

## **Summary of the Judgements of the Supreme Court of Canada and the Judicial Committee of the Privy Council in *Re Persons of Japanese Race Case***

In December 1945, the Government of Canada made three Orders in Council authorizing the deportation of persons of “Japanese race” to Japan under the emergency powers authorized by the *War Measures Act*. After some private organizations questioned the legality of the three Orders, the Government of Canada asked the Supreme Court of Canada to provide its opinion on the validity of the three Orders in a Reference case.

### **Orders in Council 7355, 7356 and 7357**

(see pp 254-258 of SCC Judgment for full text of the Orders in Council)

#### **Order in Council 7355**

Section 2 of Order 7355 authorized the deportation of the following persons:

1. Japanese nationals who made a request for repatriation to Japan after the date of declaration of war by Canada against Japan on December 8, 1941, or who were being detained under emergency war measures as of September 1, 1945.
2. Naturalized Canadians “of the Japanese race” who made a request for repatriation if the request was not revoked before September 1, 1945.
3. Natural born Canadians “of the Japanese race” who made a request for repatriation if the request was not revoked prior to the issuance of the deportation order.
4. Wives and children under 16 years old of anyone issued a deportation order.

The rest of Order 7355 authorized various other measures related to deportation. Section 6 authorized the dispossession of real and personal property of persons issued a deportation order, and section 9 authorized the detention of persons issued a deportation order pending deportation.

#### **Order in Council 7356**

Order in Council 7356 stated that naturalized Canadians who were deported would cease to be Canadian.

#### **Order in Council 7357**

Order in Council 7357 appointed a Commission which was to make inquiries as to Japanese-Canadians’ “activities, loyalty and extent of cooperation” with the Canadian government. The Commission was authorized to make recommendations for deportation of any Japanese nationals or naturalized Canadians of Japanese descent.

### **SCC Decision on Order 7355**

The Supreme Court of Canada upheld all three Orders in Council with the exception of the provision authorizing the deportation of wives and children of Japanese-Canadians.

Two justices of the Supreme Court of Canada, Kellock J and Rand J, wrote dissenting opinions for their opposition to the deportation of natural born Canadians.

### Japanese Nationals and Naturalized Canadians

None of the Justices took issue with the provisions authorizing the deportation of Japanese nationals and naturalized Canadians of Japanese descent.

### Natural Born Canadians

Two Justices held that deportation of natural born Canadians was invalid while five Justices validated the deportation of natural born Canadians of Japanese descent. Justices Kellock and Rand dissented from the majority of the Court and held that it was an affront to international law and an infringement to the sovereignty of Japan to force Japan to receive Canadian citizens. Natural born Canadians could not be “deported” from Canada.

### Wives and Children Under 16 Years Old

Four out of seven justices held that the provision authorizing the deportation of wives and children of Japanese-Canadians was invalid, without much in-depth analysis.

### **SCC Decision on Order 7356:**

#### Naturalized Canadians Cease to be Canadians once Deported

All justices found it acceptable to deport naturalized Canadians of Japanese descent. However, two justices held that Order in Council 7356 was invalid for purporting to revoke the status of naturalized Canadians as Canadian nationals.

### **Appeal to the Judicial Committee of the Privy Council**

On appeal to the Judicial Committee of the Privy Council in England, the JCPC affirmed the decision of the Supreme Court of Canada and the validity of the Orders in Council. The JCPC went further than the SCC and upheld the provision authorizing the deportation of wives and children of Japanese-Canadians.