deputy Managing Editor
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CANADA'S NATIONAL NEWSPAPER
Proprietor — The Globe and Mail Divisior
444 Front St. W., Toronto M5V 2S9
The Globe founded 1844 The Mail

SATURDAY, MARCH 12, 1988

The measures taken

The October crisis of 1970 left its psychological scars on many Canadians, people who still seek to know more clearly why the federal government invoked the War Measures Act. They will find some enlightenment — and perhaps their suspicions confirmed — in the diary of the late Donald Jamieson.

The act was used as a blunt instrument against political activists in Quebec in 1970. To help police track down two cells of kidnappers in Quebec — the Front de Libération du Québec — the federal cabinet stripped all Canadians of civil liberties, created the retroactive crime of previous membership in the FLQ and permitted hundreds of Quebeckers to be thrown into jail without charge or right to bail. No one was convicted.

After his cabinet invoked the act at 5:16 a.m. on Oct. 16, then-prime minister Pierre Trudeau spoke of the "apprehended insurrection" that had driven his government to take such measures. "If a democratic society is to continue to exist, it must be able to root out the cancer of an armed, revolutionary movement that is bent on destroying the very basis of our freedom."

For his part, then-justice minister John Turner suggested there were things the critics did not know that might change their minds about this repressive step. "It is my hope that, some day, the full details of the intelligence upon which the Government acted can be made public, because, until that day comes, the people of Canada will not be fully able to appraise the course of action which has been taken by the Government." But the details would not come from him until the year 2005, Mr. Turner said 14 years later, because he had given his papers on the matter to the national archives.

Don Jamieson sat as transport minister in the Trudeau cabinet in 1970. In his diary, parts of which appear in the April issue of Saturday Night magazine, he wrote that he wanted to keep a record of what he realized was a historic period, in part to counter critics who said his government had overreacted. To his discomfort, he soon realized the critics had a point.

The evidence that many people assumed existed did not exist. Jean Marchand, then-minister of regional economic expansion, could warn as much as he liked that the FLQ had infiltrated crucial decision-making positions and was capable of destroying downtown Montreal with its stockpiles of explosives. But Mr. Jamieson grew increasingly suspicious that the claims were "highly colored and based on exaggerated rumors, to say the least." No firearms, ammunition or explosives were found that provided evidence of any insurrection. The "intelligence upon which the Government acted," to use Mr. Turner's words, was more in the way of rumor and speculation.

Mr. Turner had "grave doubts" about using the War Measures Act, the diary says, but Mr. Trudeau felt the need to flex some muscle. "With the benefit of hindsight," Mr. Jamieson wrote, ". . . I am satisfied that from the very moment when [British Trade Commissioner James] Cross was abducted, the Prime Minister saw the incident as an issue on which he would stand or fall and through which he might very well be able to assert the federal position in a dramatic manner." Mr. Trudeau himself had said, "I think it's only, I repeat, weak-kneed bleeding hearts who are afraid to take these measures."

The Jamieson entries come more as confirmation than revelation, but their release, following Mr. Jamieson's death in 1986, is timely. Two bills introduced in Parliament last June seek to replace the War Measures Act to prevent any replay of the excesses of October, 1970. Canadians have a stake in seeing that the bills do just that.

Source: Nikkei National Museum, 2018-16-4-3-50
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta,
T6E 2T5
March 6, 1988

Mr. Roy Miki,
2995 West 15 Avenue,
Vancouver, B.C.
V6K 3A2

Mr. Art Miki,
President,
National Association of Japanese Canadians,
735 Ash Street,
Winnipeg Man.,
R3N 0R5

Ms. Maryka Omatsu,
27 Howland Avenue,
Toronto, Ontario,
M5R 3B2

Dear Roy, Art and Maryka,

Please find enclosed the final draft of the Submission. Maryka, Art suggested that I forward one to you so you and Shin can answer any questions that the media might have. Enclosed with Roy's copy is one for Cassandra, for the same reason. Roy, please give it to her before you leave for Ottawa.

I shall take enough copies with me for the Committee and a couple of extras for the media, if they want them. I am booked into the Ottawa Holiday Inn and shall arrive about 5:00 PM on Monday, March 14, 1988. Please leave me a message there telling me who shall be appearing with me and where and when to get together with them.

Sincerely yours,

M. Ann Sunahara

cc. Cassandra Koybayashi,
Shin Imai

Source: Nikkei National Museum, 2018-16-4-3-51
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta,
T6E 2T5
March 6, 1988

Mr. Art Miki,
President,
National Association of Japanese Canadians,
735 Ash Street,
Winnipeg Man.,
R3N 0R5

Ms. Cassandra Kobayashi,
3245 West 12th Avenue,
Vancouver, B.C.,
V6K 2R8

Dear Art and Cassandra,

To augment the last draft sent to you last week please find enclosed a Table of Contents (the page numbers reflect final expectations) and the revised opening to the submission. I have also added the last part (from "On the basis ...) to the end of the argument so it is repeated immediately before the list of Recommendations.

Please also find the redrafted opening to the discussion of emergency powers (pp. 13 and 14) and the redrafted Compensation sections (pp. 46 - 54). Judicial Access;

Please let me know when a decision is made so I can run off a final draft.

I received Shin Imai's comments late yesterday. I note that he thinks that I am wrong re the ability to overide the Charter. I think he is wrong. Since, in any event the question is arguable, I feel that we must assume the worse when criticizing emergency legislation and my argument should stand. Indeed, it is my belief in this danger which is the reason that I am so opposed to this abomidable Act and why I have forgone several thousand dollars in income to prepare this submission. If the committee feels otherwise, please advise me. Because if that is the case, Imai can write your submission.

Art, please also find enclosed in your copy, copies of letter I have received from David Kilgour and a letter I have sent to Professor Gerry Gall, who is on the Law and Social Reform Committee of the Canadian Jewish Congress. If they endorse the Japanese Canadian submission (as I think you should invite other ethnic minorities to do) then that

Source: Nikkei National Museum, 2018-16-4-3-52-1
www.nikkeimuseum.org

support will also reinforce our campaign to convince politicians that when they ignore redress they offend more than Japanese Canadians.

Sincerely yours,

M. Ann Sunahara

Source: Nikkei National Museum, 2018-16-4-3-52-2
www.nikkeimuseum.org

Emergency Preparedness Canada
Executive Director

Protection civile Canada
Directeur exécutif

OTTAWA, Ontario
K1A OW6

1003-2

April 14, 1988

Mr. Art Miki
President
National Association of
Japanese Canadians
National Executive Office
735 Ash Street
Winnipeg, Manitoba
R3N OR5

Dear Mr. Miki:

The Legislative Committee on C-77 (the Emergencies Act) completed clause by clause consideration of Bill C-77 on April 12, 1988. I know you will be interested in being informed of the changes the Committee has made to the Bill. The amendments are considerable in number, and respond to a wide variety of concerns raised during the Committee's hearings.

I have enclosed a summary of the amendments approved by the Committee, along with their full exposition in a "side-by-side" format so that comparisons with the original Bill can easily be made. Third reading of Bill C-77 is expected to take place in about 10 days time.

Yours sincerely,

W. B. Snarr

Enclosure

cc: Ms. Ann Sunahara

Canada

Source: Nikkei National Museum, 2018-16-4-3-53-1
www.nikkeimuseum.org

SUMMARY OF AMENDMENTS TO C-77,
APPROVED BY THE LEGISLATIVE COMMITTEE

Purpose	Clauses affected
1. Revise the definition of "national emergency" and relocate it from the Preamble to the main body of the Act.	Preamble New Section 3
2. Change the definition of "public welfare emergency" so that "a breakdown in the flow of essential goods, services or resources" is not a primary cause justifying the declaration of an emergency.	Section 3
3. Specify that the GinC cannot alter the Act by order or regulation.	New Subsection 4(a)
4. Specify that the GinC cannot order detention, imprisonment or internment of Canadian citizens or landed immigrants on the basis of race, national or ethnic origin, colour, etc.	New Subsection 4(b)
5. Change "...in the opinion of the Governor in Council..." to "...on reasonable grounds, the Governor in Council believes that...", so that executive judgments can be challenged in the courts.	Subsections 4(1), 6(1), 10(1), 10(2), 11(1)(b), 15(1), 17(1), 21(1), 21(2), 22(1)(b), 26(1), 28(1), 32(1), 32(2), 36(1), 38(1), 41(1), 41(2), 58(2)
6. Reduce the sunset periods for Parts II to IV to 30, 60 and 120 days respectively.	16(2), 21(1), 27(2), 32(1), 37(1), 41(1)
7. Permit the Governor in Council to revoke a declaration arbitrarily.	Sections 9, 20, 31, 40.

Source: Nikkei National Museum, 2018-16-4-3-53-2
www.nikkeimuseum.org

8.	Require that "reasonable" compensation be paid for commandeered services.	Subsections 6(1)(d), 17(1)(d),28(1)(e), 38(1)
9.	Clarify the provision that a province's ability to deal with a concurrent provincial emergency will not be unduly impaired.	New subsections 6(3)(a)(i), 17(3)(a), 28(2)(a)(i)
10.	Require that, to the extent possible, federal powers should be exercised in concert with the provinces.	New subsections 6(3)(a)(ii), 17(3)(b), 28(2)(a)(ii), 38(3)
11.	Clarify that travel restriction in a public welfare emergency be limited to the "protection of the health and safety of individuals".	Subsection 6(1)(a)
12.	Clarify that Part I cannot be used to terminate a labour dispute.	New Subsection 6(3)(b)
13.	Narrow the scope of the power to regulate public assembly in Part II to assemblies "that may reasonably be expected to lead to a breach of the peace."	Subsection 17(1)(a)(i)
14.	Change the definitions of "international emergency" and "war emergency" to narrow application and add "...and is so serious as to be a national emergency".	Sections 25, 35.
15.	Confine the application of Part III inquiry and search and seizure powers to the enforcement of laws dealing with defence contracts and to the prevention of profiteering or black marketing.	Subsections 28(1)(c) 28(1)(d)

Source: Nikkei National Museum, 2018-16-4-3-53-3
www.nikkeimuseum.org

16. Clarify that Part III powers do not extend to censorship.	New Subsection 28(2)(b)
17. Revise the penalties sections to specify separate maximums for summary conviction and for indictment.	Subsections 6(1)(j), 17(1)(e),28(1),38(2).
18. Provide that persons whose services are commandeered will be considered servants or agents of the Crown, and thus be indemnified.	Section 45
19. Provide for <u>reasonable</u> compensation for loss, injury or damage.	Subsection 46(1)
20. Rule out double compensation.	Subsection 46(2)
21. Make the compensation provisions of Part V mandatory rather than discretionary.	Subsection 46(1), New Subsection 46(2), Subsections 47(d), 48(1), 48(2).
22. Delete the section permitting exclusion of classes of persons from compensation.	Subsection 47(j)
23. If on appeal the assessor so recommends, require the Minister to make a compensation award which exceeds the prescribed maximum.	New subsections 50(1)(c), 50(4)
24. Remove the time limits on debate on a motion to confirm or continue an emergency declaration or revoke an order or regulation.	Subsections 56(6), 58(4) 59(4), 59(7)

Source: Nikkei National Museum, 2018-16-4-3-53-4
www.nikkeimuseum.org

25.	Lower the minimum number of members or senators required to initiate a motion to revoke a declaration, order or regulation from 30 and 15, to 20 and 10 respectively and reduce the maximum time to take up the motion from 6 to 3 days.	Subsections 57(1), 59(3)
26.	Extend the time limit on debate from five to ten hours on a motion to revoke initiated by Parliamentarians.	Subsection 57(2)
27.	Permit one House alone to revoke a declaration.	Subsection 57(3)
28.	Change the effective date of a revocation from the day of concurrence to the day specified in the motion (but not retroactive).	Subsections 57(3), 59(8), 60(4)
29.	Include current orders and regulations in a motion to continue an emergency declaration, and thus require their confirmation.	Section 58(1),(2),(3),(4).
30.	Reduce the maximum time delay in tabling orders and regulations from 15 days to 2 days.	Subsection 59(1)
31.	Remove the reference to the "opinion" of the GiC with respect to orders or regulations exempted from publication, and reduce the maximum delay for referral to the Review Committee from 15 to 2 days.	Subsection 59(2)
32.	Remove the time limit on Parliament's revocation of orders or regulations.	Subsection 59(3)

Source: Nikkei National Museum, 2018-16-4-3-53-5
www.nikkeimuseum.org

33.	Reduce the maximum time for the second House to take up a motion to revoke an order or regulation from 6 days to 3 days.	Subsection 59(6)
34.	Make the establishment of joint Review Committee of both Houses mandatory.	Subsection 60(1)
35.	Require the Parliamentary Review Committee to report to Parliament at least every 60 days, and in any case whenever a declaration is continued or revoked.	New Subsection 60(5)
36.	Require all-party representation on the Review Committee.	Subsection 60(6)
37.	Provide for a post-event inquiry, to be tabled within one year.	Section 61
38.	Change the consequential amendments to be consistent with the amended Parts V and VI.	Sections 68, 70

Source: Nikkei National Museum, 2018-16-4-3-53-6
www.nikkeimuseum.org

Internment safeguards are sought

BY VICTOR MALAREK
The Globe and Mail

Any new federal emergency legislation must prohibit internment on the basis of citizenship, national or racial origin, religion or political affiliation, says a brief presented to a parliamentary committee this week.

The brief, prepared by Toronto lawyer Alexandra Chyczij for the Civil Liberties Commission of the Ukrainian-Canadian Committee, says two proposed bills — the Emergencies Act and the Emergency Preparedness Act — are ambiguous on whether internment operations would be considered an option for dealing with internal security threats.

Bill C-77 and its companion bill were introduced last June to replace the 1914 War Measures Act, last invoked by the Liberal government during the October crisis of 1970, and the Emergency Planning Order.

Ms Chyczij says the Ukrainian Canadian community is particularly concerned that the emergency bills may provide the potential for a renewal of internment operations.

During the First World War, Ukrainian Canadians were the principal victims of Canada's first national internment operations.

More than 5,000 of them were incarcerated in 26 concentration camps around the country. A further 80,000 people, most of Ukrainian nationality, were labelled "enemy aliens" and obliged to report regularly to the police.

Of serious concern for Ukrainian Canadians, Ms Chyczij stresses, is that virtually all of them were unilaterally declared to be Soviet citizens by a Soviet law passed in 1979.

Nearly one million Canadians were born in, or are the descendants of, people born in territories that are now part of the Soviet Union.

"In the event of some international crisis in which Canada, as part of the Western alliance, found itself in conflict with the Soviet Union and its Eastern European allies, it is not difficult to conceive of a situation in which Canadians upon whom Soviet citizenship was imposed might find themselves deemed suspect by the Canadian Government, much like Ukrainian Canadians and others were declared enemy aliens during the First World War," Ms Chyczij says.

"Indeed, the Soviets, in order to foment an internal security dilemma for the Canadian authorities, would only have to issue a 'call to arms' to Soviet citizens living in Canada and the United States to provoke a federal response or at least public concern."

Ms Chyczij says that in wartime, xenophobia, prejudice and panic might then lead to a repeat of the internment operations instituted against Ukrainian Canadians and Japanese Canadians during the first and second world wars.

She also argues that provisions in the Charter of Rights and Freedoms are inadequate.

"The charter does not afford protection against internment operations and other repressive measures of the sort experienced by various Canadian ethnic, religious and racial minorities in the past."

Under Section 33 of the charter, it is possible for the rights of Canadians to be suspended temporarily for up to five years, Ms Chyczij notes.

In the brief, the Ukrainian Canadian civil liberties commission advocates a more effective balancing of emergency powers and safeguards for human rights and civil liberties.

It recommends that internment operations be specifically prohibited. It also suggests that the federal Government commission an inquiry to determine how many Canadian citizens have been affected by the 1978 Soviet law imposing dual citizenship on them, and that the Soviet Government be asked to clarify its citizenship laws as they apply to Canadians who can trace their origin to territories now within the Soviet Union.

Another recommendation asks the federal Government to provide formal assurances to Canadians of East European origin or descent that the imposition upon them of Soviet citizenship will not be construed in such a way as to infringe their fundamental human rights and civil liberties as Canadians.

Source: Nikkei National Museum, 2018-16-4-3-54
www.nikkeimuseum.org

MEMORANDUM

TO: NATIONAL ASSOCIATION OF JAPANESE CANADIANS

FROM: SHIN IMAI, Barrister and Solicitor

DATE: FEBRUARY 10, 1988

RE: COMMENTS ON NAJC POSITION ON EMERGENCIES ACT

I have had an opportunity to review the Emergencies Act, the Canadian Civil Liberties Association Brief, the paper by Ann Sunahara, and some newspaper articles. I would first like to just outline what I feel should be our approach with respect to the Emergencies Act, and then I will make my comments on the various other comments with respect to this act.

I. NAJC POSITION ON EMERGENCIES ACT

1. I believe that it is good to have a new Emergencies Act. This is because in times when emergencies occur, Governments take it upon themselves the powers any ways, as we saw in the United States and England. I believe it is better in times of peace, to have rational discussions on what types and what controls should be placed on the powers and have legislation in place which at least will provide a guideline and the protections which may not be thought of if legislation is enacted in the heat of an emergency. I realize that Ann Sunahara has a different opinion and I will discuss this later on in this memo.

2. In analyzing the legislation from our point of view, it would be good to determine whether the legislation would have prevented the actions the government took against the Japanese Canadians. I think the answer to this question in this legislation is "no". First, the various definitions of emergencies are very widely drafted. The definition of war emergency and the powers that it would be granted if war emergency were declared are also extremely broadly drafted. I agree, as does Ann Sunahara and the Canadian Civil Liberties Association, that these definitions are so broad that it is unlikely that they would prevent actions such as occurred against the Japanese Canadians during World War II.

Second, there are provisions in the statute for compensation which is very good. However, the provisions for the compensation are not drafted with enough precision and with enough protection to those who are claiming compensation. Both Geoff Stevens, a

Source: Nikkei National Museum, 2018-16-4-3-55-1
www.nikkeimuseum.org

writer with the Globe and Mail and the Canadian Civil Liberties Association concur with this.

3. The NAJC, I think, can perhaps come to some kind of consensus on what changes should be made in order to improve the Act. Unfortunately at the present time, I am not in a position to actually draft the brief with all the suggestions. I think however that taking Ann's points as well as the CCLA's points and my comments and other people's comments, it would be possible to put something together that would be coherent.

4. In general, I believe we should attempt to keep our message to the public simple and stress a couple of points. There are many specific problems with the statute, which I think Ann Sunahara and CCLA brief raise, and we can deal with that in a written brief to the committee.

The points should be:

1. This legislation gives the government so much power that it might not prevent the government from taking the actions it did against the Japanese Canadians
2. It is better than the existing legislation because it it provides for the application of the Charter of Rights, and provides for more controls on the exercise of the powers.
3. It vindicates our demand for redress by providing for compensation.
4. The legislation needs improvement to ensure that it is drafted in such a way that the events of World War II cannot be repeated.

II. COMMENTS ON THE EMERGENCIES ACT

1. Definition of Emergencies: I think that both the CCLA paper and the Sunahara paper point out the problems with the definition of various emergencies and I don't plan to repeat them here. The major point is that the Governor in Council has discretion to decide what is an emergency, and has great latitude in deciding what to do about that emergency. The CCLA suggest that there should be access to courts on the emergency powers, with jurisdiction given to the court to cut back, amend or revoke those powers, if the government cannot show that they are specifically necessary to deal with specific situations.

2. Parliamentary Supervision: I think that Ann makes several good points here. For example she states that although the declaration of the emergency is laid before Parliament, there are very short time spans for actual debate and there is only one chance to review and correct regulations. If the emergency is renewed, then the orders and regulations will continue automatically. The Parliamentary Review Committee power to review secret orders and regulations is not specific enough in

Source: Nikkei National Museum, 2018-16-4-3-55-2
www.nikkeimuseum.org

that both the establishment and the powers of the Parliamentary Review Committee are not clearly defined. I looked up current regulations under the Statutory Instruments Act to determine whether the orders and regulations which could be exempted thereunder were significant. I found that in fact they were quite significant in that quite a wide latitude appears to be given under the Act for exempting publications of regulations relating to international relations, the security of Canada, and so on. In any case, this provision which allows the drafting of secret regulations if they are exempted under the Statutory Instruments Act, has a gigantic loophole which the government could use to exempt any regulations under the Emergencies Act from scrutiny by parliament. This would be done simply by amending the Statutory Instruments Act to exempt all or some of the regulations under the Emergencies Act.

3. Charter of Rights: The preamble states that the Govern in Council would be subject to the Canadian Charter of Rights and Freedoms. Ann Sunahara suggests that Section 33 on the Charter could be used to override the Charter of Rights and Freedoms and pass secret regulations which would run contrary to the Charter. I think that her analysis is wrong here in that Section 33 requires an express declaration in "an Act of Parliament". Therefore my reading would be that you would have to have the override actually in the legislation and could not override merely in a regulation. If the legislation states clearly that the Charter of Rights applies then they cannot make a regulation under that legislation stating that the Charter of Rights does not apply. I think the NAJC would be put in an untenable position if they try to argue that someone could be executed by a secret regulation. There simply is not enough here to warrant such a conclusion.

4. Compensation: One of the points which the NAJC should jump up and down about is the provision for the awarding of compensation. I will not go into detail about the weaknesses in this provision except to say that it provides to much discretion on the part of the Minister in awarding compensation, and provides for too weak of an appeal mechanism. However, from the NAJC's point of view, the inclusion of a provision on compensation really shows that the government has come around to our point of view. I think we can use this to say that it is ridiculous that the government would talk about compensating people in the future, and at the same time turn around and refuse to compensate those that are living among them today. The provision on compensation says that the Minister may provide for compensation. This means that there is some discretion on whether to provide compensation or not to provide compensation. I think that we can make the point that if they are not going to provide compensation to the Japanese Canadians then it reflects on the exercise of the discretion that we might expect in the future. We could say that if there is an intention to provide

Source: Nikkei National Museum, 2018-16-4-3-55-3
www.nikkeimuseum.org

compensation then they should state it clearly and change the "may" to a "shall".

5. Comments on Sunahara's Final Positions: The first point that is made, is that the Emergency Act is **worse** than the current War Measures Act. I simply do not see how this conclusion can be reached. Weak as the Emergency Act is, it provides for extensive reviews by Parliament of both the powers and the declaration of the emergency itself, provides for compensation to those victims, and provides for the application of the Charter of Rights. I am willing to be convinced otherwise, but to me to make a statement that the Emergency Act is worse than the War Measures Act, which virtually has no controls, is to take a stand which is not defendable.

The next suggestion that is made is to amend the Charter to restrict the use of emergency powers to specific situations. I am not sure what this means. The issue is the application of the charter. As it stands, the Charter will have to be honoured even if an emergency is declared. If the Charter is amended to allow the use of emergency powers in certain situations, is it being suggested that the Charter provisions be subject to override in those emergency situations? Another suggestion that had been made by Don Rosenbloom earlier, was to amend Section 28 of the Charter, which deals with equality guarantees for women, to include absolute guarantees for race. I think it is O.K. to look at the Charter but I do not see why sex and race should be the only absolutely prohibited grounds of discrimination. Why should not the entire list in Section 15 be included in Section 28?

The next suggestion is to pass legislation on compensation for people who suffer injury under emergency legislation. I am not sure why this is necessary because there is provision in the current Emergencies Act for compensation. If the argument is that the proposed legislation is inadequate, which I think it is, then we should address those points directly. If the argument is that there will be no emergency legislation, and therefore a need for a specific act on compensation, then I think that one gets caught in an internal contradiction. That is, if there is no emergency powers used, then how can you get compensated for the use of emergency powers?

The final point is that it is better to have no legislation at all because it is unnecessary. I believe that in theory there is some merit in this suggestion. If you look at the range of statutory powers available, both to the provinces and to the federal government, it is hard to conceive what situations would not be covered. However, I think the reality is that when there is war or other emergencies, governments will take action outside of the existing legislation. The argument that other jursidictions do not have emergency powers, so we do not need emergency powers is a not a good argument. The fact is, those

Source: Nikkei National Museum, 2018-16-4-3-55-4
www.nikkeimuseum.org

other jurisdictions, including the United States, have used emergency powers during war, and have abused those powers badly. So what difference does it make if they have a War Measures Act or not? When it comes down to the crunch, everyone will use emergency powers. Given that practical reality, I would think it would be better for us to have input into good legislation now.

Source: Nikkei National Museum, 2018-16-4-3-55-5
www.nikkeimuseum.org

To: Art Miki
Strategy Committee
Legal Advisers et al

From: Maryka Omatsu

Date: February 15, 1988

FEB 18 1988

Re: **Emergency Powers Act (E.P.A.)**
War Measures Act (W.M.A.)

Enclosed please find my present thinking on the proposed Emergency Powers Act.

BACKGROUND

The War Measures Act Committee has recommended over the past five years that the NAJC oppose the War Measures Act and lobby for constitutional amendments to the Charter that would protect individuals and groups from our experiences. (See letter of June 1984 from Don Rosenbloom).

We supported the existence of emergency powers legislation, but with the strong proviso that civil liberties and human rights be protected. In essence, the NAJC and the Canadian Civil Liberties Association (CCLA) have held the same position.

Source: Nikkei National Museum, 2018-16-4-3-56-1
www.nikkeimuseum.org

ISSUE

The Federal Government has introduced a new Emergency Powers Act (EPA) that requires our analysis.

I have had the opportunity of reading Ann Sunaharra paper on the above. I agree with her final recommendations in Emergency Powers (see pp. 22-23).

Ann's thesis is that Canada does not require emergency powers legislation and that there is sufficient legislation on the books, to cover any exigencies that may arise.

That raises a fundamental issue for the NAJC to consider.

Q (1) Do we oppose all emergency powers legislation; or

(2) Do we support an emergency powers Act that protects civil liberties and human rights (our previously held position).

Basically once we decide the above questions, our recommendations naturally flow. Namely, if we adopt position (1) then Anne's recommendations make sense. If we continue to hold position (2) then a combination (CCLA and Rosenbloom - Charter protection argument makes sense.

Source: Nikkei National Museum, 2018-16-4-3-56-2
www.nikkeimuseum.org

CONSIDERATIONS

Regarding (1)

I have always opposed Emergency Powers Legislation as unnecessary because:

(1) existing criminal and other legislation is sufficient to cover any emergencies;

(2) other societies (e.g. England) do not have emergency powers legislation and it does not seem to be a problem; and

(3) Canada's use of the War Measures Act in 1914, 1941 and 1972 were not necessary and only provided legal protection for government misdeeds.

I am aware that civil libertarians fear that with no Emergency Powers Legislation on the books, the government could impose draconian legislation in the heat of the moment. It's a question of do we trust the enemy · we know more than the enemy we don't know.

Source: Nikkei National Museum, 2018-16-4-3-56-3
www.nikkeimuseum.org

CONSIDERATIONS (Cont'd)

Regarding (2)

A more cautions approach is to assume the worst scenario and lobby strenuously for Emergency Powers Legislation that balances our concerns for civil and human rights. This appears politically to be the most likely scenario as no federal party appears to oppose Emergency Powers Legislation in principal.

Accordingly it may be tilting at windmills to simply argue for position (1).

RECOMMENDATIONS

I believe that Emergency Powers Legislation, "Sui generis", is contradictory to human and civil rights legislation regardless of protections that we are able to extract from government. I would like the NAJC to state briefly:

(i) our opposition to Emergency Powers Legislation;

(ii) for the record, our belief that EPL is unnecessary and provides government with almost unbridled powers contrary to our democratic rights.

Source: Nikkei National Museum, 2018-16-4-3-56-4
www.nikkeimuseum.org

Having put forward our principled position of opposition to Emergency Powers Legislation, we can then address the proposed Emergency Powers Bill.

In summary, my concerns with the legislation are:

(i) no constitutional protections are proposed to override emergency powers legislation; (See Rosenbloom letter 1984);

(ii) insufficient internal (to the Bill itself) protections from unbridled executive powers:

i.e. insufficient review powers given to the Courts, Parliament itself, and a Parliamentary Review Committee to check powers that are by definition undemocratic.

The specific recommendations made by Ann and the CCLA Brief that Shin worked on, can in my opinion be adopted/adapted for our purposes.

Maryka Omatsu

Source: Nikkei National Museum, 2018-16-4-3-56-5
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta,
T6E 2T5
June 24, 1987

Ms. Cassandra Kobayashi,
 Street West,
Vancouver, B.C.,
V

Dear Cassandra,

Enclosed please find the quick legal opinion you requested on what Japanese Canadians and their allies in Parliament should be looking for in the proposed emergency legislation in order to prevent a recurrence of the fate of Japanese Canadians. I have also included a draft of the speech I gave in Vancouver on the long weekend in May. It is not exactly the same, since I can't remember everything I said, and I have left out some of my humourous remarks and tightened up the English. In substance, however, it is the same.

In my view it is very important that Japanese Canadians do not remain silent during the debate on emergency legislation. As I said in my speech, Japanese Canadians have the strongest historical grounds for being heard on this subject and a duty to all Canadians to speak out. Compensation without changes to prevent a recurrence is a pyrrhic victory.

If I can be of any assistance, please do not hesitate to contact me either at home (403 - 433 - 8104) or at work (403 - 439 - 3991).

Sincerely yours,

M. Ann Sunahara

Source: Nikkei National Museum, 2018-16-4-3-57
www.nikkeimuseum.org

9809 91 Avenue,
Edmonton, Alta., T6E 2S9
July 30, 1987

Mr. Bill Kobayashi,
77 John Street West,
Waterloo, Ontario,
N2L 1B7

Dear Bill,

I have had this ready for you since the end of June but delayed forwarding it because I wanted to include with it a legal opinion of what Japanese Canadians and their allies ought to be looking for in the proposed new emergency legislation. Cassandra Kobayashi of Vancouver has asked me to prepare that opinion.

The opinion is now about 10 single spaced pages long and now that I have obtained a copy of the new bill I will be able to add a criticism of that bill to it. The opinion is as long as it is because I have included an analysis of emergency legislation in general and have illustrated as many points as possible with the Japanese Canadian examples. I am hoping that the final document will provide the NAJC with ready arguments to attack those who would lead Canada down the same path that she has followed for the last 73 years.

I can tell you the bottom line vis-a-vis the new legislation: It has every flaw that the War Measures Act has save that it requires the government to renew the proclamation of the emergency periodically, and that "improvement", I will argue, is illusory. The new bill is the War Measures Act clothed in different words.

It may even be more insidious because it includes emergency powers for very ill defined incidents of "public disorder" and "international emergency". These powers are so broad that the uprooting of Japanese Canadians could have been carried out under them. In view of these factors I naturally want to make my analysis as thorough as possible.

Sincerely yours,

M. Ann Sunahara.

cc. Cassandra Kobayashi
Art Miki

Source: Nikkei National Museum, 2018-16-4-3-58-1
www.nikkeimuseum.org

THE CHARTER AND THE WAR MEASURES ACT
Can the Charter Protect in Emergencies?

I have been asked to speak to you today on the question of whether the Charter of Rights and Freedoms could prevent the recurrence of what was done to Japanese Canadians during the Second World War. I will give you a lawyer's answer: some protection - maybe.

My answer is qualified because, while the Charter contains protecting clauses, there are also several unanswered questions and potential problems that are simply not dealt with in the present Charter.

Let us talk first about the protective clauses. There are three; the first and most important of which is Section 24. Section 24 gives anyone who feels that their Charter rights or freedoms have been denied by the government the right to apply to a court for a declaration that a wrong has occured and for the court to give a remedy that is "appropriate and just in the circumstances."

The importance of this change will be obvious to any Japanese Canadian who remembers how difficult it was to get the federal government into court over the sale of Japanese Canadian property during the Second World War. Then, the Crown could only be sued with the permission of the Crown. It took a year from the time Japanese Canadian property was ordered sold in 1943 to get permission to sue the Custodian of Enemy and Evacuee Property. (A job title that speaks volumes by itself.)

Of course, there was no such delay with challenging the attempt to deport 10,000 Japanese Canadians in 1946. That was only because Japanese Canadians were able to blackmail the government by threatening to delay and obstruct the whole process and to force the government to put the question of the legality of the deportation orders before the court.

This need for the cooperation of the Crown sue goes a long way toward explaining why the uprooting of Japanese Canadians in 1942 was never challenged. Without a Charter of Rights there could be no Gordon Hirabayashi or Mitsue Endo in Canada. Without a Charter, noone could raise a breach of their constitutional rights as a defence to refusing to leave the Pacific coast, or could directly challenge the law detaining them and have it declared null and void.

Source: Nikkei National Museum, 2018-16-4-3-58-2
www.nikkeimuseum.org

The second important change brought by the Charter is the change in the onus of proof. Before the Charter, a person complaining that an order under the War Measures Act was wrong had to prove by "very clear evidence" that no emergency existed, which was very difficult to do when there was a war going on. The government did not have to do anything. The responsibility of proving that there was no emergency rested entirely on the person complaining, a person who would not have access to government documents or the government's advisors, and from whom evidence could very easily be hidden.

Now, a person complaining that his or her Charter rights have been denied need only prove that fact. In the case of Japanese Canadians, a complainant would only need to prove that he or she had been ordered to abandon their home and livelihood on the grounds of race alone. Once that fact was proved then the onus would be on the government to prove that discriminating against Japanese Canadians was "demonstrably justifiable in a free and democratic society." If the government failed to produce evidence to justify the order on racial grounds, the order would be struck down.

It is not difficult to understand how different things might have been if the government had had to prove in 1942 that the uprooting of Japanese Canadians was justifiable. We know now from the government's records that if the Commissioner of the RCMP had been asked under oath, "What evidence do you have of disloyalty by Japanese Canadians?", he would have replied that "We have no evidence of espionage or sabotage among the Japanese in British Columbia." That is exactly what he did state to the British Secret Service in August 1942, six months after the uprooting of Japanese Canadians began and after the RCMP had searched carefully and unsuccessfully for incriminating evidence. Had that truth been presented to a court of law in late 1942, the uprooting of Japanese Canadians might have been halted then.

The third change is found in section 52 of the Charter. That section makes the Charter the supreme law of Canada. That does not mean that the courts now make the law. Rather it means that the federal government and the provinces have agreed to limit their powers so that they must be exercised in accordance with the principles in the Charter of Rights. The federal and provincial governments have given the courts the power and the duty to tell them when they act out of line with the Charter and to right the wrong.

This change is important because in the past the courts have always refused to censure the government in time of emergency. The courts now have a duty, indeed an obligation, to say when a government has gone too far and to declare the law that goes too far as having no force and effect. This is the first time that the courts have been

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asked to act as a watchdog over the constitutional rights of individuals in the same way that they have guarded the rights of the federal and provincial governments against each other.

Having told you the good part, I must now tell you the bad part, the ways in which the Charter fails to prevent what happened to Japanese Canadians from happening again.

Everything I have said so far is true - in normal times. What happened to Japanese Canadians did not happen in normal times but at a time when the federal government in the name of "national security" was free to use is most draconian powers. How then does the Charter work in time of emergency?

The first problem lies in Section 33 of the Charter. Section 33 lets a provincial or federal government pass laws that violate the fundamental freedoms and the legal and equality rights in the Charter by simply declaring that those sections of the Charter will not apply to the particular law they are making. The fundamental freedoms include the freedom of the press, of opinion, of religion, of association and of peaceful assembly. The legal rights include the right to life, liberty and security of the person and the right not to lose your life, liberty or security except in accordance with principles of fundamental justice. In practice this means you cannot be killed or imprisoned or otherwise threatened without a fair trial. The equality rights include the right to be free from discrimination, including racial discrimination.

Section 33 means that it may be possible for a federal Cabinet acting under the War Measures Act to order all Japanese Canadians out of British Columbia on racial grounds alone. The fact that such an order discriminates on racial grounds would not make it illegal because the part of the Charter forbidding racial discrimination would be effectively wiped out. More importantly, the right to challenge the law and any imprisonment under it might also be gone because the right to liberty (indeed, the right to life) would also be gone along with the right not to be imprisoned or otherwise detained without a trial or hearing.

If the federal government ever used both Section 33 and the War Measures Act together, what was done to Japanese Canadians could be done again.

Section 33 is so dangerous in part because of the second flaw in the Charter: it fails to address the situation of an emergency. Every other major Charter of Rights sets out what a government can and cannot do in time

Source: Nikkei National Museum, 2018-16-4-3-58-4
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of emergency. The European Charter of Human Rights, which is the model for our Charter, the American Charter of Human Rights, and the United Nations Charter on Human Rights (to which Canada is a signatory) all recognize that civil rights are likely to be abused in time of emergency and, consequently place limitations on the what governments can do in time of emergency.

Canada's Charter of Rights is silent. That silence means that it is open to the federal government in time of emergency to use Section 33 in the worst possible way against individuals and groups as innocent as Japanese Canadians were in 1942. In Canada there are no constitutional controls protecting an individual's right to life, liberty or security in time of emergency.

What does all this means for Japanese Canadians? It means that Japanese Canadians are in a very unique position. The history of Japanese Canadians is the best documented abuse of civil liberties in Canada in time of emergency. It may not be the worst abuse - comparing scars is a fruitless exercise - but it is the best documented, and, therefore, the one from which Canadians can best learn how not to repeat the mistakes of the past.

Our emergency legislation is very flawed, as is the Charter of Rights. Those flaws must be drawn to the attention of the Canadian people. For the sake of all Canadians they must be corrected. Japanese Canadians are the best qualified, as past victims of emergency legislation, to carry out that task. By including the reform of Canada's emergency legislation in any redress for the wrongs of the Second World War, Japanese Canadians can benefit all Canadians.

I ask you, therefore, to take to heart the words spoken by Thomas Shoyama at a redress forum in Vancouver when he said:

> I think today that there is no question that we have not only the right but we have a duty, an overwhelming obligation, to seek redress for the wrongs of 40 years ago.

Source: Nikkei National Museum, 2018-16-4-3-58-5
www.nikkeimuseum.org

9754 90 Avenue,
Edmonton, Alta., T6E 2S9
September 23, 1983

Fellowship Division,
Social Sciences and Humanities Research Council of Canada,
Box 1610,
Ottawa, Ontario,
K1P 6G4

To Whom It My Concern,

For the assistance of the committee I should like to take the opportunity to explain my qualification for giving the attached assessment.

I am the author of The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War, 1981, Lorimer, a book that was prepared with the assistance of a Canada Council Explorations grant and published with a publishing grant from your institution.

Although I am no longer in academia I have retained a close interest in the Japanese Canadian community and have long felt that the Kitagawa papers should be published.

Thank you for your attention.

Sincerely yours,

M. Ann Sunahara.

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-59-1
www.nikkeimuseum.org

Social Sciences and Humanities Research Council of Canada
Fellowships Division

Conseil de recherches en sciences humaines du Canada
Division des bourses

255 Albert Street
Box 1610
Ottawa K1P 6G4
613 995-9330

Français au verso

PROJECT ASSESSMENT

1 Leave Fellowship ☒ 451-84- 1863
Postdoctoral Fellowship ☐ 456-84-

TO APPLICANT: Please use typewriter to complete items 1, 2 and 3, attach copy of your program proposal, and send this form to assessor.

TO ASSESSOR: Please use typewriter to complete items 4 and 5, and detach the applicant's program proposal before sending this form to the Council. Do not write on reverse.

2 Name and address of applicant
Roy Miki
2995 West 15th Ave., Vancouver, B.C.
Telephone 732-7760 V6K 3A2

3 Selection Committee no. 01

4 I have examined the applicant's program proposal, and my assessment in terms of its originality, significance and feasibility (including its strengths and weaknesses) is as follows:

Prof. Miki's proposed collection of the writings of Muriel Kitagawa is not only original, feasible and significant but necessary. Kitagawa's writings, which I have extensively examined, are one of the few contemporaneous accounts of the experiences of Japanese Canadians in World War II to survive that turbulent period. They have added value by virtue of Kitagawa's unique qualifications as a trained reporter at the hub of the Japanese Canadian community at that time. Although Kitagawa was politically associated with one of the subgroups within Japanese Canadian culture at that time, the Nisei or Canadian-born generation, her consciousness of and sensitivity to the views, fears and difficulties faced by all Japanese Canadians gives her writing a breadth seldom found in personal accounts recorded in times of crisis. Her later writings especially show her ability to calmly and with some detactment to assess potentially emotional issues. At the same time Kitagawa does not hide her feelings nor does she minimize the pain and emotional shock she observes around her.

The Kitagawa documents are significant also as a record of how one Canadian woman reacted to and coped with abuse by the government of the day. As a record of a role played by Canadians in the Second World War these papers fill a long vacant gap. Their publication will do much to explain to all Canadians what it feels like to be the powerless victim of government policy and to show the price paid by Canadians like Kitagawa during the Second World War.
I strongly urge that this project be completed as proposed.

5 If the applicant is applying for a *Leave Fellowship*, give your comments on the appropriateness of the proposed place(s) of tenure.

If the applicant is applying for a *Postdoctoral Fellowship*, give your comments on the appropriateness of the proposed arrangements for affiliation (if this assessment is being provided by someone on behalf of the proposed host institution, please comment on the training benefits accruing from affiliation with this particular institution).

Prof. Miki's proposed places of tenure are ideal. The Kitagawa papers are presently deposited in the Public Archives of Canada. I believe there are also letters from her concerning the policies of the Canadian government in the post-war period in the National Japanese Canadian Citizens' Association Papers in the same Archives. The National Library, and also I believe the Vancouver Public Library, have on microfilm a complete record of the newspaper for which she wrote, The New Canadian, although it might be preferable to use actual copies of that paper, copies which are located in Toronto.

Name of assessor	Appointment or occupation	Subject field	Institution
M. Ann Sunahara	Student-at-Law/Historian	Japanese Canadian History	Law Courts Edmonton, Alta.

Date September 23 1983 Signature M. Ann Sunahara

Please send this form to the **Fellowships Division, Social Sciences and Humanities Research Council of Canada, Box 1610, Ottawa, Canada K1P 6G4.** It must reach the Council not later than **October 1.**

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[*Justice at War: The Story of the Japanese American Internment Cases.* By Peter Irons. Oxford University Press. 1983. Pp. 407.]

M. Ann Sunahara*

In ~~April, 1983,~~ June 1984 Prime Minister Pierre Elliot Trudeau, in his last day in the House of Commons, refused an apology to the 12,000 Japanese Canadians who survive of the 21,000 who were uprooted from their homes on the Pacific coast, confined in detention camps, stripped of their real and personal property, and forced to disperse across Canada or be deported to war torn Japan during and after the Second World War. The Prime Minister declined that apology on the grounds that he could not rewrite history. "It is our purpose," he stated, "to be just in our time, and that is what we have done by bringing in the Charter of Rights."[1] The Prime Minister implied that, because of the *Canadian Charter of Rights and Freedoms*,[2] the wartime experience of Japanese Canadians could never recur. *Justice At War*, Peter Irons's study of the legal cases that evolved from the parallel uprooting of Japanese Americans, provides us with an opportunity to test the Prime Minister's hypothesis without putting more Canadians through the turmoil experienced by Japanese Canadians.

Between 1942 and 1945, 112,000 Japanese Americans, over sixty percent of whom were American citizens, were uprooted from their homes along the American west coast and confined in "relocation camps" built in isolated and uninhabited areas of the United States.[3] While the uprooting of Japanese Americans paralleled a similar uprooting of Japanese Canadians,[4] the Japanese American experience differed from that of Japanese Canadians in several notable particulars. Of concern to us is the fact that in the United States, unlike in Canada, the legality of the relocation of Japanese Americans was

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* Of the Alberta Bar. Author of *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (1981).

[1] House of Commons, *Debates*, June 29, 1984, at 5308.

[2] Being Part I of the *Constitution Act, 1982*, which itself is scheduled to the *Canada Act 1982*, c. 11 (U.K.).

[3] For the history of the Japanese American experience, see Daniels, *Concentration Camps USA: Japanese Americans & World War II* (1971), and Commission on Wartime Relocation, *Personal Justice Denied* (1983).

[4] For the Japanese Canadian experience, see Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (1981); Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (1976).

Source: Nikkei National Museum, 2018-16-4-3-60-2a
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legally challenged, giving rise to four cases that eventually reached the United States Supreme Court. *Justice At War* traces the evolution of not only those four cases, but also the Executive Order that uprooted Japanese Americans, the legal strategies and tactics employed by the lawyers on both sides, the role of the American Civil Liberties Union throughout the entire process and, in chapters reminiscent of *The Brethren*,[5] the deliberations of the justices of the United States Supreme Court when faced with a choice between the liberty of an unpopular minority and upholding an Executive Order made by the President who had appointed them.

In the process, Peter Irons reveals a legal scandal without precedent in the history of American law. It is a scandal that begins when lawyers in the War Department present the President with an Executive Order allegedly based on military necessity. It continues with the destruction by War Department officials of evidence that contradicted that allegation of military necessity. It culminates with the presentation to the United States Supreme Court of briefs based on evidence containing lies and intentional falsehoods. The scandalous and unethical behaviour of the War Department lawyers is compounded by the behaviour of the American Civil Liberties Union and of certain justices of the United States Supreme Court, who, on the basis of their personal and partisan loyalties to President Franklin D. Roosevelt, sought, in the case of the American Civil Liberties Union, to bar a constitutional challenge to his Executive Order and, in the case of the justices, to uphold that order at the cost of the liberty of 80,000 American citizens.

Executive Order 9066 was the creation of three men: John J. McCloy, Assistant Secretary of War; Major General Allen W. Gullion, the Provost Marshall General, United States Army; and Colonel Karl R. Bendetsen, Chief of the Aliens Division, Office of the Provost Marshall General. They were supported in their efforts by the Secretary of War, Henry L. Stimson. Stimson and McCloy were both highly influential, with access to the President both directly and indirectly through Supreme Court Justice Felix Frankfurter.[6] The War Department officials were assisted in their task by the fact that "F.D.R. was no Eleanor Roosevelt."[7] Because the President lacked the sensitivity to the plight of racial minorities that was characteristic of his wife, he left the decision whether all Japanese Americans should be uprooted

[5] Woodward and Armstrong, *The Brethren: Inside the Supreme Court* (1979).

[6] Frankfurter was Stimson's protégé and McCloy was Frankfurter's protégé. Frankfurter arranged Stimson's appointment as Secretary of War. Irons, *Justice At War* (1983), at 16, 18.

[7] *Id.*, at 57.

Source: Nikkei National Museum, 2018-16-4-3-60-2b
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from their homes to his Secretary of War, Stimson. Despite his doubts about the constitutionality of an uprooting based on racial characteristics, and his knowledge that the army was unable to substantiate its claim of military necessity with hard evidence, Stimson chose to interpret Roosevelt's vague instructions as indicating a desire to resolve promptly the "Japanese problem" on the west coast.

Stimson, in turn, was the captive of his own officials who had worked very hard to create that "Japanese problem." Bendetsen had spent most of the three months following the December attack on Pearl Harbor on the west coast with General John L. DeWitt, Commander, Western Defence Command. Bendetsen had been urging DeWitt to adopt an expanding programme of measures against aliens and Japanese Americans, a programme that he and Gullion knew the Justice Department would never support. Their objective was to force the Justice Department to agree to the transfer of jurisdiction over aliens and Japanese Americans to the War Department. They, in turn, were assisted by the west coast politicians and the Hearst press, who seized upon each of General DeWitt's allegations of sabotage and espionage to fan the fears of the west coast populace.

It is to be noted that, as in Canada, the policy of uprooting the Japanese population received no support among senior military and police officers. Whereas in Canada their opinion was canvassed and then ignored,[8] in the United States the Chief of Staff was not consulted and the protest of his immediate subordinate that an uprooting of Japanese Americans would tie up troops needed for combat was overruled by the Secretary of War.[9]

The absence of strong leadership by political superiors also undermined the efforts of those who opposed the uprooting of Japanese Americans. While James H. Rowe, Deputy Attorney-General, and Edward J. Ennis, Director, Alien Enemy Control Unit, Justice Department, using constitutional arguments, fought against the growing demands of the War Department, they were eventually undermined by their political superior, Francis Biddle, Attorney-General of the United States. Recently elevated to Roosevelt's cabinet, Biddle deferred to his more senior colleagues and, in particular, found it extremely difficult to disagree with the Secretary of War, Stimson. While initially strongly opposed to any move against Japanese Americans, Biddle soon showed a willingness to yield to War Department

[8] In Canada, the Chief of Staff, Ken Stuart, opposed the removal of Japanese Canadians from the Pacific coast as being unnecessary. When requested to undertake it, the military declined, stating that men could not be spared from home defence for the purpose of moving Japanese Canadians. See Sunahara, *supra*, note 4, at 24, 33, 43 and 48.

[9] Irons, *supra*, note 6, at 61.

Source: Nikkei National Museum, 2018-16-4-3-60-3a
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demands for a transfer of jurisdiction over aliens and Japanese Americans where it was allegedly necessary for military reasons. In the face of the well-organized War Department campaign, the constitutional arguments of Rowe and Ennis were ignored. The Executive Order was drawn up by Gullion and signed by the President on February 19, 1942.

Only twelve of the 112,000 Japanese Americans affected challenged their uprooting in the courts. Of that twelve, only four reached the Supreme Court: *Yasui*,[10] *Hirabayashi*,[11] *Korematsu*[12]and *Endo*.[13] Minoru Yasui, a lawyer and a Second Lieutenant in the Army Infantry Reserve, challenged the military order that imposed a dusk to dawn curfew on Japanese Americans. Gordon Hirabayashi, a university student, challenged both the curfew order and the order uprooting Japanese Americans. Fred Korematsu, a welder, defied the order to leave the Pacific coast in order to remain with his white girlfriend. Mitsue Endo, a California civil servant, was carefully selected by her lawyer, James Purcell, to challenge the detention of Japanese Americans by a petition of *habeas corpus*. Only Endo was successful. Yasui, Hirabayashi and Korematsu all served prison terms for disobeying orders that the United States Supreme Court found to be constitutional.

The curfew order and the order removing Japanese Americans from the Pacific coast were based on Executive Order 9066 and Public Law 503, the latter passed by Congress in March, 1942, at breakneck speed, so as to permit the enforcement by criminal sanctions of orders under Executive Order 9066. Only Senator Robert Taft objected to Public Law 503, stating that it was so indefinite and so uncertain that it could not be enforced under the constitution in peace time.[14]

Not surprisingly, the government's arguments emphasized the wartime emergency. War Department lawyers rested their case on a two-pronged argument. First, the removal of Japanese Americans was necessary by reason of their proximity to military installations and the threat that they posed to the security of the Pacific coast states. Secondly, their racial characteristics made it impossible to separate the loyal from the disloyal. Government lawyers drew upon the principle that the war power of the President overrode constitutional guarantees in the Bill of Rights to whatever extent was necessary for national safety in wartime. Their argument depended upon establishing as a fact that the racial characteristics of Japanese Americans pre-

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[10] *Yasui v. United States*, 320 U.S. 115 (1943).

[11] *Hirabayashi v. United States*, 320 U.S. 81 (1943).

[12] *Korematsu v. United States*, 323 U.S. 215 (1944).

[13] *Ex parte Endo*, 323 U.S. 283 (1944).

[14] Irons, *supra*, note 6, at 68.

Source: Nikkei National Museum, 2018-16-4-3-60-3b
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disposed them to disloyalty and to the commission of sabotage and espionage.[15]

The latter argument, which today seems so patently racist and absurd, went largely unquestioned by those who doubted the constitutionality of Executive Order 9066 and Public Law 503. Edward Ennis at the Justice Department initially confined his objections to whether a statute that permitted military commanders to pass criminal laws could be a constitutionally valid delegation of legislative power.[16] Publicly, however, Ennis and his Justice Department colleagues defended those orders.

Those who opposed the government were also divided. The National Executive of the American Civil Liberties Union attempted to instruct its west coast branches against challenging the constitutional validity of Executive Order 9066 and refused funding to lawyers like James Purcell, Endo's counsel, who failed to accept the guidance of the American Civil Liberties Union. As a result, each of the four cases was defended almost entirely in isolation and not always by the most competent of counsel. Indeed, it was not until late 1944 that the efforts of all parties focused on the *Korematsu* and *Endo* cases in the Supreme Court.

The Japanese American cases are also rife with ethical problems. The impropriety of the American Civil Liberties Union attempting to restrict the legal arguments of the defence lawyers was minor compared with the behaviour of War Department lawyers who not only circumvented the adversary process by feeding questionable information to the courts by ghost-writing the supposedly neutral "friends of the Court" briefs submitted by State governments, but who also actively suppressed evidence.

The government position depended upon evidence that "proved" the disloyalty of at least some Japanese Americans. The major source of that evidence was the opinion of General John L. DeWitt as presented in his "Final Report." Prepared in 1942, the initial draft of that report was destroyed by Bendetsen on the orders of the Assistant Secretary of War, John J. McCloy, because it admitted that lack of time within which to conduct individual loyalty hearings had not been a factor in DeWitt's decision to recommend the removal of Japanese Americans. That admission proved that Japanese Americans had been deprived of due process.[17] A second carefully edited version omitting that and other damaging evidence was released in January, 1944.

It was not until January, 1944, that Justice Department lawyers,

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[15] *Id.*, at 123-27.

[16] *Id.*, at 124.

[17] *Id.*, at 208.

Source: Nikkei National Museum, 2018-16-4-3-60-4a
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despite their strong opposition to the War Department's stance, subjected War Department evidence to enquiry. Only in April of that year did Ennis discover that DeWitt's allegations of illicit radio transmissions were false, and that DeWitt had known that they were false before he recommended the removal of Japanese Americans from the Pacific coast.[18]

That revelation, however, did not change the government's argument. Rather, it initiated yet another internecine battle between the War Department and Justice Department lawyers. Predictably, the politically stronger War Department lawyers prevailed. To satisfy Ennis's demands that the Supreme Court be alerted to the errors in DeWitt's final report, the final draft of the government's brief in *Korematsu* contained one ambiguously worded footnote critical of that report.[19] The majority of the United States Supreme Court does not appear to have noticed that footnote. Although the lawyer for the American Civil Liberties Union attempted to point out inconsistencies and errors in the Final Report, the majority of the Supreme Court in *Korematsu* clung to the principle on which they had determined the earlier cases of *Yasui* and *Hirabayashi* – that the order was necessary to protect against sabotage and espionage.[20]

Peter Irons's chronicle of the deliberations of the United States Supreme Court in *Hirabayashi* and *Yasui* illustrates the inherent dangers in close ties between the judiciary and politicians. In *Hirabayashi*, although five of the nine justices expressed doubts at some point about the constitutionality of Executive Order 9066, Chief Justice Stone produced a unanimous opinion, as he and Justice Frankfurter, through flattery, compromise and incredible peer group pressure, persuaded the potential dissenters to concur.

Unanimity of the Court, however, broke with *Korematsu*. Three justices, Roberts, Jackson and Murphy, dissented. To Justice Murphy, the most vigorous of the dissenters, the order removing Japanese Americans from the Pacific coast was a legalization of racism.[21]

The conversion of the Supreme Court was complete in *Endo*. Unani-

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[18] *Id.*, at 282.

[19] *Id.*, at 285-92.

[20] In *Hirabayashi*, *supra*, note 11, at 99, the Court held:

> Whatever views we may entertain regarding the loyalty to this Country of citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population whose numbers and strength could not be precisely and quickly ascertained. We cannot say that the warmaking branches of government did not have grounds for believing that in a critical hour such persons could not be readily isolated and separately dealt with.

[21] Irons, *supra*, note 6, at 336.

Source: Nikkei National Museum, 2018-16-4-3-60-4b
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mously the justices rejected the government's argument that, while the detention of Japanese Americans was not necessary to protect the United States from sabotage and espionage, it was necessary to protect Japanese Americans from those elements of the American populace that might do them harm. Endo, whose loyalty was acknowledged by the government, could not be denied access to any part of the United States open to other loyal American citizens. Withholding its decision until after the American election in November 1944, the United States Supreme Court announced the decision in *Endo* one day after General Henry C. Pratt, Commander of the Western Defence Command, rescinded all of DeWitt's exclusion orders.

Given the American experience as revealed by Peter Irons, could the wartime treatment of Japanese Canadians recur today given the *Canadian Charter of Rights and Freedoms*? The answer depends upon the meaning attributed to sections 6 and 33 of the Charter, and upon the standard that courts employ when deciding whether a given law is "demonstrably justified in a free and democratic society."[22] Section 33 permits Parliament or a legislature to pass laws notwithstanding the fundamental freedoms and legal and equality rights in the Charter. Since the *War Measures Act*[23] vests the executive with "plenary powers of Legislation as large and of the same nature as those of Parliament itself," and gives Orders-in-Council passed under that Act "the effect of an Act of Parliament,"[24] the executive in time of emergency may have the power under section 33 to nullify rights granted in the Charter.

Assuming that the executive, using its powers under section 33, were to revoke the non-discrimination provisions in section 15, a minority group subjected to discrimination, as Japanese Canadians and Americans were, might still be able to claim the protection of section 6, the mobility rights section. Section 6 raises two issues: whether the right to "remain in . . . Canada. . . . and take up residence in any province" means the right to remain in all parts of Canada and to take up residence in all parts of any province and, if so, whether restrictions on the mobility are "demonstrably justified in a free and democratic society."

The first issue arises because Japanese Canadians in 1942 were permitted to remain in Canada, as Japanese Americans were permitted to remain in the United States. They were denied only the right to remain in that portion of Canada within 100 miles of the Pacific coast.

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[22] *Supra*, note 2, s. 1.

[23] Now R.S.C. 1970, c. W-2.

[24] *Reference re Regulations in Relation to Chemicals*, [1943] S.C.R. 1, at 17, and at 9, [1943] 1 D.L.R. 248, 79 C.C.C. 1.

Source: Nikkei National Museum, 2018-16-4-3-60-5a
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Similarly, they could reside in any province of Canada, with the permission of the local authorities, although not in all parts of British Columbia. Should courts rule that the rights guaranteed by section 6 do not require universal access to all parts of Canada for every citizen and permanent resident, then the *Canadian Charter of Rights and Freedoms* would provide no protection to Canadians facing a forced removal identical to that faced by Japanese Canadians and Americans in 1942.

Should courts rule, however, that section 6 requires universal access to all parts of Canada, then the second issue arises. This is essentially the same issue addressed by the United States Supreme Court in *Endo*. If Canadian courts today were to use the same standard as the American courts did in *Endo*, then proven disloyalty alone would make the denial of mobility rights demonstrably justifiable in a free and democratic society.

The standards our courts will use are still open to question. Ironically, the case that causes the greatest doubt that the Supreme Court of Canada would employ a strict scrutiny test, *Reference re Anti-Inflation Act*,[25] rests on statements by Lord Wright in *Cooperative Committee on Japanese Canadians v. A.G. Canada*,[26] the case that affirmed the legality of the Government's attempt to deport 10,000 Japanese Canadians in 1946. In the *Anti-Inflation Act* case the Supreme Court of Canada had to decide whether an emergency existed. For three justices,[27] the failure of those opposed to the legislation to disprove the existence of the alleged emergency was sufficient to establish the validity of that emergency.[28] More importantly for Laskin C.J., writing for himself and three others,[29] it was only necessary that there be a "rational basis for the governmental and legislative judgment exercised in the enactment" of emergency legislation.[30] The question then arises whether Chief Justice Laskin's conclusion means that, even where a minority group member could prove, in the words of Lord Atkins, "that he or she had been a loyal subject for thirty or forty years, was a supporter of this country's war effort, and had never taken any part in any hostile activity,"[31] his or her detention would be justified if the government could offer a rational basis for the

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[25] [1976] 2 S.C.R. 373, 68 D.L.R. (3d) 452.

[26] [1947] A.C. 87, [1947] 1 D.L.R. 577 (P.C.).

[27] Ritchie, Martland and Pigeon JJ.

[28] *Reference re Anti-Inflation Act, supra*, note 25, at 509.

[29] Judson, Spence and Dickson JJ.

[30] *Reference re Anti-Inflation Act, supra*, note 25, at 487.

[31] *Liversidge v. Anderson*, [1942] A.C. 206, at 243, [1941] 3 All E.R. 338 (H.L.). The vast majority of Japanese immigrants uprooted in 1942 fit this description.

Source: Nikkei National Museum, 2018-16-4-3-60-5b
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detention order. If so, what would constitute a "rational basis": a public speech by the Minister; the preamble to the legislation;[32] or a statement by officials that the presence of unascertained potentially disloyal persons within a group necessitated the detention of the entire group, regardless of age, sex, health or record of loyalty?[33]

Peter Irons's excellent study also points out two other factors that undermine the Prime Minister's allegation that the Charter of Rights would prevent a recurrence of the abuse of Canada's Japanese minority – the evidentiary problems facing the victims of emergency legislation and the problem of a non-neutral judiciary. In the United States, evidence was suppressed; in Canada, it was unavailable for thirty years. As Irons's book illustrates, the only protection against the suppression of evidence lies in the ethics of the lawyers preparing and arguing for the government, and the lawyers' freedom to disclose unfavourable evidence.

The latter problem – that of a non-neutral judiciary – which can also arise from the natural inclination of a citizen to support his or her government in time of emergency, was evident in both England and Canada during the Second World War. The majority of the House of Lords in *Liversidge v. Anderson*[34] readily found that "the duty to act in the national interest . . . is a higher duty than the duty to regard the liberty of the subject."[35] Only Lord Atkins dissented, stating that "[j]udges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law."[36] In Canada, Thorson J., formerly a Minister in the Cabinet that uprooted Japanese Canadians, reserved his decision on whether the Crown had the power to sell Japanese Canadian property for three years while his former Cabinet colleagues sold off all real and personal property owned by Japanese Canadians within 100 miles of the Pacific coast.[37]

As an example of how legal history can be written, *Justice at War* is

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[32] This reason was sufficient in *Reference re Orders in Council in Relation to Persons of the Japanese Race*, [1946] S.C.R. 248, at 164, [1946] 3 D.L.R. 321, aff'd *Co-operative Committee on Japanese Canadians v. A.G. Canada*, *supra*, note 26, and in *Reference re Anti-Inflation Act*, *supra*, note 25. See Belobaba, "Disputed 'Emergencies' and the Scope of Judicial Review: Yet another Implication of the Anti-Inflation Act Reference" (1977), 15 Osgoode Hall L.J. 406, at 410.

[33] Similar statements by the American military were sufficient to allow the United States Supreme Court to support Executive Order 9066. See *supra*, note 20.

[34] *Supra*, note 31.

[35] *Id.*, at 265.

[36] *Id.*, at 244.

[37] See Sunahara, *supra*, note 4, at 109; *Nakashima v. R.; Wakabayashi v. R.; Tanaka v. R.*, [1947] Ex. C.R. 486, [1947] 4 D.L.R. 487.

Source: Nikkei National Museum, 2018-16-4-3-60-6a
www.nikkeimuseum.org

excellent. While by no means neutral,[38] the breadth of research and the clarity with which the evidence is presented are outstanding. While students of advocacy will enjoy the discussion of procedure and strategy and the "behind the scenes" view that Irons offers, students of constitutional law will be disappointed that Irons states the constitutional arguments but does not attempt to analyze them.

Justice At War, albeit American legal history, is an important book for Canadian lawyers. It explores the difficult ethical questions that arise in the heat of emergency. It exposes the special dangers to the rule of law in a society very like our own in a time of crisis. It provides Canadian lawyers with a unique opportunity to speculate about how our judicial system might perform under the stress of war. Most importantly, *Justice At War* makes abundantly clear that we cannot complacently conclude that the Charter of Rights would prevent a recurrence of the experience of Japanese Canadians during the Second World War.

[38] Peter Irons is the attorney of record in the *corum nobis* petitions by which Yasui, Korematsu and Hirabayashi are seeking to have their convictions discharged and E.O. 9066 ruled unconstitutional.

Source: Nikkei National Museum, 2018-16-4-3-60-6b
www.nikkeimuseum.org

Source: Nikkei National Museum, 2018-16-4-3-60-7
www.nikkeimuseum.org

THE SUPREME COURT LAW REVIEW

Editors
Edward P. Belobaba, B.A., LL.B., B.C.L. (Oxon), Osgoode Hall Law School
Eric Gertner, LL.B., B.C.L. (Oxon), of the Ontario Bar

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Tel. (416) 667-3106

February 14, 1984.

Ann Sunahara,
9754 - 90 Avenue,
Edmonton, Alberta,
T6E 2S9.

Dear Ms. Sunahara:

Professor Patricia Roy of the Department of History, University of Victoria has suggested to me that you would be most qualified and perhaps willing to review Peter Irons' book Justice At War, concerning the internment of Japanese-Americans during the Second World War, for the next volume of the Supreme Court Law Review.

The Review, as you may or may not know, is devoted to an annual examination of the decisions of the Supreme Court of Canada. It is published annually around June or July. In addition to a discussion of the term's decisions, we also like to provide our subscribers with book reviews of publications concerning judicial personalities and judicial developments.

Manuscripts must be submitted by September 1 and, in the case of book reviews, should be approximately 2,500 words in length, typed, double-spaced with footnotes appearing at the end. We prefer that book reviews be more in the nature of review-essays rather than a chapter by chapter description of a book.

Please advise me at your earliest convenience if you are interested in reviewing Justice At War, a copy of which we shall be happy to provide you with. You may write to me c/o McCarthy & McCarthy, Box 48, Toronto-Dominion Centre, Toronto, Ontario, M5K 1E6.

Sincerely yours,

Eric Gertner.

EG:mek

Source: Nikkei National Museum, 2018-16-4-3-61-1
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OUR REFERENCE:

March 13, 1984

Ms. M. Ann Sunahara
9754 - 90 Avenue
Edmonton, Alberta
T6E 2S9

Dear Ms. Sunahara:

Thank you for your letter of February 27, 1984. I am pleased that you are interested in reviewing Peter Irons' book, Justice at War. I am enclosing a review copy of the book for you and would ask you to follow the directions in my letter of February 14, 1984 regarding format and submission of your review essay.

I look forward to reading your review on what is a most interesting episode of American justice.

Yours sincerely,

McCarthy & McCarthy

Per:

Eric Gertner

EG/b

Encls.

Source: Nikkei National Museum, 2018-16-4-3-61-2
www.nikkeimuseum.org

9754 90 Avenue,
Edmonton, Alta., T6E 2S9
February 27, 1984.

Mr. Eric Gertner,
The Supreme Court Law Review,
Osgoode Hall Law School,
York University,
4700 Keele Street,
Downsview, Ontario,
M3J 2R5

Dear Mr. Gertner,

I am writing in response to your letter of February 14, 1984.

I should be most pleased to review Peter Irons' book Justice At War. I see no difficulty in writing a review-essay on the topic. I am presently working on an examination of the legal position with respect to Japanese Canadians which I should be able to draw upon to maximize the relevence of Dr. Irons book for the Canadian legal reader.

Please forward the review copy of the book to the above address as soon as possible. I am anxious to get this written before my bar admission exams begin in May. If there are any problems or questions I can be reached during normal business hours at the Judges Library, The Law Courts, Edmonton, Alta., T5J 0R2. Telephone: (403) 422 - 2528.

Thank you for your attention.

Sincerely yours,

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-61-3
www.nikkeimuseum.org

JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES

By Peter Irons. Oxford University Press. 1983. Pp. 407.

M. Ann Sunahara*

In ~~April~~ JUNE 4, 1983, Prime Minister Pierre Elliot Trudeau in his last day in the House of Commons refused an apology to the 12,000 Japanese Canadians who survive of the 21,000 uprooted from their homes on the Pacific Coat, confined in detention camps, stripped of their real and personal property, and forced to disperse across Canada or be deported to wartorn Japan during and after the Second World War. The Prime Minister declined that apology on the grounds that he could not rewrite history. "It is our purpose", he stated, "to be just in our time, and that is what we have done in bringing in the Charter of Rights". The Prime Minister implied that because of the Charter of Rights the wartime experience of Japanese Canadians could never recur. Justice At War, Peter Irons' study of the legal cases that evolved from the parallel uprooting of Japanese Americans, provides us with an opportunity to test the Prime Minister's hypothesis without putting more Canadians through the turmoil experienced by Japanese Canadians.

Between 1942 and 1945, 112,000 Japanese Americans, over 60% of whom were American citizens, were uprooted from their homes along the American west coast and confined in "relocation camps" built in isolated and uninhabited areas of the United States.[1] While the uprooting of Japanese Americans paralleled a similar uprooting of Japanese Canadians,[2] the Japanese American experience differed from that of Japanese Canadians in several notable particulars. Of concern to us is the fact that in the United States, unlike Canada, the legality of the relocation of Japanese Americans was challenged giving rise to four cases that eventually reached the United States Supreme Court. Justice At War traces the evolution of not only those four cases, but also the Executive Order that uprooted Japanese Americans, the legal strategies and tactics employed by the lawyers on both sides, the role of the American Civil Liberties Union throughout the entire

Source: Nikkei National Museum, 2018-16-4-3-61-4
www.nikkeimuseum.org

process, and, in Chapters reminiscent of The Brethren,[3] the deliberations of the Justices of the United States Supreme Court when faced with a choice between the liberty of an unpopular minority and upholding an Executive Order made by the President who had appointed them.

In the process, Peter Irons reveals a legal scandal without precedent in the history of American law. It is a scandal that begins when lawyers in the War Department present the President with an executive order allegedly based on military necessity. It continues with the destruction by War Department officials of evidence that contradicted that allegation of military necessity. It cumulates with the presentation to the United States Supreme Court of briefs based on evidence containing lies and intentional falsehoods. The scandalous and unethical behaviour of the War Department lawyers is compounded by the behaviour of the American Civil Liberties Union and by certain Justices of the United States Supreme Court who, on the basis of their personal and partisan loyalties to President Franklen D. Roosevelt sought, in the case of the ACLU to bar a constitutional challenge to his Executive Order, and, in the case of the Justices, to uphold that order at the cost of the liberty of 80,000 American citizens.

Executive Order 9066 was the creation of three men: John J. McCloy, Assistant Secretary of War; Major General Allen W. Gullion, the Provost Marshall General, U.S. Army; and Colonel Karl R. Bendetsen, Chief of the Aliens Division, Office of the Provost Marshall General. They were supported in their efforts by the Secretary of War, Henry L. Stimson. Stimson and McCloy were both highly influential with access to the President both directly and indirectly through Supreme Court Justice Felix Frankfurter.[4] The War Department officials were assisted in their task by the fact that "F.D.R. was no Eleanor

Source: Nikkei National Museum, 2018-16-4-3-61-5
www.nikkeimuseum.org

Roosevelt."[5] Because the President lacked the sensitivity to the plight of racial minorities that was characteristic of his wife, he left the decision as to whether all Japanese Americans should be uprooted from their homes to his Secretary of War, Stimson. Despite his doubts about the constitutionality of an uprooting based on racial characteristics, and his knowledge that the army was unable to substantiate its claim of military necessity with hard evidence, Stimson chose to interpret Roosevelt's vague instructions as indicating a desire to promptly resolve the "Japanese problem" on the west coast.

Stimson in turn was the captive of his own officials who had worked very hard to create that "Japanese problem". Bendetsen had spent most of the three months following the December attack on Pearl Harbor on the west coast with General John L. DeWitt, Commander, Western Defence Command. Bendetsen had been urging that unstable and xenophobic racist to adopt an expanding program of measures against aliens and Japanese Americans, a program he and Gullion knew the Justice Department would never support. Their objective was to force the Justice Department to agree to the transfer of jurisdiction over aliens and Japanese Americans to the War Department. They in turn were assisted by the West Coast Politicians and the Hearst press who seized upon each of General DeWitt's allegations of sabotage and espionage to fan the fears of the west coast populace.

It is to be noted that, as in Canada, the policy of uprooting the Japanese population received no support among senior military and police officers. Where in Canada their opinion was canvassed and then ignored,[6] in the United States, the Chief of Staff was not consulted and the protest of his immediate subordinate that an uprooting of Japanese Americans would tie up troops needed for combat was overruled by the Secretary of War.[7]

Source: Nikkei National Museum, 2018-16-4-3-61-6
www.nikkeimuseum.org

The absence of strong leadership by political superiors also undermined the efforts of those who opposed the uprooting of Japanese Americans. While James H. Rowe, Deputy Attorney General, and Edward J. Ennis, Director, Alien Enemy Control Unit, Justice Department, fought using constitutional arguments against the growing demands of the War Department, they were eventually undermined by their political superior Francis Biddle, Attorney General of the United States. Recently elevated to Roosevelt's cabinet, Biddle deferred to his more senior colleagues and in particular found it extremely difficult to disagree with the Secretary of War, Stimson. While initially strongly opposed to any move against Japanese Americans, Biddle soon showed a willingness to yield to War Department demands for a transfer of jurisdiction over aliens and Japanese Americans where it was necessary for military reasons. In the face of the well organized War Department campaign, the constitutional arguments of Rowe and Ennis were ignored. The Executive Order was drawn up by Gullion and signed by the President on February 19, 1942.

Only 12 of the 112,000 Japanese Americans affected challenged their uprooting in the Courts. Of that 12, only 4 reached the Supreme Court: Yasui,[8] Hirabayashi,[9] Korematsu,[10] and Endo.[11] Minoru Yasui, a lawyer and a Second Lieutenant in the Army Infantry Reserve, challenged the military order that imposed a dusk to dawn curfew on Japanese Americans. Gordon Hirabayashi, a university student, challenged both the curfew order and the order uprooting Japanese Americans. Fred Korematsu, a welder, defied the order to leave the Pacific coast in order to remain with his white girlfriend. Mitsue Endo, a California civil servant,was carefully selected by her lawyer, James Purcell, to challenge the detention of Japanese Americans by a petition of habeas corpus. Only Endo was successful. Yasui, Hirabayashi and Korematsu all served prison terms for disobeying orders the United States Supreme Court found constitutional.

Source: Nikkei National Museum, 2018-16-4-3-61-7
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The curfew order and the order removing Japanese Americans from the Pacific coast were based in Executive Order 9066 and Public Law 503, the latter passed by Congress in March, 1942 at breakneck speed to permit the enforcement by criminal sanctions of orders under E.O. 9066. Only Senator Robert Taft objected to Public Law 503 stating that it was so indefinite and so uncertain that it could not be enforced under the Constitution in peace time.[12]

Not surprisingly, the Government's arguments emphasized the wartime emergency. War Department lawyers rested their case on a two-pronged argument. Firstly, the removal of Japanese Americans was necessary by reason of their proximity to a military installation and the threat they posed to the security of the Pacific coast states. Secondly, their racial characteristics made it impossible to separate the loyal from the disloyal. Government lawyers drew upon the principle that the war power of the President overrode constitutional guarantees in the Bill of Rights to whatever extent is necessary for national safety in wartime. Their argument depended upon establishing as a fact that the racial characteristics of Japanese Americans predisposed them to disloyalty and to the commission of sabotage and espionage.[13]

The latter argument, which today seems so patently racist and absurd, went largely unquestioned by those who doubted the constitutionality of E.O. 9066 and P.O. 503. Edward Ennis at the Justice Department initially confined his objections to the question of whether a statute that permitted military commanders to pass criminal laws could be a constitutional delegation of legislative power.[14] Publicly, however, Ennis and his Justice Department colleagues defended those orders.

Source: Nikkei National Museum, 2018-16-4-3-61-8
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Those who opposed the government were also divided. The National Executive of the American Civil Liberties Union attempted to instruct its west coast branches against challenging the constitutional validity of Executive Order 9066 and refused funding to lawyers like James Purcell, Endo's counsel, who failed to accept the guidance of the ACLU. As a result each of the four cases was defended almost entirely in isolation and not always by the most competent of counsel. Indeed it was not until late 1944 before the efforts of all parties focused on the Korematsu and Endo cases in the Supreme Court.

The Japanese American cases are also rife with ethical problems. The impropriety of the ACLU attempting to restrict the legal arguments of the Defence lawyers was minor compared with the behavior of War Department lawyers who not only circumvented the adversary process by feeding questionable information to the Courts by ghost-writing the supposedly neutral "friends of the Court" briefs submitted by State governments, but who also actively suppressed evidence.

The government position depended upon evidence that "proved" the disloyalty of at least some Japanese Americans. The major source of that evidence was the opinion of General John L. DeWitt as presented in his "Final Report". Prepared in 1942, the initial draft of that report was destroyed by Bendetsen on the orders of the Assistant Secretary of War, John J. McCloy, because it admitted that a lack of time in which to conduct individual loyalty hearings had not been a factor in DeWitt's decision to recommend the removal of Japanese Americans. That admission proved that Japanese Americans had been deprived of due process.[15] A second carefully edited version omitting that and other damaging evidence was released in January of 1944.

Source: Nikkei National Museum, 2018-16-4-3-61-9
www.nikkeimuseum.org

It was not until January of 1944 that Justice Department lawyers, despite their strong opposition to the War Department's stance, subjected War Department evidence to enquiry. Only in April of 1944 did Ennis discover that DeWitt's allegations of illicit radio transmissions were false, and that DeWitt had known they were false before he recommended the removal of Japanese Americans from the Pacific coast.[16]

That revelation however, did not change the Government's argument. Rather, it initiated yet another internecine battle between the War Department and Justice Department lawyers. Predictably, the politically stronger War Department lawyers prevailed. To satisfy Ennis'demands that the Supreme Court must be alerted to the errors in DeWitt's final report, the final draft of the Government's brief in Korematsu contained one ambiguously worded footnote critical of that report.[17] The majority of the United States Supreme Court does not appear to have noticed that footnote. Although the Attorney for the ACLU attempted to point out inconsistancies and errors in the Final Report, the majority of the Supreme Court in Korematsu clung to the principle on which they had determined the earlier cases of Yasui and Hirabayashi: that the order was necessary to protect against sabotage and espionage.[18]

Peter Irons' chronicle of the deliberations of the United States Supreme Court in Hirabayashi and Yasui illustrates the inherent dangers in close ties between the judiciary and politicians. In Hirabayashi although five of the nine Justices expressed doubts at some point about the constitutionality of Executive Order 9066, Chief Justice Stone produced a unanimous opinion as he and Justice Frankfurter through flattery, compromise, and incredible peer group pressure persuaded the potential dissenters to concur.

Source: Nikkei National Museum, 2018-16-4-3-61-10
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Unanimity of the Court however, broke with Korematsu. Three Justices, Roberts, Jackson and Murphy, dissented. To Justice Murphy, the most vigorous of the dissenters, the order removing Japanese Americans from the Pacific coast was a legalization of racism.[19]

The conversion of the Supreme Court was complete in Endo. Unanimously the Justices rejected the Government's argument that while the detention of Japanese Americans was not necessary to protect the United States from sabotage and espionage, it was necessary to protect Japanese Americans from those elements of the American populace that might do them harm. Endo, whose loyalty was acknowledged by the Government, could not be denied access to any part of United States open to other loyal American citizens. Withholding their decision until after the American election in November, 1944, the United States Supreme Court announced the decision in Endo one day after General Henry C. Pratt, Commander of the Western Defence Command, rescinded all of DeWitt's exclusion orders.

Could the wartime treatment of Japanese Canadians recur today in view of the Charter of Rights? The answer depends upon the meaning of Section 6 and Section 33 of the Charter of Rights, and upon the standard the Court employs when deciding whether a given law is "demonstrably justifiable in a free and democratic society". Section 33 permits Parliament or a Legislature to pass laws notwithstanding the fundamental freedoms and legal and equality rights in the Charter. Since the War Measures Act vests the Executive with "plenary powers of Legislation as large and of the same nature as those of Parliament itself" and gives Orders in Counsel passed under that Act "the effect of an Act of Parliament",[20] the Executive may have the power under Section 33 to nullify rights granted in the Charter in time of emergency.

Source: Nikkei National Museum, 2018-16-4-3-61-11
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Assuming that the Executive, using its powers under Section 33, were to revoke the Nondiscrimination provisions in Section 15, a minority group discriminated against as Japanese Canadians and Americans were, might still be able to claim the protection of Section 6, the Mobility Rights section. Section 6 raises two issues: whether the right to "remain in Canada...and take up residence in any Province" means the right to remain in all parts of Canada and to take up residence in all parts of any Province, and, if so, whether restrictions on the mobility are "demonstrably justifiable in a free and democratic society".

The first issue arises because Japanese Canadians in 1942 were permitted to remain in Canada, as Japanese Americans were permitted to remain in the United States. They were denied only the right to remain in that portion of Canada within 100 miles of the Pacific coast. Similarly, they could reside in any Province of Canada, with the permission of the local authorities, although not in all parts of British Columbia. Should the Courts rule that the rights guaranteed by Section 6 do not require universal access to all parts of Canada for every citizen and permanent resident, then the Canadian Charter of Rights and Freedoms would provide no protection to Canadians facing a forced removal like that faced by Japanese Canadians and Americans in 1942.

Should the Courts rule, however, that Section 6 requires universal access to all parts of Canada then the second issue arises. This is essentially the same issue addressed by the United States Supreme Court in Endo. If the Canadian courts today were to use the same standard as the American Courts did in Endo, then proven disloyalty alone would make the denial of mobility rights demonstrably justifiable in a free and democratic society.

Source: Nikkei National Museum, 2018-16-4-3-61-12
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The standards our courts will use are still open to question. Ironically, the case which causes the greatest doubt that the Supreme Court of Canada would employ a strict scrutiny test, the Anti-Inflation Act Reference,[21] rests on statements by Lord Wright in Cooperative Committee on Japanese Canadians v. A.G. Canada,[22] the case that tested the legality of the Government's attempt to deport 10,000 Japanese Canadians in 1946. In the Anti-Inflation Act Reference the Supreme Court of Canada had to decide whether an emergency existed. For three Justices,[23] the failure of those opposed to the legislation to disprove the existance of the alleged emergency was sufficient to establish the validity of that emergency.[24] More importantly, for Laskin, C.J.C., writing for himself and three others,[25] it was only necessary that there be a "rational basis for the governmental and legislative judgment exercised in the enactment" of emergency legislation.[26] The question then arises whether Laskin's conclusion means that even where a minority group member could prove in the words of Lord Atkins, "that he or she had been a loyal subject for 30 or 40 years, was a supporter of the Country's war effort, and had never taken part in any hostile activity,"[27] his or her detention would be justified if the Government could offer a rational basis for the detention order. If so, what would constitute a "rational basis": a public speech by the Minister; the preamble to the legislation;[28] or a statement by officials that the presence of unascertained potentially disloyal persons within a group necessitated the detention of the entire group regardless of age, sex, health or record of loyalty?[29]

Peter Irons' excellent study also points out two other factors that undermine the Prime Minister's allegation that the Charter of Rights would prevent a recurrence of the abuse of Canada's Japanese minority: the evidentiary problems facing the victims of emergency legislation and the problem of a non-neutral judiciary. In the United States, evidence was suppressed. In Canada it was unavailable for thirty years. As Irons' book illustrates, the only protection against

Source: Nikkei National Museum, 2018-16-4-3-61-13
www.nikkeimuseum.org

the suppression of evidence lies in the ethics of the lawyers preparing and arguing for the Government and their freedom to disclose unfavourable evidence.

The latter problem, which can also arise from the natural inclination of a citizen to support his or her government in time of emergency, was evident in both England and Canada during the Second World War. The majority of the House of Lords in Liversidge v. Anderson[30] readily found that "the duty to act in the national interest...is a higher duty than the duty to regard the liberty of the subject."[31] Only Lord Atkins dissented stating that "Judges are no respectors of persons and stand between the subject and any attempt at encroachment on his liberty by the executive, alert to see that any coercive action is justified in law."[32] In Canada, Thorson, P., formerly a Minister in the Cabinet that uprooted Japanese Canadians, reserved his decision on whether the Crown had the power to sell Japanese Canadian property for three years while his former Cabinet colleagues sold off all real and personal property owned by Japanese Canadians within 100 miles of the Pacific coast.[33]

As an example of how legal history can be written, Justice At War is excellent. While by no means neutral,[34] the breadth of research and the clarity with which the evidence is presented are outstanding. While students of advocacy will enjoy the discussion of procedure and strategy and the "behind the scenes" view Irons offers, students of constitutional law will be disappointed by the fact that Irons states the constitutional arguments but does not attempt to analyze them.

Justice At War, while American legal history, is of value to Canadian lawyers. It explores the difficult ethical questions that arise in the heat of emergency. It exposes the special dangers to the rule of law in a society very like our own in times of crisis. It

Source: Nikkei National Museum, 2018-16-4-3-61-14
www.nikkeimuseum.org

provides Canadian lawyers with a unique opportunity to speculate about how our judicial system might perform under the stress of war. Most importantly, Justice At War makes abundantly clear that we cannot complacently conclude that the Charter of Rights would prevent a recurrence of the experience of Japanese Canadians in the Second World War.

Source: Nikkei National Museum, 2018-16-4-3-61-15
www.nikkeimuseum.org

FOOTNOTES TO JUSTICE AT WAR

* Student at Law, Lucas, Edwards & Bishop, Edmonton Alberta. Author of The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War, Lorimer, 1981.

1. For the history of the Japanese American experience see Roger Daniels, Concentration Camps USA; Japanese Americans in World War II, Holt, Rinhart & Winston, 1971, and Commission on Wartime Relocation, Personal Justice Denied, 1983.

2. For the Japanese Canadian experience see Sunahara, The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War, Lorimer, 1981, and Ken Adachi, The Enemy That Never Was: A History of the Japanese Canadians, McClelland and Stewart, 1976.

3. Bob Woodward and Scott Armstrong, The Brethren: Inside the Supreme Court, Simon and Schuster, 1979.

4. Frankfurter was Stimson's protege and McCloy was Frankfurter's protege. Frankfurter arranged Stinson's appointment as Secretary of War. Irons, Justice At War (1983) at 16, 18.

5. Ibid at 57.

6. In Canada the Chief of Staff, Ken Stuart, opposed the removal of Japanese Canadians from the Pacific coast as unnecessary. When requested to undertake it, the military declined stating that men could not be spared from home defence for the purpose of moving Japanese Canadians. See Sunahara, supra, note 2, at 24, 33, 43, 48.

7. Irons, supra, note 4, at 61.

8. Yasui v. United States, 320 U.S. 115 (1943).

9. Hirabayashi v. United States. 320 U.S. 81 (1943).

10. Korematsu v. United States, 323 U.S. 215 (1944).

11. Ex parte Endo, 323 U.S. 283 (1944).

12. Irons, supra, Note 4 at 68.

13. Ibid at 123 - 127.

Source: Nikkei National Museum, 2018-16-4-3-61-16
www.nikkeimuseum.org

14. Ibid at 124.

15. Ibid at 208.

16. Ibid at 282.

17. Ibid at 285 - 292.

18. In Hirabayashi the Court held at 99: "Whatever views we may entertain regarding the loyalty to this Country of citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population whose numbers and strength could not be precisely and quickly ascertained. We cannot say that the warmaking branches of government did not have grounds for believing that in a critical hour such persons could not be readily isolated and separately dealt with."

19. Irons, supra, Note 4 at 336.

20. Reference as to the Validity of the Regulations in Relation to Chemicals (1943) S.C.R. 1 at 17, 9.

21. Reference re: The Anti-Inflation Act (1976) 68 D.L.R. (3d) 452.

22. Cooperative Committee on Japanese Canadians et al v. Attorney General of Canada et al (1947) 1 D.L.R. 577 (P.C.).

23. Ritchie, Martland and Pigeon, J.J.

24. Anti-Inflation Act Reference, supra, Note 21 at 509.

25. Judson, Spence, and Dickson, J.J.

26. Anti-Inflation Act Reference, supra, Note 21 at 487.

27. Liversidge v. Anderson, (1942) A.C. 206 (H.L.) at 243. The vast majority of Japanese immigrants uprooted in 1942 fit this description.

28. This reason was sufficient in Reference As To The Validity of Orders in Counsel of the 15th Day of December, 1945 in Relation to Persons of the Japanese Race. (1946) S.C.R. 248 at 264 and in the Anti-Inflation Act Reference, supra, Note 21. See Edward P. Belobaba, "Disputed 'Emergencies' and the Scope of Judicial Review: Yet Another Implication of the Anti-Inflation Act Reference", (1977) Osgood Hall L.J. 406 at 410.

Source: Nikkei National Museum, 2018-16-4-3-61-17
www.nikkeimuseum.org

29. Similar statements by the American military were sufficient to allow the United States Supreme Court to support Executive Order 9066. See Note 18, supra.

30. (1942) A.C. 206.

31. Ibid at 260 - 261.

32. Ibid at 244.

33. See Sunahara, supra, Note 2, at 109 and Nakashima et al v. The King (1947)Ex. C.R. 486.

34. Peter Irons is the attorney of record in the corum nobis petitions by which Yasui, Korematsu and Hirabayashi are seeking to have their convictions discharged and E.O. 9066 ruled unconstitutional.

Source: Nikkei National Museum, 2018-16-4-3-61-18
www.nikkeimuseum.org

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July 31, 1985

Price Waterhouse,
1075 West Georgia Street,
Vancouver, B.C.
V6E 3G1

Attention: Rosemary Anderson

Dear Madam:

Re: Japanese Canadian Losses Survey

Further to our telephone conversation of July 29, 1985, please find enclosed a copy of the Report on the Re-establishment of Japanese in Canada, as requested. The copy I regret is not pristine since it contains underlining and comments by myself which were placed on my copy during the process of writing my book.

I also have the other reports produced from time to time by the government earlier in the war, should you require them. I have also a microfilm of the reports of the Custodian of Enemy and Evacuee Property, which microfilm is a copy of one of the rolls in the Public Archives of Canada. Nakashima's thesis is also available on microfilm.

Enclosed also please find a copy of an Economic Losses Survey form (my husband's father's) and a few pages from my own records of the data extracted from the forms in Toronto. If it will save the expense of re-transcribing and recoding the data, I am willing to make my material available to you.

Please advise me whether you require a list of the materials I have in my possession which may be of use to you.

Sincerely yours

M. Ann Sunahara.

Source: Nikkei National Museum, 2018-16-4-3-62-1
www.nikkeimuseum.org

Japanese Canadians and the Government of Canada

David and Ann Sunahara

Source: Nikkei National Museum, 2018-16-4-3-63-1
www.nikkeimuseum.org

JAPANESE CANADIANS AND THE GOVERNMENT OF CANADA

Between 1942 and 1949, the Canadian government forced 20,000 Canadian residents of Japanese ancestry from their homes, placed them in detention camps, took away their property and then told them to scatter across Canada or be exiled to Japan. Canadian citizens made up three quarters of those treated this way. The government said its actions were to protect Canada from sabotage.

Today, the government's documents are open and they tell a different story. They tell a story of racism and political opportunism. They show that Cabinet Ministers used Japanese Canadians to capture the votes of bigotted voters. These documents reveal not a threat to national security but a threat to the democratic integrity of Canada.

Since the turn of the century winning votes on the backs of Asians whether Chinese, East Indians or Japanese was a fact of British Columbia's political life. B.C.'s politicians, alderman, M.L.A. and M.P., Conservative and Liberal had exploited the voters' fears of Asians to gain support. To appease the white supremacists in British Columbia, politicians denied Asians the most elementary of civil rights, the right to vote. To gain labour's vote, politicians charged that the Asian's lower standard of living undermined labour's attempt to gain higher wages. Yet when Asians attempted to improve their lot, politicians were quick to block their path. Asians were not allowed to become lawyers, teachers and civil servants. Where Asians had made modest economic gains such as in forestry and fishing, the federal and provincial governments reacted by trying to eli-

Source: Nikkei National Museum, 2018-16-4-3-63-2
www.nikkeimuseum.org

minate them from these industries. Before the Second World War, Japanese Canadians were outcasts in Canada, the only home the vast majority knew.

Even before the attack on Pearl Harbor, the military aggression of Imperial Japan brought into the open the extreme prejudices of many politicans against Japanese Canadians. And many politicians were well aware of the immorality of their policies. They believed, however, that to be successful in B.C. politics, a politician had to adopt a virulent anti-Japanese stance. Illustrative of this political cynicism is a letter sent in 1940, by Minister of Fisheries, J. E. Michaud to his Cabinet colleague, Ian Mackenzie the Minister of Pensions and Health. This letter concerned legislation designed to force Japanese Canadians from the fishing industry. Michaud wrote:

> I have always found it difficult to justify this arbritrary legislation against British subjects of Japanese origin. This year, in view of the reasons we are giving for our participation in the European War, it would seem all the more difficult to explain why we are adopting against these British subjects of Japanese origin the techniques that Hitler adopted against the Czechs, the Slovaks and the Poles.
>
> Of course I am willing to be guided by your opinion with the assurance that when the time comes you will justify my arbitrary attitude.

This letter clearly identifies the two most common positions on Japanese Canadians amongst politicians. One group, those not actively engaged in persecuting Japanese, were willing to gloss over the immorality of government policy if a someone else was prepared to take the political heat which might arise from such policies. The members of the second group were those who could not see the immorality of their actions.

Source: Nikkei National Museum, 2018-16-4-3-63-3
www.nikkeimuseum.org

Unfortunately for Japanese Canadians, there was one politician who was both a member of this second group and in a position to act out his prejudices; Ian Alistair Mackenzie, the minister to whom Michaud was writing looking for absolution.

In 1941 Mackenzie was the Minister of Pensions and Health and the Member of Parliament for Vancouver Centre. He was also the only Minister from British Columbia and therefore by default, the Cabinet's resident expert on the "Oriental problem". Mackenzie once boasted that his strident anti-Asian rantings would win every parliamentary seat in British Columbia for the Liberals. He was of the opinion that skin colour determined national loyalty and that in the event of war with Japan, Japanese Canadians would betray Canada.

In fairness to Mackenzie it must be said that he was neither the first nor the only official to deny the loyalty of Japanese Canadians. Long before war with Japan was declared officials had speculated on what to do with Japanese Canadians in the event of war. In 1938, the Deputy Minister of National Defence, L. R. Lafleche, advised that, in his opinion, a large number of Japanese Canadians would support Japan and consequently his department may "find itself required to provide facilities for the detention of upward of 10,000 persons in British Columbia". Lafleche did not provide any evidence to support his view that Japanese Canadians were disloyal.

A similar suggestion was made in 1939 by the federal Interdepartmental Committee on the Treatment of Aliens and Alien Property. This committee

Source: Nikkei National Museum, 2018-16-4-3-63-4
www.nikkeimuseum.org

reported that in the event of war with Japan "it might be necessary to recommend the internment of nearly all enemy nationals" to prevent sabotage and to protect Japanese Canadians from a hostile British Columbian public. The committee felt it was better to lock up Japanese Canadians than attempting to defuse the public's anger.

In 1941, Japanese Canadians were completely unprepared for what was to come. In November 1941 the editor of the New Canadian assured his readers that, if war came, they had more to fear from an angry public than from the government which appeared to be seeking a moderate solution. The editor of the New Canadian reasoned that since the government had refused in 1940 to bend to the hysterical demands for the internment of German and Italian Canadians, the government would act fairly with Japanese Canadians.

The standards applied to white Canadians, however, were not applied to Japanese Canadians. Less than 6 weeks after Pearl Harbor the government ordered 1,700 male Japanese nationals removed from the Pacific coast. Only 12 weeks after Pearl Harbor the government ordered the remaining Japanese Canadians to leave their homes on the coast. In the next 9 months, 20,881 Japanese Canadians were shipped into exile. Most were held first in the livestock barns on the Pacific National Exhibition grounds in Vancouver. From there the men were sent to work on road gangs in the mountains and the women and children were sent to detention camps in abandoned mining towns in the interior of British Columbia.

The authority for the forced removal of the Japanese Canadians from their homes and for all the other abuses which soon followed, was the War Meas-

Source: Nikkei National Museum, 2018-16-4-3-63-5
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ures Act. And as Ian Mackenzie clearly knew orders made under the War Measures Act "cannot be challenged in the courts". With the War Measures Act in their hands, Mackenzie and some of his Cabinet colleagues had the tool they needed to act on their anti-Japanese prejudices.

However, to make their actions more palatable to their more timid or moral colleagues, Mackenzie and his confederates were careful to claim that their actions were necessary for national security and in the best interests of Japanese Canadians themselves. They alleged that the Japanese Canadian communities on the coast were hotbeds of sabotage and treason. They also claimed, in a burst of false concern for the welfare of Japanese Canadians, that the West Coast was unsafe for Japanese Canadians and that they had to be removed from their homes for their own good. If Mackenzie's statements are to be believed, the west coast population was so fearful of Japanese Canadians that it was bordering on hysteria.

Neither of the government's reasons for uprooting Japanese Canadians is supported by the government's own documents. If the British Columbian public were demanding the removal of Japanese Canadians from the coast, one would expect the government's files to be filled to overflowing with anti-Japanese letters. An inspection of Prime Minister King's files reveals that only 150 letters and resolutions were received between the attack on Pearl Harbor on December 7, 1941 and February 24, 1942, the day Japanese Canadians were forced from their homes.

A closer inspection of these letters reveals an even more interesting story. The majority of the anti-Japanese letters came from veterans' and

Source: Nikkei National Museum, 2018-16-4-3-63-6
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political organizations located in communities in and around Victoria, where relatively few Japanese Canadians lived. These organizations had overlapping memberships and consequently one must conclude that the number of people actually involved in writing these letters was less than the membership of these organizations might indicate. Further, these were the same organizations which had lobbied unsuccessfully for interning German and Italian Canadians in 1940. The demand for the removal of Japanese Canadians came from a localized and very vocal minority of bigots with virtually no contact with Japanese Canadians.

The RCMP recognized that Japanese Canadians posed no danger to national security. Assistant Commissioner of the RCMP, F.J. Mead in 1940 reported that:

> No fear of sabotage need be expected from the Japanese in Canada. I feel this is a broad statement, at the same time I know it to be true.

In December 1941, immediately following the attack on Pearl Harbor, Canada's military leaders were still of the same opinion. The Chiefs of General Staff stated on December 29, 1941 that:

> members of the special government committee as well as the military, police and local authorities were less concerned about the possibility of subversive activity by Japanese than at the danger of serious anti-Japanese outbreaks by the white population.

To Canada's security experts, the threat to order came not from Japanese Canadians but from the small vocal minority who were demanding the removal of Japanese Canadians from the coast.

Source: Nikkei National Museum, 2018-16-4-3-63-7
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Ian Mackenzie was not above misrepresenting to Cabinet the views of the military and RCMP. In 1942, much of the Cabinet's information about Japanee Canadians was filtered through Ian Mackenzie and he seems to have passed on only those pieces of information which furthered his political cause. For example, Mackenzie's report of a January 1942 conference on Japanese Canadians differs markedly from the minutes of the meeting prepared by the Department of External Affairs. Mackenzie told his Cabinet colleagues that the west coast commander, Maj. Gen. R.O. Alexander had proposed three weeks after Pearl Harbor that all male adult Japanese Canadians be interned to prevent riots. What Mackenzie did not report was that Alexander's superiors had dismissed his suggestions as totally unfounded and that the RCMP and the military opposed the internment of Japanese nationals. Canada's senior military officers recognized that Japanese Canadians did not pose a threat to Canada's security.

The abuse of Japanese Canadians did not end with their forced removal from the coast. Seven weeks after the order for removing Japanese Canadians from the coast was passed, Mackenzie began plotting the confiscation and sale of farms owned by Japanese Canadians The forced sale of Japanese Canadian property was intended to fulfill Mackenzie's promise that Japanese Canadians would not return to the coast after the war.

Mackenzie skillfully navigated the political waters to ensure the success of his scheming. Because the Veterans' Land Act under which Japanese Canadian farms would be purchased by veterans was not yet law, Mackenzie arranged for the sale of farms to be frozen. He then had the farms surveyed by the Soldier Settlement Board using criteria which minimized their

Source: Nikkei National Museum, 2018-16-4-3-63-8
www.nikkeimuseum.org

true value. This done, Mackenzie persuaded Secretary of State, Norman A. McLarty, to amend the powers of the Custodian of Enemy Property, who was responsible for the Japanese Canadians' property, so that property could be sold without the owner's consent.

Mackenzie was not alone in his scheming. He was helped by Humphrey Mitchell, the Minister of Labour. Mitchell wanted to use the money from the sale of Japanese Canadian property to help pay for incarcerating Japanese Canadians in the detention camps. Forcing Japanese Canadians to pay for their own incarceration, the government felt, would help forestall any criticism from Conservative M.P.'s that the government was pampering Japanese Canadians.

In January 1943, the Cabinet passed an order authorizing the Custodian of Enemy Property to sell all the real and personal property owned by Japanese Canadians located within 100 miles of the Pacific coast. Japanese Canadians challenged the legality of these sales in the courts. In an extraordinary example of judicial foot dragging, however, the court withheld its decision for almost four years, long enough for all the property to be sold, turnng the legal challenge into an empty and sad travesty.

When the court finally did arrive at a decision, it upheld the government's right to confiscate Japanese Canadians' property. The court reasoned that the order authorizing the sale of the property was a legitimate aspect of the war effort on the ground that the order had been passed during a time of war. One shudders to think what this court would have

Source: Nikkei National Museum, 2018-16-4-3-63-9
www.nikkeimuseum.org

decided if the Jews of Europe had challenged the legality of the orders sending them to concentration camps.

The property of Japanese Canadians was sold for $5,373,317.64, slightly over half its estimated value of $11,500,000. The Japanese Canadians, however, did not receive all the revenue from the sale of their property. The cost of selling their property, storage charges and administrative fees were deducted from the money received from the sale. In addition the former owners were required to reimburse the government for any relief payments they had accepted while being held in a detention camp. Even after all these deductions were made, the former owners still did not have free access to their money. The Custodian of Enemy Property held the money and would dole it out only if the rightful owner was unable to support himself and his family while in the camps. It was the government's policy that Japanese Canadians pay for their own incarceration. The only other way Japanese Canadians could get their money was by moving east of the Rockies. Even then the Custodian of Enemy Property held back a substantial amount in case it was decided that Japanese Canadians were to be exiled to Japan. In addition that portion of their money that they did receive could not be used to purchase land or a business for Japanese Canadians were prohibited by law from doing so.

The last chapter in the government's trilogy of oppression was its attempt to deport 10,000 Japanese Canadians to Japan. If the government had succeeded Mackenzie would have made good his promise to ensure that there would be no Japanese Canadians on the B.C. coast. Mackenzie and his colleagues went to extraordinary ends to keep this promise. Their manoever-

Source: Nikkei National Museum, 2018-16-4-3-63-10
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ing illustrates clearly the impotence of Parliament when a willful Cabinet is armed with the War Measures Act.

The first draft order under the War Measures Act for deporting Japanese Canadians was presented to a Special Cabinet Committee on September 2, 1945. Mackenzie and Mitchell were two of the key players on this committee. It was their intention to rush the order through the committee and the Cabinet before the War Measures Act was replaced by the National Emergency Transition Powers Act on January 1, 1946. However, this first attempt to exile Japanese Canadians failed because of opposition from the new and more liberal committee members and because General Douglas MacArthur, the Supreme Allied Commander in Japan, did not consider the wants of Canadian politicians a major priority.

Undaunted by this initial failure, Mackenzie tried a different tack. Rather than using the War Measures Act, he attempted to use the National Emergency Transitional Powers Act to accomplish his ends. He inserted a clause in that Act which would give the Governor in Council (the Cabinet) power over "entry into Canada, exclusion and deportation, and revocation of nationality". This caused an uproar in Parliament. The United Nations had just declared the deportation of citizens to be a crime against humanity and Parliament had just been asked to approve legislation for deporting citizens. Faced with this furor, Louis St. Laurent, the Justice Minister of the day, withdrew the offending clause.

After two failures it must have been apparent to all concerned that Parliament opposed exiling Japanese Canadians. This opposition, however, was

Source: Nikkei National Museum, 2018-16-4-3-63-11
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not sufficient to deter Mackenzie and his colleagues. Rather it forced them to seek a strategy by which they could circumvent the wishes of Parliament.

A clause already contained in the National Emergency Powers Transition Act provided Mackenzie with the means to deport Japanese Canadians. This clause stipulated that all orders passed under the War Measures Act which were still in force when the National Emergency Powers Transition Act came into being would remain in force. Clearly in an attempt to defy the wishes of Parliament, the Cabinet waited until just before the War Measures Act expired before passing the order for deporting 10,000 Japanese Canadians. By the standards of the United Nations and the Nurember War Crimes Trials the Canadian Cabinet committed a war crime when it ordered the deportation of Canadian citizens of Japanese ancestry.

The government's deportation order was virtually unassailable. Orders passed under the War Measures Act could not be annulled by Parliament. The only way Parliament could stop the Cabinet was to defeat the government and force the country into a general election.

The possibility of defeating the Liberal Government in 1945 was almost non-existent. They had just won an election with a 5 seat majority. While some Liberals would have resisted voting to deport Canadian citizens, none would fail to support the government in a vote of confidence. The Liberal majority also had as willing allies Conservative M.P.'s from British Columbia. When it came to the treatment of Japanese Canadians Conservative politicians from B.C. were indistinguishable from their Liberal bed

Source: Nikkei National Museum, 2018-16-4-3-63-12
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partners. No one would be permitted to call them soft on Japanese Canadians.

Like the assessment of the military and RCMP concerning the loyalty of Japanese Canadians, the true circumstances surrounding the deportation of Japanese Canadians may have been hidden from many members of Cabinet. The deportation order gave the impression it had been passed at the request of the deportees themselves. The order gave the impression the government was merely helping those Japanese Canadians who asked to go to Japan to do so.

The government used the results of a "loyalty survey" to support its claim that the deportation was strictly voluntary. This alleged loyalty survey was conducted in April and May, 1945 and it was designed to force as many Japanese Canadians as possible to agree to be shipped to Japan. Those who agreed to go to Japan would be given that thing which Japanese Canadians, after three years in custody wanted most, a sense of security. If they were employed, they could keep their jobs. They could keep their shacks. They would be supported by the government rather than being forced to live off what remained of their savings. They would be given a $200 resettlement allowance upon their arrival in Japan. The offerings were meagre but they were better than anything they had seen in three years in the detention camps.

While the inducements to go may have been minimal, the insecurities and fears associated with staying were very great. The government told Japanese Canadians that those who chose to stay would lose their jobs. They

Source: Nikkei National Museum, 2018-16-4-3-63-13
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would be forced to leave their homes in the detention camps for the rotting tenement buildings of the Kaslo camp. From there they would be shipped to jobs east of the Rocky Mountains with no assurance that these jobs would last more than a few weeks. Most importantly, they were told that a hostile reception awaited them if they moved east.

Based on what it alleged to be the free choice of an imprisoned people, the government claimed that 6,500 Japanese Canadians had freely chosen to go to Japan. The orders deporting them, therefore, were actually in their own best interest and in the interest of their 3,500 dependents. The government was well aware that what they claimed to be a loyalty survey was anything but a test of loyalty. Government documents show that Japanese Canadians were told that requesting to go to Japan would not be taken as a sign of disloyalty.

In the end, 4,000 Japanese Canadians were actually deported. Political considerations caused the government to order the deportation of Japanese Canadians and in the end, political considerations forced the government to back down. The end of the war had meant an end to press censorship. Canadians were finally told what was being done to Japanese Canadians. Church groups, civil liberties organizations and the press led a massive protest against the deportation of Japanese Canadians. Concerned with its popularity the Cabinet, on January 27, 1947, finally revoked the order for the deportation of 10,000 Japanese Canadians.

By the time the government revoked the deportation order the war had been over for almost a year and a half. Yet Japanese Canadians were forced to

Source: Nikkei National Museum, 2018-16-4-3-63-14
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wait for almost another year and a half before their civil rights were restored.

While they waited, the government made one small attempt to rectify the most politically sensitive wrong done to Japanese Canadians. To quiet the public criticism of the forced sale of Japanese Canadian property, the government set up a Royal Commission in 1947 to investigate the administration of that sale. Consistent with the government's wartime policy, the ground rules for this Commission were stacked against Japanese Canadians. The Commission's mandate was defined so narrowly that meaningfull compensation was almost impossible. The Commission could investigate only the losses resulting from the sale of property by the Custodian of Enemy Property. The object of this Commission was not to compensate Japanese Canadians but to quiet the public's criticism of Cabinet's behavior. Finally, after four years of 'investigation' the Commission paid out one million dollars as compensation on the five million dollars in claims made by 1,100 Japanese Canadians.

Today, 41 years after the Government of Canada under the auspices of the War Measures Act tried to destroy their community, Japanese Canadians still call for redress. There is now, however, a greater urgency in this call. Many of those who founded our community are dying. Redress will be a sign to these men and women from those who did not suffer at the hands of a cynical and prejudiced government that we recognize their many gifts to us. Redress will be a sign to these first Japanese Canadians that the community they built and then led through the darkest years of the War remains a vital and integral part of Canadian society. Redress will be a

Source: Nikkei National Museum, 2018-16-4-3-63-15
www.nikkeimuseum.org

sign to ourselves and to our leaders that we live in a civilized society where wrongs are righted and where government is the servant and not the master of the house.

Source: Nikkei National Museum, 2018-16-4-3-63-16
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