S. M. Cherniack - Corr apr 1948

April 1st, 1948.

Mr. A. Watson,
Secretary,
Japanese Property Claims Commission,
c/o Marquis Hotel,
LETHBRIDGE, Alta.

Dear Sir:

We acknowledge with thanks receipt of your letter of the 27th ultimo enclosing list of Fort William claims and inquiring as to whether or not we are acting for all claimants.

On the 23rd ultimo we wrote you care of Mr. L.S. Turcotte as well as to Vancouver to the effect that we are acting for all except the nine claims listed therein, being numbers 3, 9, 19, 22, 40, 42, 43, 44 and 45. We pointed out then that there was a possibility that when the writer arrives in Fort William, he will be asked to act for some or all of those.

We also acknowledge receipt of your letter of the 29th ultimo pointing out the difficulties of Government Counsel in preparing the Fort William claims without sufficient time to do so properly.

The problem is even more serious for the writer as he will not be able to be in Fort William until after the end of the Winnipeg Hearings and for that reason, he will make every attempt to proceed speedily as possible. Frankly, however, we are hopeful that the alternative suggested in the third paragraph of your letter to the effect that there may be a delay in proceeding with the opening claims at Fort William, would be made to apply, even though the Winnipeg hearings would end sooner.

Although we realize that the Commissioner would not welcome a few days in Winnipeg with nothing to do, yet these few days would prove invaluable in Fort William to the writer.

As requested in your final paragraph, we have warned Messrs. Swift, Macleod & Co. to be prepared to proceed at an earlier date than the 20th instant.

Yours truly,
CHERNIACK & CHERNIACK

per.

SMC/y

April 1st, 1948.

Mr. F.A. Brewin,
Barrister, etc.,
Sterling Tower,
TORONTO, Ontario.

Dear Sir:

You will recall that we had arranged with Mr. MacMaster to have Mr. Leckie come here during the Winnipeg and Fort William sessions, namely from the 1st week in April to the end of the month. He subsequently advised us, however, that Mr. Leckie could only come for the period from April 5th to the 15th.

It is our plan to work with Mr. Leckie in Winnipeg from about the 5th of April to the 8th and have Mr. Leckie proceed to Fort William to work alone from April 9th to April 15th.

We are hopeful that in this way, all claims will be fully prepared before the Hearings commence and it would, therefore, be unnecessary for the writer to employ any other legal assistance for the preparation of claims. On the other hand, we may not be able to complete as much as we are hoping to do and it may yet be necessary to pay some lawyer for his help.

We are, however, arranging for an interpreter to help both in Winnipeg and in Fort William and it will be necessary to pay him for loss of earnings.

These expenses were not contemplated during our Conference in Regina and we are, therefore, pointing same out to you. In this connection, we have not received a cheque for the disbursements of $140.87 nor the advance of $1000.00. As it will be necessary to pay out additional disbursements, we would appreciate anything you can do to facilitate the remittance.

Yours truly,

CHERNIACK & CHERNIACK

per.

SMC/y

or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

April 1st, 1948.

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

Dear Fred:

Further to my letter to you of the 29th ultimo, I have now received and enclose herewith a list of the Fort William cases and the dates on which they will be heard.

I also enclose a list of the cases of which I have a record showing the addresses of the claimants. You will note that 9 names listed in my letter to you of the 29th ultimo are not on my list and it is important to know whether or not I will be asked to appear for them. These cases are numbers 3, 9, 19, 22, 40, 42, 43, 44 and 45 on the Commissioner's list.

Mr. Leckie will arrive in Fort William not later than the morning of the 10th instant, and will leave not later than the evening of the 15th instant. During that time, I would like him to interview as many claimants as possible and certainly the first 20 on the list. The other 25 will be heard after Saturday the 24th and Sunday the 25th instant and I will be able to finish off the balance at that time.

There is a good possibility of Mr. Leckie being able to arrive on the 8th or the 9th instant, but I will not be able to confirm this until about the 6th instant.

Mr. Leckie will be able to handle about 6 or 7 a day and I would suggest that you arrange to have 3 people in the mornings, 2 in the afternoons and 2 in the evenings. Since it is possible that he will be able to handle more, you should keep in reserve, a few people who can be called on very short notice. Warn them all to bring all documents in their possession and to prepare a list of all items, showing date of purchase and price paid.

I would suggest that you call the out of town peoplefor the 10th and 11th instant, so that it should not interfere with their work.

- over -

would find that they were sold at their full market value.

he is prepared now to recommend are therefore in his view, outside the terms of reference.

4. If we refuse the settlement proposed, there will be no alternative but to proceed with hearings before the judge, which are likely to take at least one or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

It is obvious that most of the people will have to stay away from work but this cannot be helped.

You will have to arrange for an interpreter to work with Mr. Leckie at all times. In all probability, he will be able to work with them in his hotel room, but since we do not know this until later, you could possibly arrange tentatively for a room in the house of one of your members.

If there is anything not clear to you, let me know immediately.

Yours truly,

SMC/y

S. M. Clemiack - Corr Apr 1948

Campbell, Brazier, Fisher & McMaster
Barristers and Solicitors

A. T. R. CAMPBELL
C. W. BRAZIER
A. W. FISHER
R. J. McMASTER
A. J. F. JOHNSON

TELEPHONE PACIFIC 9164

ROYAL BANK BUILDING
675 WEST HASTINGS STREET
VANCOUVER, B.C.

OUR FILE NO.
1742

April 2nd, 1948.

S. M. Cherniack, Esq.,
Barrister, etc.,
31 - 460 Main St.,
Winnipeg, Manitoba.

Dear Saul:

I have for acknowledgment receipt of your letter of March 29th and have noted the contents.

I agree with you that as the Custodian is getting into mass production with these files, they are considerably stripped. If any of the documents which are produced in the files refer to correspondence or documents which are not produced, I would suggest that you write a letter to Hunter in each such case demanding production of the documents and send a copy to Mr. Shears who is travelling with the Commission. The Commission will be in Lethbridge until about April 6th and then in Moose Jaw for three days before proceeding to Winnipeg. At Lethbridge, they followed the new practice of the Custodian having with him complete files in case reference is required to be made thereto. I am hopeful that he will follow this practice across the country so that when he arrives if there is further information that you feel you need in any case you should see him the first day he is there and advise him that you wish him to produce further information from his complete file. I do not think that it is a deliberate attempt on the part of either Hunter or the Custodian to deprive us of information because they will be in the situation that if they have not produced the material to us, they will have considerable difficulty producing it themselves at a later date. I think the whole trouble is that the Custodian's office is being pressed to produce these files far too fast. They are not only producing the files for the main Commission but for the Sub-Commissions in British Columbia. If you do not find them satisfactory,

would find that they were bound to short [illegible]

he is prepared now to recommend are therefore in his view, outside the terms of reference.

4. If we refuse the settlement proposed, there will be no alternative but to proceed with hearings before the judge, which are likely to take at least one or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

S. M. Cherniack
Apr 1948

however, we would suggest that you complain to the Custodian about them and although it won't help your particular picture at the moment, it may have some effect on the production of future documents. If you cannot see any signs of assistance from that source, then the matter might be taken up in an informal way with the Commissioner.

We have taken the view that we are entitled to a copy of the Claims Analysis and if there is more than one in the file, we proceed to help ourselves.

Concerning the Municipal Assessment system, the assessment notice states the assessed value of the land and all improvements in most cases. Under our municipal tax system, the land is taxed on the full assessment value and the improvements are taxed on 50% of the value.

With regard to Kinya Hinatsu whom you state owned property jointly with Senjuro Saito in trust for Pitt Meadows Japanese Farmers' Association, we have a communication from Senjuro Saito, dated February 12th, 1948 asking to have this claim heard in Winnipeg and agreeing that the evidence be given by Hinatsu. We enclose the original letter in case you need it upon the hearing, a copy of the claim form filed by Saito and the two appraisals which were made.

With respect to Hideo Onotera, you will already have received the file in this respect, it being one of the six files that we forwarded to you.

Yours truly,
CAMPBELL BRAZIER FISHER & McMASTER,

Per:

McM:MM
encls.

he is prepared now to recommend are therefore in his view, outside the terms of reference.

4. If we refuse the settlement proposed, there will be no alternative but to proceed with hearings before the judge, which are likely to take at least one or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

S. M. Cherniack
Apr 1948
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S. M. Cherniack

Apr 1948

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CANADIAN PACIFIC
TELEGRAPHS
World Wide Communications
W.D.NEIL, GENERAL MANAGER, MONTREAL

STANDARD TIME

1948 APR 3 PM 5 25

AD93 15

BRANDON MAN 3 520P

557

S M CHERNIAK

PHONED To SMC By Time 5.34 p.m.

31- 460 MAIN ST WINNIPEG MAN

ARRIVING CANADIAN PACIFIC ABOUT SEVEN THIRTY TONIGHT. WOULD YOU

GET ME BOTTLE SCOTCH OR RYE

LECKIE

he is prepared now to recommend are therefore in his view, outside the terms of reference.

4. If we refuse the settlement proposed, there will be no alternative but to proceed with hearings before the judge, which are likely to take at least one or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

April 10th, 1948.

Mr. J. Lockie,
c/o Royal Edward Hotel,
FORT WILLIAM, Ontario.

Dear Jack:

Your telegram convinces me that you are really busy. Would it not be possible for Shaffer to sit in while you do a few of the claims and he might then learn enough to be of an assistance? Of course, I am leaving it to your discretion.

The quickest way of getting the forms to you is by Express, so that they should be at the Express office to-morrow morning and if you need them badly you can send for them. Unfortunately I am running short of forms, but hope these will suffice.

Happy & I are still working our heads off.

Sincerely,

SMC/y
AIRMAIL SPECIAL DELIVERY

he is prepared now to recommend are therefore in his view, outside the terms of reference.

4. If we refuse the settlement proposed, there will be no alternative but to proceed with hearings before the judge, which are likely to take at least one or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

S. M. Chemiack
Apr 1948

CAMERON, WELDON & BREWIN,
Sterling Tower,
Toronto 1, Ontario,
April 13, 1949.

Co-operative Committee on Japanese Canadians,
67 Riverdale Avenue,
Toronto 6, Ontario.

Dear Sirs:

I thought it might be advisable that as general counsel to the Co-operative Committee, I should put in writing, as a matter of record, my advice in respect to the proposals for an overall settlement of the claims as set out in a letter from Mr. McMaster of the 6th of April 1949 and the attached memorandum of the proposed recommendations to be made by Mr. Justice Bird, dated April 6th, 1949.

It is my recommendation that subject to what is said later, the proposed basis of settlement be accepted. I will endeavour to set out briefly my reasons for recommending this.

1. The narrow terms of reference should be always borne in mind. The Commissioner is only authorized to grant the difference between the actual selling value of the various properties and the fair market value at the date of sale. The Commissioner has held, and there is no appeal from his ruling, that this means the actual value of the property in the condition which it in fact was at the date of sale.

2. A very great deal of work has been done by Mr. McMaster and the staff which he has employed in the collection of evidence as to valuations.

This has included careful statistical analysis, valuations, surveys based on relationship between assessments and sale prices, surveys based upon the value of properties as shown by the annual value of the crops, and other available evidence. Experts have been employed in regard to nets and fishing gear, boats and motor vehicles, auctioneers and others in respect to auctions. A very great deal of other evidence has been collected, and Mr. McMaster has cross examined individual witnesses extensively. As a result of all this Mr. McMaster is satisfied that our own evidence will not, bearing in mind always the narrow terms of reference, establish on an overall basis, higher valuations than those contained in the settlement, with the exception of the Vancouver city properties. Mr. McMaster is somewhat reluctantly recommending the settlement and there is no one with a more detailed knowledge of the evidence upon which we could base our submissions. In respect to automobiles, V.L.A. property, boats and fishing gear, the amounts proposed in the settlement are the full amounts that our own evidence is able to establish. The weaknesses of the proposed settlement from our point of view are obviously;

(a). Vancouver properties.

(b) Properties outside Vancouver.

(c) Chattels.

The formula in respect to lost chattels is the fairest that we think could be contended for.

In the ultimate analysis we can never hope to recover more than Mr. Justice Bird is prepared to allow. In fairness it should be pointed out that Mr. Justice Bird has accepted our contention rather than the Government contention in respect to several of the categories of property above mentioned. However, in respect to city properties, boats and chattels (excluding motors and nets) Mr. Justice Bird has intimated on the evidence presented at the present time, he would find that they were sold at their fair market value. The allowances which he is prepared now to recommend are therefore in his view, outside the terms of reference.

4. If we refuse the settlement proposed, there will be no alternative but to proceed with hearings before the judge, which are likely to take at least one or two years. The judge is unlikely, except perhaps in a few individual cases, to make allowances higher than those he is now prepared to recommend. In a very

great many cases it is obvious that he will recommend less, Taking all these factors into account, there can therefore be little doubt that more will be obtained for the claimants by accepting the settlement than by refusing to do so.

The one glaring feature which is bound to provide serious disappointment is the allowance of only 5% on Vancouver properties. I have written a strong letter to the Minister of Justice in confidence urging that the Government increase their offer on this at least to 10%. However, the information supplied by Mr. McMaster is that in respect to this part of the claim, our own evidence will establish at the best, an overall increase of little more than 10%. We are faced with the difficulty that sales were made with the approval of the advisory committee of which Mr. Justice Sidney Smith was the chairman, after receiving values from competent and respected valuators. In these circumstances, I think I am bound to recommend to the Co-operative Committee and through them to the claimants that the proposals be accepted, subject to:

(a) A further reiteration of our claim that the terms of reference were too narrow.

(b) A strong insistence that on the Vancouver properties a minimum of 10% be allowed.

Notwithstanding the natural disappointment which some claimants will feel, it may be considered that the overall allowance which with corporation claims will exceed $800,000 constitute a fairly satisfactory recognition of the justice of the claimant's demands.

There can be no doubt that if it had not been for:

(a) The efforts of the Co-operative Committee to have the original terms of reference revised.

(b) The tremendous amount of work done by those who represent the Committee, and the co-operation of the National Japanese Canadian Association, and above all the careful and conscientious work done by Mr. McMaster and those whom he employed, that no comparable offer from the Government would have been forthcoming.

My recommendations as set out above, are also partly based upon the fact that the tremendous volume of work required to complete the hearings make it virtually impractical that individual cases be fully heard without a great burden of additional expense and lengthy delay before any recovery is made at all.

Yours very truly,

F. A. BREWIN.

FAB:HC/nf

Reasons for accepting
1. Narrow terms of reference
2. Our own evidence
3. postponement of payment 2 yrs.
4. tremendous expense re individual cases.
5. Commissioners reluctant to vary
6. payment of 100 000 out of terms of reference.

MEMORANDUM TO CLAIMANTS:

April 13th, 1948.

Mr. F.A. Brewin,
Barrister, etc.,
Sterling Tower,
TORONTO, Ontario.

Dear Andy:

Today is my second day before the Commissioner and I am rather pleased with the hearing I am getting. I could tell you though that McMaster did not exaggerate the terrific amount of work necessary in preparation.

Mr. Lockie arrived here 3 days ago and left for Fort William on Thursday evening. Since the minute of his arrival, we have been working day and night, but we are now beginning to see light.

I wrote you at the beginning of the month asking that you make an attempt to facilitate remittance of the disbursements and retainer. I received a cheque for the disbursements but have heard nothing about the retainer.

As I have yet to pay my interpreter both in Winnipeg and Fort William together with my expenses in Fort William, I would very much like to receive the retainer proposed. If there is any difficulty in connection with same, I would appreciate your advising me.

With best regards, I am,

Yours sincerely,

MC/y

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

MEMORANDUM TO CLAIMANTS:

Re: Offer of Settlement, Japanese
Claims Commission

April 13th, 1948.

Mr. R.J. McMaster,
Barrister, etc.,
675 Hastings Street West,
VANCOUVER, B.C.

Dear Bob:

I am completely tied up with the Commission. I find everybody concerned to be quite nice and feel that we are getting a very good hearing. I do, however, want to tell you that Mr. Leckie proved invaluable to me. He worked very hard for the 4 days that he was here and if he worked equally hard in Fort William for the 3 days he was there, I should be able to manage fairly nicely. Without his help I would have been in an awful mess and I am very appreciative.

Yours sincerely,

SMC/J

we engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

S. M. Chemiack ... Corr ... Apr 1948

MEMORANDUM TO CLAIMANTS:

Re: Offer of Settlement, Japanese
Claims Commission



THE FORT GARRY
WINNIPEG, MANITOBA

Dear Mr Cherniack

Please forward the enclosed to the correct address of Ohori if you think he still requires it.

May I say again that I appreciated your co-operative attitude and the excellent and fair presentation of your side of the case. Sub-rosa I must admit that I could not disagree with you at all times!!!

Yours truly,

G. Shears

CANADA'S HOTELS OF DISTINCTION — OWNED AND OPERATED BY CANADIAN NATIONAL RAILWAYS
THE CHARLOTTETOWN, CHARLOTTETOWN - THE NOVA SCOTIAN, HALIFAX - CHATEAU LAURIER, OTTAWA - PRINCE ARTHUR HOTEL, PORT ARTHUR
THE FORT GARRY, WINNIPEG - PRINCE EDWARD HOTEL, BRANDON - THE BESSBOROUGH, SASKATOON - THE MACDONALD, EDMONTON
OPEN SUMMER SEASON ONLY: JASPER PARK LODGE, JASPER, ALTA. - MINAKI LODGE, MINAKI, ONT. - PICTOU LODGE, PICTOU, N.S.
HOTEL VANCOUVER, VANCOUVER, B.C. (OPERATED UNDER THE JOINT MANAGEMENT OF THE CANADIAN NATIONAL AND CANADIAN PACIFIC RAILWAY COMPANIES)

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

MEMORANDUM TO CLAIMANTS:

Re: Offer of Settlement, Japanese
Claims Commission

TELEPHONE PACIFIC 9164

Campbell, Brazier, Fisher & McMaster

Barristers and Solicitors

A. T. R. CAMPBELL
C. W. BRAZIER

A. W. FISHER
R. J. McMASTER

A. J. F. JOHNSON

ROYAL BANK BUILDING
675 WEST HASTINGS STREET
VANCOUVER, B.C.

OUR FILE No.
1742

April 14th, 1948.

S. M. Cherniack, Esq.,
Barrister, etc.,
460 Main Street,
Winnipeg, Manitoba.

Dear Saul:

Re: Japanese Property Claims Commission.

As you appreciate, we are confronted in British Columbia with the preparation of material for the hearings of all claims across Canada at Vancouver on evidence other than the evidence from the claimants themselves. One of our problems is to have appraisals made of the real property involved and to assist our appraiser we need to have copies of the appraisals which have been furnished by the Custodian to the claimants or their counsel and also copies of the transcripts of evidence of the claimants and copies of exhibits filed by counsel at an early date after cases have been heard.

Accordingly, it would be very much appreciated if when you receive your transcripts of evidence on claims heard which you represented, if you would be good enough to read through the transcripts and make a memorandum of any matters of importance which you consider should be followed up either by investigation or at the hearings in Vancouver and also a memorandum of any other points of investigation or evidence which does not appear in the transcript. Would you then at an early date kindly send us your memorandum plus one copy of the transcript and copies of the forms filed as evidence and any other documents or material which may be of assistance, as well as your copy of the appraisal.

Yours truly,
CAMPBELL BRAZIER FISHER & McMASTER,

Per:

McM:MM

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

S. M. Cherniack ... 1948

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MEMORANDUM TO CLAIMANTS:

Re: Offer of Settlement, Japanese Claims Commission

CAMERON, WELDON & BREWIN
BARRISTERS & SOLICITORS

A. J. P. CAMERON, K.C. ROY WELDON
F. A. BREWIN

CABLE "RUERMAS" TORONTO
TELEPHONE ADEL. 4391

STERLING TOWER
TORONTO 1, CANADA
April 1[illegible], 1948.

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

Attention Mr. S. M. Cherniack

Dear Sirs:

Thank you for your letters of April 1st and 13th.

I have been out of town a good deal and very busy, and therefore have not answered your letters sooner.

I have taken up with the Committee the question of sending out the retainer cheques, and I hope that they will be sent out next week.

It looks as if it will soon be our turn to worry about the tremendous amount of work necessary for the hearings. I am glad to hear that you are pleased with the hearing you are getting.

With best regards, I am,

Yours sincerely,

FABrewin

FAB:HC.

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

MEMORANDUM TO CLA...

Re: Offer of Settlement, Japanese
Claims Commission

MEMORANDUM FOR FILE

Campbell, Brazier, Fisher & McMaster

Barristers and Solicitors

A. T. R. CAMPBELL
C. W. BRAZIER
A. W. FISHER
R. J. McMASTER
A. J. F. JOHNSON

ROYAL BANK BUILDING
675 WEST HASTINGS STREET
VANCOUVER, B.C.

April 20th, 1948.

OUR FILE NO.
1742

S. M. Cherniack, Esq.,
Barrister, etc.,
460 Main Street,
Winnipeg, Manitoba.

Dear Sir:

Re: Japanese Property Claims Commission.
Appraisals.

We have now made arrangements with our appraisers to commence work and after doing a number of sample investigations, we find that it is going to be necessary for them to have copies of the appraisals made by the Custodian. We are advised by the Custodian's office that all appraisals have been sent out either to the claimants or to counsel.

We have endeavoured to make arrangements to obtain copies of these appraisals in some other way but so far have not been successful. It would therefore be greatly appreciated if you would endeavour to gather together all appraisals for your clients' properties, both Soldier Settlement appraisals and otherwise and forward them to the writer at the earliest possible date. If you will require these appraisals for Sub-Commission Hearings in the Fall, kindly so notify us and we will arrange to return the same.

In those cases where the chief commission has not yet completed its sitting, we realize that you won't be able to send the appraisals for the cases coming on before the Chief Commission. However, we trust that you will send them for all others.

We think you will appreciate that we get these at the earliest possible date so that we will not waste the time of our appraisers and trust that we will receive your coperation.

Yours truly,
CAMPBELL BRAZIER FISHER & McMASTER,

Per: R. J. McMaster
M.

McM:MM

AIRMAIL

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

S. M. Cherniack ... Corr ... 1948

MEMORANDUM TO CLAIMANTS:

Re: Offer of Settlement, Japanese Claims Commission

MEMORAND UM FOR FILE

MEMORAND UM FOR FILE

George Tanaka called me last night and stated that he was sending me copies of various memorandums and letters relating to the Commissioner's proposal for over-all settlement.

The following is what he told me over the 'phone:

V.L.A. Sales of Mission properties - 125% of sale price, all other V.L.A. Sales - 80%

Fishing Vessels - those sold to Nelson Fisheries 23.5%, all others 28.5%

All cars - 25%

Urban properties outside of Vancouver 12½%

Vancouver properties 5% (these figures for urban properties include rebate for commission)

Fishing nets - 25% of sale price

Lost nets - 65% of claim

Chattels sold by Auction - 22% which represents commission fees

Chattels sold by tender - 10%

Chattels lost, destroyed or stolen - 35% of claim plus 15% of the 35%

These include Chattels sold with realty.

In addition to all the above 5% of all payments for costs.

It is estimated that the total payment will be in the neighbourhood of $800,000.00.

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

S. M. Chemiack - Corr. Apr 1948

MEMORANDUM TO CLAIMANTS:

Re: Offer of Settlement, Japanese Claims Commission.

You will have received from the Toronto Co-operative Committee a memorandum of the proposed settlement in this matter. After careful consideration and in consultation with Counsel, the Committee are recommending acceptance of the settlement upon the basis outlined in the Co-operative Committee letter. It is the understanding that Counsel and the Committee will do their utmost to have the offer improved insofar as it relates to property in the City of Vancouver.

Before dealing with the individual items of the proposed settlement and to understand the willingness of the Committee to consider the same and to recommend it at this stage, it is wise to consider the present status of the proceedings. The Commissioner has heard the evidence of practically all of the claimants. This evidence while necessary to outline the limits of the claims and to identify the property in respect of which claims are made is at law of very little weight and value in determining the fair market value of the property claimed. It would require, from a legal point of view, to establish the fair market value of the claims the necessity of calling experts who from their experience and knowledge could express an opinion as to the value of each item of property. If this were a proceeding relating to the property of one individual such a task while difficult, having regard to the lapse of six or seven years since evacuation, would be reasonably possible. Where, however, there are some 1400 claimants with a large variety of property, some of it widely scattered along the Coast, the task is an extremely difficult one, if not impossible. We have endeavoured with the resources and personnel available to obtain the maximum amount of expert evidence on this question of fair market value. Due to the immensity of the task and the limitations referred to, it has been necessary in the main to approach the obtaining of such evidence from a broad point of view which would be helpful to all claimants and we have only been able to a very limited extent to approach it from an individual claimant's point of view except with respect to real property situated on the lower main land most of which we have had appraised.

In addition to the evidence of the claimants already referred to, we have placed before the Commissioner to date the evidence of certain experts dealing with the problem of fair market value in general terms. With respect to property sold to the DVLA which was the area in which we could hope to make the largest recovery and with respect to which the greatest injustice occurred, we have presented to the Commissioner quite strong evidence dealing with the general problem and it is our belief that had it not been for that evidence, the proposed settlement of DVLA on the basis outlined in the memorandum forwarded by the Committee would have been considerably less, if not half as much. In this connection, we conducted studies in five of the major municipalities in the Fraser Valley as to the relationship between prices obtained by Occidentals who sold their property in 1943 and the prices paid to the Japanese by the Veterans Land Act in that year using as the common factor the assessment with respect to both groups of property. We employed the services of Dr. Drumond of the University, a very capable statistician, to analyze this material and had him present evidence with respect to it. In addition, we carried out a study of the 1941 Argricultural Census which shows the value of farm land in the various municipalities of the Fraser Valley in 1941 and related these to prices paid by the VLA. We also engaged the services of Clement Consulting Service with which the Dean of Argriculture of the Universi is closely associated to make a study from a purely agricultural point of view and Dean Clement presented evidence showing the great discrepancy between the agricultural value of the lands sold to DVLA and the prices paid therefore by DVLA. In this connection, we were also able to use evidence presented by the Crown which showed that when property was withdrawn for one reason or another from the DVLA transaction and sold by the Custodian by public offer, the prices obtained by him substantially exceeded the prices offered by DVLA with respect to these lands.

We engaged the services of two farm appraisers in connection with DVLA lands. While it was difficult for them by reason of the fact that in a number of instances VLA has re-subdivided parcels of lands formerly owned by Japanese and in some instances torn down or renovated

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buildings situated on the lands, their appraisals indicate that if we make the recovery indicated in the proposed settlement that a substantial measure of justice will be done. If the proposed settlement is agreed upon it will be necessary to use the information which they have collected as a bases of distribution.

In the case of boats, aside from general information as to the increased cost of construction, it was very difficult to obtain expert information. Very few fishing craft of the type owned by the Japanese were prior to evacuation sold through boat brokers. That source of expert opinion, therefore, was not available to us. The boats which came into the Custodian's hands and were sold by him included many of the older boats. It was difficult to obtain evidence as to the extent of abuse and depreciation suffered by the boats in the hands of the Navy before the Custodian received them. Furthermore, a fairly large number of the types of persons who might have been able to give evidence from personal knowledge, e.g., fishermen and fishing companies, were involved directly or indirectly in the transactions with the Japanese Fishing Vessel Disposal Committee and the Custodian and were reluctant or unwilling to give evidence which would be helpful to the claimants. Again, we were successful in cross-examination of Crown witnesses in obtaining certain information with respect to the treatment of the boats and their sale which was useful. Were the proceedings to be carried on to their ultimate conclusion, however, it appears unlikely that we would be able to obtain any further specific expert evidence that would be of use. We were able to pursuade the Commissioner to make his recommendation at the proposed figure although the Crown originally offered only a 15% increase.

Concerning nets, the Custodian employed an appraiser who worked out a formula based on the type of net, cost price, age and depreciation. We engaged the services of both an Occidental fisherman who is friendly to the Japanese and of a Japanese fisherman to examine this formula and it was their opinion that the formula was reasonably fair. We also applied the formula to a reasonable sample of cases and found that it worked out reasonable fairly in the opinion of our experts. We also sought the opinion of some of the other Japanese fishermen concerning its use and had the opinion of our experts confirmed. One major difficulty with regard to nets, however, was the fact that while a large number of them were appraised by the Custodian's appraiser using the aforesaid formula before the sale of the nets so appraised the identification tags attached to the nets had either been torn off or switched so that it is almost impossible to say in many instances whether the net sold by the Custodian was the property of the person whose name appeared on the tag at the date of sale or of some other person. In these circumstances you will appreciate that it is impossible, aside from the difficulty that an appraiser at this time would not have an opportunity to examine the net, to deal with nets on an individual basis except in very rare cases. The recommendation of the Commissioner is to large measure based upon a study which we did of a fairly large sample of claims on nets applying the formula referred to above.

With respect to the subject matter of cars and trucks, we persuaded the Crown to undertake jointly with us a study of actual sales of automobiles which were made by reputable automobile sales firms in Vancouver in the summer of 1942, at which date most of the automobiles owned by the Japanese were sold by the Custodian. The study so made indicated that the prices obtained on sales through these Companies were some 40% above the prices obtained by the Custodian. However, evidence was introduced by the Crown and we were unable to refute it that when the automobiles sold privately through these Companies they carried with them a guarantee as to the state of repair varing from 90 days to one year. The evidence was that this guarantee materially affected the sale price. In the large majority of cases of automobiles owned by the claimants, some repairs would have required to have been done before the automobiles could have been sold with a mechanical guarantee such as applied to the private sales. Furthermore, when it came to the matter of trucks, we found that it was practically impossible to obtain the same type of information concerning private sale of trucks as we were able to with regard to automobiles and there was some indication that the Custodian received better prices on the sale of the trucks then he did on the sale of the cars. Taking these factors into consideration on the evidence available at this stage (and we do not foresee that we would be able to obtain much stronger evidence if the proceedings are continued) a 25% increase over the sale price of the Custocian would appear to give a reasonable measure of justice. The

market for used motor vehicles in the summer and fall of 1942 due to gas and tire rationing was very poor, this situation changed within one year thereafter, but by the terms of reference we are limited to fair market value at the date of sale.

With respect to personal property other than that mentioned above, we think that it was recognized at the outset that we were up against a most difficult problem. To obtain expert opinion as to the value of an article which was sold in 1942 and which it is impossible for the expert to examine is difficult. The only thing that he has to go on is the description given by the claimant and other information as to age and original cost given by the claimant. It will be readily appreciated that when there is a choice between this kind of evidence and the evidence of a person who actually saw the goods at the time of sale, and having regard to the fact that the goods sold for a certain price at the time of sale, a judge is more likely to accept the latter. We had hoped that we would be able to obtain expert opinion that when goods are sold by auction, they bring a lower price than when sold by other means. However, we have not been able to find anyone qualified as an expert who will substantiate that view. The two auctioneers whose services we used and who were the best we were able to obtain did not consider this to be the case. We did engage the services of one of the oldest auctioneers in Vancouver to give evidence. It was his opinion that the manner of sale and the places at which the sales were conducted were open to criticism and might have resulted in less than the fair market value being obtained. However, without an examination of all of the chattels this evidence was not very strong. We did have him examine a fairly large number of chattel claims where persons had owned household goods and chattels and other specialized chattels and provided him with the information given by the claimant in his evidence concerning the description, age and original cost price. Even using our best chattel claims we do not feel that the opinions which he expresses with respect to those would be too helpful if the proceedings are continued, although his valuations are somewhat higher than the sale prices, by reason of the difficulties described above. If each personal chattel claim were gone into in the manner in which it ought to be to try to determine the fair market value as at the date of sale, a great deal of expense would be involved and furthermore, the the Commission would require to sit for at least a further year to hear the evidence. We are satisfied that the proposed settlement with regard to chattels will not be just and equitable in a great many individual cases but even in those individual cases and certainly generally we are not optimistic that it is possible to prove the fair market value of the chattels should the proceedings continue.

With respect to property outside of Greater Vancouver and not included in the sales to the DVLA it has in most instances been impossible to date, without considerable expense, to obtain expert advise. Many of the properties are in islolated areas and it would be extremely expensive to have appraisals made. In some of the areas which are not so isolated we have approached the problem from two points of view. One, by having our appraiser examine a large number of the properties and the other by comparing the prices obtained by the Custodian on sales of those properties with prices obtained by him where like properties were sold to DVLA. There is no doubt about it t that when the Custodian made a sale other than to DVLA he obtained considerably better prices which would be closer to the fair market value. Furthermore, the evidence of our own appraisers going back from four to six years would not encourage us to believe that if the proceedings were carried through to the end the ultimate recovery would substantially exceed that set forth in the proposed settlement.

Concerning Greater Vancouver property, it did not appear that a study similar to that carried out in the municipalities in the Fraser Valley and related to assessment would be productive of the same satisfactory results. In the City of Vancouver particularly most of the Japanese owned property was either concentrated in two or three areas of alternatively, was scattered throughout the Occidental community. Dealing with the areas in which the Japanese property was concentrated, we were confronted with two difficulties. As advised by the City Assessor and others, these areas had been for some time overassessed and the City has, in fact, for the last several years been reducing the assessment in these areas. Furthermore, having been areas of concentration of Japanese persons, there were very few Occidental private sales in these areas with which any comparison could be made.

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In the case of the properties that were scattered, however, the opposite situation existed, that is, there was a large number of private Occidental sales but there were very few Japanese Sales (through the Custodian) with which the Occidental sales could be compared. The method used in the Fraser Valley required large samples of sales of both occidental and Japanese properties. While theoretically the assessments in the City of Vancouver should be uniform throughout the City, it is a fairly noted and recognized fact that this is not so and that there are variations between various districts of the City. We did, however, call the City Assessor to give evidence that generally in the City of Vancouver in his opinion, sale prices in the years 1943-44-45 with respect to private sales exceeded assessment. On the other hand, the Custodian sold most of the Japanese property below assessment. We must admit to ourselves that the assessor's evidence was fairly General although in our opinion it should have carried some weight. However, the Judge has clearly indicated that he places no value upon it as related to the problem in hand. On City property we also called two real estate men who gave evidence with regard to the methods of sale adopted by the Custodian and expressed the opinion that these methods would not be likely to produce fair market value. However, against this the Judge apparently lays greater weight upon the evidence of the appraisers employed by the Custodian. We have had most of the greater Vancouver properties appraised by our own appraiser and have received a tentative report from him which even based upon his opinion would not substantiate a very large recovery. One of the difficulties that we have run into which neither the claimants nor counsel could anticipate has been the effect of the restricted interpretation of the Orders-in-Council placed upon them by the Judge as this interpretation affects City property. The Judge has interpreted the Order-in-Council as meaning that he must determine the fair market value of the property sold by the Custodian as at the date of sale in the condition in which the property was at that date. You will readily realize that such an interpretation of the terms of reference seriously affects the recovery which may be expected in relation to such things as boats which had depreciated in the hands of the Navy and chattels which had depreciated either in the hands of tenants or by reason of vandalism or storage. However, it hits hardest in relation to City property because not only does it mean that we must take the property in the state of repair in which it was at the date of sale and many of the properties had deteriorated subsequent to the removal of the Japanese but also it means that we must take the properties in the condition of being occupied by tenants who could not be dispossessed except in accordance with the rental regulations. During the period that the Custodian was selling Greater Vancouver property the rental regulations varied from requiring six months' notice to the tenant and personal occupation of the premises by the owner, to a situation where it was impossible to evict the tenant unless he neglected to pay his rent or was obnoxious. In the opinion of our appraiser, the inability of the Custodian to deliver vacant possession of the premises would make a difference of from $500.00 to $1,000.00 in the sale price in most instances and a larger amount in some instances. Most of the claims we believe were set up on the basis of the price at which the claimants believed the premises could be sold if in the state of repair in which they left them and under circumstances where, if they were selling themselves, they would be able to give the purchaser vacant possession. By reason of the interpretation of the terms of reference, therefore, it must be appreciated that a very large portion of the claim in nearly every instance is excluded.

In addition to the evidence which we have so far adduced on behalf of the claimants the Crown have put in their general evidence. Some of the evidence which they gave was useful particularly with regard to nets and boats. We also were able by cross-examination to obtain some good evidence in our favour particularly with regard to the Veterans Land Act transactions. On the subject matter of City property, however, they called Douglas Reeve to give evidence as to the appraisals. He is one of the best known appraisers in the City of Vancouver and has had a great deal of experience in giving evidence in the Courts. It was difficult to try to shake his evidence and from the Judge's reaction we take it that we were not successful. We ran into a similar type of difficulty with regard to the sale of chattels where we felt that the auctioneers were on the defensive and could obtain from them no admissions which were useful.

The Judge has intimated his impression of the evidence to date and in considering the matter of accepting the proposed settlement it is important to keep in min the views which he has expressed as,

if the proceedings continue, strong evidence will have to be called to vary those views. For instance, with regard to City real estate, chattels (excluding nets and cars) and with respect to boats, the Judge has expressed the view that the Custodian obtained the fair market value and is only prepared to recommend the proposed settlement on the basis of rebate of certain charges made by the Custodian and in the case of boats, an allowance for extraordinary depreciation in certain instances.

While your Counsel feels that there is evidence which has already been placed before the Commission which would justify a finding that these items did not all receive their fair market value on sale, it must be recognized that the Commissioner is the Judge. We have particularly urged the Commissioner to change his views with respect to City property and have found that he is extremely firm in his opinions in that respect. It is therefore apparent that if the proposed settlement is not consummated that we will have an uphill job to change his views with respect to these matters and, as indicated above, with respect to some of them, the evidence which we are now in a position to call is not too strong.

Consideration must be given in dealing with the proposed settlement to the fact that the Commissioner is prepared to recommend it but in doing so is recommending payments which will total approximately $100,000.00 which are out-side the terms of reference. For instance, the basis of his recommendation on boats and chattels sold by auction as well as on City property are entirely outside the terms of reference. His recommendation with regard to the payment of certain of the costs likewise are outside the terms of reference. While the Government has intimated that with a view to settlement they are prepared to have him do so for the purposes of settlement and with a view to saving the expense of carrying the Commission on for another nine mmnths to a year. Accordingly, if the proposed settlement is not accepted and the proceedings are carried on for a prolonged period to enable us to call evidence in individual cases, it is to be anticipated that in the ultimate outcome we would not recover these monies. In the opinion of Counsel it is doubtful whether in view of the views now expressed by the Commissioner we would succeed in recovering anything like the amount which we would stand to lose by dropping that portion of the proposed settlement which is outside the terms of reference.

It is true that if the proceedings were continued that some individuals might stand a chance of making a larger recovery than they would under the proposed terms. Looking at the matter from the standpoint of the large majority of the claimants, it is our opinion that if the proceedings are continued they will stand a chance of recovering less than they would under the proposed terms of settlement. It must be kept in mind that whether the proposed settlement is made or the proceedings are carried through, having regard to the immensity of the enquiry and the impossibility of the Commissioner going into complete detail in every case whatever the outcome may be, it will provide only a measure of rough justice to all and cannot hope to attain equity between all the claimants. It is with regard to both of these factors that the Committee, having regard to the welfare and interest of all of the claimants have recommended the acceptance of the proposed settlement subject to the condition in the first paragraph mentioned.

The claimants undoubtedly will be concerned with the question as to how the monies recommended to be paid will be distributed amongst them. Concerning Greater Vancouver property, the claimants will be rebated the actual commissions charged them on the sale of their property. In the case of property outside of Greater Vancouver, excluding VLA, they will receive 10% on the sale price and plus a rebate of the commissions charged, being on the average 2.96%. Concerning motor vehicles, they will receive 25% on the sale price. On nets and gear due to the fact that it is impossible to ascertain whether or not the nets sold by the Custodian were the actual nets of the claimant, we have recommended to the Commissioner that in the event of the proposed settlement being accepted the fund created by 25% on sales and the allowance on nets declared or found by the Custodian and now missing should be distributed amongst all the claimants by a percentage deduction from their claimed value. Each claimant will therefore receive approximately 65% of the claimed value of nets which he had declared or which were found by the Custodian less the amount actually received by him from the Custodian purportedly from the sale of his nets. It is not possible at this time to determine exactly what the percentage will be but it appears likely that it will be somewhere between 60% and 70%. While this will create certain inequities as between claimants

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who were more conservative in placing their values on nets, the inequities would not be as great in our opinion as they would be if it were based upon the sale by the Custodian due to the fact that so many of the tags on the nets were switched or destroyed and proper identification is not possible. Furthermore most claimants had fixed the value of their nets at the time of the evacuation.

With respect to boats and gear, it will partly depend on whether the boat was sold by the Custodian to Nelson Brothers or by other sale what will be the recovery. The boats sold to Nelson Brothers were actually transferred into their custody in the Spring of 1942 and in the opinion of the Commissioner did not suffer as great depreciation as did the boats which were disposed of by the Custodian otherwise. Accordingly, on the 21 vessels sold to Nelson Brothers the claimants will receive 23.5% of sale price and on the boats otherwise disposed of by the Custodian the claimants will receive 28.5%. This method of distribution is based upon the information presently given by the Custodian that a charge of 13.5% for administration was made against each boat. It should be made clear to the claimants that this 13.5% was not the only charge made against their boats by the Custodian as this related only to administration expenses and that other charges such as insurance and repairs may have been made against them which will not be repaid. With respect to chattels other than those dealt with, while the Custodian represents that the rebate of charges on auction sales will average 22%, the actual amount credited to each claimant will be the amount which he was charged in relation to the goods claimed so that some claimants may receive less than 22% and some claimants may receive more. In the case of goods that were sold by tender, however, the 10% will be applied to the sale price in every instance. This 10% will include an average allowance for charges made by the Custodian of 3.7%. However, there will be no attempt to distribute the 3.7% on the basis of actual charges as the amount would be extremely small. Before dealing with VLA it might be advisable to explain the manner in which the settlement will work if adopted with respect to goods and chattels which were declared or found by the Custodian and are now missing. Each claim will be examined to ascertain the amount for which the Custodian sold at auction the goods of the claimant (if so sold). This amount will then be related to the amount which the claimant claimed for those goods and the rate which the one bears to the other will be applied to the claimed value of the missing goods to determine how much the Custodian would have received had he sold the missing goods, and the amount so arrived at will be payable to the claimant. For instance, if a claimant claimed $100.00 for goods which the Custodian actually sold at auction and the Custodian received on the sale of the goods $35.00 and if the claimant claimed for goods which had been declared and not found $100.00 then for these latter goods he would receive 35% of $100.00 or $35.00. In addition to this he would recover the charges made by the Custodian with respect to the goods sold at auction. In some cases all of the goods claimed by the claimant were lost or destroyed while in the custody of the Custodian. Obviously in these cases there will be no measuring rod in the specific case and it is proposed that the general over-all average of the relationship between all goods sold by the Custodian at auction and the total claim for such goods shall be applied in this type of case. The percentages in these cases it appears will be approximately 35%. It might have been mentioned earlier in dealing with boats and gear that there are a few cases where the boats were sold and the Navy acknowledged that gear was missing from the boats. In these cases it appears that the Custodian credited the allowance made by the Government for the missing gear to the purchaser of the boat rather than to the claimant as he ought to have done and it is proposed in these limited number of cases that the claimant should be compensated in the amount paid to the purchasers.

the Custodian credited the allowance made by the Government for the missing gear to the purchaser of the boat rather than to the claimant as he ought to have done and it is proposed in these limited number of cases that the claimant should be compensated in the amount paid to the purchasers.

Concerning DVLA it will be observed that there are two recommendations. One is related to property situate in the Village of Mission where we were able to abduce evidence and also to obtain certain admissions from the Crown witnesses that even greater injustice had been done than with respect to the balance of the DVLA transactions. For this reasons it is proposed that the property situate in the Village of Mission shall make a lagger recovery than other DVLA properties. With respect to the property situate in the Village of Mission, however, it doesn't mean, that each property will receive 125% on sale price but that the total amount payable with respect to property situate in the Village of Mission and sold to DVLa shall average 125%. This is also true with regard to the 80% on sale price contained in the proposed settlement on VLA purchases other than Village of Mission properties.

In our study on private sales and in the evidence which we adduced before the Commissioner it appeared that in some municipalities there was a larger discrepancy between the prices paid by VLA and Occidental free transfers than in other municipalities. For instance, in the Municipality of Maple Ridge private sales indicated prices on the average about 100% more than VLA, whereas in Richmond Municipality private sales indicated prices about 65% to 70% higher than VLA. In making the distribution therefore of the fund created by the proposed settlement of 80%, differences will have to be made between property situated in the various municipalities in accordance with the evidence which has been filed and our own studies. Furthermore, the Committee felt that they were not satisfied to rely upon the appraisals of the Soldier Settlement Board as being equitable between the claimants. One of our farm land appraisers had done a considerable amount of work in relation to claims respecting VLA and from the reports received from him it appeared that some properties had been appraised by the S.S.B. more severely than others. Accordingly, we have arranged to have a value placed on all of the properties in the Fraser Valley at least, by our two farm appraisers with the view to establishing a fair relationship between the properties. It is therefore proposed that the total fund available for distribution on the basis of the proposed recommendation on VLA shall first of all be divided into municipalities in accordance with the information which we have as to private sales in these municipalities and having regard to the number of cases in each and then the fund with respect to each Municipality will be distributed on a basis which will recognize the inequities between properties in the original S.S.B. appraisals. The exact formula for this has not yet been worked out and will be subject to the approval of the Commissioner. The result once again will be a matter of rough justice but will be more equitable than a flat basis of distribution amongst the claimants. Insofar as it is based upon the appraisals by our own appraisers the result should not differ considerably from what the result would be if we proceeded with the hearings and each individual case were dealt with. As intimated intthe proposed settlement the Commissioner is prepared to allow some recommendation by way of compensation for costs. It should be clearly understood that whatever amount is allowed will be limited to 5% of the recovery and furthermore that this will not begin to meet the total expenses. It will, however, alleviate the burden of the cost of the proceedings to date in some measure.

S. M. Chemiach - Corr 1948

S. M. Cherniack - Corr Apr 1948

CAMERON. WELDON & BREWIN

BARRISTERS & SOLICITORS

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April 20, 1948.

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

Attention Mr. S. M. Cherniack.

Dear Sirs:

We acknowledge receipt of the file in relation to Mr. Hideo Tamaki and we note that he wishes to have his claim heard in Toronto.

We shall be glad to see that it is looked after when it comes up.

Yours very truly,
CAMERON, WELDON & BREWIN
per: FABrew

FAB:HC