S. M. Cherniack - corr Oct - Dec 1947

Winnipeg

October 7th, 1947.

Mr. F.A. Brewin,
c/o Cameron, Welldon & Brewin,
372 Bay Street,
TORONTO, Ontario.

Dear Mr. Brewin:

To date I have not been able to do very much in connection with the Property Loss Claims other than examining and sorting out all Manitoba Questionnaire Forms which were sent here by George Tanaka. As soon as we receive the claim forms from you, I will start interviewing people and completing the forms. We have about 75 claims already and since we expect quite a few more, I want to start as soon as possible. We will need 3 forms for each claim, i.e. 2 for the Commission and 1 for us, so that I expect we will require a minimum of 500 forms.

There are some details I wish to clear up as soon as possible; I would, therefore, appreciate your considering the following, and advising me of your opinion:

1. Will the claim forms be based only on information we obtained from the claimants, or will there be machinery in Vancouver, through which we can obtain more material? What I have in mind are details such as:

(a) valuations by Real Estate Agents in the locality of the property in question, as of the date of evacuation, date of sale, and at present;

(b) searches at the Land Titles Office to attempt to obtain information of resale, if any, by purchasers from the Custodian, and the profit made thereby;

(c) itemized statement from Custodian for costs and deductions from sale price, and for particulars as to method of attempting to obtain offers.

2. As I understand it, fishing boats and fishing gear were first taken over by some "committee", then handled by the B.C. Securities Commission, before the Custodian was appointed. Do claims for loss suffered by sale by these bodies come within the terms of reference?

3. The local committee keeps asking me about the legal fees. I have taken the stand that I will conform to the decision of the Toronto Committee. Your latest letter to Mrs. Scambler suggests that

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all claimants pay in 1% of their claim, and the successful claimants pay an additional amount. Several questions have arisen which I have been unable to answer and I would appreciate clarification from you.

(a) Do you feel that there should be a minimum payment so that people who have a questionable claim for a small amount of say $50.00 to $500.00 will think twice before making same?

(b) Do you contemplate that out-of-pocket expenses, such as stenography, stationery, postage and travelling expenses be paid out of this 1% or that the Co-operating Committee and the B.C.C.A. be expected to pay same and the 1% should be clear to the lawyers?

(c) Who is to fix the additional sum payable by successful claimants and on what basis should they do so? Do you suggest some form of sliding scale?

(d) In the case of Manitoba, I feel that I will be able to look after all the claims and thus eliminate the necessity of retaining more lawyers and acquainting them with the nature and background of the claims. In such case shall I expect the Co-operative Committee to handle all the moneys or shall I handle them myself?

(e) In the case of work being done for us in B.C. in accordance with Question One above, what sort of arrangements will be made with the Vancouver lawyers? Will you look after these arrangements on a National scale or do we take it up with them in each individual case?

(f) Are you preparing a form of retainer setting out the financial arrangement to be signed by each claimant?

I hope you won't mind letting me have your reaction to these questions. I consider the first two very vital and hope to have your answer in the very near future.

As to the question of fees; although I of course, expect to be paid for my work, I am certain that I will not receive as much as it will be worth, and that does not bother me one bit. I am, however, anxious to make arrangements exactly in accordance with those worked out in Toronto, so that there should be uniformity throughout.

Hoping to hear from you shortly, I am,

Sincerely,

SMC/y
Air Mail

CAMERON WELDON & BREWIN

October 8th, 1947.

Mr. George Tanaka,
Executive Secretary,
Japanese Canadian Citizen Association,
84 Gerrard Street East,
TORONTO 2, Ontario.

Dear Mr. Tanaka:

We sorted all the Forms which you sent us in relation to Manitoba claimants and I am returning herewith three forms; one is that of a Montreal resident and two have moved to Ontario.

Yours sincerely,

SMC/y
encl.

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CAMERON, WELDON & BREWIN
BARRISTERS & SOLICITORS

A.J.P. CAMERON ROY WELDON
A.F. BREWIN

CABLE "RUERMAS" TORONTO
TELEPHONE ADEL.4391

STERLING TOWER
TORONTO 1, CANADA

October 9, 1947.

Messrs. Cherniack & Cherniack,
Barristers and Solicitors,
31-460 Main Street,
Winnipeg, Manitoba.

Re: Japanese Canadian Property Claims

Attention Mr. S. M. Cherniack.

Dear Sirs:

Thank you for your letter of October 7th. I have been meaning to write to you.

We will be sending you the forms as soon as possible, and I will inform George Tanaka that you require a minimum of 500 forms. They have already gone to the printers together with an accompanying letter from the Co-operative Committee setting out the general scheme.

We have given consideration to some of the matters raised in your letter and will endeavour to answer the questions.

In regard to "1" I do not see how we can possibly obtain material in Vancouver for the purpose of completing the claim forms. For one thing the costs of doing so would be tremendous and I am sure there would not be time to have the investigations made before the forms are to be filed on the 30th of November. We shall have to use every effort we can to get the forms filed by that date. We are therefore putting on the forms that the fairest possible estimate of values will have to be made by the claimants themselves and that later after the oral hearings, we will endeavour to produce evidence in Vancouver of valuations made by real estate agents. I am inclined to think also that this sort of evidence will be of greater value after we have had a chance to see the files of the Custodian which in many cases contain valuations.

We are also trying to get the Custodian to agree

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CAMERON, WELDON & BREWIN

Messrs. Cherniack & Cherniack October 9, 1947.

to produce statements of his costs and deductions from the sale price and make full production ofhis records in respect to each case. This again I am quite sure cannot be done until after the claims have been filed.

We also have in mind having a statistical survey made of sales in the localities in question in the years immediately preceding the sale by the Custodian and possibly as you suggest, of resales made by purchasers from the Custodian, although,of course, obviously the difficulty of this latter evidence would be that values generally have tremendously increased.

Our representatives in Vancouver will be Norris and MacLennan and Mr. R. J. McMaster, and I have already discussed with Mr. McMaster who has been in Toronto, the importance of securing competent real estate valuators and appraisers to advise us. I believe most of their work, however, will have to be done after the claims are filed.

This puts a great burden on the claimants but it seems inevitable and we shall have to try and impress the Commissioner that the claimants cannot be expected to make complete or accurate or satisfactory estimates on the basis of the information which they have.

In answer to question "1" therefore, I would say that the claim forms will have to be based on information obtained from the claimants and except perhaps in individual cases in which inquiry might be made in Vancouver before the claims are filed,it will not be practicable to obtain material there in time to put into the claims.

I cannot give a definitive answer to your question "2" about fishing boats and fishing gear. My understanding is that a great deal of the fishing fleet owned by the Japanese, was sold by other agencies before the property vested in the Custodian. These sales would seem to be excluded from consideration by the Commissioner. On the other hand I do understand that quite a number of sales were made by the Custodian himself. Under these circumstances claims should be made.

I have not yet secured or analyzed in detail the various Orders-in-Council which apply, and therefore I do not know whether the British Columbia Securities Commission could be considered as a person appointed by the Custodian within the wording of the terms of reference.

It seems obvious that in making the claims we should err on the side of putting in claims that may not later turn out to be supported.

If the British Columbia Securities Commission and the

CAMERON, WELDON & BREWIN

Messrs. Cherniack & Cherniack October 9, 1947.

committee referred to in your question operated before the Custodian was appointed, I do not see how sales made by them can possibly come within the terms of reference.

In regard to your third question I would answer as follows:

(a) We have not made any provision for a minimum payment as you have suggested, but a proposal was made for an overall payment for every claim of $10.00, but we advised against this on the ground that people with substantial claim would be getting the services for a far less investment than they were entitled to. I doubt if you will find that many of the claims are less than $300.00 or $400.00.

I will answer your question under (c) next, namely, who is to fix the additional sum payable by successful claimants. My suggestion in regard to this is that each firm involved should prepare an ordinary account which may be informally taxed by the representatives of the Committee and approved by them, or if there is any serious doubt as to the amounts asked for, could be subject to actual taxation though I feel this latter course will not be necessary.

I would suggest that each solicitor appearing for the claimants prepare a careful docket of his time spent and the number of claims handled, and the amounts involved, and at that stage we could have a discussion as to what would be a fair basis for setting our accounts. This sounds rather like a combine, but it seems to be the only sensible way of handling it. I do not think any of us can have the faintest idea at the present time as to the amount of time and effort we shall have to put into it.

In reply to your question 3 (b) we have not contemplated an additional fund for out-of-pocket expenses as this, of course, would be included in any account presented by any solicitor. It was thought that the 1% levy would bring in approximately $20,000.00 and that this would be enough to cover a minimum for disbursements and legal fees. I must admit that the amount seems small, but the Committee here are very much of the opinion that claimants should not be discouraged and that there can be little doubt that some substantial sum will be allowed to the claimants out of which a full and fair fee and all disbursements can be paid. We have made a rough estimate that the minimum fees for the work in Manitoba payable out of the 1% would be $1000.00. I am quite sure that this would not begin to cover all the work involved, but it assures that such an amount could be paid, and would probably mean that you or whoever was acting, would be able to feel that at least some remuneration would be paid in any event.

Messrs. Cherniack & Cherniack

October 9, 1947.

Out of the $20,000.00 that we expect to raise through this 1% we have anticipated that disbursements would be paid first and then the accounts of the various solicitors in proportion to the total amount of their bills as approved.

In reply to your question "d" it would certainly be satisfactory to us if you were able to look after all the claims in Manitoba. Our scheme was to have the money sent in to the local branches of the Co-operative Committee or the National Japanese Canadian Citizens Association, then disbursed by them to the lawyers as occasion arose. It is quite obvious, however, that many of the claimants will pay their money in directly to the lawyers and we suggest that this should all be kept by the lawyers in a trust fund to the credit of the Co-operative Committee, and reported to them. The general principle under which we proposed to operate was that the Co-operative Committee should be responsible for all the moneys collected under the scheme and that the lawyers should be retained by them.

In regard to the work to be done in British Columbia, our suggestion is that all work done by the two firms which we have named under the general auspices of the Co-operative Committee, should be done through the general arrangement made by the whole Co-operative Committee and that in each province the local lawyers concerned while they should communicate with these firms as occasion arises, should not seek to make individual arrangements.

The answer to "f" is that we are preparing a duplicate of the claim to be completed, for the various lawyers concerned and that this duplicate should contain a form of retainer setting out the financial arrangement, to be signed by each claimant.

I hope that these arrangements will be satisfactory to you. I understand that the Commissioner proposes to start hearings in British Columbia in December, and I shall probably try to be there just to see how the thing starts. Either on the way out or on the way back, I shall have a chance for consultations with you.

I hope that you will write to us with any suggestions, and keep in touch with us from time to time with what you have in mind, and we will try to do the same. As soon as we have prepared a general brief or memorandum we will try to send it to you.

I have already had fairly full consultations with Mr. McMaster and I think I shall have to try and develop a system whereby any suggestions coming in from any lawyers across Canada who are acting for us, as well as any suggestions from the Committee should automatically go out to all the other legal representatives across Canada.

Messrs. Cherniack & Cherniack

October 9/47

We are very glad that you have felt able to co-operate with us in these matters.

Yours very truly,

CAMERON, WELDON & BREWIN

per: F.A. Brewin

FAB:HC

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IN THE KING'S BENCH

The 15th day of October, A.D. 1947.

THE HONOURABLE
MR. JUSTICE MAJOR

B E T W E E N :

GORDON LESLIE FORREST,

Petitioner,

- and-

CONSTANCE ELEANOR RUBY FORREST,

Respondent,

- and -

ROBERT ALEXANDER RADLEY,

Co-Respondent.

D E C R E E N I S I

THIS MATTER HAVING COME UP for trial on Tuesday, the 30th day of September, 1947, and having been adjourned to this day, and the Court having heard the evidence of the Petitioner and of the witnesses produced on his behalf and having heard Counsel for the Petitioner;

THIS COURT FINDS that the charges contained in the Petition have been proved; and

THIS COURT DECREES that the marriage between Gordon Leslie Forrest, the Petitioner, and Constance Eleanor Ruby Forrest, the Respondent, be dissolved on the grounds of adultery committed by the Respondent with the Co-Respondent, unless sufficient cause be shown to the Court why this Decree should not be made absolute within three calendar months from the date hereof.

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TO LAWYERS FROM CO-OPERATIVE

October 29, 1947

Mr. S. M. Cherniack
460 Main St.
Winnipeg, Manitoba

IT IS ORDERED that Myrtle Dorothy Forrest named in the said Petition do remain in the custody of the Petitioner until further order of the Court, but it is directed that the said Myrtle Dorothy Forrest be not removed out of the jurisdiction of the Court without its sanction.

THE COURT ALSO ORDERS that the Petitioner recover against the Co-Respondent the sum of $500.00 by way of damages, and the taxed costs incurred and to be incurred on behalf of the Petitioner.

SIGNED at the City of Winnipeg, in the Province of Manitoba, this day of October, A.D. 1947.

_____
Prothonotary.

TO LAWYERS FROM CO-OPERATIVE COMMITTEE

October 29, 1947

Mr. S. M. Cherniack
460 Main St.
Winnipeg, Manitoba

Dear Sir:

We understand from Mr. Brewin that you will be acting as the representative of the Co-operative Committee. The legal representatives in British Columbia who will act as our agents there in connection with these claims, are Mr. R. J. McMaster and Norris and MacLennan.

We are very glad that you have been able to assume this important task and we fully realize that a great deal of the burden of the presentation of evidence will fall upon you, and that the arrangements which have been made for remuneration involve a sacrifice on your part.

It was thought advisable to set out our understanding in that arrangement, so that there can be no misunderstanding.

We are inviting the claimants to sign a retainer form retaining the Co-operative Committee on Japanese Canadians to represent them before the Commission. The Co-operative Committee in turn will be retaining you. We are asking all claimants to send with their retainer, a sum of money equivalent to 1% of their claim. All of this money, together with the Remittance Record Forms, is to be sent by local committees to the Co-operative Committee here and the money will be banked by them in a separate account to be called the Co-operative Committee Claims Fund, and we are asking for all cheques made out in pursuance of this plan to be made payable to the Co-operative Committee Claims Fund. We are hopeful that out of this money enough will be received to cover preliminary legal expenses and disbursements for valuations, etc.

The retainer which we are obtaining from the claimants also provides that each claimant will agree that additional legal expenses will be paid proportionately by successful claimants out of their claims.

We would ask you to keep a careful account of all disbursements and time spent in this matter, and submit accounts to us. These will be paid out of the fund obtained of 1%, and further out of the monies secured by successful claimants. If monies are needed by you from time to time, we will endeavour to make advances to cover any necessary expenses. We appreciate that it is quite impossible at this time to make any accurate estimate of the amount of the claims or the amount of work that will be involved in presenting claims, and for that reason we have thought it advisable to leave the amount of fees to be finally paid for this work, to be determined by the presentation of accounts in the usual manner with details set out in these accounts of the services rendered.

The point has been raised that some claimants would prefer to consult you or your firm individually. Our suggestion, which we have discussed with Mr. Brewin and some of our other legal representatives is that when such claimants come to you, you probably would see fit to inform them of the Co-operative Committee's scheme and leave it to the claimant to decide whether he will make individual arrangements with you or come under the scheme. No doubt you will be having some claimants come to you directly and asking you to represent them in accordance with the scheme of the Co-operative Committee. In this case we would ask that you secure cheques from them for the 1% and have them made payable to the Co-operative Committee Claims Fund and sent to the office of the Co-operative Committee on Japanese Canadians, Apartment #23, 94 Homewood Avenue, Toronto, with remittance record form containing the names and addresses of the claimants from whom the money was received.

May we hear from you if these arrangements are satisfactory and any question which require to be answered.

Perhaps it is not necessary to add that the Co-operative Committee has no substantial funds of its own, and we presume that you will be willing to look for the payment of your fees to the fund to be raised in the manner outlined above.

CO-OPERATIVE COMMITTEE ON JAP. CANADIANS

Miss Margaret K. Boos, Secretary

...newood Ave,

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LETTER TO JAPANESE CANADIAN CLAIMANTS
FROM CO-OPERATIVE COMMITTEE ON JAPANESE CANADIANS

The Co-operative Committee on Japanese Canadians in consultation with the National Japanese Canadian Citizens Association have undertaken to assist Japanese Canadians to present their claims to the Commissioner, The Honourable Mr. Justice Bird, who has been appointed by the Dominion Government to investigate losses caused by the sale at less than fair market value or the loss of real or personal property vested in the Custodian.

The Commissioner has published a notice requiring all claimants to file claims in duplicate verified by statutory declarations sent to the office of the Custodian, Royal Bank Building, Vancouver, B.C., on or before November 30th, 1947.

The Co-operative Committee have printed forms complying with the requirements of the Commissioner and duplicate forms are attached to this letter. These forms should be completed and sent to the above address as soon as possible. We suggest sending them by registered mail. The forms when completed should be taken to a lawyer or Justice of the Peace or other person with authority to take declarations and the statutory declarations should be signed and completed before him. Every effort should be made to put fair and moderate valuations on property lost or sold. Exaggerated claims may prejudice not only the individual claimant but also other claimants. On the other hand in giving estimate of value of land or personal property exact knowledge is not necessary; but fairest and best estimate possible should be made. Where the information required is not known by the claimant, a statement should be written in "information not immediately available." The amount of the loss claimed must be completed. Application may be made to any of the legal firms or lawyers listed below for assistance in completing the forms. After the forms have been filed the Commissioner proposes to visit various centres in each Province in Canada to hear evidence from the claimants. This evidence will be given orally and will consist of evidence given by the claimants themselves and evidence of others who may be able to verify statements as to property left behind and its condition and value. Later, evidence will probably be given in British Columbia as to the values of property.

The Co-operative Committee have arranged in co-operation with the National Japanese Canadian Citizens Association to provide legal assistance to claimants in presenting their evidence and putting forward their case. While claimants are of course entitled to secure whatever legal advice and assistance they see fit it is believed that it will save money and be more efficient if lawyers representing the claimants act in co-operation and under the general guidance of the Co-operative Committee and of the National Japanese Canadian Citizens Association and its affiliated organizations.

A partial list of lawyers representing the Committee is set out below and legal and other expenses such as valuators' fees are to be taken care of by payment of the claimants of a retaining fee of 1% of the lost claim. This payment will be made to the Co-operative Committee or to the National Japanese Canadian Citizens Association to be administered by the former for necessary legal and other expenses. Any proper additional expenses will be paid by the successful claimants proportionately out of monies awarded to them by the Commissioner.

If you wish to avail yourself of the assistance provided by the Committee you are requested to fill in the form addressed to the Co-operative Committee attached hereto and send it out to the person in your Province listed below and if you are not able to send the fee the Committee will still be willing to represent you subject to the advice of the National Japanese Canadian Citizens Association and you should indicate this by putting a check mark in the attached form in the appropriate place. It is essential that this form be sent as soon as possible so that lawyers may be assigned to your case and may secure full information and be able to get in touch with you for consultation before the hearing.

(over)

The claim form addressed to the Co-operative Committee together with the retainer form and 1% legal fee should be sent to your provincial Japanese Canadian Citizens Association or Co-operating Committee as listed below.

NOTE: Make cheques, money orders, payable to Co-operative Committee Claims Fund.

British Columbia: B.C. Japanese Canadian Citizens Association,
Greenwood, B.C.

Alberta: Lethbridge Co-operative Committee,
c/o Mr. W. S. Wallace, Secretary,
Box 629,
Lethbridge, Alberta.

Alberta JCCA chapter to be announced.

Saskatchewan: To be announced.

Manitoba: Manitoba Japanese Canadian Citizens Association,
c/o 504 Talbot Ave.,
Winnipeg, Man.

Ontario: Ontario Japanese Canadian Citizens Association,
84 Gerrard St. East,
Toronto 2, Ont.

Quebec: Quebec Japanese Canadian Citizens Association,
713 Moffat Ave.,
Verdun, Montreal 19, P.Q.

LIST OF LAWYERS REPRESENTING THE CO-OPERATIVE COMMITTEE

British Columbia: Norris & MacLennan, 602 Hastings St. W., Vancouver, B.C.
R. J. McMaster, c/o Campbell, Brazier, Fisher & McMaster,
675 Hastings St. W., Vancouver, B.C.

Alberta: W. E. Huckvale, Ritchie & Huckvale, 612 Third Ave. S.,
Lethbridge, Alta.
L. S. Turcotte, Barrister, Lethbridge, Alta.

Saskatchewan: To be announced.

Manitoba: S. M. Cherniack, 460 Main St., Winnipeg, Man.

Ontario: F. A. Brewin, Cameron, Welldon & Brewin, 372 Bay St., Toronto, Ont.
R. A. Best, 15 Toronto St., Toronto, Ont.

Quebec: Roger Ouimet, K.C., 152 Notre Dame, East, Montreal, P.Q.

(over)

RETAINER

I hereby retain the Co-operative Committee on Japanese Canadians which is acting in consultation with the National Japanese Canadian Citizens Association to present my claim to the Custodian and to secure such legal assistance, valuators' reports, and other information as may be necessary and I enclose, herewith, $..... being 1% of the total claim which I have made as a retaining fee and undertake to pay proportionately out of any monies that I may be awarded by the report of the Commissioner my share of such further legal and valuation and other expenses and disbursements as may be approved by the Co-operative Committee.

N.B.: If your financial circumstances do not enable you to pay this fee, kindly mark an X in the blank space after the following statement:

I wish to retain the Co-operative Committee to act for me, but I am not in a financial position to pay any retaining fee. I am willing that my share of the expenses of presenting my case should be paid out of such monies as I may be awarded by the Commissioner.

.....

.....

Signature

IMPORTANT — make cheques, money orders, payable to **Co-operative Committee Claims Fund**, and send with this retainer form and claim form addressed to the Co-operative Committee to your provincial Japanese Canadian Citizens Association or Co-operating Committee as listed in accompanying letter.

November 1st, 1947.

Co-Operative Committee on Japanese Canadians,
Apt. 28, 94 Homewood Avenue,
TORONTO, Ontario.

Dear Sirs:

I am in receipt of your Form Letter "to lawyers" together with copies of the form prepared by you, and as requested by you, I am confirming my willingness to act under the financial arrangements as proposed by you.

There are, however, several questions with regard to the forms on which I would like clarification.

1. Your explanatory letter contemplates sending two forms to the claimants and requests him to complete and forward them to the Commissioner and does not contemplate sending an extra copy to us. Of the two forms, you sent me, it is obvious that one is meant for the Commissioner and the other for the Co-operative Committee. Do you think that the letter that is attached to the forms is sufficiently clear in this respect, or do you intend to clarify same with an additional note?

2. The Commission is authorized to hear claims for loss due to sale of personal property at less than marked value, in addition to the other losses. Neither the Commissioner's instruction, nor the form prepared by you provides for itemization of this type of claim. Where do you suggest or propose to insert this type of claim?

3. Subject to your advice, I propose to show the net proceeds of sale by Custodian in Item 4(e)(v) after charges are deducted, arguing that costs of the sale should be properly payable by the Government, which forced same.

I wrote to Mr. Brewin in connection with charges and received a reply dated the 9th ultimo, to the effect that at present, it is difficult to know, whether or not we will be able to question same. I am wondering whether we can in some way, insert into these forms, a claim regarding improper deductions, such as the cost of shipping goods, legal costs, etc.

Trusting to hear from you shortly, I am,

Yours sincerely,

SMC/y

November 10th, 1947.

Mr. A. F. Brewin,
c/o Cameron, Weldon and Brewin,
372 Bay Street, TORONTO.

Dear Mr. Brewin:

-Re: Japanese Claims Commission-

I acknowledge receipt of your letter of November 5th, with enclosures as therein stated.

My position in connection with the above Commission is to act as counsel for the Dominion Government, and as such to attempt to ensure that the Japanese claimants receive no more than the fair market value of their property at the time of the sale. I am not counsel for the Custodian, although, in a sense my duties will necessitate the justification of the actions of the Custodian.

I am stating my position in order that it may be clear that I am not in a position to produce documents from the Custodian without his approval. However, I have discussed this matter with the Custodian at some considerable length, and in order to facilitate the Hearings, it is at present proposed to produce for the solicitors for the claimants any documents which are deemed relevant to the claim.

We have had photostatic copies made of the appraisals of those properties which were sold to the Veterans' Land Act. I have not yet seen these photostats, but it is my understanding that they have been made in triplicate, and if this is so, it is proposed to furnish the solicitors for the claimants with one copy. It is presumed that the Commissioner will be satisfied with a photostatic copy, and it is further presumed that you will not raise any objection.

Insofar as appraisals of other properties are concerned, and insofar as statements of accounts and other relevant documents are concerned, it will all boil down to the question, first of all what is relevant, and secondly whether it is physically possible for the Custodian's Office to make copies of all the relevant material. We should like to be able to do this and to furnish the solicitors for the claimants with copies of all material before the oral hearings take place, as it is feld that this will greatly facilitate the hearings. It may be, however, that no sufficient steno-

November 10th, 1947.

Mr. A. F. Brewin

graphic help will be available, in which case, we shall simply have to make the documents available at the office of the Custodian, and the solicitors for the claimants or their agents will have to attend there and inspect or make copies of same.

We should very much prefer to be able to furnish copies, as it will start the initial hearings on a proper basis, and reduce the hearing to an issue right from the beginning. It is our intention to do this, and as mentioned above, it will only be a physical impossibility that will prevent it.

All the above is entirely without prejudice to the rights of the Government or the Custodian, as it may be that for reasons of which I am not yet aware, there will be occasions in which we do not care to furnish this material. In that case, you will have to apply to the Commissioner for an order for production. I am making this latter reservation, not because I anticipate any such occasion arising, but simply because situations may arise which I cannot anticipate.

Yours truly,

"John W. G. Hunter"

JWGH:LMS

CAMERON WELDON & BREWIN
BARRISTERS & SOLICITORS

A.J.P. CAMERON ROY WELDON
A.F. BREWIN

CABLE "RUERMAS" TORONTO
TELEPHONE ADEL.4391

STERLING TOWER
TORONTO 1, CANADA

November 10, 1947.

Mr. S. N. Cherniack,
c/o Messrs. Cherniack & Cherniack,
Barristers and Solicitors,
31-460 Main Street,
Winnipeg, Manitoba.

Re: Japanese Canadian Claims

Dear Mr. Cherniack:

I have been asked by Miss Boos to reply to your letter of November 1st, and to answer the questions set out in your letter. The answers are as follows:

1. I believe that the subsequent material has made it quite clear that two forms in duplicate should be sent to the Commissioner, and one retained for the Co-operative Committee.

2. You are quite right that there is an omission in the form. Under 5(e) there should be an item setting out the amount at which sales of personal property were made by the Custodian and this should be deducted from the fair market value in order to arrive at the loss.

3. I do not think it is possible to argue that costs of the sales by the Custodian can be taken into account by the Commissioner. It seems to me fairly clear that the Commissioner is only concerned with determining the difference between the fair market value and the amount at which the Custodian actually sold. If the Custodian made deductions which he is not entitled to make, this would seem to be a matter of accounting by the Custodian and of separate representation to the Government. We are advising the other claimants not to make any reference to improper deductions.

I would be glad to have your further advice as to whether you think we are wrong in this. My feeling is that it would be a mistake to put in, items that clearly seem to fall outside the terms of reference.

MEMORANDUM FOR MR. TANAKA

Mr. S. N. Cherniack November 10, 1947.

As you have probably heard, the preliminary hearings are to be in Vancouver on the 3rd of December. The writer is going out to Vancouver on the 1st of December.

I do not suppose that you will find it possible to be in Vancouver, but we will report fully to you what transpires. We would be glad of any suggestions as to points you think should be made at the preliminary hearing. We feel satisfied that it will not be possible for the Commissioner to actually start hearing claims until the beginning of next year.

Yours very truly,

FAB:HC

F A Brewin

S. M. Cherniack - Corr Oct - Dec 1947

Corr Oct - Dec 1947

November 15th, 1947.

Mr. F. A. Brewin,
c/o Cameron, Walldon and Brewin,
372 Bay Street,
TORONTO, Ontario.

Dear Mr. Brewin:-

Re: Japanese Canadian Claims

I acknowledge with thanks receipt of your letters of the 10th and 12th instant and note in particular your remarks regarding the cost of the sales by the Custodian. I feel that the likelihood of further terms of reference or extension of the present terms is extremely remote and that this may be our only opportunity of presenting an argument regarding any of the losses suffered by Japanese Canadians. It appears to me that we can say that just as the Government paid the administration costs of the Custodian, so should the costs of sales and storage of chattels be chargeable to the Custodian's administration expenses. I know that I need not argue the moral grounds to you, and I don't want to quibble about fine interpretation, but the wording of the terms of reference seems to establish that the Commissioner is to determine the loss equal to the difference between "the amount received from the sale" and the "fair market value" and I feel that we can argue that the "amount received" means the net amount received and not the price for which it was sold.

Would you consider the advisability of arguing this point before the Commissioner at the preliminary hearing? I feel we have nothing to lose in making an attempt and a great deal to gain if we are successful.

To date we have completed some 55 forms out of an estimate of 125 for the Province. Because we are unable to satisfactorily establish the claimants' estimate of the fair market value, we have been trying to keep the estimates at what seems a reasonable figure and I do not know in what way this estimate would be affected by our having made available to us before the hearing the copies of appraisals referred to in Mr. Hunter's letter to you of the 10th instant. Do you propose that we request these immediately or do you consider that they will be considered in Vancouver after the Commissioner has travelled across the country? I realize that you may not be able to answer this question until after your meeting of December 3rd.

We have had considerable difficulty in the valuation of personal property because we have either been unable to obtain the itemized list of the personal property from the claimants or we have obtained lists of 3 and 4 pages in

cont'd ——

1-2

length which made it impossible to include in the claim because of limited time and personnel. In some instance, therefore, we had to say something like this:

"Chattels sold by Custodian on the 4th day of March, 1943,
Estimated Value - $500.00
Amount received from Custodian - 76.22
Loss - $423.78

Do you feel that the Commissioner will reject such a claim because it is too general or will he give us an opportunity to go into the values in detail at the time of the Hearing? If we stopped to make an itemized list in detail, we could certainly not complete all claims by the deadline.

Because I felt that the Commissioner might not accept interpreters supplied by us, I have answered the question in the forms as to the necessity of an interpreter as "yes". When I send the forms in, I propose to make it clear that the claimant cannot speak English but we will be able to supply an interpreter. You might clarify this point when you meet with the Commissioner.

We have had several requests to complete forms by sons of people who were repatriated. The property or the claims were not assigned nor was Power of Attorney given. Shall we complete such claims by "next of kin remaining in Canada" or "personal representative" or should we tell them not to bother at all especially in view of the terms of reference referring only to persons residing in Canada at the date of the Order. I would like an immediate answer to this last question even if you cannot answer the others quite so quickly.

Yours very truly,

S. M. Cherniack.

SMC*yh

Oct - Dec 1947

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CAMERON, WELDON & BREWIN
BARRISTERS & SOLICITORS

A.J.P. CAMERON ROY WELDON
A.F. BREWIN

CABLE "RUERMAS" TORONTO
TELEPHONE ADEL.4391

STERLING TOWER
TORONTO 1, CANADA

November 17, 1947

Messrs. Cherniack & Cherniack,
Barristers and Solicitors,
31-460 Main Street,
Winnipeg, Canada.

Re: Japanese Canadian Claims

Dear Sirs:

Thank you very much for your letter. The point of interpretation which you raised is a very interesting one, and I will certainly take it up with the other counsel involved and see whether they think we should press the point at the preliminary inquiry. I may say that although the argument is ingenious, it seems to me that the amount received from the sale refers to the actual proceeds of the sale received from the purchaser by the Custodian and that the question of accounting by the Custodian for what he received, and justifying any deduction, is not within the scope of the Commission. However, I can assure you that we will give very careful consideration to the point you have raised, and I will particularly take it up with our legal adviser in British Columbia.

In regard to the estimates on the Custodian's files, I think we should endeavour to make an arrangement to have them made available to counsel before the oral hearings. It is quite obvious that knowledge of their contents would be very helpful in considering what points to discuss with the claimants.

In regard to the description of the chattels, I think where it is possible, it is advisable to have a list of them attached to the claim, even if it is only pasted in, or attached as a schedule to the claims, but I certainly think that under the circumstances the Custodian would hardly refuse to consider claims because the chattels were not listed.

I would suggest, however, that where you have put the thing in in general terms, you should endeavour

Corr Oct - Dec 1947
1-2

Messrs. Cherniack & Cherniack November 17, 1947.

to get a list to send on to the Commissioner after the deadline as supplementary material. In regard to an interpreter I do not believe that the Commissioner will refuse to accept interpreters supplied by us, but I think it will be better probably to use the same interpreter throughout. We will discuss this point with the Commissioner. In regard to the last point that you raise, I am afraid that unless there is some form of assignment, no claim can be made under the terms of reference. However, if there is any doubt, in other words, if there is some equitable assignment or agreement to sign, even though it is not yet registered, I would put it in the claim, and I would be inclined to describe the people not as next of kin or personal representatives of somebody out of Canada, which implies that the person is dead, and would seem to be on the face of it, to be excluded by the Commission, but some such title as assignee. You are certainly doing well with 55 forms completed already. We have at least 200 claims, and so far between Mr. Best and myself we probably have about 20 completed.

Yours very truly,

CAMERON, WELDON & BREWIN

per: F.A. Brewin

FAB:HC

Oct - Dec 1947

1-2

Cherniack & Cherniack
BARRISTERS AND SOLICITORS

J. A. CHERNIACK, B.A., LL.B.
S. M. CHERNIACK, LL.B.

PLEASE REFER
TO FILE NO.

31-460 Main Street
Winnipeg,
Canada

Phones { 22 878

November 25th, 1947.

Messrs. Cameron, Weldon & Brewin,
Barristers, etc.,
Sterling Tower,
TORONTO1, Ontario.

Dear Mr. Brewin:

I acknowledge with thanks receipt of your letter of the 19th instant and I enclose herewith copy of a letter which I am today sending to the Commissioner, along with a total of 131 claims.

In addition I have a record of 5 claims from Geraldton, Ontario, which were sent direct to the Commissioner.

The hardship placed on the Fort William area people, should they be compelled to come to Winnipeg is very obvious and I would ask you to make every effort to convance the Commissioner to sit in Fort William. I believe that there ought to be no difficulties in this connection.

In addition to the forms which I am now forwarding, I know of about 5 more from the Fort William area and at least 12 in the Winnipeg area which are yet to come and which have been held up due to the impossibility of certain people to get to a Commissioner or to someone who can help them complete their forms and in some cases, people have been waiting to hear from members of the family as to what was being claimed by them in relation to properties owned jointly.

I hope that within the next week I will have completed all claims of which I am now aware.

It seems to me that it would be a good idea to obtain opinions from reliable real estate people as to the comparison between market value and assessed value in the various localities as in many cases we have no information about the value other than assessment notices.

Other than the above, and the questions of interpretors, costs of sales and claims for sales by the Fishing Vessels Disposal Committee referred to in previous letters, I have no other suggestions to make as to the matters for discussion at the Preliminary Hearings.

Yours very truly,

Corr Oct - Dec 1947

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Cherniack & Cherniack
BARRISTERS AND SOLICITORS

J. A. CHERNIACK, B.A., LL.B.
S. M. CHERNIACK, LL.B.

PLEASE REFER
TO FILE NO.

Phones { 22 877
22 878

31-460 Main Street
Winnipeg,
Canada

November 25th, 1947.

The Honorable
Mr. Justice H. L. Bird,
Commissioner,
c/o Office of the Custodian,
Royal Bank Bldg.
Hastings & Granville,
VANCOUVER, B.C.

Dear Sir:

I enclose herewith 110 claims in duplicate of the persons in Manitoba enumerated in the attached list.

I also enclose 21 claims in duplicate of persons in the Fort William area enumerated in a separate list.

These Fort William people together with five to ten additional persons, who have already mailed forms direct to you or are about to do so, find that if it were necessary to come to Winnipeg for the Hearing, it would involve an expenditure for travelling and hotel expenses of a minimum of $30.00 per person plus loss of earnings whilst away from Fort William. The train fare alone from Fort William to Winnipeg return in about $30.00. Should no sittings be held in Fort William, these people will either be put to a great expense, or on the other hand will be unable to press their claims because of lack of funds, preventing them from coming to Winnipeg. In view of the fact that there will be a minimum of 25 claims and a probability of 30 claims in the Fort William area, I request that you decide to hold Hearings in Fort William for these people.

You will note that in most cases the claimants will require interpretors and should you deem it advisable, I can submit to you the names of a few Winnipeg Nisei veterans who served with the Canadian Intelligence Corps as Japanese Language interpretors, and of a competent Nisei interpretor in Fort William.

Arrangements have apparently been made between Mr. Erwin and Mr. Hunter to provide photostatic copies of the valuations and appraisals made for the Custodian. I am, therefore, requesting the Custodian through you to let me have same at his earliest convenience in order that I may familiarize myself with them prior to appearing before you.

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Corr Oct - Dec 1947
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The Honorable Mr. Justice H.L. Bird, Commissioner:-

As these forms were prepared under great pressure of time, it may be that in certain cases they are a little more general than I would have preferred them to be. I trust, however, you will take into consideration the difficulties I have had, because of limited time and personnel.

Yours truly,

SMC/y
encl.

COPY
Oct - Dec 1947
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CANADA

DEPARTMENT OF THE SECRETARY OF STATE

CAMERON.WELDON & BREWIN
BARRISTERS & SOLICITORS

A.J.P. CAMERON ROY WELDON
A.F. BREWIN

CABLE "RUERMAS" TORONTO
TELEPHONE ADEL.4391

STERLING TOWER
TORONTO 1, CANADA

November 19, 1947.

Messrs. Cherniack & Cherniack,
Barristers, Solicitors,
31-460 Main Street,
Winnipeg, Manitoba.

Re: Japanese Claims

Dear Sirs:

As you have heard the Commissioner plans to have preliminary hearings on the 3rd of December in Vancouver, and the writer plans to be there for these preliminary hearings. We would suggest that if you are not one of those who can attend in Vancouver at this time, that you should let the writer know of any points in regard to procedure or otherwise, that you particularly wish to have taken up with the Commissioner at the preliminary hearings. May I also suggest that you ask the association with which you are working, to send to the writer c/o Georgia Hotel, Vancouver, B.C., to arrive not later than December 1st, a summary of the number of claims which have been filed, and in respect to which the Co-operative Committee through yourself is representing the claimant.

Would you also send any statement that may be relevant to the extension of time for filing claims, e.g. the number of claims of which you have heard, but which for one reason or other have not been able to be completed. It also appears clear that it may be necessary to ask for an extension of time for filing claims.

One subject to which we shall have to give careful attention when at Vancouver is the question of expert evidence as to valuations. We would be glad to have any comments or suggestions from you on this problem.

cc-M.C.Shumiatcher
Mr.Huckvale Mr.Ouimet
Mr.McMaster Mr.Best
Mr.MacLennan
FAB:HC

Yours very truly,
CAMERON, WELDON & BREWIN
per: F.A. Brewin

Oct - Dec 1947

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CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

November 21st, 1947

Office of the Custodian,
506 Royal Bank Bldg.,
Hastings and Granville,
VANCOUVER, B.C.

Dear Sirs:

re: Tokujiro Arai, No. 04316
Your file 9782/11927

We have been ~~advised~~ consulted by Mrs. Nabu Tanabe, Reg. 00815 of 134 Spence Street, in connection with her claim against the above party and have perused your letters to her of July 29th, September 11th and September 29th last.

From the reading of the mortgage, it is quite clear that interest is payable on the loan, but we understand and have explained to Mrs. Tanabe, your position in regard to payment of same.

We enclose the mortgage herewith for your perusal and would ask you to let us have a cheque payable to Mrs. Tanabe for the balance that you have, which we understand amounts to $73.16.

Yours truly,

CHERNIACK & CHERNIACK

per.

SMC/y
encl.

Oct - Dec 1947

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CANADA

DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

506 ROYAL BANK BLDG.
HASTINGS AND GRANVILLE
VANCOUVER, B. C.

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO. 9782/11927

November 26th, 1947

Messrs. Cherniack & Cherniack,
Barristers & Solicitors,
31-460 Main Street,
Winnipeg. Man.

Dear Sirs:- Re:- Tokujiro ARAI,
and
Mrs. Nobu TANABE

We are in receipt of yours of the 21st instant with enclosure of Mortgage in respect to the above parties.

As you state that you have read our letters of July 29, September 11 and September 29 last to Mrs. TANABE you will understand that we stated that we would forward this amount, namely $73.16 on condition that Mrs. TANABE would accept it in full payment of the balance of her claim. While we did not have the authority of Mr. ARAI to do this we decided, under the circumstances, that we would pay over this small amount as indicated in our letter to her of July 29th last.

Not having heard from her in answer to our letter of the 29th September last, we had taken action along the line indicated in our letter of the 11th September last but cancelled the disposition arranged on receipt of your letter of the 21st instant.

The last paragraph of your letter does not indicate that she will release all her claim on receiving our cheque for $73.16 which you will understand is the condition prescribed.

We shall hold this amount for a short time longer pending receipt of an early reply that this amount will be accepted in full settlement.

In the meantime we are holding the Mortgage in our file.

Yours truly,

B.R. Dusenbury,
Office of the Custodian.

BRD/DD.

Oct - Dec 1947

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December 1st, 1947.

Office of the Custodian,
Royal Bank Bldg.,
Hastings & Granville,
VANCOUVER, B.C.

Dear Sirs: re: Arai and Tanabe,
Your files 9782/11927

Mrs. Tanabe has instructed us to advise you that she would accept the sum of $73.16 mentioned in your letters to her in full settlement of her claim against Arai.

If you like, you can send us this cheque in trust together with a full discharge and we will undertake not to hand the cheque to her until we have obtained and forwarded to you this release.

Yours truly,

CHERNIACK & CHERNIACK

per.

SMC/y

Corr Oct - Dec 1947

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Corr Oct - Dec 1947

December 2nd, 1947.

Mr. Katsutaro Ito,
217 Clair Street,
NORTH KILDONAN, Man.

Dear Sir:

We have been in touch with the British Columbia Securities Commission in connection with your claim for the proceeds of the sale of your chattels and we have now obtained and enclose herewith a copy of the Statement of your account, wherein you will see that you were credited with the sum of $17.28 in March, 1944 and $21.14 in April, 1945. It would appear, therefore, that you received full credit for the sales made.

Yours truly,

CHERNIACK & CHERNIACK

per.

SMC/y
encl.

1-2

December 10th, 1947.

Mr. Fred Nishikawa,
708 McKenzie Street,
FORT WILLIAM, Ontario.

Dear Fred:

I have been intending to write you since my return from Fort William, but until now have been quite rushed and just did not seem to get around to it.

I want particularly to thank you for making my brief stay a very pleasant one, particularly because of the evening I spent at your home.

I was very pleased of an opportunity to meet with you and your friends socially and I am looking forward to seeing you again.

Mr. Andrew Brewin stopped off in Winnipeg last Saturday evening on his return from the preliminary Hearing in Vancouver and spent a few hours with us, giveing us his impression of the Commissioner. Although the important parts discussed were not finally settled at the time of the Hearing, the Commissioner undertook to give his decision on same in due course. Yet Mr. Brewin feels that his decision will be quite favourable to us. He feels fairly confident that the Commissioner will agree to stop for Hearing in Fort William, and it appears that I will be spending a few days with you again. According to Mr. Brewin, the Commissioner is a fair minded person with no apparent prejudice and should give us a sympathetic hearing providing the claimants are not too belligerent and give the impression that they feel that they are being robbed. Our stand will have to be that the Custodian is not personally to blame for what happened but that certain losses were suffered due to war conditions and that these losses should be made up in all fairness by the Government.

I have not heard from you in connection with the claim of Moriji Shiozaki and would urge you to complete same and send it to me so that I can check it before it is sent to the Commissioner. You probably know that the deadline was extended to January 15th, 1948.

With best regards, I am,

Sincerely,

PHONE PACIFIC 6131

PLEASE REFER TO

FILE NO.

JAPANESE EVACUATION SECTION

Oct - Dec 1947

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MACARONI

COMMISSION OPENS HEARINGS

Jap Claims Expected To Reach $9 Million

VANCOUVER, Dec. 4 (CP)—A one-man royal commission to investigate Japanese-Canadians' claims against the federal government because of property confiscations during the Second World War stood adjourned today until Monday after a single day's hearing in which the enormity of its scope became apparent.

More than 1,000 of the 18,000 Japanese-Canadians in Canada at the outbreak of the war have registered claims and the flow mounts to between 50 and 100 daily.

The average claim is for $3,000 and Mr. Justice Henry I. Bird of the B.C. Court of Appeal is the commission. It is expected total claims will amount to $9,000,000.

The sittings, expected to take about one year, will extend from Vancouver to Montreal. B.C. sessions have been ordered in Kamloops, Nelson, Grand Forks and Vernon. Other cities to be visited are Lethbridge, Moose Jaw, Winnipeg and Montreal.

A possibility of convening in Fort William also is considered to ease travel problems for Japanese residents between Winnipeg and Toronto and in northern Ontario.

Japanese citizens, evacuated from the coast during the war, complain that since that time the federal government, through one of its agencies ,has disposed of their property at prices below their market value.

The commissioner reserved a ruling on whether he would consider Japanese property never taken possession of by the custodian.

F. A. Brewin, of Toronto, counsel for the Japanese-Canadian Committee for Democracy, protested that hardship would result if the commission did not, claiming some had turned property over to civil custodians who subsequently had been required to dispose of it.

Tax Returns Not Admitted As Evidence

Magistrate D. G. Potter in Provincial police court Wednesday refused to allow previous Soudack Fur Auction Sales Ltd. income tax returns, from 1937 to 1940, to be admitted as evidence.

Crown Counsel C. V. McArthur, K.C., said that the company, prior to 1940, spent "enormous amounts" of money for advertising purposes to induce shippers to bring in their furs. He said he wanted to introduce the previou returns to make a compariso with the 1941 fiscal year whi was being tried now.

Soudacks face 36 charges the Income Tax Act from 1946. Eighty articles hav been filed as exhibits. adjourned until 2.30 p.

Magistrate Potter court was not inter vious income tax they were of som the court was 1941 year, not

Milton M come ta exami K.C.

Licence Requests Given Approval

Applications for licences for three second hand businesses, two dance halls and a bowling alley were proved Wednesday by civic

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OFFICE OF THE
JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO. 9782/11927

December 13th, 1947

RJ

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V

December 13th, 1947.

Mr. A. Watson,
Secretary,
Japanese Property Claims Commission,
Court House,
VANCOUVER, B.C.

Dear Sir:

I find it necessary to make certain plans for the next few months and obviously the date for the Hearings by the Commissioner in Fort William and Winnipeg will greatly affect my plans.

I realize full well that it is impossible for you to say definitely when the Commissioner will likely be here, but since you are certainly in a better position to Judge than I am, I would very greatly appreciate it, if you would write me indicating the probabilities according to the information you now have.

For personal reasons, I am hoping that the Commissioner will not be here until after the beginning of March and it may be that you can already state that the Commissioner is not likely to be here during January and February.

I have, of course, no intention of trying to tie you down to a definite statement and will bear in mind that whatever your answer is, it is not a commitment but only a guess on your part.

Thanking you in anticipation of an early reply,
I am,

Yours truly,

SMC/y

Dec. 1947

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couver on Dec...

confer with Mr. McMaster, Mr. MacLen...

...committee, and also Mr. Gladstone ...

CANADA

DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

506 ROYAL BANK BLDG.
HASTINGS AND GRANVILLE
VANCOUVER, B. C.

PHONE PACIFIC 6131

PLEASE REFER TO
FILE NO. 9782/11927

December 13th, 1947

REGISTERED

Messrs. Cherniack & Cherniack,
Barristers etc.,
31-460 Main Street,
Winnipeg. Manitoba.

Dear Sirs:- Re:- ARAI and TANABE

We are in receipt of your letter of the 1st instant advising that Mrs. TANABE will accept $73.16 in full settlement of her claim against Tokujiro ARAI.

Accordingly we are enclosing herewith our cheque for $73.16 payable to Mrs. TANABE. We shall be obliged if you will obtain a full discharge of the Mortgage and claim from her, prior to delivery of the cheque to her, and forward same to this office.

As this Mortgage does not show as having been renewed in the Registry Office here as required, a simple form of discharge will be sufficient.

The Mortgage is dated February 12, 1932 for $384.80 and interest, and was registered February 13, 1932 in the Registry Office at Vancouver, B.C. and numbered #38908.

Yours truly,

B.R. Dusenbury,
Office of the Custodian.

BRD/DD.
Enc. 1.

make cheque
& mail to Mrs.
134 Spence

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couver on Dec
confer with Mr. McMaster, Mr. MacLe
resenting the Co-operative Committee, and also Mr. Gladstone
representing some 200 claimants in Alberta.

CAMERON, WELDON & BREWIN
BARRISTERS & SOLICITORS

A.J.P. CAMERON ROY WELDON
A.F. BREWIN

CABLE "RUERMAS" TORONTO
TELEPHONE ADEL.4391

STERLING TOWER
TORONTO 1, CANADA

December 16, 1947.

Messrs. Cherniack & Cherniack,
Barristers,
31-460 Main Street,
Winnipeg, Canada.

Re: Japanese Canadian Property Claims

Attention Mr. S. M. Cherniack

Dear Mr. Cherniack:

I was very glad to have the opportunity to meet you and members of the Japanese Canadian community in my brief stay in Winnipeg, and certainly enjoyed the evening very much.

I am enclosing a report which sets out some of the matters which we discussed. As I told you the Commissioner stated definitely that he would sit at Fort William.

We discussed the matter raised in your earlier correspondence of deductions from the sale price, and agreed that the point which you mentioned was worth argument. However, it seemed to us that it would be better not to raise the matter in the opening hearings. However we instructed Mr. McMaster fully in regard to the argument and expect that it will come up quite early in the actual hearings and that we shall have a report from him as to the Commissioner's attitude.

What we felt was that a strong case could be made out that the Custodian was not entitled to deduct from what he paid to the claimants, commissions charged for same inasmuch as the orders expressly state that no commission is to be charged, and we would argue that this meant not only management fee but also commissions for his agents when they sold the property, as the power to sell is expressly included in the power of control and management, and it would appear that the orders-in-council intended that the Government should bear this expense and not the claimants.

Oct - Dec 1947

S. M. Cherniack - corr Oct - Dec 1947

MEMORANDUM FOR MR. TANAKA

The opening hearing of the Commission took place in Vancouver on December 3rd. Before the hearing I had an opportunity to confer with Mr. McMaster, Mr. MacLennan and Mr. George Tamaki, representing the Co-operative Committee, and also Mr. Gladstone Virtue representing some 200 claimants in Alberta.

At the preliminary hearing various relevant Orders-in-

Messrs. Cherniack & Cherniack December 16/47.

We will be glad to keep you informed as to any other developments.

Yours very truly,

CAMERON, WELDON & BREWIN

per: F. A. Brewer
per HC.

FAB:HC
Encl.

Bernacki - Corr Oct - Dec 1947

MEMORANDUM FOR MR. TANAKA

The opening hearing of the Commission took place in Vancouver on December 3rd. Before the hearing I had an opportunity to confer with Mr. McMaster, Mr. MacLennan and Mr. George Tamaki, representing the Co-operative Committee, and also Mr. Gladstone Virtue representing some 200 claimants in Alberta.

At the preliminary hearing various relevant Orders-in-Council were filed. Mr. Hunter for the Commissioner, then raised the point that the terms of reference in regard to personal property lost, destroyed or stolen restricted the Commissioner to cases where such property was lost destroyed or stolen when in the actual or physical possession of the Custodian.

I arguedfor the Committee that this was not necessary, that possession and control over properties vested in the Custodian at the date of the relevant Orders-in-Council. This enabled us not only to deal with this point but to discuss generally the interpretation which we said should be put upon the terms of reference, which we said should be a generious one as the purpose was to do justice and provide fair compensation.

The Commissioner reserved his ruling, but our impression was that we had the best of this argument.

It is probable that the Commissioner will give his ruling shortly and we will hear from Mr. McMaster about this.

We then took up with the Commissioner the question of claims by companies whose shareholders "were of the Japanese race", and were evacuated. Considerable argument developed on this, and the Commissioner ruled that he would accept and investigate such claims, reserving the question till after evidence was given as to whether he had a right under the terms of reference to make findings in regard to them.

We should therefore notify all claimants that such claims should be filed, and we believe that even if the terms of reference are not amended, the Commissioner will make the necessary findings even if he has not strict legal authority to do so, and if it is shown that properties of such corporations were sold at less than a fair market value, the government will pay compensation.

Such claims should be completed and filed in the name of the corporation concerned, and an affidavit should no doubt be com-

1-2

pleted by the President or Secretary of the Corporation. The next point which was taken up was the question of fishing vessels disposed of by the fishing vessels disposal committee, known as the Smith Committee. It was conceded by all concerned that the terms of reference were not broad enough to include all claims in respect to such fishing vessels and the Commissioner so ruled.

I intimated that an application would be made to the government to enlarge the terms of reference to include these fishing vessels. In this connection it is important that we should collect as soon as possible details in respect to prospective claims for the sale or deterioration of fishing vessels sold by the Smith Committee.

We should also get a report on this matter as soon as possible from Mr. K. Kamura, Alpine Inn, British Columbia, as he was a member of the Committee.

Would you write to Mr. Kamura asking him for a report as to what was done and any circumstances within his knowledge which would indicate that sales were perforce at less than fair market value.

The situation in respect to these vessels is complicated by the fact that the property in the vessels was not vested in the committee and the actual sales, although arranged by the committee were carried through by means of documents signed by the owners. Furthermore a fund of $80,000 subsequently increased, was set up to compensate for loss, presumably the loss in respect to the deterioration of the vessels while tied up after evacuation, and before their sale.

We should like to have all possible information in regard to this.

It would be advisable that this information be secured as soon as possible so that application may be made to the government to enlarge the terms of reference before the Commissioner has gone very far in hearing claims.

The other problems which were discussed at the opening hearing were chiefly on matters of procedure. The Commissioner agreed with our contention that he would not be bound by the strict rules of evidence, but would hear evidence wherever he could. It was agreed in a general way that the Commission would hear what the claimants had to say and supporting local evidence in a series of hearings arranged across the country. He proposed to sit for one week at Kamloops, and

Japanese Fishermen's Claims - Corr Oct - Dec 1947

and has as you know been sitting this week. He would then resume hearings in British Columbia in the New Year.

He anticipated that he might be altogether, a further two months in British Columbia and two months in Alberta and Saskatchewan, and suggested that he might come to Toronto for hearing of Ontario claims in May.

After all the claimants evidence has been heard, the Commissioner will hear evidence of valuations in British Columbia.

The question of production of the Custodian's files was discussed, and we were informed that in respect to the valuation made by the Soldier Settlement Board in respect to properties sold to the D.V.A., photostatic copies of the appraisals would be made and were being sent out to the claimants or their solicitors. Claimants for whom the Co-operative Committee is acting should therefore be asked to send these photostatic copies of appraisals in to be put on the files of the various lawyers acting, as soon as possible after received.

It was also understood that the Custodians files should be open for inspection by the solicitors for the claimants, but as an inspection of these bulky files would involve too big a job for our legal representatives in Vancouver, it was agreed that the Custodian would send relevent material in the files including all documents to which he proposed to refer on the hearings, to the solicitors involved, at least one week before the claimants were heard, so as to give an opportunity for study of these files by the solicitors.

It was also agreed that one copy of the evidence should be supplied free of charge to the solicitor for the claimants. There was also some discussion in regard to interpreters, and we offered to assist the Commissioner if necessary in finding interpreters. However, we will hear from him if anything has to be done in this regard.

In general it may be said that the opening hearing was valuable.

Subsequently to the hearing the Commissioner together with the Custodian's represontative Col. Hunter, Mr. Tanaki and myself visited a number of the properties in question in the Fraser Valley.

This was, not, of course, done for the purpose of any

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actual evidence or valuations, but so that we might have some idea of the type of property which was being discussed. Mr. Tanaki is to furnish a memorandum of his impressions as to changes in the properties and other points of interest arising out of this trip.

The presence of the various lawyers in Vancouver enabled a discussion to be had about other matters of importance, and in particular in respect to the valuations that would be necessary. Mr. McMaster and Mr. MacLennan undertook to take the following steps.

1. To interview Prof. Farr in regard to statistical material to be prepared for the claimants.

2. Mr. Norris and Mr. MacLennan or Mr. McMaster undertook to interview Mr. Monsell of Pembertons who was suggested as one who may be employed as an expert valuator, and who might make suggestions as to others.

3. It was decided to ask the National J. C. C. A. to get in touch with Mr. Yamada at present at Hope, B. C. and to secure his services if possible. Arrangements as to payment for his services to be discussed between the Co-operative Committee and the N. J. C. C. A. Mr. Yamada was on the original Whiteside Committee and was secretary of the Co-operative and has a wide knowledge of the properties in the Fraser Valley, and subsequently resigned from the Committee when the sales to the D. V. A. were proposed. We believe every effort should be made to secure Mr. Yamada's expert services.

4. Finally Mr. McMaster was to discuss the whole question of valuations, etc. with Prof. Angus. It was agreed that a job much required to be done before the valuators were actually put on the job was the organization of the claims by municipalities and with respect to different types of property, e.g. fishing vessels, cars, etc.

Each claim would be separately numbered. For this purpose it was proposed that Mr. Tanaka and his staff should be asked to do this as soon as the claims had been filed. For this it would be necessary that copies of the claims be made and sent in to the office of the National J.C.C.A. 64 Gerrard Street East, Toronto.

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Later, copies of evidence relating to each case and the relevant Custodian's productions would be added to the files and made available to our valuators and experts.

We also discussed the sort of questions that would be asked all claimants and it was pointed out that the following points should be established.

1. Date of sale.
2. Assessed values.
3. Income from property or rentals.
4. Offers if any for the property in question or adjoining properties.
5. Corroborated materials such as insurance accounts, bills for material put into the improvements or for property purchased.
6. The claimants should be asked what other witnesses are abailable to give evidence on the hearings.
7. Expenditures on the property by way of improvements and otherwise.
8. Condition of the property at the date of evacuation.
9. Arrangements made when leaving.
10. Whether any of the personal property has been received from the Custodian.

It was decided that after the first few hearings had taken place and experience had been gained as a result of them, Mr. McMaster would report to the Committee and a letter be prepared to claimants to be sent to them before they gave evidence, outlining the sort of evidence that would be required.

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HONOURABLE MR. JUSTICE H. I. BIRD
COMMISSIONER

A. WATSON
SECRETARY

JAPANESE PROPERTY CLAIMS COMMISSION

COURT HOUSE
VANCOUVER, B.C.

December 17th 1947.

Messrs. Cherniack & Cherniack,
Barristers and Solicitors,
31-460 Main St.,
Winnipeg, Can.

Dear Sirs,

Referring to your letter of the 13th inst.- It will be quite in order for you to proceed with any plans you propose for the next few months, as it does not appear possible for the Commission to conduct hearings in Winnipeg or in Fort William until later on in the year.

We shall of course advise you when the hearings will take place in your city and in Fort William.

Yours truly,

A. Watson

SECRETARY TO THE COMMISSION.

AW/W.

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December 18th, 1947.

Mr. F.A. Brewin,
c/o Cameron, Weldon & Brewin,
Sterling Tower,
TORONTO 1, Ont.

Dear Mr. Brewin:

Thank you for your letter and enclosure of the 16th instant.

I have read it with interest and am awaiting the report from Mr. McMaster.

The immediate problem is whether or not you have definitely decided that you wish to have made copies of the claim forms. This will be quite a job and it might be necessary to pay the girls of the J.C.C.A. Committee who will be called upon to do it. It may be that the best time for them would be the coming Christmas holidays and generally, if the job is to be done, it should be done quickly.

Please, therefore, have Mr. Tanaka advise me or the local J.C.C.A. when the decision has been made, at the same time advising us if you want to have only the first side of the claim form relating to real property, or the full claim form. In the latter event, I would like to point out that anumber of the claims have attached to them lists of chattels, and it may not be necessary to make copies of these lists.

Yours very truly,

SMC/P

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December 22nd, 1947.

Mrs. Nobu Tanabe,
134 Spence Street,
WINNIPEG.

Dear Madam:

re: Tokujiro Arai

We have now obtained from the Custodian a cheque for $73.16 in full payment of your claim against Arai. It is necessary for us to obtain from you a Discharge of the Mortgage before we hand you the cheque and we will, therefore, ask you to call at our office personally.

Yours truly,

CHERNIACK & CHERNIACK

per.

SMC/y

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