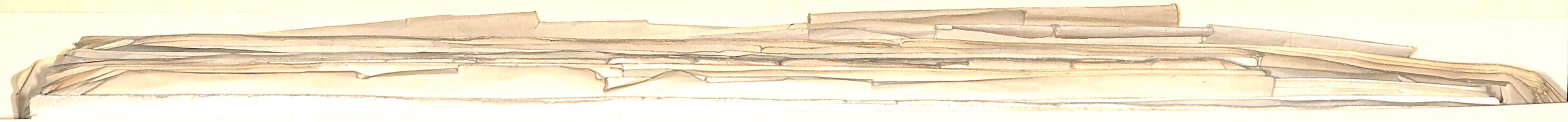
16700 [RT. 1. 4] DEEP BAY LOGGING CO. 16700 [RT. 1. 4]



Victoria Building,
7 O'Connor Street,
Ottawa, 4, Ontario.

February 25th, 1954.

F. G. Shears, Esq.,
4615 West 9th Avenue,,
Vancouver, B.C.

Dear Mr. Shears:

Re: E. Kagetsu
Deep Bay Logging Company Limited

I intended to write you in connection with this matter some days ago but we have been unduly pressed and are short of secretarial staff.

Confidentially a meeting took place in the Minister's Office on 12th instant, when Mr. Angus MacInnis, M.P., Mr. John Osborne of the Legal firm of Gowling et al, Mr. Kagetsu and his ~~son~~son were present. They requested the Minister to re-open the case and he advised that it would not be possible for him to do so without conferring with his Colleagues in the Cabinet.

Mr. Stein phoned today to say that a decision has been reached not to re-open the matter, and they must accept the award plus allowance for disbursements amounting to $2,587.50 on or before 15th proximo.

It is near closing time and we have not had an opportunity to go through the file this afternoon, but my recollection is that you wrote some time ago and indicated that you were preparing a special form of release. Will you please let me hear from you in regard to this by early mail as it would be very helpful to me if you sent a draft form of release to cover this case.

I imagine they will accept the offer very soon and we will not part with the funds unil he signs the release form.

Mr. Stein also advised me this morning that the Minister had received a clipping from a recent edition of the New Canadian reporting the interview that took place. I expect to receive a memo. as to this in a day or so and will let you have a copy. The fact that they published the story may bring additional letters from those Japanese who were not fully satisfied with the treatment they received.

Your letter enclosing a clipping regarding P. H. Russell's tame ducks has just been handed to me. I understood he located in Nanaimo, but note that he now resides in West Vancouver.

Will try to write you again next week but as suggested above we are still fighting the clock.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G

File 16700

Ottawa, February 16th, 1954.

MEMORANDUM FOR FILE

Re: E. Kagetsu
Deep Bay Logging Company Limited.

The following is an extract from the Minutes of Meeting of the Administration Board Tuesday, February 16th, 1954.

"The Chairman presented a memorandum from the Deputy Custodian dated February 12th, 1954, relative to the interview in the Minister's Office on Friday when Mr. Angus MacInnis, M.P., Mr. John Osborne of the legal firm of Gowling et al, Ottawa, also Mr. Kagetsu and his son, were present.

The Chairman reported generally in regard to what took place at the meeting and stated that he believed Honourable Mr. Pickersgill would fix a definite time for the acceptance of the offer in order that this case may be finalized. Of course, this is subject to Cabinet approval to his carrying out the offer of the Honourable Mr. Bradley."

K. W. Wright.

KWW/G

1670 / 1A

Ottawa, January 7th., 1954.

MEMORANDUM FOR DEPUTY CUSTODIAN

Re: Japanese Property Claim No. 1388
Deep Bay Logging Company Limited-Kagetsu

On the 18th July, 1947 Order in Council P.C. 1810 was passed appointing The Honourable Mr. Justice Henry I. Bird Commissioner under The Inquiries Act, to inquire into and report upon claims of persons of the Japanese race evacuated from the protected area of British Columbia.

The Commissioner's Report, dated April 6th., 1950, was accepted by the Government and Order in Council P.C. 3037 dated 20th June, 1950, authorized the Custodian to carry out the recommendations of the Commissioner.

The Commissioner recommended awards in respect of 1324 claims.

1311 awards have been paid amounting to	$1,260,563.94
13 claims remain unpaid amounting to	$ 53,747.05
Total -	$1,314,310.99

The amount of $53,747.05 unpaid includes an award for the Deep Bay Logging Company amounting to the sum of $51,750.00.

This Company carried on a Logging operation at Fanny Bay on Vancouver Island. The majority of the shares were owned by E. Kagetsu, viz: 3949 out of 5000 shares issued.

The claim was originally filed by Kagetsu through Mr. Brewin of Campbell, Weldon, Brewin & McCallum.

At the initial hearings November 8th, 1948, Colonel Norris of Vancouver and his partner Mr. Baldwin, together with Mr. Brewin, appeared for the claimant. In the course of the hearing changes were made in the original claim and the amended claim submitted to the Commission amounted to approximately $464,000. The fact that the Commissioner's award was $51,750 on the claim of $464,000 indicates that the whole claim was extravagant. The hearing went on for 16 days and its detailed and complex nature necessitated the collecting of a mass of technical and expert evidence. There are 1382 pages of transcript and 61 exhibits were filed. The Commissioner's recommendation to the Cabinet (sixteen pages) is attached.

In July 1951 a lengthy memorandum of argument for reconsideration of the award as to compensation and expenses was presented by Colonel T. G. Norris, Q.C., Vancouver, through his Agent, Mr. John Osborne of Messrs. Gowling, MacTavish, Watt, Osborne & Henderson. Their claim for expenses amounted to upwards of $31,000, including liquidation expenditures charged by the Custodian amounting to approximately $18,000.

As to the question of expenses which might be paid by the Government, Mr. John Hunter (Counsel for the Government) reported to the Deputy Minister of Justice in April 1948, in part as follows:

> "It becomes increasingly obvious that the claimants and their counsel had no conception of the magnitude of the task given to the Commissioner. It is equally obvious that they had no idea of the business-like and careful manner in which the Custodian dealt with Japanese property..... "Their counsel realize that their fee of 1% of the claims is hopelessly inadequate to cover the fees and expenses of counsel engaged over a long period of time."

Later Mr. Hunter prepared a memorandum to the Commissioner and eventually a recommendation was made allowing 5% to the Japanese Cooperative Committee.

Mr. Justice Bird made no reference as to costs when handing down his recommendation as to the Deep Bay award.

The Secretary of State reviewed three cases including the Deep Bay Logging Company claim and, under date of July 8th, 1952, the Deputy Custodian sent a memorandum to the Chairman of the Administration Board in part as follows:

> "Re: British Columbia Japanese evacuee claims
> and re: Deep Bay Logging Co. (Kagetsu)
> Kirokichi Yamanaka and
> Mrs. Mayuse Jinnouchi

The Chairman of the Administration Board and myself yesterday discussed these three cases with the Minister, when he read in our presence my draft memorandum for him of March 8th, 1952, and some of its appendices, and we gave him supplementary information in the course of the interview.

The Minister made the following decisions:

I. Deep Bay Logging Co. and E. Kagetsu: 5% of the award of $51,750. i.e. $2,587.50 to be offered in final settlement of their claim for expenses incurred in the presentation of their claims to the Bird Commission. This 5% allowance is authorized by the Minister on the basis of the informal recommendation of Mr. Justice Bird in favour of a group of claimants, pursuant to which recommendation and to the specific provision in this connection, contained in P.C. 3027 of June 20, 1950, an amount of $58,577.96 was paid for such expenses to the said group (whose claims were handled by the Co-operative Committee on Japanese-Canadians).

...

The said provision in P.C. 3027 reads:

"......including the reimbursement to claimants of expenditures made by them, exclusive of legal fees, on the presentation of their claims to the Commission."

Otherwise, no review is to be made or payment to be made further to the award of $51,750. made by the Bird Commission to these claimants."

We now turn to correspondence that passed between the Secretary of State and Mr. Angus MacInnis, copies of which are attached as follows:

Letter, December 5, 1952, Mr. Angus MacInnis to the Secretary of State;

Letter, December 15, 1952, Executive Assistant to Secretary of State to Mr. Angus MacInnes;

Letter, January 30, 1953, Mr. MacInnis to Executive Assistant to Secretary of State;

Letter, March 11, 1953, Secretary of State to Mr. MacInnis;

Letter, April 20, 1953, Mr. MacInnis to Secretary of State;

Letter, May 12, 1953, Secretary of State to Mr. MacInnis.

It was difficult to decide as to the best method of handling the continued correspondence of Mr. MacInnis, as any attempt to justify a particular point might open the avenue to another. It appeared unwise to place ourselves on the defensive and in effect deal with matters thoroughly examined by the Commissioner.

A report dealing with Mr. MacInnis' comments was obtained from Mr. F. G. Shears (former Director of our Vancouver Office) as he attended all sessions of the inquiry and was the only member in our organization conversant with all the facts. Incidentally, the information supplied by Mr. Shears was not made known to Mr. MacInnis for reasons indicated above.

Mr. Shears' report is in part as follows:

"I. Schultz Cruise. He says the Commissioner rejected the cruise. The Commissioner allowed a long adjournment in order that this very cruise might be made and the results were subsequently fully considered by him. It was basically a 4% cruise. In the case of Block 195 the largest area consisting of 979 acres it was made in less than six days. However any cruise from the point of view of market value, is concerned with the size of the timber included in the cruise, the varieties, qualities, accessibility in terms of cost and selling prices. The cruise was made in 1948. It was not disputed that market conditions and logging practise in the use of smaller timber, was different in 1948 from that prevailing at the time of sale. Evidence, argument and exhibits concerning these matters was

most extensive and the Commissioner certainly gave it the fullest consideration. It might be said that the Commissioner with all such evidence and knowledge of logging conditions in 1942 and 1948 before him did not accept the quantity totals of the Schultz report, but it was fully considered and there is no reason for saying that the Commissionergave more weight to the evidence of Keith Shaw, merely because Mr. MacInnes disagrees with the conclusions arrived at by the Commissioner.

2. A going concern and compulsory taking over.
Compulsory taking over of this and other Japanese operations was of course a matter of Government policy. Mr. MacInnes would not agree with the Terms of Reference. The Commissioner acted within them and it is broadly true that nothing was allowed for the fact that the Japanese were forced to leave. I dealt with the consideration given by the Commissioner to property being a going concern in my letter of December 29th.

3. Kagetsu denied access to records.
I am not aware that Kagetsu ever requested or was denied access to his records when preparing his original claim. Mr. MacInnes may be referring to Kagetsu's statement that when his own Solicitor, Mr. Brewin called upon him in Toronto "I had only about an hour to fit in all these things, and I didn't have the note books or anything with me, and it was only a rough estimation". As you are aware the opportunity to prepare and file claims existed for months. Moreover the "note books" to which Kagetsu referr d above, were note books that he had with him in Toronto and which he used when he was on the witness stand before the Commissioner and to which he referred continuously. Kagetsu had been an operator for many years and in his evidence he claimed to have an accurate knowledge of the quantities & values of his holdings. As previously mentioned he was allowed to amend his claim when the case was presented and to still further amend it later.

4. No allowance made for time Mr. Kagetsu was deprived of the use of his property.
It seems to me that you will just have to ignore this or tell him, as he already knows that there was no provision made for such compensation.

Logging Railway.
This question was very fully covered. The previous, present and future use and value of the railway was taken into consideration. The altitude of much of the remaining timber was high. Evidence showed that it was not feasible or anticipated that the railway would be extended into those areas. Areas through which the railway was laid had been largely logged. When operations originally began, a railway proposition was logical but it had largely served its purpose in this operation. If other

timber...

timber surrounding the Deep Bay property could have been obtained the use of the railway might have been continued. These areas it was shown could not be obtained by the Deep Bay Company. There was evidence that parts of the railway had already been taken up, that timber in areas partly logged and other areas to be logged, would be more easily taken out by Trucks and that in some cases this was the intention. of Mr. Kagetsu. In the higher altitude areas a railway would be useless, a 6% grade being the maximum that this type of railway could operate. To log and haul from those areas by truck and then load on the railway and then unload onto trucks again to transport the logs to a shipping railhead would be most uneconomical. It is a fact that the railway was completely discarded. Very little use was made of the railway grade when trucking roads were constructed. The award of $1,000 to which Mr. MacInnes refers was not for the value of the railway but an allowance for 4 miles of railway bed that was used in the construction of a part of the trucking road. The Rails were sold by P.S.Ross & Sons for something over $8,000 and other railway equipment was also sold these amounts of course being credited to Kagetsu's account."

For your convenience I also attach copies of the Orders in Council appointing the Commissioner, amending the Terms of Reference and approving payment of the awards.

K. W. Wright
Chairman, Administration Board
and Chief Counsel

Encls.

P.C. 1810

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 18th July, 1947.

The Committee of the Privy Council have had before them a report dated 14th July, 1947, from the Secretary of State, representing:

That during the war persons of the Japanese race were evacuated from the protected areas of British Columbia and by Order in Council P.C. 1665 of March 4, 1942, as amended by Order in Council P.C. 2483 of March 27, 1942, it was provided that all property situated in any protected area of British Columbia belonging to any person of the Japanese race (except fishing vessels subject to Order in Council P.C. 288 of January 13, 1942, hereinafter referred to, and deposits of money, shares of stock, debentures, bonds or other securities) delivered up to any person by the owner pursuant to an Order of the Minister of Justice or which was turned over to the Custodian by or on behalf of the owner, or which the owner on being evacuated from the protected area was unable to take with him, should be vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy;

That by Order in Council P.C. 469 of January 19, 1943, it was provided that whenever the Custodian had been vested with the power and responsibility of controlling and managing any property of persons of the Japanese race evacuated from the said protected areas, such power and responsibility should be deemed to include and to have included from the date of the vesting of such property in the Custodian, the power to liquidate, sell or otherwise dispose of such property;

That by Order in Council P.C. 6247 of July 20, 1942, it was provided that all vessels and equipment not disposed of by the committee established by the said Order in Council of January 13, 1942, should on and after the first day of August, 1942, be vested in and be subject to the control of the Custodian;

That pursuant to the above mentioned Orders real and personal property of persons of the Japanese race was disposed of and claims have been made by persons of the Japanese race that in respect of such disposition of their property they have suffered pecuniary loss and

That it is deemed advisable to appoint a Commissioner under Part I of the Inquiries Act to investigate the said claims and to make recommendations with respect thereto

... ...

The Committee, therefore, on the recommendation of the Secretary of State, advise:

1 That the Honourable Mr. Justice Henry Irvine Bird be appointed a Commissioner pursuant to the Inquiries Act, chapter ninety-nine of the Revised Statutes of Canada, 1927, to inquire into the following claims of persons of the Japanese race who are resident in Canada at the date of this Order, namely -

(a) that by reason of the failure of the Custodian to exercise reasonable care in the disposition of the real and personal property vested in the Custodian pursuant to the above mentioned Orders, the amount received by the Custodian for such property was less than the market value thereof at the time of such disposition; and

(b) that by reason of the failure of the Custodian to exercise reasonable care in the management of personal property, such property was lost, destroyed or stolen but no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control or management of any person, other than the Custodian, appointed by the owner of the property.

2. That the Commissioner shall examine into each claim and make a report to the Governor in Council setting forth the claims, if any, which in the opinion of the Commissioner are well-founded and the amount which, in his opinion would fairly and reasonably compensate the claimant for failure of the Dustodian to exercise reasonable care.

3. That the Commissioner shall give public notice in such manner as he deems advisable of the time for the filing of claims and for the hearing of evidence and that all claims shall be in writing, verified by statutory declaration and filed in the Office of the Custodian at Vancouver, British Columbia.

4. That the Commissioner be authorized to engage the services of such counsel, technical advisers or other experts, clerks, reporters and assistants as he may deem necessary or advisable.

5. That the expenses of and incidental to the said inquiry be paid out of money appropriated by Parliament.

A. D. P. Heeney
Clerk of the Privy Council.

COPY
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WH/10

P.C. 3737

PRIVY COUNCIL
CANADA

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 17 September, 1947.

The Committee of the Privy Council have had before them a report dated 11th September, 1947, from the Secretary of State, stating that, after further consideration of the Order in Council P.C. 1810, 18th July, 1947, providing for an inquiry into property claims of Japanese persons evacuated from the coast of British Columbia as a war measure, he is of opinion that the terms of reference should be expressed in terms in line with the Fourth Report of the Standing Committee of the House of Commons on Public Accounts, which Report dealt with the general administration and liquidation of property owned by Japanese evacuees and was concurred in by the House of Commons.

The Committee, therefore, on the recommendation of the Secretary of State, advise that the terms of reference contained in the Order in Council P.C. 1810 aforesaid be amended:

1. By striking out paragraphs (a) and (b) of Clause numbered 1 and substituting the following:

"(a) that real and personal property vested in the Custodian pursuant to the above mentioned Orders was disposed of by the Custodian for less than the fair market value thereof at the time of sale resulting in loss to the Claimants equal to the difference between the amounts received from the sale and the fair market value aforesaid; and

(b) that personal property vested in the Custodian pursuant to the above mentioned Orders was lost, destroyed or stolen while in the possession or under the control of the Custodian or some person appointed by him, with the result that the claimant suffered a loss equal to the fair market value of the property at the time when the same was lost, destroyed or stolen: provided that no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control or management of any person other than the Custodian, appointed by the owner of the property."

2. By striking out the words "for failure of the Custodian to exercise reasonable care" from Clause numbered 2.

A. D. P. HEENEY
Clerk of the Privy Council

The Honourable
the Secretary of State.

IH/12

P.C. 3737

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 17th September, 1947.

PRIVY COUNCIL Canada

The Committee of the Privy Council have had before them a report dated 11th September, 1947, from the Secretary of State, stating that, after further consideration of the Order in Council P.C. 1810, 18th July, 1947, providing for an inquiry into property claims of Japanese persons evacuated from the coast of British Columbia as a war measure, he is of opinion that the terms of reference should be expressed in terms in line with the Fourth Report of the Standing Committee of the House of Commons on Public Accounts, which Report dealt with the general administration and liquidation of property owned by Japanese evacuees and was concurred in by the House of Commons.

The Committee, therefore, on the recommendation of the Secretary of State, advise that the terms of reference contained in the Order in Council P.C. 1810 aforesaid be amended:

1. By striking out paragraphs (a) and (b) of Clause numbered 1 and substituting the following:

"(a) that real and personal property vested in the Custodian pursuant to the above mentioned Orders was disposed of by the Custodian for less than the fair market value thereof at the time of sale resulting in loss to the Claimants equal to the difference between the amounts received from the sale and the fair market value aforesaid; and

(b) that personal property vested in the Custodian pursuant to the above mentioned Orders was lost, destroyed or stolen while in the possession or under the control of the Custodian or some person appointed by him, with the result that the claimant suffered a loss equal to the fair market value of the property at the time when the same was lost, destroyed or stolen; provided that no claim shall be considered in respect of property lost, destroyed or stolen while under the custody, control or management of any person other than the Custodian, appointed by the owner of the property."

2. By striking out the words "for failure of the Custodian to exercise reasonable care" from Clause numbered 2.

"A. M. HILL"
Asst. Clerk of the Privy Council

P. C. 3027

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 20 June 1950

The Committee of the Privy Council, on the recommendation of the Secretary of State, advise that the Custodian of Enemy Property be authorized to carry out all the recommendations of the Commission appointed by Order in Council P. C 1810 of 18th July, 1947 to inquiry into claims in connection with the disposition of the property of persons of the Japanese race evacuated from the Protected Area of British Columbia in World War 11, and to make the payments recommended by the said Commission out of the Custodian's Administration Account, including the reimbursement to claimants of expenditures made by them, exclusive of legal fees, on the presentation of their claims to the Commission.

The Committee further advise that the Custodian be authorized to pay out of the said Account the expenses of the Japanese Evacuee Section of the Vancouver Office of the Custodian.

"N. A. Robertson"
Clerk of the Privy Council

CLAIM NO.1388 - DEEP BAY LOGGING COMPANY LIMITED, and EIKICHI KAGETSU

This claim is made in respect of two tracts of timber land situate on Vancouver Island, British Columbia, as well as in respect of the buildings, logging equipment, foreshore rights, booming grounds, log dump landing, coal dock and other structures erected by the claimants on one such area, used in connection with logging operations conducted thereon by the claimants prior to March 1942.

The claimants allege:

1. That one tract, i.e. Block 195, Cowichan Lake District, had a fair market value of $247,500.00 at the date when it was sold by the Custodian for the sum of $93,000.00

2. That the other tract, comprising 11 blocks of land described in the claim form, certain felled, bucked and cold-decked timber and a stand of immature timber, as well as the said plant and equipment of the logging operation situate in the Newcastle District, all of which is hereafter described as "the Deep Bay property" had a fair market value of $292,039.00 and was sold by the Custodian for $40,000.00

3. That a logging railway situate on the Deep Bay property had a fair market value of $28,260.00 when the same was sold, together with the property described in No. 2 for the consideration mentioned therein.

4. That certain logging equipment enumerated in items 3, 4, 5, and 8 of the claim, having an aggregate fair market value of $62,368.55, was sold by the Custodian for $34,604.53.

5. That the claimant Kagetsu's dwelling situate at 5286 McKenzie St., Vancouver, had a fair market value of $5500.00 at the time when the same was sold by the Custodian for the sum of $4300.00

6. That a Plymouth 1942 model Sedan motor car had a market value of $1396.00 when it was sold by the Custodian for the sum of $1025.00

The claimants claim, in respect of the difference between the alleged fair market value of the property mentioned in paragraphs numbered 1 to 6 hereof and the sum realized on the sale thereof by the Custodian, the sum of $464,134.02.

All of the property, the subject of this claim, was administered under the direction of the Custodian by P. S. Ross & Sons and their Vancouver agents, Frederick Field & Co. from the date of the evacuation in 1942 of the claimant Kagetsu, who was the major shareholder and Managing Director of the Deep Bay Logging Company Limited until the said property was sold in 1943 on instructions of the Custodian.

During the period of the Custodian's administration of the said property, efforts were made to sell the tracts of timber and the logging operation, by Carl Stewart, a Vancouver Solicitor who then held a general Power of Attorney from the claimant Kagetsu, which is described by Kagetsu in his J.P. Form (Exhibit 9) as giving full power to the Attorney to deal with his property, both real and personal. Stewart reported to P.S. Ross & Sons, by letter dated November 23rd, 1942, that he had been negotiating for the sale of the Deep Bay property with five different firms, that the best offer he had received was $2.75 per M. for the timber (then estimated by him on instructions from Kagetsu to contain 17 to 18 million feet) including the use of the equipment. This offer was rejected by Kagetsu. On March 3rd 1943 Stewart reported to the Custodian (Exhibit 35) that he had received two offers for purchase of Block 195, i.e. $85,500. cash, and $100.00. on stumpage payments spread over 2½ years, that the

claimants had rejected both offers and fixed as the rock-bottom price $125,000.00 cash. It appears that Stewart was unable to effect a sale of any of the said property up to the date when the Custodian received instructions to offer the same for sale by public tender. Stewart further reported to the Custodian (vide Exhibit 32) that a tract of timber lying to the North West of the Deep Bay property, which the claimants had expected to acquire from the E. & N. Railway Company with a view to logging the same in conjunction with the Deep Bay operation, had been optioned by the E. & N. Railway Company to another logging operator. This factor in his opinion had made the Deep Bay property less attractive to prospective purchasers.

There is evidence, which I accept, that Frederick Field during this period in the interest of the claimants endeavoured unsuccessfully to persuade the E. & N. Railway Company to make the adjoining tract available to the claimants, so that the same might be sold with the Deep Bay timber.

These properties were advertised for sale by public tender by the Custodian, during the summer of 1943, in two separate parcels, i.e. Block 195 and the Deep Bay property. I think it is unnecessary to canvass in detail the steps taken to bring the properties to the notice of persons interested. Suffice it to say that in my opinion the advertising is shewn to have been adequate, and in fact attracted general interest among persons engaged in the logging industry.

The Custodian or his representatives, before considering the tenders received in response to these advertisements, caused both timber tracts to be cruised for volume and valued by Eustace Smith, Esquire, a timber cruiser and valuator of long experience in the timber industry of British Columbia, who then was and now is held in high regard both for his

competence and integrity, and the equipment and buildings to be appraised and valued by Eustace Smith and by George W. Skelding, a machinery appraiser representing the Universal Appraisal Company, Vancouver.

One tender was received for the purchase of Block 195,- that of H.R. MacMillan Export Co. Ltd., for the sum of $93,000. This offer was accepted by the Custodian, after consultation with and upon the advice of Eustace Smith, who expressed the opinion that the offer was fair and in excess of the value placed upon the timber by himself, i.e. $80,050.00. The effective date of this sale, I find, was June 15th 1943, when the Custodian notified the MacMillan Company of his acceptance of the offer.

One offer only was received for the Deep Bay property,- that of H.R. MacMillan Export Co. Ltd., who offered $40,000.00 for the standing and fallen timber, log dump, booming ground, fore-shore lease and right-of-way from timber to dump with rails removed. This offer, which also exceeded the appraisal, was ultimately accepted on the advice of Eustace Smith. Prior to acceptance, however, the MacMillan Company, at the request of the Custodian, made an offer for all of the Deep Bay property as advertised for sale, which included timber, equipment and other property enumerated in Exhibit 45, being the report on liquidation dated 15th March 1945. This offer of $75,000.00 was rejected by the claimant, Kagetsu, who at the same time expressed the opinion that $40,000.00 was a reasonable price for the timber. The Custodian consequently accepted the MacMillan offer of $40,000.00 and caused the other property advertised for sale to be sold by private sale under the circumstances later mentioned. The sale of this timber was not finally consummated until March 13th 1944, due to title difficulties, although tenders were closed on August 31st 1943. Since the offer was not accepted by the Custodian until the latter date,

I find the effective date of sale to have been March 13th, 1944.

Early in the course of the Inquiry, after extended argument from all Counsel concerned, I announced my conclusions as to the principles upon which I considered that fair market value should be determined under the terms of reference directed to me, vide General Report. Now I have had the benefit of further argument from Counsel for these claimants, who I apprehend accept the conclusions then expressed, though Counsel submits that the principles subsequently adopted by the Supreme Court of Canada in Diggon-Hibben vs. Regem (1949) S.C.R. 712 should be followed. This decision, as I interpret the opinions of the several members of the Court, is designed to clarify and explain the decisions upon which my earlier conclusions were founded, and does not alter or vary the principles which I have held applicable to all claims under consideration on this Inquiry. I do not consider that the allowance of 10% for compulsory taking, applied by the majority of the Court in that case, can be applied to sales made by the Custodian.

The questions raised on the investigation of this claim as it relates to timber, which occupied 16 full day Sessions of the Inquiry, involved two principal issues, namely,- quantity and price. The volume of merchantable and accessible timber in any given area I think depends in large measure on market conditions in the logging industry at the time when the timber is cut and transported for manufacture. Chief Justice Sloan in his Report on the Forest Resources of British Columbia, made in December 1945, has defined the terms "merchantable" and "accessible" at pages 26 and 29 of the Report as follows:

"The next gradation finds the forest an advanced "(so-called) second-growth forest composed of trees sufficient "in size to contain measurable amounts of usable material. "If normal growth continues, the forest reaches the rotation "age or continues on to the maturity of an old-growth forest. "Forests in the third and fourth stages of gradation (<u>those before mentioned</u>) (my italics) contain trees of a size and "quality which, under normal conditions can be profitably "marketed. These are the <u>merchantable</u> trees.

" 'Accessibility' is a term definitive of area. "An accessible area is one from which the forest crop may be "harvested at a profit. An inaccessible area is one in which "the cost of extraction does not leave a margin of profit. "The term is a variable one and its components are computed in terms of (inter alia) location, i.e. distance from "markets, terrain, logging methods, degree of utilization, "site, quality, and the market price for logs and for the "end product. Thus an area may be inaccessible today "and accessible tomorrow, depending upon the relation of "the cost of production to the realizable price of its crop. "The same factors also operate to render inaccessible areas "now classed as accessible. Areas of accessibility expand "or contract in direct relation to logging economics. "Location and difficulties of terrain are merely elements "to be considered as affecting production costs."

Here the testimony of many witnesses called on behalf of the claimants on the one hand and the Government on the other discloses a wide divergence of opinion on both of the principal issues. I am satisfied that the very marked difference of opinion between these groups of witnesses has arisen from the factors of merchantability and accessibility as defined by Chief Justice Sloan.

The bases for the Custodian's acceptance of the tenders made for both tracts of timber are the valuations per thousand feet board measure (MBM) and the volume estimates made by qualified persons in and immediately prior to 1943 founded upon economic conditions then existing in the logging industry, whereas in my opinion the bases for the claimants' claim in respect of these tracts rest upon like valuations and estimates which have been unwarrantably influenced by economic conditions in the logging industry existing at the date when the claim was presented in 1948. The claimants caused volume cruises to be made of both areas, one of which, i.e. on Block 195, was completed in November 1948, the other in December 1948. Both are expressed to relate to conditions pertaining to 1943, though in my judgment the appraiser has not successfully avoided the influences of the changed conditions which are shewn to have occurred subsequent to 1945. I am satisfied on the evidence, as well as from my knowledge of conditions in the timber industry of British Columbia in

the interval between 1943 and 1947, of which I consider I may take judicial notice, that a marked rise in the market value of standing timber and timber products occurred between those years, and further that a radical change in the degree of utilization of timber occurred in the same period, which resulted in classification as merchantable and accessible much standing timber of a quality and dimension that would not have been so classified in 1943. These factors in my opinion serve substantially to explain the divergence of opinion noted on both principal issues.

It is I think desirable to review, in what must necessarily be a very summary way, the evidence and argument on these issues taken in the course of this investigation, which extend to some 1200 pages of evidence and nearly 200 pages of argument.

The claimants now allege that Block 195 at the date of sale had a fair market value of $247,500.00 based upon a volume estimate of 55 million feet valued by them at $4.50 per thousand, although in the original claim they valued the same timber at $187,500.00, said by the claimant Kagetsu to have been based upon a volume of 50 million at $3.75 per M. This block of timber was bought by the claimants in 1937 for $75,000.00.

The volume estimate made by Mr. Schultz is based upon an examination of 4% of the entire area, in which is included all merchantable timber 12" diameter, breast high (DBH) and over. At the time the cruise was made the area had been logged to the extent of about 80% of the whole. The estimate on the logged portion was based on measurement for diameter and height of stumps remaining. The volume of standing timber tallied was compiled from volume tables. This estimate shows a net volume of approximately 22 million ft. of fir, 26 million ft. of hemlock and balsam, and approximately 8 million ft. of cedar and pine, a total of 55,474 M. ft.

The tender of the MacMillan Company for purchase of this tract of timber from the Custodian was based upon a cruise estimate made by Eustace Smith in 1923, which he had checked in 1940 and then had increased by 1 million ft. to 31 million ft., in which the timber under 12" DBH was not included. Smith again rechecked the former cruises on instructions from the Custodian in 1943, and at the same time considered a cruise made by P.F. Sheehan in about 1925 which showed approximately 50 million ft. A letter from Sheehan, identified by Smith, disclosed that the Sheehan cruise was made on the assumption that the timber removed would be manufactured by a mill on the ground. He therefore included as merchantable timber a grade and quality which he would not have considered merchantable if it was necessary to transport the timber any distance for manufacture. Smith then adopted his 1940 check cruise estimate and declared that his cruise was conservative. I do not attempt to reconcile the differences between these cruise estimates, since other evidence, now discussed, in my opinion provides more reliable evidence of the volume of timber considered to be merchantable and accessible under economic conditions prevailing subsequent to 1945.

In the period 1945 to 1948 the MacMillan company caused Block 195 and an adjoining tract (Block 403) to be logged together. Soon after its purchase of Block 195, that company negotiated by private treaty for and bought Block 403, the purchase being based as was that of Block 195 on a cruise made by Eustace Smith, employed for the purpose by vendor and purchaser. He estimated the timber on Block 403 at 22 million ft. Keith Shaw, a senior executive of the MacMillan company testified that the two areas contained timber of similar type and quality, and that the timber stands were approximately of equal density, which statements are substantially confirmed by William Byers, a witness called by the claimant (vide p. 264). He stated, and it appears from the scale records found in

Exhibit 23 that 58,752 M. ft. of merchantable timber had been removed by contractors for his company at September 1948; that he estimated as a result of frequent examinations of the standing timber that 12 million ft. of standing timber then remained on the two areas, i.e. a total of 70 million ft. or an over-run on the aggregate of the Smith cruises of approximately 17 million ft. In view of this evidence, I consider it reasonable to assume that there will have been an approximately equal over-run on each tract. Founded upon this assumption, I conclude that Block 195 is shewn to have contained 41 million ft. or 10 million ft. more than the volume content estimated by Eustace Smith, on which the Custodian's sale was based.

I am satisfied on all of the evidence that the degree of utilization in most B.C. logging operations was substantially greater in the period 1945 to 1948 when this timber was logged than would have applied in 1943 when this tract was cruised by Smith. The evidence of the various witnesses on the subject of comparative utilization does not permit an accurate estimate of the difference in volume. In these circumstances, however, I consider that it is reasonable to estimate that 10% greater volume of then merchantable timber will have been removed in 1947 than a competent cruiser would have estimated to be merchantable in 1943, which brings me to the conclusion that the volume of merchantable and accessible timber on Block 195 as at the date of sale was 37 million ft. or 6 million ft. in excess of the cruise on which the sale by the Custodian was based.

On the subject of market value of this timber, Keith Shaw said that his company bought Block 403 by private treaty soon after its purchase of Block 195, and at a slightly lower price than was paid to the Custodian; further that his company had also bought a comparable tract of timber in the same area at about the same time at a price equivalent to the $3.00 per M. paid for Block 195. I accept his evidence as establishing the fact that the fair market value of standing timber on Block 195

at the date of sale by the Custodian was $3.00 per M. However, in view of my conclusion that Block 195 contained 37 million feet of merchantable and accessible timber, I find, that the fair market value at the date of sale by the Custodian was not less than $111,000.00, or $18,000.00 more than was realized on the sale.

Deep Bay Property

Turning now to consideration of the Deep Bay property. This tract of timber is shewn on the evidence to have been a remnant of an area which had been logged for 20 years by the claimants. The claimants had bought from the E. & N. Railway Company blocks of this area from time to time between 1923 and 1941 at prices varying from $1.10 per M. to $2.00 per M., the last purchase made in 1941 (that of Block 617) being at $1.10 per M. All such purchases were based on cruise estimates made by the Railway company discussed later. The claimants now allege that at the date of sale by the Custodian the area contained in excess of 56 million feet, based on a 5% to 10% cruise made by Mr. Schultz in 1948, having a fair market value of $4.00 per M. The claimant, Kagetsu, acknowledged that the most accessible timber had been removed prior to 1942. Eustace Smith confirmed this statement. He said that the heart had been cut out of the stand, and described the logging of it as a salvage operation.

In 1942 Kagetsu's Attorney, Stewart, endeavoured to sell this timber to various purchasers, and then reported to the Custodian that Kagetsu estimated the tract to contain 17 million to 18 million ft. of merchantable and accessible standing timber and 2½ million ft. of felled and bucked timber. Confirmation of Kagetsu's estimate is found in a minute of a meeting held in April 1942 attended by Kagetsu, vide Ex. 30.

Eustace Smith's cruise estimate of this area, founded upon the same E. & N. cruises upon which the claimant bought this timber, and upon a check cruise made by himself in 1942, shows approximately 14 million feet of standing timber in

addition to an undetermined quantity of felled timber then lying on the ground.

There is evidence that the entire area of 11 blocks when acquired by the claimants from the E. & N. Railway Company was estimated to contain approximately 88 million feet. All testimony introduced on the subject shows that E. & N. cruises were extremely conservative, confirmation whereof is found in a record of the Deep Bay Company's cut from the area to March 1942 showing that more than 112 million feet had been removed by the claimants, that is to say,- the cut exceeded the cruise estimates by 27%.

It was shown that the contractors for the MacMillan Company subsequent to purchase from the Custodian had cut and removed from the area up to September 1948 approximately 16 million feet; further, that additional timber remained of which no estimate was furnished on the Inquiry.

The foregoing testimony does not permit of any satisfactory conclusion as to the quantity of standing timber on this area at the date of sale. The estimate by Schultz shows half as much timber on three blocks, two of which were partly logged, as the entire area of eleven blocks was estimated to contain when bought by the claimants. Conservative as the E. & N. cruises are shewn to have been, it is not conceivable that the total area contained 100% more timber than was estimated by E. & N. Railway Company cruises, which must have been the case if the Schultz estimate is accepted. On the other hand, Smith's cruise, which is founded substantially on E. & N. cruises, is shewn to err in the other direction, but to a substantially less degree. In view of the claimants' estimate of 17 to 18 million feet, and the fact that the cut made by the MacMillan contractors exceeded 16 million feet, leaving an undetermined quantity of standing timber, the best estimate which I find it possible to make is that the volume of merchantable and accessible timber standing on the area, determined under conditions existing in

1943, exclusive of felled and bucked timber, did not exceed 17 million feet or an excess of 3 million feet over the Smith cruise on which the selling price was based.

Stumpage value of Deep Bay Timber.

Keith Shaw has said that the tender of the MacMillan company was based on the Smith cruise and upon his own estimate of value at $2.50 per M., the latter figure being applied because of the fact that the available standing timber was widely scattered and that a truck road was required to be constructed of approximately 8 miles to remove the timber. I find nothing in the evidence to support a conclusion that the standing timber was then of greater value than $2.50 per M.

It is true that the going price of timber of comparable quality at the date of sale is shewn to have been about $3.00 per M. However, the scattered nature of the stand in my opinion operated to reduce the market value of this timber below that figure.

It is, I think significant that none of the five logging operators with whom Stewart had conducted negotiations were sufficiently interested to tender for purchase of this timber when the same was offered for sale by the Custodian. The best offer received by Stewart was $2.75 per M., and that offer included the use of all of the claimants' equipment.

Since I find that the quantity estimate on which this sale was based shewed 3 million feet less than the tract contained, I therefore estimate the fair market value of the standing timber at the date of sale to have exceeded the price realized therefor by the Custodian by the sum of $7,500.00

I therefore find the fair market value of the timber and the various structures sold with it was $47,000.00.

Felled, bucked and cold-decked timber.

It was shewn that approximately 2,500 M. feet of felled, bucked and cold-decked timber cut by the claimants prior to March 1942 was lying on the area and was included in the sale made by the Custodian. The claimants allege that this felled timber had a value of $29,000.00 calculated on a basis of approximately $11.00 per M. It may be inferred that this fallen timber had suffered some deterioration due to the fact that it lay on the ground for not less that 18 months prior to the date of sale. No satisfactory evidence was introduced before me on the investigation of this claim as to the value of such timber. However, a similar claim for felled and bucked timber was made by another claimant (Claim No.1381). On that investigation it was shewn that approximately 2½ million feet of felled and bucked timber which had lain on the ground for an equivalent time had been sold in September 1943 by the purchaser for the Custodian at the sum of $6.50 per M. In that claim I estimated the value of the felled and bucked timber at $13,750.00 based upon an estimated market value of $5.50 per M.

The stumpage value of the timber under consideration in Claim No.1381 was found to be $3.00 per M. compared with $2.50 value of this timber.

Applying the information furnished in Claim No. 1381 and taking into account the difference in stumpage value,- i.e. 50 cents per M., I estimate the fair market value of the claimants' felled and bucked timber at $5.00 per M. i.e. an aggregate sum of $12,500.00.

However, since this felled and bucked timber was appraised by Eustace Smith at $4500.00 (vide Exhibit 45, schedule 3) upon which the Custodian in part based his acceptance of the MacMillan tender - consequently an allowance of $4500.00 for felled and bucked timber having

been included in the sale price - that sum must be deducted from the estimate of fair market value of felled and bucked timber now made. I THEREFORE RECOMMEND payment to the claimants on this head of the claim the sum of $8000.00.

Logged off lands.

The claimants present a further claim of $43,225.00 for stands of so-called immature timber on logged-off areas, being part of the claimants' lands. This claim is supported by the Schultz report (Exhibit 61 page 20) from which it appears that approximately 5500 acres of logged-off land contained immature timber said to be of from 5 to 65 years of age. No value for such timber was taken into account on the sale made by the Custodian.

There is not before me any satisfactory evidence that such areas were considered as having particular value at or prior to the period of 1944 when this timber was sold, though it does appear that since 1945 logging operators have considered as of real value for reforestation purposes areas which have been logged off in earlier years. The claimants held these lands in fee, and had continued to pay taxes thereon up to the date of sale by the Custodian. In these circumstances, notwithstanding that the change in practice of logging operators did not occur until two years after the sale, I consider that the claimants have been shewn to have placed a value on such areas, though the extent thereof is not readily determined. In the circumstances I estimate the value of the logged off lands to have been $8,250.00 at the date of sale, i.e. $1.50 per acre.

40 Buildings

A further claim is made for 40 buildings, formerly used by the claimants for housing of its logging crews. Various witnesses have testified that the buildings were not suitable for occupation by Occidental crews, and therefore were esteemed valueless from the point of view of an Occidental purchaser. However, since value to the owner (vide Diggon-Hibben v. Regem, Supra) at the date of sale is the criterion to be

adopted in circumstances such as are found here, I consider there is evidence to show that the buildings were of value to the owners, which I estimate at $1000.00.

Logging railway

The claimants had constructed and in operation at the date of evacuation a logging railway which comprised 8½ miles of main line, upon which steel was laid. It was shewn that the railway was in poor condition, Kagetsu stated that if he had continued in operation he would have converted to truck hauling.

A claim is made in respect of the railway for value of the railway in use, for $28,260.00. This claim I take it is based on the assumption that the claimants would acquire the tract containing 25 million ft. before mentioned, lying behing the Deep Bay tract, and would have used the railway for the hauling of logs to salt water. It is shewn that this latter tract had been alienated to Alaska Pine Company by the E. & N. Railway Company, and consequently was not available to the claimants. The purchasers from the Custodian scrapped the railway and converted to truck hauling, using approximately 4 miles of the railway bed in the construction of the truck road; from which information I infer that these 4 miles of railway bed had some value to the purchaser and will not have had less value to the owner. In the absence of any evidence as to the value calculated on this basis, I estimate the same to have been $1000.00.

Logging Equipment.

The claim for this equipment is set out in items 3, 4, 5, and 8 of the claim form. The claimants allege that this property had a fair market value of $62,368.55 when sold by the Liquidator on instructions of the Custodian for $34,604.53. They therefore claim in respect thereof the difference, being $27,764.02. During the investigation of the claim, Counsel for the claimants and the Government asked me to consider a proposal for settlement of this part of the claim which had been the subject of discussion between Counsel. Evidence had not then been introduced

on this subject other than certain appraisals of such property which had been obtained by the Custodian.

I required Counsel to file memoranda outlining the basis on which the proposal for settlement had been calculated. These memoranda, signed by Counsel, together with a letter of the claimant, Kagetsu, confirming the proposed settlement, are filed as Exhibit 64 on this Inquiry.

I am satisfied after thorough examination of the material filed that the proposal is fair and reasonable, as between the parties, and that the figure of $8000.00 proposed for payment to the claimant, added to the sum realized on the sale, is equivalent to its fair market value at the time of sale, that is to say the fair market value then was $48,434.80.

5286 McKenzie St. Vancouver and 1942 model Pontiac Sedan motor car.

Claim made in items 6 and 7 of the claim form arising out of the sale by the Custodian of the marginally noted dwelling and car will be disposed of by agreement between Counsel, on the basis of the over-all recommendation mady by me in respect to property of the same nature.

I THEREFORE RECOMMEND payment to the claimants of the sum of $51,750.00, being the aggregate of the excess of the estimates here made of fair market value over the sale price, summarized as follows:

Block 195	- $18,000.00
Deep Bay	- 7,500.00
Deep Bay felled and bucked	- 8,000.00
5500 acres immature timber	- 8,250.00
40 buildings Deep Bay	- 1,000.00
Railway	- 1,000.00
Logging equipment	- 8,000.00

to which will be added the aggregate of the over-all recommendations in respect of the dwelling and motor car.

(sgd.) H.I. BIRD
Commissioner.

March 24th 1950.

CS/LT

Copy for the information of
The Chairman, Administration Board.

OFFICE OF THE CUSTODIAN
RECEIVED
FEB 16 1954
PASS TO.....
FILE

Ottawa, February 12, 1954.

MEMORANDUM

FOR THE SECRETARY OF STATE

Re: Claim of E. Kagetsu with respect to Deep Bay Logging Co. Ltd.

Hereunder, as requested, are a few notes on your conference (in your office this morning) with Mr. Kagetsu and his son and, speaking on their behalf, Mr. Angus MacInnis, M.P. and Mr. John Osborne, of the legal firm of Gowling et al, Ottawa.

1. You wish to ask your colleagues whether they would agree to provision being made for the claims of Japanese evacuees to be reconsidered (presumably by a new commission).

The Bird Commission was established by Order in Council P.C. 1810 dated July 18, 1947, as amended by P.C. 3737 of September 17, 1947. Its report is dated April 6, 1950. By Order in Council P.C. 3027 of June 20, 1950 the Custodian was authorized to carry out all the recommendations of Commissioner Bird and to make payments accordingly, out of the Custodian's administration account, "including the reimbursement to claimants of expenditures made by them, exclusive of legal fees, on the presentation of their claims to the Commission".

Commissioner Bird's recommendation that $58,577.96 be paid to the Japanese Co-operative Committee (which handled approximately 1300 claims out of the total of 1324 claims) was made informally by him. It was included with his recommendations for the payment of awards to some claimants whose claims he considered as special cases outside his terms of reference.

The amount above-mentioned of $58,577.96 works out to a little less than 5% of the total amount of the awards on the 1300 claims involved and was recommended by Mr. Justice Bird to be paid in respect of the disbursements incurred by the claimants in the presentation of their evidence to the Commission. This amount was in fact paid to the Japanese Co-operative Committee under the authority of Order in Council P.C. 3027, above quoted. The details furnished to us before we made such payment, of the disbursements incurred on the presentation to the Commission of the said 1300 claims did not, in fact, include any legal fees.

...2

2. Out of the total 1324 claims on which awards were made by the Bird Commission we have settled 1311 and obtained releases from the claimants. The total amount paid by the Custodian on the settlement of these is $1,260,563.94 (including the amount of $58,577.96 above-mentioned in respect of disbursements).

Of the thirteen claims remaining unsettled (on which awards were made by the Bird Commission) twelve involve a total sum of a little less than $2,000. The award to Kagetsu (the thirteenth of these) was $51,750.00.

3. The test that the Bird Commission was required to apply under its terms of reference was the fair market value at the time of the sale (in the case of real or personal property sold by the Custodian) or at the time of the loss (in the case of personal property lost, destroyed or stolen while in the possession or under the control of the Custodian).

Therefore, the policy of the Government, as embodied in the terms of reference of the Bird Commission, was that Japanese evacuees should be compensated only for the loss to them consisting in the difference between the fair market value and what they received from the Custodian.

4. In addition to seeking reconsideration of the claim of approximately $464,000.00 which he presented to the Bird Commission and on which he obtained an award of only $51,750.00, Kagetsu is asking for approximately $31,000.00 for expenses allegedly incurred by him in the presentation of his claim to the Commission.

Your predecessor offered him 5% of $51,750.00 i.e. $2,587.50 (in addition to the amount of the award) in full and final settlement. - The offer remains unaccepted.

The offer of the additional 5% was made on the ground that if the matter had been raised with Commissioner Bird he would presumably have made the same informal recommendation (for the payment of disbursements on the presentation of the claim, at the rate of 5% of the amount of the award) which he made in the case of the 1300 claims handled by the Japanese Co-operative Committee.

You wish to ask your colleagues whether this offer should be withdrawn or renewed.

You indicated that you had some doubt as to your authority to pay the said additional 5%. In this connection you may be interested in my memorandum for the Minister of Justice dated June 19, 1950, copy of which is attached hereto. I am also

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attaching copy of an opinion given to me by the Deputy Minister of Justice under date of December 13, 1951, together with copy of the letter therein referred to from Mr. Wright to the D.M.J. dated December 7, 1951. The D.M.J.'s said opinion deals only with the question as to whether the Bird Commission was functus officio. It does not deal with the question of the authority of the Custodian to pay additional claims, more particularly with respect to expenses.

There is no doubt that the suggested payment of an additional 5% to Kagetsu does not come strictly within the terms of the Order in Council of June 20, 1950, for there has never been any recommendation whatsoever from Mr. Justice Birdfor the payment of any amount in respect of expenses of presentation of this claim to the Commission. However, I think it is perhaps not straining the language of the Order in Council too much to say that the informal recommendation of the Commissioner in favour of the vast majority of the claimants (1300 out of 1324) for the payment of approximately $58,000.00 (or approximately 5% of the awards) with respect to the expenses of presentation of the claims is one of principle which is applicable to all claimants. Furthermore, it is also quite arguable that the Custodian could and can legally make such payments out of his administration account without the authority of the Governor in Council. - I am here, of course, only speaking of the strict legal point of view, and not of the policy, i.e. of the advisability of obtaining Cabinet or Council approval.

C. STEIN

C. Stein,
Under Secretary of State.

MD

Ottawa, June 19, 1950.

MEMORANDUM

FOR THE MINISTER OF JUSTICE:

Re: Submission to Council for authority to Custodian to carry out recommendations of Bird Commission on Japanese Evacuees claims

Herewith is a copy of a submission to the Governor in Council which has been signed by my Minister and which is on Council's agenda. Mr. Olmsted, of your Department, telephoned me a few minutes ago to tell me that you had been inquiring about this item on the agenda. I undertook to supply you immediately with a copy of the submission.

I prepared this submission at the end of last week, after full discussion of this matter with Mr. Mundell, Acting Deputy Minister of Justice, and Mr. Bryce, of Treasury Board. The gist of the recommendation to Council is that, instead of asking Parliament to vote money to pay the claimants in accordance with the recommendations of Mr. Justice Bird, whatever compensation is required to satisfy the claimants in carrying out the recommendations of the commissioner, be paid out of the Custodian's administration account. Authority is also sought from Council for the Custodian to pya out of such account all the expenses incurred and to be incurred by him in connection with the administration of Japanese Evacuees and payment of the claims in question. The idea is that there is no point in asking Parliament for money to "foot this bill", when we have ample funds to take care of it in the Custodian's administration account, which is made up of revenue accumulated over theyears and the balance of which, if any, remaining when the Custodian's Office is wound up, will presumably be turned over to the Consolidated Revenue Fund (after the first World War a balance of twelve and a half million dollars was thus turned over by the Custodian to the Canadian Treasury). It is quite likely that if Parliament were asked to vote money for this purpose, the point would be raised in the House as to whether the Custodian has not sufficient funds (over and above assets formerly belonging to nationals of various countries and which are to be returned to them or which are ear-marked as reparations for the

FPV/adm

DEPARTMENT OF JUSTICE

CANADA

please address
The Deputy Minister of Justice
Ottawa.

Ottawa, December 13th, 1951.

Dear Sir:

On December 7th, Mr. Wright wrote to me with respect to three additional claims by Japanese based on alleged failure by the Custodian to perform his functions as such to the satisfaction of the claimants. All three claims are outside the terms of inquiry conducted by Mr. Justice Bird under Part I of the Inquiries Act. It is under consideration, however, that Mr. Justice Bird should be asked to inquire into these claims but it is suggested that he is "Functus Officio".

The Commissioner has undoubtedly completed his inquiry and could not resume the same without a further Order in Council under the Inquiries Act. Moreover, the claims are, as I have indicated, outside the scope of the inquiry and, for this additional reason, would require a further Order in Council if they are to be inquired into by Mr. Justice Bird under the Inquiries Act.

Yours truly,

F. P. Varcoe

Deputy Minister.

The Custodian of Enemy Property,
Secretary of State Department,
Victoria Building,
O t t a w a.

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

56178

December 7th, 1951.

ATTENTION: Mr. R. A. Olmsted.

Deputy Minister of Justice,
Department of Justice,
Ottawa, Ontario.

Dear Sir:

Re: Japanese Claims Commission

Reference is made to the writer's several interviews with your Mr. Olmsted relative to three claims received from Japanese evacuees.

One (Masuye Jinnouchi) is based on failure of the Custodian or his agent to pay insurance premiums with the result that policies lapsed prior to the death of the insured.

Another (Hirokichi Yamanaka) is for loss on grounds that the Custodian assumed responsibility for collection of accounts. Mr. A. J. P. Cameron, M.P., alleges that his client suffered loss due to the negligent efforts made by the Custodian to collect.

The third (Kagetsu - Deep Bay Logging) is presented by Mr. J. C. Osborne, Agent for Mr. T. G. Norris, K.C., of Vancouver, and covers expenses other than legal fees.

I have been instructed by the Deputy Custodian to obtain your opinion as to whether or not the Commissioner is "Functus Officio", as it has been suggested that Justice Bird might at our request review these claims. Mr. Cameron's partner, Mr. Brewin, indicated that he would be content. Mr. Justice Bird completed his report on April 6th, 1950.

It was pointed out during our recent interview that it is desirable to complete these matters before we close our Vancouver Office early next year, as we will lose personnel who are familiar with the cases referred to.

For your convenience I enclose the following Orders in Council:

P.C. 1810 dated 18th July, 1947,
P.C. 3737 dated 17th September, 1947,
P.C. 3027 dated 20th June, 1950.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G
Encls.

Ottawa, February 12, 1954.

MEMORANDUM

FOR THE SECRETARY OF STATE

Re: Claim of E. Kagetsu with respect to Deep Bay Logging Co. Ltd.

Hereunder, as requested, are a few notes on your conference (in your office this morning) with Mr. Kagetsu and his son and, speaking on their behalf, Mr. Angus MacInnis, M.P. and Mr. John Osborne, of the legal firm of Gowling et al, Ottawa.

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2. Out of the total 1324 claims on which awards were made by the Bird Commission we have settled 1311 and obtained releases from the claimants. The total amount paid by the Custodian on the settlement of these is $1,260,563.94 (including the amount of $58,577.96 above-mentioned in respect of disbursements).

Of the thirteen claims remaining unsettled (on which awards were made by the Bird Commission) twelve involve a total sum of a little less than $2,000. The award to Kagetsu (the thirteenth of these) was $51,750.00.

3. The test that the Bird Commission was required to apply under its terms of reference was the fair market value at the time of the sale (in the case of real or personal property sold by the Custodian) or at the time of the loss (in the case of personal property lost, destroyed or stolen while in the possession or under the control of the Custodian).

Therefore, the policy of the Government, as embodied in the terms of reference of the Bird Commission, was that Japanese evacuees should be compensated only for the loss to them consisting in the difference between the fair market value and what they received from the Custodian.

4. In addition to seeking reconsideration of the claim of approximately $464,000.00 which he presented to the Bird Commission and on which he obtained an award of only $51,750.00, Kagetsu is asking for approximately $31,000.00 for expenses allegedly incurred by him in the presentation of his claim to the Commission.

Your predecessor offered him 5% of $51,750.00 i.e. $2,587.50 (in addition to the amount of the award) in full and final settlement. - The offer remains unaccepted.

The offer of the additional 5% was made on the ground that if the matter had been raised with Commissioner Bird he would presumably have made the same informal recommendation (for the payment of disbursements on the presentation of the claim, at the rate of 5% of the amount of the award) which he made in the case of the 1300 claims handled by the Japanese Co-operative Committee.

You wish to ask your colleagues whether this offer should be withdrawn or renewed.

You indicated that you had some doubt as to your authority to pay the said additional 5%. In this connection you may be interested in my memorandum for the Minister of Justice dated June 19, 1950, copy of which is attached hereto. I am also

...3

attaching copy of an opinion given to me by the Deputy Minister of Justice under date of December 13, 1951, together with copy of the letter therein referred to from Mr. Wright to the D.M.J. dated December 7, 1951. The D.M.J.'s said opinion deals only with the question as to whether the Bird Commission was functus officio. It does not deal with the question of the authority of the Custodian to pay additional claims, more particularly with respect to expenses.

There is no doubt that the suggested payment of an additional 5% to Kagetsu does not come strictly within the terms of the Order in Council of June 20, 1950, for there has never been any recommendation whatsoever from Mr. Justice Bird for the payment of any amount in respect of expenses of presentation of this claim to the Commission. However, I think it is perhaps not straining the language of the Order in Council too much to say that the informal recommendation of the Commissioner in favour of the vast majority of the claimants (1300 out of 1324) for the payment of approximately $58,000.00 (or approximately 5% of the awards) with respect to the expenses of presentation of the claims is one of principle which is applicable to all claimants. Furthermore, it is also quite arguable that the Custodian could and can legally make such payments out of his administration account without the authority of the Governor in Council. - I am here, of course, only speaking of the strict legal point of view, and not of the policy, i.e. of the advisability of obtaining Cabinet or Council approval.

C. STEIN

C. Stein,
Under Secretary of State.

Ottawa, February 11th, 1954.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: Deep Bay Logging Company Limited
E. Kagetsu

In the course of today's telephone conversation you referred to the report which Mr. John Hunter (Counsel for the Government) made to the Deputy Minister of Justice in April 1948, on the question of expenses which might be paid by the Government.

I find on examination of the records that following this, Mr. Hunter prepared a memorandum of suggested terms of settlement which was presented to the Commissioner in which he states:

"Claimants incurred heavy expense in investigating and securing evidence of value. This has helped the Commissioner and saved the Government the expense of obtaining such evidence itself and has helped to shorten the duration of the hearings. Since normally an Inquiry under the Inquiries Act is made at Crown expense and since the inquiry has shown that certain losses did occur to the Japanese, it would appear fair that some portion at least of those expenses should be repaid. The Commissioner is waiting for a detailed statement from Counsel for the Japanese before he makes a definite recommendation therefor, but it has been suggested that 5% of the total awards would be a reasonable sum to return in lieu of costs."

Mr. Shears also referred to this problem in a letter dated 10th December, 1951, as follows:

"In view of the fact that the Commissioner has considered that the claimants are entitled to receive awards, it has been suggested that consideration should be given to the question of out of pocket expenses incurred by counsel for the claimants apart from purely legal fees for which the claimant was responsible.

In a conference "in Camera" between the Commissioner and counsel at which Messrs. Hunter and Braidwood, representing the Government, and Messrs. Virtue and McMaster, counsel for claimants were present, a portion of the transcript of this conference reads:

MR. McMASTER: There is one other thing, and that is this question of 5%. I think it was suggested and Mr. Brewin communicated to Mr. Hunter subsequently that we were in agreement with what your Lordship said on the subject of costs at that time.

THE COMMISSIONER: I do not recall what I did say.

McMASTER: You thought it might not appear very happy in the public eye to have a provision in there for legal fees.

THE COMMISSIONER: You are thinking now of disbursements.

McMASTER: Yes, I am taking into account Mr. Hunter's offer is 5% in view of disbursements.

THE COMMISSIONER: Can you give Mr. Hunter some breakdown that would justify 5%?

McMASTER: Yes, I think so.

THE COMMISSIONER: If you satisfy Mr. Hunter, I would have no objection to incorporating the recommendation for it, putting it solely on the footing of covering out-of-pocket expenses in the presentation of claims.

As you are aware, the majority of cases were handled by the Co-operative Committee on Japanese Canadians, Toronto, represented in Vancouver by R. J. McMaster, and also Virtue and Russell who represented claimants in Southern Alberta."

Mr. R. J. McMaster filed a declaration relative to the Japanese Canadian Citizens Association's disbursements and liabilities assumed outside of Counsel fees. In accordance with your instructions, I requested Mr. Shears to examine all material in Mr. McMaster's possession in support of the claim we eventually paid ($58,577.66). This was the total sum allowed in connection with the presentation of practically all of the 1,300 claims and included travelling expenses for quite a number of persons, the expenses of experts and clerical work involved in providing statistical information.

You may recall that you conferred with Mr. Adamson in the late Mr. Mathieu's office during May 1951. Apparently the question was raised as to whether or not Mr. Justice Bird had made a specific recommendation with regard to disbursements. In accordance with your instructions I communicated with Mr. Shears and he returned a memorandum from Mr. Justice Bird as follows:

"I handed to Director, Custodian's Office, shortly before Feb. 7, 1951, recommendations for payment of sums there set out to claimants whose claims were considered as special cases outside terms of reference, included in which was recommendation for payment of claimant's disbursements incurred in proof of claims amounting to $58,577.66.

Am presently laid up in hospital. Director can furnish you with copy of this memo of recommendtations. If anything further required it must await my return to my chambers."

I fully agree with the statements contained in paragraph 5 of your memorandum of 5th instant to the Secretary of State, viz. it was felt that the Commissioner would probably have recommended payment of an additional 5% of the amount of the award if the point had been raised.

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

Royston Lumber
awarded 6900

True ~~Hess~~ Kapetan's
claim was the
largest but award
was less than Royston
Kapetan was extravagant

D E E P B A Y L O G G I N G C O.

RECEIPTS

Sale of Speeder to Lake Logging Co.	$ 2,500.00
Transfer from E. Kagetsu, Car a/c	998.02
P.S. Ross & Sons, to cover disbursements	1,588.05
Sale of rural mail box	2.97
P.S. Ross & Sons, to cover disbursements	4,079.21
Balance of funds re liquidation	1,973.39
Sale of Wire Rope	75.00
Canada Daily News, Final div. payment	57.29
Sale of two Steam donkey engines	200.00
	$11,473.93

DISBURSEMENYS

P.S. Ross & Sons, services rendr'd	$ 5,327.76	
Examining Fanny Bay Operations	150.00	
Advertising equipment	27.68	
Legal fees, M. Stewart & N.C.Kleman	186.36	
Exp. re Gen. meeting and fees	11.00	
Wages	3,703.24	
Looking after property	51.40	
Lease rental	250.00	
Sundry accounts paid	88.48	
Fire insurance premium	687.95	
Paid to Eikichi Kagetsu(Tfr. to)	472.37	
Paid to R. Kagetsu	517.69	
		$11,473.93

DEEP BAY LOGGING CO.

Dec.	28, 1942	Transfer to P.S. Ross & Sons, Charges for comtrolling affairs of company.	$ 305.00	
Mar.	11, 1943	Proportion of wages due	200.00	
Apr.	9	" "	200.00	
June	4	W.S. Murray, wages to May	1,107.83	
July	8	Fireman's Insurance	687.95	
Sept.	1	Wages, etc. June & July	355.64	
Dec.	11	W.S. Murray, wages and board allowance August 1st. to Oct. 31	455.49	
	20	Wages for Oct. & Nov.	250.77	
		Matt. Brown, fees & Exp. looking after property	51.40	
Feb.	2, 1944	Lake logging Co. payment of speeder		$ 2,500.00
	10	Tax deduction from pay roll to Jan. 31st. 1944	521.87	
		Wages, C.Morrison, Dec./43 and Jan./44	251.64	
	17	Lease rental, right of way due Sept. 1943	250.00	
Mar.	2	Imperial Oil Co. Oil	10.35	
	23	Transferred from T. Kagetsu Car funds		998.02
April	10	King's printer, Pay't of a/c	5.00	
		Empress Garage "	18.75	
		Imperial Oil Co. "	1.84	
		Bell Tel. Co. "	12.05	
		J.H. Robertson "	5.20	
		Roysten Motor Co. "	15.29	
		Charles Morrison wages	253.50	
		Receiver General a/c	106.50	
May	6	Bell Tel. Co. 2 months	20.00	
	24	P.S. Ross & Sons, to cover disbursements from account		1,588.05
Nov.	2	Sale of rural mail box		2.97
		Transfer to P.S. Ross & Sons	2.97	
			5,089.04	5,089.04

DEEP BAY LOGGING CO.

1945			
May 29	Continued	5,089.04	5,089.04
	Services renderred by P.S. Ross		
	& Sons, July /42 to March /45		$ 4,079.21
30	Transferred to P.S. Ross & Sons	$ 4,079.21	
1946			
May 18	Balance of funds, Liquidation		1,973.39
Jun 13	Services rendered, P.S. Ross		
	April / 45 to April /46	575.33	
Jul 21	Sale of wire rope		75.00
1947			
Sep 5	Paid to E. Smith,		
	Examination of Fanny Bay Oper'ns	150.00	
Oct 3	J.J. Gibbons, Advertising	27.68	
1948			
Jan 8	P.S. Ross & Sons, May /46 to Nov./47	290.25	
Dec 22	M. Stewart & N.C. Kleman		
	Full settlement of a/c	133.86	
1949			
Jan.	Expenses, re Gen. meeting and		
	filing fees	11.00	
1950			
Jan 25	Canada Daily News, Final Dist'n		57.29
1951			
Jan 16	Sale of Steam engines		200.00
Feb 2	N.C. Kleman, Legal fees	12.50	
1952			
Mch 14	" Winding up	40.00	
25	Final distribution		
	Eikichi Kagetsu	472.37	
	R. Kagetsu	517.69	
Jun 14	P.S. Ross & Sons		
	for services re liquidation	75.00	
		$11,473.93	$11,473.93

E I K I C H I K A G E T S U

RECEIPTS

Transfer from car a/c	$ 2,072.99
Purchase of block # 195 by H.R. McMillan Export	93,000.00
C.G. Hori, payment of 25% of claim	625.00
Sale of property, MacKenzie St. Cat. #148	2,000.00
N.D. Bischoff, closing adjustment, #148	99.57
Rebate of insurance, Met. Life	10.92
Refund of rent, Cat. # 148	42.75
Sale of property, W. 37th. St. Cat. # 396	4,225.00
James Thom, Closing adjustment "	116.21
Canada Daily News, 30% of claim	300.00
Sale of property, Cat. # 442	75.00
Sale of Lots 1-13 and 18-21, $12,000. less mortgage	2,250.00
Net proceeds of auction sale	439.30
Closing entries, Cat. # 442	38.90
D/C Bonds, Interest $55,000.00	5,212.50
C.G. Hori, 14% of claim	350.00
Refund of light and gas account	3.00
Payment under A/S District of North Vancouver	1,490.17
Canada Daily News, Final distribution on claim	49.82
Payment of debt, by Kagetsu & Co.	4.07
Transfer from Deep Bay Logging Co.	472.37
Distribution, 530 shares of E. Kagetsu & Co.	16,220.30
Transfer from suspense a/c $28,191.72 less amount of $19,000.00 paid to Yokohama Specie Bank and Adm. charge of $387.75	8,803.97
	$137,901.84

L.L.

DISBURSEMENTS

Vancouver and Victoria Registrar's fees	$ 89.00
P.S. Ross & Sons, services rendered	650.00
Purchase of Victory bonds	25,000.00
Income tax, 1940 -1942	5,735.79
Life insurance premium, Met. Life	291.30
Taxes and water rates	5,679.25
Balance owing on mortgage, Block # 195	16,816.33
Transfer to Deep Bay Logging Co. Car a/c	998.02
Transfer to Kagetsu & Co.	992.07
Transfer to suspense a/c No. 2 re Yokohama Specie Bank	28,191.72
Commission on sales, legal fees, val. fees etc.	1,415.33
Fire insurance premium, Furniture	12.00
Total amount of remittances to Eikichi Kagetsu	52,031.03
	$137,901.84

Dates of remittances to E. Kagetsu

Oct.	13/44	$ 2,000.00	
Dec.	21	256.15	
Mch.	10/45	5,000.00	
Sept.	11	5,000.00	
Jan.	16/46	7,500.00	
Nov.	6	3,500.00	
Sept.	30/47	1,800.00	
Feb.	10/48	3,000.00	
Oct.	28	3,000.00	
Nov.	2	5,000.00	
Jan.	7/49	554.35	
Feb.	1	450.00	
	4/50	49.82	
Nov.	4	8,803.97	
	8	2,645.00	
July	10/52	3,471.74	$52,031.03

File:12787

EIKICHI KAGETSU

		Dr.	Cr
1942 Dec. 28	Transfer from car account	$	$ 1,550.79
1943 Feb. 8	Cert's of Encumb. Vancouver	2.00	
Mar. 8	Transfer from car account		522.20
10	Cert's of Encumb. Vancouver	3.00	
24	The Registrar, B/S	1.50	
June 25	Cert. of Encumb.	1.00	
July 3	City of Vancouver, Taxes	259.22	
Aug. 5	Cert. of Encumb.	1.00	
12	H. R. McMillan Export Purchase of Block #195		93,000.00
	Balance owing on Block #195	16,816.33	
Sept. 1	Legal services, Locke,Guild & Lane	331.40	
2	Services - examining property	297.00	
	Services - advertising	155.29	
24	Water rates to December	16.80	
Oct. 8	C.G.Hori. Pay't 25% of claim		625.00
Nov. 8	Appraisal fee, Cat.396	7.50	
16	N.B.Bischoff, closing adjustment		99.57
17	Transmission and Assignment of Agreement, Lot 47	9.10	
	P.S.Ross & Sons, Services	650.00	
Dec. 2	Commission, Cat.148	215.00	
6	Purchase price, Cat.148		2,000.00
1944 Mar. 11	Metropolitan Life, Rebate of premium		10.92
23	Transfer ~~of~~ to Deep Bay Log.	998.02	
Apr. 27	Fee to clear mortgage, 148	7.50	
	North West Mortgage	124.50	
June 16	Refund of rent, re Cat.148		42.75
July 20	Registrar, Victoria Cat.396	15.45	
Aug. 9	Registrar, Victoria, C.of E.	5.00	
11	North Vancouver Realty Cat.442	5.00	
22	Advertising Cat.396, 442, 148	12.00	
	Carried forward.....	19,933.61	97,851.23

File:12787

EIKICHI KAGETSU

			Dr.	Cr.
1944		Balance Forward	$19,933.61	$97,851.23
Aug.	25	Pemberton Realty, Cat.442	5.00	
	29	Income Tax, 1940-42	5,735.79	
	30	North Van.Realty, Taxes and Int.Lots 1-13 & 18	2,524.08	
Sept.	1	City of Vancouver Taxes 1944 Cat.396	129.75	
		Water Rates	8.20	
	6	James Thom, Bal.of Adjustment Cat.396		116.21
	6	Sale of Cat.396, W.37th		4,225.00
	9	Simpson-McPherson Ltd. Commission, Sale of 2867 W 37th Ave.Cat.396	211.25	
Oct.	11	Fees re services	20.00	
	13	Remit.Royal Bank, Personal use	2,000.00	
	27	Purchase of Victory Bonds	25,000.00	
Nov.	7	Payment of claim to Yokohama Specie Bank	28,191.72	
Dec.	21	Remit. personal use	256.15	
1945 Jan.	22	Metropolitan Life premium	145.65	
	30	Registration fee Cat.148	8.00	
	31	Tax arrears, 1944, Cat.442	53.79	
Feb.	1	Canada Daily News, Payment of 30% of account owing		549.84
	14	Less overpayment	249.84	
		Metropolitan Life premium	145.65	
Mar.	1	Registration fee	6.70	
	10	Remit. personal use	5,000.00	
	12	Transferred to Kagetsu & Co.	552.77	
	24	Commission, sale of Cat.442	3.75	
	26	Proceeds, sale of Cat.442		75.00
Apr.	5	Proceeds, sale Lots 1-13 & 18-20 less payment of mortgage		2,250.00
	7	Taxes and Insurance, 43 & 44	2,453.75	
	11	Auction sale disb.	70.25	
		Proceeds, Vancouver #527		439.30
		Carried Forward.....	92,705.70	105,506.58

File:12787

EIKICHI KAGETSU

			Dr.	Cr.
1945 Apr.	16	Balance Forward	$92,705.70	$105,506.58
		Taxes, Lot 13	233.66	
	19	Registration Fees, Lots 1-13 and 18-21	34.75	
May	17	" " "" "	.50	
		Insurance premium, furniture	12.00	
	23	Transfer to Kagetsu & Co.	439.30	
		Refund Disb. auction sale		70.25
		Closing adjustment		38.90
Aug.	4	Certificate of Encumbrance	1.00	
Sept.	11	Remit. personal use	5,000.00	
	27	Interest on Victory Bonds		562.50
Oct.	26	C.G.Hori, 14% of claim		350.00
		Refund, Light & Gas account		3.00
1946 Jan.	16	Remit. personal use	7,500.00	
Feb.	1	Interest on bonds		450.00
		" " "		375.00
		Payment under Agreement for Sale due Apr.1st, 1946		1,490.17
Aug.	3	Interest on bonds		450.00
	26	Interest on bonds		375.00
Nov.	6	Remit. personal use	3,500.00	
1947 Jan.	30	Cost of telegram	2.92	
Feb.	3	Interest on Bonds		450.00
Mar.	22	Interest on Bonds		375.00
Aug.	1	Interest on bonds		450.00
	8	Interest on bonds		375.00
Sept.	30	Remit. personal use	1,800.00	
Oct.	15	Charge for shipping bonds	17.22	
1948 Feb.	2	Interest on bonds		450.00
	10	Remit. personal use	3,000.00	
	13	Distribution, shares kagetsu & Co.		10,580.00
Aug.	2	Interest on bonds		450.00
		Carried forward.....	114,247.05	122,801.40

File:12787

EIKICHI KAGETSU

		Dr.	Cr
1948	Balance Forward	$14,247.05	$122,801.40
Oct. 28	Remit. personal use	3,000.00	
Nov. 2	Remit. personal use	5,000.00	
1949 Jan. 7	Remit. personal use	554.35	
Feb. 1	Interest on bonds		450.00
1	Remittance	450.00	
1950 Jan. 28	Canada Daily News. Final		49.82
Feb. 4	Remittance	49.82	
Nov. 4	Balance, Suspense Acct. after paying Yokohama Specie Bank and Admin.charges of $387.75		8,803.97
4	Remittance	8,803.97	
8	Distribution, shares of Kagetsu & Co.		2,645.00
	Remittance, personal	2,645.00	
1952 Mar. 25	Partial Distribution one share		25.00
	Distribution Deep Bay Logging		472.37
	Debt. Kagetsu & Co.		4.07
	Final distribution, shares of Kagetsu & Co.		2,970.30
July 10	Releasing total balance to Eikichi Kagetsu	$ 3,471.74	
		$ 138,221.93	$ 138,221.93

SECURITIES

Note in Ledger account

D/C Bonds $55,000.00

Removed 15th. October 1947 and

forwarded to Eikichi Kagetsu.

CS/LT

URGENT

CONFIDENTIAL

Ottawa, February 5, 1954.

MEMORANDUM

FOR THE SECRETARY OF STATE

Re: E. Kagetsu and Deep Bay Logging Co. Ltd. (Japanese evacuee claim - Bird Commission award)

1. The former shareholders of this company were awarded by the Bird Commission compensation in the amount of $51,750.00 (on a claim for approximately $464,000.00) in respect of the difference between the amount realized by the Custodian (and remitted to the company) on the sale of the company's real and personal property and the fair market value of such property. - The fair market value at the time of the sale by the Custodian (of an evacuee's real or personal property) was the test laid down in the Bird Commission's terms of reference (P.C. 1810 of July 18, 1947 as amended by P.C. 3737 of September 17, 1947).

2. The award remains unpaid because Mr. Kagetsu (the former owner or main shareholder) has refused to accept it and has been pressing for reconsideration of the claim (i.e. for the "reopening of the award", so to speak) and for the payment of additional compensation, in the amount of more than $31,000., for expenses allegedly incurred in the presentation of the claim to the Bird Commission. - Apart from a sum of a little less than $2,000. (made up of small awards to twelve other claimants, - some of whom we have not been able to locate, a couple of them died and the administration of whose estates is pending and a few have refused to accept their awards and to sign a final release on payment thereof), all the other awards (numbering 1311) have been paid, in the total amount of $1,260,563.94.

3. Commissioner's Bird's report on his terms of reference is dated April 6, 1950 (though his report or award on the claim re Deep Bay Logging Co., copy hereunder, is dated March 24, 1950) and P.C. 3027 of June 20, 1950 authorized the Custodian to carry out all the recommendations of the Commissioner and to make payments accordingly, out of the Custodian's Administration Account, "including the reimbursement to claimants of expenditures made by them, exclusive of legal fees, on the presentation of their claims to the Commission". — The clause with respect to the reimbursement of expenditures incurred on presentation

...

of claims was included because the Commissioner had informally recommended payment of such expenses to a group of claimants (at the rate of 5% of the amount of the award) and this recommendation perhaps exceeded his terms of reference (which is probably the reason why he did not make a formal or official recommendation on the point). The group of claimants in whose favour he made that recommendation did not include Deep Bay Logging Co. It was the group whose claims were handled through the Japanese Cooperative Committee. The only explanation for the recommendation being restricted to that group is apparently that their consel (of whom there were a number, I think), asked for this and pressed for it, whereas it seems the others did not.

4. In addition to seeking reconsideration of the award and an increase thereof (without specifying to what amount, I think), Mr. Kagetsu is asking for over $31,000. for expenses allegedly incurred by him in the presentation of his claim to the Bird Commission. However, a few items have no relation to such expenses, more particularly an item of approximately $18,000. which the Custodian paid to P.S. Ross & Sons or their Vancouver agents Frederick Field & Co. for their services in the administration and liquidation of the company and which he deducted from the proceeds of the sale of the assets.

The deduction of the $18,000. in question was, of course, known to the claimant when his claim was submitted to the Commission, but he did not include that item therein, presumably because he realized that it probably did not come within the order in council above referred to establishing the terms of reference of the Commission.

5. Your predecessor decided (in the spring of 1952) to offer Kagetsu in final settlement, in addition to the amount of the award of Commissioner Bird ($51,750.), 5% thereof, or $2,587.50 for expenses incurred in the presentation of the claim to the Commission. - He took into account that Commissioner Bird would probably have made the same informal recommendation for such 5% addition in respect of expenses if the point had been raised before him, and that, in fact, pursuant to the recommendation of the Commissioner in favour of the Japanese Cooperative Committee group of claimants, 5% of their awards, or a total of $58,577.96, was paid to them in respect of such expenses.

6. Mr. Kagetsu, mainly through Mr. MacIn[illegible], still refuses both the award of $51,750. and the said offer of an additional amount of $2,587.50 [illegible] final settlement.

C. Stein,
Under Secretary of S[illegible]

CS/MD

URGENT

CONFIDENTIAL

Ottawa, February 5, 1954.

MEMORANDUM

FOR THE SECRETARY OF STATE

Re: Japanese evacuee property claim
of Deep Bay logging Co. Ltd.
(E. Kagetsu)

Mr. John Osborne, of the Gowling firm, Ottawa, has requested me to arrange, if possible, an appointment with you for himself, Mr. Angus MacInnis, M.P., and Mr. Kagetsu within the next two weeks to discuss this matter and to give him a few days' advance notice of the appointment.

Herewith is a memorandum for me dated the 7th ultimo from the Chairman of the Administration Board of the Custodian's Office, together with its enclosures, also a short summary of this claim for compensation additional to that awarded by the Bird Commission. This matter has been the subject of correspondence and discussions for a couple of years (for over a year the correspondence has been conducted with Mr. MacInnis). Your predecessor decided, as a compromise settlement proposal, to offer $2,587.50 for expenses (other than legal fees) incurred by Mr. Kagetsu in the presentation of his claim to the Bird Commission. Mr. Kagetsu has not accepted that offer and Mr. MacInnis, on his behalf, has continued to press for the reopening of the award made by the Bird Commission of compensation in the amount of $51,750 (which Mr. Kagetsu still refuses to accept).

Your predecessor made quite plain to Mr. MacInnis that he would not recommend to the government that the case be reopened and that he was standing on our offer, above mentioned, of the sum of $2,587.50 for expenses incurred in the presentation of the claim to the Bird Commission. More precisely, your predecessor concluded his letter of May 12, 1953 to Mr. MacInnis in the following terms:

> "Under all the circumstances I regret to inform you that the Government's decision to accept the Commissioner's recommendation is absolutely final".

...

However, Mr. MacInnis still will not give up.

Will you please let me know if you are prepared to see Messrs. MacInnis, Osborne and Kagetsu, and if so on what day and at what time and whether you wish the Chairman of the Administration Board and myself to be present at the interview.

C. STEIN

C. Stein,
Under Secretary of State
and Deputy Custodian.

File No. 16700

Ottawa, January 8th, 1954.

MEMORANDUM FOR FILE

Re: Japanese Property Claim No. 1388
Deep Bay Logging Company Limited - Kagetsu

The following is an excerpt from the Minutes of Meeting of the Administration Board Thursday, January 7th, 1954.

"The Chairman presented a memorandum addressed to the Deputy Custodian, which reads as follows:

"On the 18th July, 1947 .....approving payment of awards."

The Chairman reported that this was sent to the Deputy Custodian ~~yesterday~~. Today

The Board approved.

K. W. Wright.

KW"/G

No. 16700

Ottawa, May 22nd, 1953.

MEMORANDUM FOR FILE

Re: Deep Bay Logging Company Limited
E. Kagetsu

The following is an excerpt from the Minutes of Meeting of the Administration Board Friday, May 22nd, 1953.

"A memorandum from the Chairman and Vice Counsel dated May 21st, 1953, was read.

It was noted that the Secretary of State signed the letter submitted by the Chairman addressed to Mr. Angus MacInnis, M.P. indicating that the Government's decision herein is absolutely final."

K. W. Wright.

KWW/G

Ottawa, May 21st, 1953.

MEMORANDUM FOR THE ADMINISTRATION BOARD

Re: Deep Bay Logging Company Limited
E. Kagetsu.

Reference is made to letter dated April 20, 1953, to the Secretary of State from Mr. Angus MacInnis, M.P., re the above case.

The following letter dated May 12, 1953, was signed by the Secretary of State and forwarded to Mr. Angus MacInnis, M.P. in reply to his letter of 20th ultimo:

"In answer to your suggestion that some important points were overlooked by Commissioner Bird, I am informed that all the matter to which you refer were dealt with and there is no reason to suppose they were overlooked by the Commissioner.

In this particular case the Commissioner allowed the claim to amended and reamended, consented to long adjournments and granted every opportunity for Mr. Kagetsu and his Counsel to present all the evidence they wished. I am also advised that the Commissioner was more patient with the claimants herein than in any other case.

The Government accepted the conclusions of the Commissioner and when doing so relied upon his qualifications to attach the right weight of value to the facts which lay behind the matters to which you refer.

Under all the circumstances I regret to inform you that the Government's decision to accept the Commissioner's recommendation is absolutely final."

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KW"/G

16700

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

May 19, 1953.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver, B.C.

Dear Mr. Shears:-

Re: Deep Bay Logging Company Ltd.
E. Kagetsu.

I have for acknowledgment your letter of the 14th instant.

For your information, I enclose copy of the letter to Mr. Angus MacInnis, M.P., which I prepared for the signature of the Secretary of State, under date of the 12th instant. I have been informed that the letter was signed and forwarded with no change.

Yours very truly,

Encl.

K. W. Wright
Chairman, Administration Board
and Chief Counsel.

KWW/K

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO.

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

4615 West 9th Avenue
Vancouver, B.C.
May 1eth 1953.

OFFICE OF THE CUSTODIAN
RECEIVED
MAY 19 1953
PASS TO.....
FILE

K.W.Wright Esq., Q.C.
Chief Counsel
Office of the Custodian
Ottawa

Deep Bay Logging Company Ltd.
E. Kagetsu.

Dear Mr Wright,

I have received your letter of the 11th inst. enclosing copy of your letter of March 11th to Mr Angus MacInnes.

After reading this through I do not think it necessary to amend in any way what I wrote in my last letter dated May 7th. and I am hoping that you may be able to use or extract from it sufficient material to make a reply to Mr MacInnes, and in some way make it clear to him that from the Government point of view Mr Justice Bird's conclusions are considered as final and that those conclusions were based upon a knowledge of all the matters which have been raised by Mr MacInnes.

I am hoping that on this occasion you will be able to bring matters to a conclusion because even if he replies with still further criticism I know of nothing further that can be done, short of opening up the whole enquiry again and I see no reason why this should even be considered. I suppose the amount we agreed to pay Mr Norris for legal expenses is also being held in abeyance.

Yours very truly,

F.G. Shears

Ottawa, May 12th, 1953.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: Deep Bay Logging Company Limited
E. Kagetsu

In accordance with the request in your memorandum of 23rd ultimo, I attach letter for the Minister's signature with two copies for your file, and also return communication addressed to Honourable Gordon F, Bradley by Angus MacInnis, Esq., M.P., under date of April 20th, 1953.

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encls.

Mailed May 19, 1953.
In d.

OFFICE OF THE
CUSTODIAN
RECEIVED
MAY 20 1953
PASS TO.....
FILE

Ottawa, May 12, 1953.

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. MacInnis:

Re: Deep Bay Logging Company Limited
E. Kagetsu

I have for acknowledgment your communication of 20th ultimo.

In answer to your suggestion that some important points were overlooked by Commissioner Bird, I am informed that all the matters to which you refer were dealt with and there is no reason to suppose they were overlooked by the Commissioner.

In this particular case the Commissioner allowed the claim to be amended and reamended, consented to long adjournments and granted every opportunity for Mr. Kagetsu and his Counsel to present all the evidence they wished. I am also advised that the Commissioner was more patient with the claimants herein than in any other case.

The Government accepted the conclusions of the Commissioner and when doing so relied upon his qualifications to attach the right weight of value to the facts which lay behind the matters to which you refer.

Under all the circumstances I regret to inform you that the Government's decision to accept the Commissioner's recommendation is absolutely final.

Yours very truly,

F. GORDON BRADLEY

Secretary of State.

16700

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

May 11th, 1953.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver 8, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company Ltd.,
E. Kagetsu

I have just received your lengthy communication of 7th instant and appreciate the careful study you have made of Mr. McInnis' communication.

I was under the impression that we had forwarded you a copy of the letter sent to him under date of March 11th, same is enclosed in case you wish to amend your comments.

Kindly let me hear from you as soon as possible.

Yours very truly,

K. W. Wright.

KWW/G
Encl.

3 copies

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO.

JAPANESE EVACUATION SECTION

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

Noted Vca. 1/5/53

4615 West 9th Avenue
Vancouver- 8 B.C.

May 7th 1953.

OFFICE OF THE CUSTODIAN
RECEIVED
MAY 11 1953
PASS TO.....
FILE

K.W.Wright Esq.,Q.C.
Chief Counsel
Office of the Custodian
Ottawa.

Deep Bay Logging Company
E.Kagetsu.

Dear Mr Wright,

I received your letter of April 25th in which you enclosed copy of Mr Angus MacInnes' letter to the Honoarble Gordon Bradley.

It is difficult to decide the best method of answering the continued correspondence of Mr MacInnes. Any attempt to argue and justify our position on any particular point is liable to open up the way for further challenge on some other point with which his opinion may differ. We are thus placing ourselves on the defensive and in effect dealing with matters concerning which it was the very purpose of setting up the Commission enquiry. In view of the thorough examination of the case by the Commissioner I do not think it would be advisable to attempt a detailed justification on any perticular points but rather to take the stand that adequate consideration was given to every factor of the case.

Mr MacInnes states that he is still of the opinion that some important points have been overlooked by Commissioner Bird. The answer to this would be that all the matters to which he refers were dealt with and there is no reason to suppose they were overlooked by the Commissioner. The point at issue is that in the light of the evidence and information available, Mr MacInnes says he would have arrived at a different conclusion from that of the Commissioner. He may be entitled to ~~in~~ this opinion but in effect this means that he considers himself more qualified to assess the value of evidence than the Commissioner who by training and experience is dealing with such matters every day of his life.

I would suggest that the position that should be taken is that in this particular case, the Commissioner allowed the claim to be amended and then amended again, and consented to long adjournments and granted every opportunity for Kagetsu & his Counsel to present all the evidence they wished, that all the matters to which Mr MacInnes refers were dealt with and discussed at great length, and that the Government having accepted the conclusions of the Commissioner in this and all other cases dealt with under this enquiry have finalized the matter of Japanese property claims.

16700

While I do not think it would be wise to try and argue the specific points raised in his letters as this would practically mean reviewing the whole enquiry, in order not to entirely brush aside the statements he makes, you might want to touch upon them in a general way.

In your letter to me of January 8th you mentioned that the arguments furnished in my letters of December 9th would be reserved for presentation if the need arises. One or two other points were dealt with when I wrote on February 9th. I do not have a copy of the letter which Mr Bradley wrote to MacInnes dated March 11th and it may be that some ammunition in my previous letters has so far not been used.

Mr MacInnes does not introduce anything new and a large part of this letter as in previous ones, hinges upon his disagreement with the policy of the Government and with losses which may have been caused by evacuation. If you wish to touch upon the points he raises without attempting much detail the following may give you a little guidance .

1. Schultz Cruise. He says the Commissioner rejected the cruise. The Commissioner allowed a long adjournment in order that this very cruise might be made and the results were subsequently fully considered by him. It was basically a 4% cruise. In the case of Block 195 the largest area consisting of 979 acres it was made in less than six days. However any cruise from the point of view of market value, is concerned with the size of the timber included in the cruise, the varieties, qualities , accessibility in terms of cost and selling prices. The cruise was made in 1948. It was not disputed that market conditions and logging practise in the use of smaller timber , was different in 1948 from that prevailing at the time of sale. Evidence, argument and exhibits concerning these matters was most extensive and the Commissioner certainly gave it the fullest consideration. It might be said that the Commissioner with all such evidence and knowledge of logging conditions in 1942 and 1948 before him did not accept the quantity totals of the Schultz report, but it was fully considered and there is no reason for saying that the Commissioner gave more weight to the evidence of Keith Shaw , merely because Mr MacInnes disagrees with the conclusions arrived at by the Commissioner.

2. A going concern and compulsory taking over.
Compulsory taking over of this and other Japanese operations was of course a matter of Government policy . Mr MacInnes would not agree with the Terms of Reference. The Commissioner acted within them and it is broadly true that nothing was allowed for the fact that the Japanese were forced to leave. I dealt with the consideration given by the Commissioner to property being a going concern in my letter of December 29th.

3 Kagetsu denied access to records
I am not aware that Kagetsu ever requested or was denied access to his records when preparing his original claim. Mr MacInnes may be referring to Kagetsu's statement that when his own Solicitor, Mr Brewin called upon him in Toronto "I had only about an hour to fit in all these things, and I didnt have the note books or anything with me, and it was only a rough estimation" As you are aware the opportunity to prepare and file claims existed for months. Moreover the"note books" to which Kagetsu referred above, were note books that he had with him in Toronto and which he used when he was on the witness stand

before the Commissioner and to which he referred ~~to~~ continuously. Kagetsu had been an operator for many years and in his evidence he claimed to have an accurate knowledge of the quantities & values of his holdings. As previously mentioned he was allowed to amend his claim when the case was presented and to still further amend it later.

4 No allowance made for time MR Kagetsu was deprived of the use of his property.

Itseems to me that you will just have to ignore this or tell him, as he already knows that there was no provision made for such compensation

Logging Railway.

This questin was very fully covered . The previous, present and future use and value of the railway was taken into consideration . The altitude of much of the remaining timber was high . Evidence shewed that it was not feasible or anticipated that the railway would be extended into those areas. Areas through which the railway was laid had been largely logged. When operations originally began, a railway proposition was logical but it had largely served its purpose in this operation. If other timber surrounding the Deep Bay property could have been obtained the use of the railway might have been continued. These areas it was shewn could not be obtained by the Deep Bay Company. There was evidence that parts of the railway had already been taken up, that timber in areas partly logged and other ares to be logged, would be more easily taken out by Trucks and that in some cases this was the intention of Mr Kagetsu. In the higher altitude areas a railway would be useless, a 6% grade being the maximum that this type of railway could operate. To log and haul from those areas by truck and then load on the railway and then unload onto trucks again to transport the logs to a shipping railhead would be most uneconomical. It is a fact that the railway was completely discarded . Very little use was made of the railway grade when trucking roads were constructed. The award of $1000 to which Mr MacInnes refers was not for the value of the railway but an allowance for 4 miles of railway bed that was used in the construction of a part of the trucking road. The Rails were sold by P.S.Ross & Sons for something over $8000 and other railway equipment was also sold these amounts of course being credited in Kagetsu's account

100% more timber than the Custodian allowed

Mr MacInnes quotes from Mr Bradley's letter "Accordong to Mr Kagetsu, , on some blocks of timber he cut 100% more than anticipated" &c It is perfectly plain that this is a reference to the time when Kagetsu was operating himself and our reference to "the accepted standard then being used in cruising a timber limit" refers to the time of evacuation and before. Kagetsu's own lawyer elicited from him that if the E & N cruise (from whom he bought the property) was 5 million , his own calculations were 10 million. To be perfectly sure of this statement the Commissioner himself asked Kagetsu the question "I understand you to say that when the ~~Ex&xN~~ cr E & N cruise showed 5 million in your experience you cut 10 million. The answer was "I do mean that" That is to say it was his policy to cut logs of a size which were not considered as merchantable timber when the cruise was made and which operators were not cutting at that time because it was not economivally sound. This is the force of the statement, that having cut this smaller timber, which it is admitted would add to the quantity, Kagetsu's operations according to his own ledgers resulted in a loss.

Mr MacInnes then ~~xyxs~~ says in regard to the quotation from Mr Bradley's letter " I think there must be some mistake here as the overplus of

cut timber to which I referred was not Mr Kagetsu's figures...but Provincial Government"

There was considerable doubt as to whether all the Provincial Government figures which they produced had reference only to timber which came off the Deep Bay property. In addition to this it would not be denied that in 1948 logging practices had changed considerably from what they were in 1942 and that smaller timber became "merchantable" Matters of this nature were brought out in the Sloan Report of 1945 The crux of this particular contention therefore comes back to the question of "quantity at time of sale" and quantity as my previous letter indicated, "at the time of sale" was based on a larger diameter breast high than later became an acceptable standard and therfore changed the basis on which cruises were made. The quantity of merchantable and accessible timber (interpreting these terms as understood in the lumber industry) was greater in the period after the sale, and the quantity scaled resulting from subsequent logging operations might easily greatly exceed the quantity estimated in an earlier cruise. There would not be any doubt that the Schultz cruise of 1948 would take into account a lot more trees than would have been included had Schultz himself made a cruise of this property in 1942. While there was ~~not~~ no suggestion that Schultz was not qualified, he did not represent an old time firm as his company was organized in 1944.

It may be of interest to note that Kagetsu purchased these timber limits on the basis of a standard of cruise of timber, as large or larger, than the standard inforce and used at the time of the Custodian sale. The largest area Block 195 he purchased in 1937 for $75,000 and the Custodian sale was for $93,000 (This area had not been logged at time of sale) Kagetsu's original claim for the value of this Block was $187,500, when the claim was presented it was raised to $275,000 and later reduced to $247,500. Buying a property in 1937 for $75,000 and considering it to be worth $247,500 after 5 or 6 years during a time when Mr MacInnes says that logging operations generally were not very profitable seems to be rather fantastic. Other Blocks of timber were bought by the Company on a cruise basis and price equally far removed from the claim made in regard to same.

Logging Railway

Further to what I wrote earlier in this letter. The sum of $28,260 which Mr MacInnes says is the claim for 8½ miles of railway was not supposed to represent the value of the ~~railway~~ cost of the railway. The claim was that the railway would add 50 cents per 1000 feet to the value of 56,520,000 feet of timber. It was never clear what this 56,520,000 feet referred to and appeared to be partly on the assumption that there was a block or blocks of timber behind the Deep Bay property ~~that~~ the timber on which might be transported over the railway. Evidence was all against the possibility of there being additional adjacent timber available

I received your letter of May 7th during the typing of this page. Am sorry that I did not ~~reply~~ reply to your first letter sooner. I had been giving it a lot of thought and going over the evidence but seemed to be travelling in a circle. The case was so extensive that one cannot reply in any detail to the opinions of Mr MacInnes without being almost as extensive as the transcript of evidence itself and as I indicated at the start any attempt to deal with the claim

point by point would I think be placing ourselves in a position which we should avoid, as our reliance should be upon the qualifications of the Commissioner to attach the right weight of value to the facts which lay behind the various matters to which Mr MacInnes refers.

Mr MacInnes concludes by saying that in the interests of Justice Mt Justice Bird should be asked to review this case and if necessary others, on the basis of new facts which bear on the value of the properties involved. Without a doubt if Mr Justice Bird were asked to review this case the way would be open for other cases to be reviewed. As a matter of fact the Commissioner was more than patient and gave the widest opportinities for the claimants to present every angle in their favour, than in any other case. This was the case you will remember that was commenced in November 1948 and Mr McPherson represented the Government. In order to provide an opportunity for the claimants to make a cruise which they desired to do the case was adjourned. It had to be taken over on behalf of the Government by Mr Braidwood and it was a year later that the final arguments were made. The "new facts" which Mr MacInnes says bear upon the value of the properies involved were all before the Commissioner before he made his recommendation.

I trust that this letter will be of some value to you and if it is not as helpful as you could wish, it is not because I have not given the matter a lot of thought but that it seems hopeless to establish a common ground with Mr MacInnes, who disagrees with the policy of the Government, with the basis on which the enquiry was set, and in spite of all the evidence, with the conclusions of the Commissioner. It is not likely therefore that he could be convinced even if you decided to argue the points he has raised and in my judgment it is a case of telling him that all the relevant facts were before the Commissioner and that the review which has been made by yourself has led to a final conclusion that the recommendation of the Commissioner is absolutely final.

Yours very truly,

F.G.Shears

F.G.Shears

Victoria Building,
7 O'Connor Street,
Ottawa 4, 4, Ontario.

May 7th, 1953.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver 8, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company Ltd.,
E. Kagetsu

Reference is made to my communication of 25th ultimo, enclosing copy of letter dated April 20, 1953, received from Mr. Angus McInnis, M.P., addressed to the Secretary of State, asking for your comments as I have to prepare a reply for the Minister's signature.

I enclose a further copy of that letter in case you did not receive the one forwarded on the 25th ultimo. Please reply by airmail.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KW"/G
Encl.

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

April 25th, 1953.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver 8, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company, Ltd.,
E. Kagetsu.

I enclose herewith copy of letter dated April 20th, 1953, received from Mr. Angus MacInnis, M.P., addressed to the Secretary of State.

Will you kindly let me have your comments as I have to prepare a reply for the Minister's signature.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encl.

OFFICE OF THE CUSTODIAN
RECEIVED
APR 24 1953
PASS TO.....
FILE

DEPARTMENT OF THE SECRETARY OF STATE

Date: April 23, 1953.

re: Letter dated April 20, 1953, from Mr. Angus MacInnis, M.P., to the Secretary of State, concerning Claim No. 1388 E. Kagetsu, Deep Bay Logging Co. Ltd.

TO: THE CHAIRMAN, ADMINISTRATION BOARD

Note and file .....

Note and see me about this .....

Note and return with file .....

For your attention .....

Prepare draft reply for the Minister's signature and submit it to me for consideration .....

Prepare draft reply for my signature.....

Prepare memorandum for me .....

Attach file and return to .....

SPECIAL INSTRUCTIONS:

C. Stein

C. Stein,
Under Secretary of State.

Jan 24

16700

copy

HOUSE OF COMMONS

Canada

O t t a w a
April 20, 1953.

Honorable Gordon F. Bradley,
Secretary of State,
O t t a w a.

Dear Mr. Bradley:

Re: Japanese Property Claims
Commission Claim No. 1388,
E. Kagetsu, Deep Bay Logging
Company Limited.

I wish to thank you for your letter of March 11th, in reply to my letters of December 5th, 1952 and January 30th, 1953.

I am still of the opinion that some important points in regard to Mr. Kagetsu's claim were overlooked by Commissioner Bird. In reading the Commissioner's report, I am satisfied that he did not take into consideration several matters that are usually considered when property is being expropriated. I will enumerate some of these:

I. The Commissioner rejected the cruise made by C. D. Schultz, one of the foremost engineers in British Columbia, in the matter of timber cruises. The Commissioner relied on the evidence of Eustace Smith whose cruise was merely a re-check on a cruise made years earlier. In my opinion more weight was given to the evidence of Keith Shaw, Manager of the Company which purchased the timber from the custodian, than should have been given.

2. The operation was a going concern when Mr. Kagetsu was forced to leave it, but the Commissioner made no allowance for this, neither did he allow anything for compulsory taking and gave no reason for denying it.

3. Mr. Kagetsu was denied access to his records when preparing his initial claim.

4. No allowance was made for the time Mr. Kagetsu was deprived of the use of his property.

16700

I do not think that the value of the property to a purchaser at the date of sale is the ultimate criterion, as the property was unoccupied and unused from the date of the evacuation until the date of the sale. I think that applies particularly to Mr. Kagetsu's claim of $28,260.00 for 8½ miles of railway upon which steel was laid. The Commissioner states

that.....

that the purchasers from the Custodian scrapped the railway and converted to truck hauling, using a part of the railway bed for the truck road. Because the purchasers didn't use the railway. the Commissioner evidently came to the conclusion that it had very little value and put the absurd value on the 8½ miles of railway of $1,000. Railways, even logging railways, cannot be built for that kind of money, and it seems to me that it isn't a question of what value it had for the purchaser, but what it cost the claimant and the use he would have made of it had he been left in unmolested possession of his property.

I need not say anything further about the logging property. The fact remains that the Commissioner's estimate of the amount of timber on the property has been away out. As mentioned in my first letter, as at November, 1951, 70% more timber had been taken off one block than the Commissioner allowed was on the property. On the other block, 100% more timber had been cut than the Commissioner allowed was on it in the first place. Considerable timber has been cut on these properties since the figures in the above statement was made public and logging is still going on.

You state in your letter:

> "According to Mr. Kagetsu, on some blocks of timber he cut 100% more than anticipated, but it appeared that to arrive at this figure, he was cutting much smaller logs than the accepted standard then being used in cruising a timber limit."

I think there must be some mistake here as the over-plus of cut timber to which I referred was not Mr. Kagetsu's figures but the figures of logs scaled by the Provincial Government after the property was sold by the Custodian.

You also say that the Kagetsu Company's own ledgers, covering ten years' operations, showed operating losses of $3,000 a year for nine years. I do not believe that that is a very important point, because a great many logging companies - and other companies as well - were showing losses in the years these operations would cover. What is important, it seems to me, is what the property would be worth in the prosperous years of the logging industry since Mr. Kagetsu was deprived of his property in 1942.

In the dispute between the Government of the Province of Quebec and the shareholders of the Beauharnois Light, Heat and Power Company, I note that the arbitrators in their award a few days ago said this:

> "We think it is pertinent also to refer to the fact that the Beauharnois undertaking was in 1944 emerging from its lean years - a process experienced by nearly every industrial undertaking."

The arbitrators then went on to point out the various factors involved in an undertaking before it can begin to obtain a return on the capital employed.

They say:

> "Just as this point had been reached in the case of Beauharnois, the undertaking was expropriated before the expectations of the investors could be realized."

I think this argument applied with particular force to the Kagetsu Company. Like all other logging companies at the time the evacuation took place, it was emerging from the lean years of the depression.

It is also interesting to note that the Commissioner refused the claimant's request for an addition to the award because of the compulsory taking of the property. The Commissioner - as far as I am aware - has not given any reason for that decision. I think the circumstances under which this property and all other properties belonging to those evacuated in 1942 make these properties particularly eligible for an allowance for compulsory taking.

You say that personal and political opinion may have differed in regard to the policy of evacuation, but that its application to Mr. Kagetsu was no different to that of al other Japanese who were evacuated from British Columbia. I agree that the position of Mr. Kagetsu is no different from that of the other Canadian-Japanese who were unjustly dealt with under the policies adopted by the Federal Government in a period of hysteria. And I agree that there were many cases in which extreme injustice, perhaps, relatively, a greater injustice than was done Mr. Kagetsu. Mr. Kagetsu's was the largest property involved and he approached me in the matter. Others who felt that an injustice had been done them did not approach me.

From the last paragraph in your letter, it seems to me that you are taking the position that if Mr. Justice Bird had not recommended any compensation at all, and if the government had concurred in that recommendation, it would have "discharged its obligations to those most directly affected and to the general public". I do not agree that the government, by paying the smallest compensation possible, has discharged its obligations to those Canadian citizens whom it uprooted and whose lifetime's work it destroyed.

May I end this letter by a quotation from a speech by the Prime Minister before the Quebec Bar Association as reported in the "Montreal Gazette" of January 26, 1953;

> "Thus, when you are studying present administration of justice, or new methods of procedure, you are helping your country to preserve, not only justice but all the fundamental liberties that we fought for, won and defended, as essential to our way of life."

I do....

I do not believe that we have dealt with the Canadian-Japanese and their properties on the basis of those fundamental liberties which the Prime Minister - and I agree with him - asserts are most dear to us. I think that in the interests of justice, Mr. Justice Bird could be asked to review this case and if necessary, others, on the basis of new facts which bear on the value of the properties involved.

Yours sincerely,

"Angus MacInnes"

Angus MacInnes, MP.

Ottawa, May 21st, 1953.

MEMORANDUM FOR THE ADMINISTRATION BOARD

Re: Deep Bay Logging Company Limited
E. Kagetsu.

Reference is made to letter dated April 20, 1953, to the Secretary of State from Mr. Angus MacInnis, M.P., re the above case.

The following letter dated May 12, 1953, was signed by the Secretary of State and forwarded to Mr. Angus MacInnis, M.P. in reply to his letter of 20th ultimo:

"In answer to your suggestion that some important points were overlooked by Commissioner Bird, I am informed that all the matter to which you refer were dealt with and there is no reason to suppose they were overlooked by the Commissioner.

In this particular case the Commissioner allowed the claim to amended and reamended, consented to long adjournments and granted every opportunity for Mr. Kagetsu and his Counsel to present all the evidence they wished. I am also advised that the Commissioner was more patient with the claimants herein than in any other case.

The Government accepted the conclusions of the Commissioner and when doing so relied upon his qualifications to attach the right weight of value to the facts which lay behind the matters to which you refer.

Under all the circumstances I regret to inform you that the Government's decision to accept the Commissioner's recommendation is absolutely final."

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KW"/G

File No. 16700.

May I, 1953.

MEMORANDUM FOR MR. WRIGHT

Re: Japanese Property Claims
Commission Claim No. 1388,
E. Kagetsu, Deep Bay Logging
Company Limited.

The following is an excerpt from the Minutes of Meeting of the Administration Board, held Friday, May I, 1953.

"A communication dated April 20, 1953 from Angus MacInnes, M.P. to the Honourable Mr. Bradley was read.

The contents were noted and it was agreed that the Chairman should prepare and forward a draft reply to the Deputy Custodian for approval."

K. W. Wright

KWW/K

16700

Returning this second copy just received as it may be of some value to you.

copy

HOUSE OF COMMONS

Canada

16202

O t t a w a
April 20, 1953.

Honorable Gordon F. Bradley,
Secretary of State,
O t t a w a.

Dear Mr. Bradley:

Re: Japanese Property Claims
Commission Claim No. 1388,
E. Kagetsu, Deep Bay Logging
Company Limited.

I wish to thank you for your letter of March 11th, in reply to my letters of December 5th, 1952 and January 30th, 1953.

I am still of the opinion that some important points in regard to Mr. Kagetsu's claim were overlooked by Commissioner Bird. In reading the Commissioner's report, I am satisfied that he did not take into consideration several matters that are usually considered when property is being expropriated. I will enumerate some of these:

I. The Commissioner rejected the cruise made by C. D. Schultz, one of the foremost engineers in British Columbia, in the matter of timber cruises. The Commissioner relied on the evidence of Eustace Smith whose cruise was merely a re-check on a cruise made years earlier. In my opinion more weight was given to the evidence of Keith Shaw, Manager of the Company which purchased the timber from the custodian, than should have been given.

2. The operation was a going concern when Mr. Kagetsu was forced to leave it, but the Commissioner made no allowance for this, neither did he allow anything for compulsory taking and gave no reason for denying it.

3. Mr. Kagetsu was denied access to his records when preparing his initial claim.

4. No allowance was made for the time Mr. Kagetsu was deprived of the use of his property.

I do not think that the value of the property to a purchaser at the date of sale is the ultimate criterion, as the property was unoccupied and unused from the date of the evacuation until the date of the sale. I think that applies particularly to Mr. Kagetsu's claim of $28,260.00 for 8½ miles of railway upon which steel was laid. The Commissioner states

that.....

that the purchasers from the Custodian scrapped the railway and converted to truck hauling, using a part of the railway bed for the truck road. Because the purchasers didn't use the railway. the Commissioner evidently came to the conclusion that it had very little value and put the absurd value on the 8½ miles of railway of $1,000. Railways, even logging railways, cannot be built for that kind of money, and it seems to me that it isn't a question of what value it had for the purchaser, but what it cost the claimant and the use he would have made of it had he been left in unmolested possession of his property.

I need not say anything further about the logging property. The fact remains that the Commissioner's estimate of the amount of timber on the property has been away out. As mentioned in my first letter, as at November, 1951, 70% more timber had been taken off one block than the Commissioner allowed was on the property. On the other block, 100% more timber had been cut than the Commissioner allowed was on it in the first place. Considerable timber has been cut on these properties since the figures in the above statement was made public and logging is still going on.

You state in your letter:

> "According to Mr. Kagetsu, on some blocks of timber he cut 100% more than anticipated, but it appeared that to arrive at this figure, he was cutting much smaller logs than the accepted standard then being used in cruising a timber limit."

I think there must be some mistake here as the over-plus of cut timber to which I referred was not Mr. Kagetsu's figures but the figures of logs scaled by the Provincial Government after the property was sold by the Custodian.

You also say that the Kagetsu Company's own ledgers, covering ten years' operations, showed operating losses of $3,000 a year for nine years. I do not believe that that is a very important point, because a great many logging companies - and other companies as well - were showing losses in the years these operations would cover. What is important, it seems to me, is what the property would be worth in the prosperous years of the logging industry since Mr. Kagetsu was deprived of his property in 1942.

In the dispute between the Government of the Province of Quebec and the shareholders of the Beauharnois Light, Heat and Power Company, I note that the arbitrators in their award a few days ago said this:

> "We think it is pertinent also to refer to the fact that the Beauharnois undertaking was in 1944 emerging from its lean years - a process experienced by nearly every industrial undertaking."

The arbitrators then went on to point out the various factors involved in an undertaking before it can begin to obtain a return on the capital employed.

They say:

> "Just as this point had been reached in the case of Beauharnois, the undertaking was expropriated before the expectations of the investors could be realized."

I think this argument applied with particular force to the Kagetsu Company. Like all other logging companies at the time the evacuation took place, it was emerging from the lean years of the depression.

It is also interesting to note that the Commissioner refused the claimant's request for an addition to the award because of the compulsory taking of the property. The Commissioner - as far as I am aware - has not given any reason for that decision. I think the circumstances under which this property and all other properties belonging to those evacuated in 1942 make these properties particularly eligible for an allowance for compulsory taking.

You say that personal and political opinion may have differed in regard to the policy of evacuation, but that its application to Mr. Kagetsu was no different to that of dl other Japanese who were evacuated from British Columbia. I agree that the position of Mr. Kagetsu is no different from that of the other Canadian-Japanese who were unjustly dealt with under the policies adopted by the Federal Government in a period of hysteria. And I agree that there were many cases in which extreme injustice, perhaps, relatively, a greater injustice than was done Mr. Kagetsu. Mr. Kagetsu's was the largest property involved and he approached me in the matter. Others who felt that an injustice had been done them did not approach me.

From the last paragraph in your letter, it seems to me that you are taking the position that if Mr. Justice Bird had not recommended any compensation at all, and if the government had concurred in that recommendation, it would have "discharged its obligations to those most directly affected and to the general public". I do not agree that the government, by paying the smallest compensation possible, has discharged its obligations to those Canadian citizens whom it uprooted and whose lifetime's work it destroyed.

May I end this letter by a quotation from a speech by the Prime Minister before the Quebec Bar Association as reported in the "Montreal Gazette" of January 26, 1953;

> "Thus, when you are studying present administration of justice, or new methods of procedure, you are helping your country to preserve, not only justice but all the fundamental liberties that we fought for, won and defended, as essential to our way of life."

I do....

I do not believe that we have dealt with the Canadian-Japanese and their properties on the basis of those fundamental liberties which the Prime Minister - and I agree with him - asserts are most dear to us. I think that in the interests of justice, Mr. Justice Bird could be asked to review this case and if necessary, others, on the basis of new facts which bear on the value of the properties involved.

Yours sincerely,

"Angus MacInnes"

Angus MacInnes, M.P.

Inform - Wales + Chairman re suggested approval

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

March 16th, 1953.

Alistair Fraser, Esq.,
Executive Assistant to
The Minister of Fisheries,
Ottawa, Ontario.

Dear Mr. Fraser:

Re: Deep Bay Logging Company Limited
E. Kagetsu.

Reference is made to your communication of 10th ultimo and our subsequent telephone conversations herein.

For your information I am enclosing copy of letter dated 11th instant to Mr. Angus MacInnis, M.P., by Honourable Mr. Bradley.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encl.

Ottawa, March 11th, 1953.

MEMORANDUM FOR

MISS TERESA MALONEY,
EXECUTIVE ASSISTANT

Re: Japanese Property Claims Commission
No. 1388 E. Kagetsu, Deep Bay Logging
Company Limited

I enclose herewith, for your information, copy of memorandum sent to the Deputy Custodian, also draft letter addressed to Mr. Angus MacInnis, M.P., for the minister's signature on approval.

K. W. Wright,
Chairman, Administration Bord
and Chief Counsel.

KWW/G
Encls.

Ottawa, March 11, 1953.

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. MacInnis:

Re: Japanese Property Claims Commission
Claim No. 1388 E. Kagetsu, Deep Bay
Logging Company Limited.

A reply to your communication of 30th January, 1953 was delayed in order to gather additional information.

May I again emphasize that this case was before the Commissioner for 16 days, and about 20 witnesses gave evidence, there were 61 exhibits (some of a very detailed nature) and 1384 pages of manuscript of evidence.

Apparently the impartial or even favourable attitude which the Commissioner accorded to each Japanese claimant was evident at all times and his insight in regard to lumber operations was commented upon by Counsel for some of the claimants.

I am of opinion that the Commissioner did not overlook any important facts.

The operations of the company, before evacuation, and its position at the time of sale, were all matters in regard to which the Commissioner gathered ample information. The remaining life of the operation, the possibility of obtaining timber adjacent to their own limits, the relation of the railway and railway equipment to the areas on which further logging was possible or for the necessity for conversion into a trucking operation, all came into adequate and extended review. Questions that had a bearing on the value of the property as a going concern were all fully dealt with and carefully considered by the Commissioner.

As to the quantity of timber on their limits, there was evidence to shew that Kagetsu's own figures at the time of his evacuation did not differ greatly from the quantity which formed the basis of the sale by the Custodian.

Difference of opinion might arise when e.g. dealing with the problem involving size of the timber. Whether 18 inches or 12 inches or any other diameter should be the basis for computing quantity was a matter which could vary from time to time and would mainly depend upon the minimum size that was considered economically "merchantable". "Accessibility" was also another factor which had a bearing in estimating quantity. Moreover "accessibility" involves far more than the question of whether the area could actually be logged, but whether it could be logged at a profit. The quantity of "Merchantable" and "Accessible" timber on a property could thus vary materially according to market conditions.

According to Mr. Kagetsu, on some blocks of timber he cut 100% more than anticipated but it appeared, that to arrive at this figure, he was cutting much smaller logs than the accepted standard then being used in cruising a timber limit. However there was no evidence to show that this was economically sound. I am informed that the Company's own Ledgers covering ten years operations, shewed operating losses averaging $3000 a year for nine years and a profit in one year of just over $1000.

The Commissioner was fully aware of figures which might indicate a larger amount of timber being cut than the quantity which formed the basis of the Custodian's sale. He would also know from the evidence, that from 1945 onward the utilization of smaller timber was very much greater than was the case at the time of sale.

I would say that within the Terms of Reference, the Hon. Mr. Justice Bird, after dealing with a great mass of detail and with the evidence of witnesses called on behalf of the claimant, covering all the matters to which you refer, made an award, which together with the sale price, was sufficient to cover the fair market value of the enterprise at the time of sale.

I am aware that personal and political opinion may have differed in regard to the policy of evacuation but its application to Mr. Kagetsu was no different to that of all other Japanese who were evacuated from British Columbia.

The purpose of the Government in appointing a Royal Commission was to ascertain what would be fair and just to claimants and to the Canadian public generally under all circumstances. The Commissioner recommended that certain sums of money be paid as compensation. The Government concurred in the recommendation and funds were made available to meet the claims. In carrying out the recommendations of Mr. Justice Bird, the Government considers that it has discharged its obligations to those most directly affected and to the general public.

Yours very truly,

Secretary of State.

March 10, 1953.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: Japanese Property Claims Commission
No. 1388 E. Kagetsu, Deep Bay Logging Company Limited.

About ten days ago I informed you that a communication had been received from Mr. Alistair Fraser, Executive Assistant to the Minister of Fisheries, and that arrangements had been made for him to call at my office in order to peruse the files herein. Mr. Fraser could not keep the appointment but advised that he would get in touch with me later. Miss Maloney spoke to him about this since then, but he has not called.

My idea was to delay replying to Mr. Angus MacInnis' letter of January 30th. until after the interview with Mr. Fraser.

I doubt if it is wise to wait any longer and have prepared a reply for the Minister's signature. The suggested reply is enclosed for your approval together with copies of the following:

1. Letter from Mr. Angus MacInnis, M.P. to the Secretary of State, dated December 5, 1952.

2. Letter from Miss Maloney to Mr. Angus MacInnis, M.P., dated December 15, 1952.

3. Letter from Hon. James Sinclair to K.W.Wright, dated December 16, 1952.

4. Letter from K. W. Wright to Hon.James Sinclair, dated December 23, 1952,

5. Letter from Mr. Angus MacInnis, M.P. to Miss Maloney, dated January 30, 1953.

6. Letter from Mr. Alistair Fraser, Executive Assistant to the Minister of Fisheries, to K. W. Wright, dated February 10, 1953.

K. W. Wright,
Chairman, Administration Board
and Chief Counsel

Encs.

COPY

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

19257

March 3rd, 1953.

J. Arthur McLennan, Esq., LL.B.,
Barrister at Law, Solicitor, Notary Public,
430-433 Rogers Building,
470 Granville Street,
Vancouver 1, B.C.

Dear Sir:

Re: Rinkichi Tagashira.

Reference is made to my communications of December 11th, 1952 and January 9th, 1953.

Mr. Shears has advised us that he had several contacts with you in connection with your representations on behalf of Mr. Tagashira, and that you have just had a prolonged session with him in review of the whole case.

We are advised that your arguments on behalf of Mr. Tagashira were all forcibly presented by yourself and fully discussed. This has been conveyed to us in a report submitted to us by Mr. Shears. The whole matter has again been reviewed by the Custodian's Administeation Board under whose purview this matter has come. I am instructed to inform you that within the Terms of Reference it is considered that the Commissioner was fully informed on all details of this case, and a final ruling given by the Deputy Custodian is to the effect that no further review or cange in the Commissioner's recommendation can be made. It will therefore be necessary for you to inform your client that the award which he has already received and for which a full Release has been given, has finalized the matter.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G

CANADA

DEPARTMENT OF FISHERIES

OTTAWA

OFFICE OF THE MINISTER

February 10, 1953.

OFFICE OF THE CUSTODIAN
RECEIVED
FEB 11 1953
PASS TO.....
FILE

K.W. Wright, Esq., Q.C.,
Chairman, Administration Board,
Custodian of Enemy Property,
Department of the Secretary of State,
7 O'Connor Street,
Ottawa, Ontario.

Dear Mr. Wright:

Further to Mr. Sinclair's letter to you of December 16, 1952 and your reply of December 23, 1952, the Minister has again been asked by Mr. Angus MacInnis, M.P., to take the above case up with you.

Mr. Sinclair would normally be writing this letter, but was suddenly called away from Ottawa last night and has consequently asked me to re-initiate the correspondence.

Mr. MacInnis, under date of January 29th, expresses the opinion that your office has lost sight of what he feels to be the central fact in this case, namely that because of the action of the Government Mr. Kagetsu's substantial business has been ruined. Mr. MacInnis goes on to say that the entire case may have been handled in accordance with the strict letter of the law, but does not jive with his conception of justice.

Mr. Sinclair has asked me to take this matter up with you anew and expressed the strong hope that it will be possible, following a review of the file, for an upward adjustment to be made in the assessment of Mr. Kagetsu's claim.

Yours very sincerely,

Alistair Fraser

Alistair Fraser,
Executive Assistant.

List of letters and Memoranda taken from File No.16700

1. Order in Council 1810, dated 18th July, 1947.

2. Order in Council 3027, dated 20th. June, 1950.

3. Mr. Shears letter to Mr. Wright, dated December 10, 1951.

4. Mr. Mathieu's memorandum to Deputy Custodian, December 17, 1951.
4A. Claim No. 1388.
5. Mr. Wright's memorandum to Deputy Custodian, dated Nov. 26, 1951.

6. Mr. Shears letter to Mr. Wright, dated June 2, 1951.

7. Mr. Shears letter to Mr. Wright, dated June 27, 1951.

8. Mr. Wright's memorandum dated March 20, 1952 to Deputy Custodian.

9. Memorandum to Secretary of State, dated March 4th, 1952, from Under Secretary of State.

10. Mr. Stein's memorandum dated July 8, 1952 to Chairman, Administration Board.

11. Mr. Stein's memorandum dated December 10, 1952, to Chairman, Administration Board, with copy of Mr. Angus MacInnis letter to Mr. Bradley dated December 5, 1953, attached.

12. Miss Maloney's letter to Mr. Angus MacInnis, M.P. dated Dec.15, 1952.

13. Mr. Shears letter dated December 29, 1952 to Mr. Wright.

14. Mr. MacInnis' letter dated January 30, 1953, to Miss Maloney.

15. Mr. Shears letter dated February 9, 1953, to Mr. Wright.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131

PLEASE REFER TO

FILE NO.

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

4615 West 9th Avenue
Vancouver 8 B.C.
February 9th 1953.

OFFICE OF THE CUSTODIAN
RECEIVED
FEB 11 1953
PASS TO.....
FILE

K.W.Wright Esq.,Q.C.
Chief Counsel
Office of the Custodian
Ottawa.

Deep Bay Logging- E.Kagetsu

Dear Mr Wright

I have for acknowledgment your letter of the 5th inst. After consideration I really do not think that in any brief way I can add muchto my letter of December 29th.

Mr Angus McInnes seems to think that this question of there being 70 to 100 percent more timber on the properties was overlooked by the Commissioner, and that this matter in itself would discredit the Commissioners recommendations. This is certainly not so. He was well aware of this angle of the case; hours of argument and evidence were considered by the Commissioner on just this very point. The statistics of the Provincial Government to which reference is made were also before the Commissioner. The purchasers of these properties were owners of other timber and in some cases it is not clear that timber from other blocks owned by the purchasers was not included in the statistics, but that was only one angle of the matter, sizes and grades were also dealt with. As I mentioned before, merchantability, accessibility, cost of logging in relation to selling price are all matters which in the timber industry are all related to the quantity which any limit is said to contain.

Even at the time Kagetsu purchased these limits from the E & N Railway he admitted that by his method of cruising down to smaller sizes at that time uneconomical, he considered he had 100% more than he bought and yet he considered that what he paid was a fair price. So also the quantity and market value of the timber at the time of sale by the Custodian was based upon recognized principles in the lumber industry. This claim originally included an item for Christmas trees growing on the property. Perhaps it could be argued they had some value as well as other small timber but these considerations are not normal factors in propositions of this kind. I have indicated and the Commission was aware of the fact that quite a change in the utilization of smaller timber has occurred since the Custodian sale and these extra quantities would of course be reflected in the statistics to which Mr McInnes refers. At the time I sold my house in West Vancouver I considered I got a fair price- it was resold a few years later when conditions in regard to Real Estate changed greatly for twice the amount I received. I believe that the Commissioner with all the evidence before him made an award which took into consideration all relevant factors at the time of sale.

Yours very truly,

J G Shears

16700 Vol. I

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

February 5th, 1953.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver 8, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company
E. Kagetsu

Enclosed you will find copy of communication dated 30th ultimo, addressed to Miss Maloney by Mr. Angus McInnis, M.P., also copy of letter addressed to Mr. McInnis by Miss Maloney under date of December 15th, 1952.

Instructions have been received from the Deputy Custodian to prepare a reply. Work in connection with the War Claims Branch will not allow time to give this attention before the early part of next week, and at that time I wll look over your letter under date of December 29th, 1952.

Please let me know by return mail if in view of the latest communication from Mr. McInnis you care to add anything to your letter of 29th December.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encls.

DEPARTMENT OF THE SECRETARY OF STATE

Date: February 3, 1953.

re: Letter dated January 30, 1953, from Mr. Angus MacInnis, M.P. for Vancouver East, to the Executive Asst. to the Secretary of State, requesting that the case of Deep Bay Logging Co. Ltd. (Mr. E. Kagetsu), Japanese claim No. 1388, be reconsidered.

TO: THE CHAIRMAN, ADMINISTRATION BOARD

Note and file .....

Note and see me about this.....

Note and return with file.....

For your attention.....

Prepare draft reply for the Minister's signature and submit it to me for consideration.....

Prepare draft reply for my signature.....

Prepare memorandum for me.....

Attach file and return to.....

Prepare draft reply for the signature of the Executive Assistant to the Minister and submit it to me for consideration.....

SPECIAL INSTRUCTIONS:

OFFICE OF THE CUSTODIAN
RECEIVED
FEB 5 1953
PASS TO.....
FILE

C. Stein

C. Stein,
Under Secretary of State.

per de Dumont

Asst. Secretary of State

House of Commons
Canada

OFFICE OF THE
JAN 31 1953
SECRETARY OF STATE

(1)

O t t a w a
January 30, 1953

Miss Theresa Maloney,
Executive Assistant, Department of
The Secretary of State,
O t t a w a

Dear Miss Maloney:

Re: Japanese Property Claims
Commission Claim No. 1388 E.
Kagetsu, Deep Bay Logging
Company Limited.

This will acknowledge receipt of your letter of December 15th, replying in the absence of the Secretary of State to my letter of December 5th.

I am well acquainted with the recommendations made by Justice Bird in the above case. My contention is that Justice Bird's recommendation is a great injustice to Mr. Kagetsu. Indeed Mr. Kagetsu has been economically ruined by the actions of the Government in this matter.

I do not think anything is required to discredit Justice Bird's recommendations than the fact which I pointed out in my letter to the Minister that in the two blocks of standing timber, in one case 70% more timber has already been cut and taken off the property, and logging is not yet completed, than Justice Bird had allowed was on the property in the first place. In the other case, 100% more timber has been cut and taken off the property than the cruising figures accepted by the Commissioner allowed was on the property. As I also pointed out in my letter to the Secretary of State the statistics of the timber already cut are from provincial government sources and there can be no doubt of their correctness.

I am convinced that regardless of what consideration may have already been given to this case that it should, in the interest of justice, be again considered.

Yours sincerely,

Angus MacInnis
Member for Vancouver East.

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

January 8th, 1953.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company
E. Kagetsu

I acknowledge and thank you for your communication of 29th ultimo. This has been perused by the members of the Board, and the Vice Chairman and Associate Counsel in his note to me states:

> "I certainly agree with the last paragraph of the attached letter."

The Comptroller has also commented as follows:

> "I was greatly interested reading this letter and I feel Mr. Shears deserves to be congratulated for it, also for the work he has put in summarizing the situation."

A reply was sent to Mr. McInnis under day of 15th ultimo, which outlines the position taken by Honourable Mr. Bradley last summer, and it was pointed out that the evidence of witnesses and the presentation of argument before the Commissioner occupied 16 days, and that there are 1,384 pages of transcript apart from 61 exhibits.

I concluded by stating that he would doubtless agree that the utmost consideration had been extended in an effort to properly assess this claim, and no reply has been received.

The Honourable James Sinclair asked for a report on the case on December 16th, and the same information was furnished, but we have not heard from him.

The arguments furnished in your letter will be reserved for presentation if and when the need arises.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G

File 16700

Ottawa, December 31st, 1952.

MEMORANDUM FOR FILE

Re: E. Kagetsu
Deep Bay Logging Company Limited.

The following is an excerpt from the Minutes of Meeting of the Administration Board Tuesday, December 30th, 1952.

"A memorandum from the Deputy Custodian under date of 10th instant, enclosing letter from Mr. Angus MacInnis, M.P. to the Secretary of State, was read.

The Chairman presented a copy of memorandum which he had sent to the Deputy Custodian under date of December 15th, 1952, also a letter which had been drafted for the signature of the Executive Assistant to the Secretary of State, to be sent to Mr. MacInnis."

K. W. Wright.

KWW/G

MR. WRIGHT,

I WAS GREATY
INTERESTED READING THIS
LETTER AND I FEEL MR
SHEARS DESERVES TO BE
CONGRATULATED FOR IT ALSO
FOR THE WORK HE HAS PUT
IN SUMMARIZING THE
SITUATION.

JAN-6/53-

Ken

I certainly agree with the last paragraph of the attached letter.

Gordon

from any source any compensation in
ment by the Japanese Government. If
- 2 -

CANADA

DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO. 16700

~~505 ROYAL BANK~~ BLDG.
~~HASTINGS AND GRANVILLE~~
VANCOUVER, B. C.
4615 West 9th Avenue
Vancouver, B.C.

OFFICE OF THE CUSTODIAN
RECEIVED
JAN 8 1953
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FILE

December 29th 1952

K.W.Wright Esq.,Q.C.
Chief Counsel,
Office of the Custodian,
Victoria Building,
Ottawa.

Deep Bay Logging Co- E.Kagetsu
Claim No. 1388

Dear Mr Wright,

Your letter concerning the above matter was delayed somewhat, doubtless due to the volume of holiday mail. I now have before me copies of letter to the Hon.Mr Bradley from Angus McInnes M.P. and Mr Stein's Memo. concerning same.

You will appreciate that comments on the statements made by Mr McInnes are difficult to answer in any abbreviated form. This case was before the Commissioner for 16 days, about 20 witnesses gave evidence, there were 61 exhibits, some of a very detailed nature and 1382 pages of transcript of evidence.

Even although Mr McInnes claims to have carefully examined the records of the claim, it is certainly my opinion, as one who was present throughout this hearing, that in the careful handling of this case the Commissioner did not overlook any important facts as Mr McInnes suggests. His patience, and insight in regard to lumber operations were matters of comment at the time of the hearing.

For the Custodian to have any doubts in this regard or to go beyond the findings of the Commissioner,would be tantamount to saying that the whole enquiry was an unsatisfactory and useless effort.

Mr McInnes specifically mentions a few matters and I will make a brief comment in regard to each.

Claimants concerned were considered enemy aliens.
You will be aware of the inaccuracy of this statement. In our administration only those who were residing in Japan or those few hundred who were Interned, were considered as "enemies" All other Japanese living in Canada, regardless of whether they were nationals, naturalized or Canadian born, were all considered as "Evacuees" under the Government Evacuation policy. I am aware that personal and political opinion may have differed in regard to this policy but its application to Mr Kagetsu was no different to that of all other Japanese who were evacuated from British Columbia. Any "injustice" done to Mr Kagetsu in this connection would apply equally to other Japanese whose business operations were disrupted and disposed of either by themselves or by the Custodian under the policy of liquidation.

Kagetsu a victim of prejudice at time of property disposal.
The matter of Government policy in regard to liquidation was not of course considered by the Commissioner. The impartial or even favourable attitude which the Commissioner accorded to each Japanese claimant was evident at all times and was commented upon not alone by Government and Custodian advocates, but also by Counsel acting for the claimants. Moreover the businesslike and honest manner in which Government policy was carried out, in an endeavour to protect and obtain fair market value for all Japanese assets, was dealt with in the Hon. Mr Justice Henry Bird's Report, and to my knowledge has never been challenged even by those acting on behalf of the Japanese, so that regardless of any prejudice that may have existed in the minds of some sections of the community, such prejudice did not have any bearing on the orderly and careful handling and disposal of Japanese property.

No consideration given by the Commissioner to property being a going concern.
Early in the enquiry, when Counsel argued on general matters, the Commissioner accepted the principle that the matter of good will was an element in establishing fair market value, and that when applicable its bearing would be considered. In this particular case the operations of the company, before evacuation, during the time it was operated by the Custodian, and its position at the time of sale, were all matters in regard to which the Commissioner gathered ample information. Facts concerning the term of the remaining life of the operation, the possibility of obtaining further timber adjacent to their own limits, the relation of the railway and railway equipment to the areas on which further logging was possible or for the necessity for conversion into a trucking operation, all came into very adequate and extended review, so that questions that had a bearing on the value of the property as a going concern were all fully dealt with and came under the consideration of the Commissioner.

No allowance made for compulsory taking over the property
While this statement may be correct this particular angle was not over-looked, and with all the evidence before him the Commissioner reached the conclusion that an allowance of 10%, which it had been argued might apply, was not applicable to the circumstances of the present case.

Something very definitely wrong with the Commissioners calculations in regard THE QUANTITY OF TIMBER ON THESE LIMITS.
I can quite understand that this statement is made in good faith as a good deal of confusion can easily arise when figures from different sources are brought together without a proper analysis of what they purport to deal with. Seeing that it was the analysis of such figures to which Mr McInnes refers which occupied the main part of this enquiry, it is impossible to dispose of the question other than by a full perusal of all the evidence, exhibits and expert opinion which was before the Commissioner, and on which he arrived at his final conclusions.
While tha Commissioner indicated that he found Mr Kagetsu's own evidence in regard to the quantity of timber somewhat contradictory or evasive, there was evidence to shew that Kagetsu's own figures at the time of his evacuation did not differ so greatly from the quantity which formed the basis of the sale by the Custodian. The claim for considerably larger quantities was based on cruises made in 1948 and upon an examination of only 4% of the entire area at a time when the area had been logged to the extent of 80% of the whole. While the answer to the question of variation in figures concerning the quantity of timber on a particular property cannot be given in a sentence,

an indication of one difference could in brief be attributed to the size of the timber which was being considered. That is to say it is quite possible that figures concerning timber of a minimum size of 12 inches D.B.H. (Diameter Breast High) might be 100% more than figures which only dealt with timber with a minimum of 18 inches D.B.H.
Much of the evidence and some of the exhibits could only be correctly understood in the light of its relation to that factor.
Whether 18 inches or 12 inches or any other diameter should be the basis for computing quantity was a matter which could vary from time to time and would mainly depend upon the minimum size that was considered economically "merchantable". "Accessibility" was also another factor which had a bearing in estimating quantity. Moreover "accessibility" involves far more than the question of whether the area could actually be logged, but whether it could be logged at a profit. The quantity of "Merchantable" and Accessible" timber on a property could thus vary materially according to market conditions.

The "Sloan Report" of December 1945, with which the Hon. Justice Bird was quite familiar, dealt with these matters and among other things brought out the fact that areas might be inaccessible to-day and accessible tomorrow, depending upon the relation of cost of production to the realizable price. Of necessity the Commissioner had to interpret the evidence before him in the light of these factors at the time of sale.

In regard to this matter of quantity, it should be noted that the basis on which the quantity of timber was established at the time of sale by the Custodian, was similar to the basis by which Mr Kagetsu originally bought these Deep Bay properties, the same Cruiser and the same standard of size of timber being used. Mr Kagetsu therefore did not suffer any loss in so far as the quantity sold by the Custodian compared with the quantity he purchased.

According to Mr Kagetsu, on some blocks of timber he cut 100% more than he originally purchased but it appeared, that to arrive at this figure, he was cutting much smaller logs than the accepted standard then being used in cruising a timber limit. However there was no evidence to show that this was economically sound. As a matter of fact the Company's own Ledgers covering ten years operations, shewed operating losses averaging $3000 a year for nine years and a profit in one year of just over $1000.

The Commissioner was fully aware of figures which might indicate a larger amount of timber being cut than the quantity which formed the basis of the Custodians sale. He would also be aware from evidence, that from 1945 onward the utilization of smaller timber was very much greater than was the case at the time of sale.

This leads me to Mr McInnes statement that
<u>If a settlement could have been delayed, Kagetsu would have received an amount nearer the true value</u>.
While this is not by any means certain it is possible that ~~it~~ the timber remaining might have been sold to better advantage.
The Commissioner was not unmindful of this and when recommending his total award of $51,750 he stated that a marked rise in the market value of standing timber and a radical change in the degree of utilization of timber occurred after the time the Custodian's cruise and valuation was made.
This factor was not confined to matters pertaining to assets owned by Japanese; many a person sold property in 1944 for which they could have realized a larger amount had they not sold until say 1948.

Mr McInnes states that the above are illustrations of what he considers to be mistakes made, and wrong conclusions arrived at by the Commissioner and that there are many more.

I would say ~~from my first hand knowledge of this case~~ that within the Terms of Reference, the Hon. Mr Justice Henry Bird, after dealing with a great mass of detail and with the evidence of witnesses called on behalf of the claimant, and covering all the matters ~~referred to by Mr. McInnes~~, arrived at conclusions and an award, which together with the sale price, was unquestionably sufficient to cover the fair market value of the enterprise at the time of sale. Mr Kagetsu's own agent was trying to effect a sale prior to the Custodian advertising the property; Lumber Firms on the Coast would not readily allow any competitor to buy a timber limit if it were particularly attractive, at less than its fair value.

Mr McInnes states that this is the only large claim among those considered by the Commissioner. It is true that the amount claimed was the largest but the Commissioner had under review a timber operation with far larger assets than were owned by Deep Bay, on which the amount he recommended as an award, has been paid and a Release given to the Custodian.

I can see no logical reason for the summation of the reply you may decide to give to Mr McInnes to be other than that the payment of the award recommended by the Commissioner, must represent a final settlement as far as the Custodian is concerned.

Yours very truly,

F.G. Shears

F.G. Shears.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131
PLEASE REFER TO
FILE NO. 16700

505 ROYAL BANK BLDG.
~~HASTINGS AND GRANVILLE~~
VANCOUVER, B. C.
4615 West 9th Avenue
Vancouver, B.C.

OFFICE OF THE CUSTODIAN
RECEIVED
JAN 8 1953
PASS TO
FILE

December 29th 1952

K.W.Wright Esq.,Q.C.
Chief Counsel,
Office of the Custodian,
Victoria Building,
Ottawa.

Deep Bay Logging Co- E.Kagetsu
Claim No. 1388

Dear Mr Wright,

Your letter concerning the above matter was delayed somewhat, doubtless due to the volume of holiday mail. I now have before me copies of letter to the Hon.Mr Bradley from Angus McInnes M.P. and Mr Stein's Memo. concerning same.

You will appreciate that comments on the statements made by Mr McInnes are difficult to answer in any abbreviated form. This case was before the Commissioner for 16 days, about 20 witnesses gave evidence, there were 61 exhibits, some of a very detailed nature and 1382 pages of transcript of evidence.

Even although Mr McInnes claims to have carefully examined the records of the claim, it is certainly my opinion, as one who was present throughout this hearing, that in the careful handling of this case the Commissioner did not overlook any important facts as Mr McInnes suggests. His patience and insight in regard to lumber operations were matters of comment at the time of the hearing.

For the Custodian to have any doubts in this regard or to go beyond the findings of the Commissioner,would be tantamount to saying that the whole enquiry was an unsatisfactory and useless effort.

Mr McInnes specifically mentions a few matters and I will make a brief comment in regard to each.

Claimants concerned were considered enemy aliens.
You will be aware of the inaccuracy of this statement. In our administration only those who were residing in Japan or those few hundred who were Interned, were considered as "enemies" All other Japanese living in Canada, regardless of whether they were nationals, naturalized or Canadian born, were all considered as "Evacuees" under the Government Evacuation policy. I am aware that personal and political opinion may have differed in regard to this policy but its application to Mr Kagetsu was no different to that of all other Japanese who we who were evacuated from British Columbia. Any "injustice" done to Mr Kagetsu in this connection would apply equally to other Japanese whose business operations were disrupted and disposed of either by themselves or by the Custodian under the policy of liquidation.

Kagetsu a victim of prejudice at time of property disposal.
The matter of Government policy in regard to liquidation was not of course considered by the Commissioner. The impartial or even favourable attitude which the Commissioner accorded to each Japanese claimant was evident at all times and was commented upon not alone by Government and Custodian advocates, but also by Counsel acting for the claimants. Moreover the businesslike and honest manner in which Government policy was carried out, in an endeavour to protect and obtain fair market value for all Japanese assets, was dealt with in the Hon. Mr Justice Henry Bird's Report, and to my knowledge has never been challenged even by those acting on behalf of the Japanese, so that regardless of any prejudice that may have existed in the minds of some sections of the community, such prejudice did not have any bearing on the orderly and careful handling and disposal of Japanese property.

No consideration given by the Commissioner to property being a going concern.
Early in the enquiry, when Counsel argued on general matters, the Commissioner accepted the principle that the matter of good will was an element in establishing fair market value, and that when applicable its bearing would be considered. In this particular case the operations of the company, before evacuation, during the time it was operated by the Custodian, and its position at the time of sale, were all matters in regard to which the Commissioner gathered ample information. Facts concerning the term of the remaining life of the operation, the possibility of obtaining further timber adjacent to their own limits, the relation of the railway and railway equipment to the areas on which further logging was possible or for the necessity for conversion into a trucking operation, all came into very adequate and extended review, so that questions that had a bearing on the value of the property as a going concern were all fully dealt with and came under the consideration of the Commissioner.

No allowance made for compulsory taking over the property
While this statement may be correct this particular angle was not over-looked, and with all the evidence before him the Commissioner reached the conclusion that an allowance of 10%, which it had been argued might apply, was not applicable to the circumstances of the present case.

Something very definitely wrong with the Commissioners calculations in regard THE QUANTITY OF TIMBER ON THESE LIMITS.
I can quite understand that this statement is made in good faith as a good deal of confusion can easily arise when figures from different sources are brought together without a proper analysis of what they purport to deal with. Seeing that it was the analysis of such figures to which Mr McInnes refers which occupied the main part of this enquiry, it is impossible to dispose of the question other than by a full perusal of all the evidence, exhibits and expert opinion which was before the Commissioner, and on which he arrived at his final conclusions.
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Yours very truly,

F.G.Shears.

F.G.Shears.

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

December 23rd, 1952.

Honourable James Sinclair, M.P.,
Minister of Fisheries,
Ottawa, Ontario.

Dear Mr. Sinclair:

Re: Kagetsu, Eikichi - R.C.M.P.#00014
& (Deep Bay Logging Company Limited)

I regret that an earlier reply to your letter of 16th instant was not possible dur to my absence from the City.

I enclose copy of a report dated 27th June, 1951, from Mr. F. G. Shears, Director of our Vancouver Office, in order to place the facts more fully before you.

You will observe that the hearing of this case before Mr. Justice Bird occupied 16 days and there are 1,384 pages of transcript. Following through examination of such submissions the Commissioner handed down his reasons for recommending the award in a 16 page document. We do not have an extra copy of this document, however one will be made and sent to you if you wish.

I should also point out that the position of the Custodian in regard to the payment of claim awards is that while the recommendations of the Commissioner have been accepted by the Government in so far as the amount recommended is concerned, the payment of the amount recommended is on a purely ex gratia basis.

The file reveals that last summer this case was carefully reviewed by Honourable Mr. Bradley following numerous representations and receipt of considerable material filed in support of an application to increase the amount of the award recommended by Mr. Justice Bird.

On July 7th, 1952, the Minister decided not to increase the award of $51,750. made by Commissioner Bird, but did agree to grant an additional $2,587.50 in final settlement of a claim for expenses other than legal fees incurred in the presentation of the claim.

This offer has not been accepted by Mr. Kagetsu and there the matter stands.

I trust you will agree that the utmost consideration has been extended in an effort to properly assess this claim.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encl.

CANADA

MINISTER OF FISHERIES

OFFICE OF THE CUSTODIAN
RECEIVED
DEC 17 1952
PASS TO.....
FILE

OTTAWA, December 16, 1952.

K. W. Wright, Esq., Q.C.,
Chairman, Administration Board,
Custodian of Enemy Property,
Department of the Secretary of State,
7 O'Connor Street,
OTTAWA, Ontario.

Re: KAGETSU, Eikichi - R.C.M.P.#00014
& (Deep Bay Logging Company Limited)

Dear Sir:

Mr. Angus MacInnis, M.P. for Vancouver East, has handed me the enclosed document regarding a claim by the above-named Japanese for property losses.

I would be most grateful if you could give me some information on this matter.

Yours sincerely,

James Sinclair

James Sinclair.

Enc.

November 16, 1949

A M E N D E D C L A I M

IN THE MATTER of a Commission to Investigate Claims of Japanese-Canadians for property Losses Pursuant to Order-in-Council P. C. 1810 - 1947 as amended by P. C. 3737 - 1947

---

(1) DEEP BAY LOGGING COMPANY LIMITED and

SURNAME Kagetsu GIVEN NAME Eikichi

(2) R. C. M. P. Registration No. 00014

(3) Pre-Evacuation Address 335 Princess Avenue, Vancouver, B.C.
2867 West 37th Avenue, Vancouver, B. C.

(4) Present Address c/o Mr. E. Kagetsu, 8 Mountview Avenue, Toronto, Ontario

(5) ITEMS

Item No. 1

(a) Legal Description Block 195, Cowichan Lake District

(b) Type of Property Timber Land

(c) Value $247,500.00

(d) Sold by Custodian $ 93,000.00

(e) Loss Claimed $154,500.00

Item No. 2

Parcels A, B, and C etc on Custodian's analysis chart being

(a) Blocks: 504, 566, 617, 274, 263, 234, 267, 276, 256, 198 and Lot 88 all in the Newcastle District, Vancouver Island and buildings and contents on Deep Bay Logging Company's operation: foreshore rights, booming grounds, dumping landing, bridges, coal stock, etc. comprising the subject matter of the sale to MacMillan Export Company Limited, particulars of which are as follows:

(i) All the standing timber as at the date of sale, being the total amount of 56,520 M. feet shown on page 5 of the Schultz Forest Inventory, less the cold decked and felled and bucked timber hereinafter set out, i. e.

		56,520 M
Less cold decked timber felled and bucked	700 M	
	1,868 M	2,568 M
		53,952 M
At $4.00 per M. =		$215,808.00
(ii) (a) Cold-decked timber		
700 M. @ $12.75 per M	8,925.00	
(b) Felled and bucked		
1868 M @ $10.75 per M	20,081.00	29,006.00
(iii) 40 buildings and their Contents as per inventory		4,000.00
(iv) Valuation of immature stands of logged and unlogged areas as set out on page 20 of the Schultz report		43,225.00
		$ 292,039.00

(b) Value $ 292,039.00

(c) Sold by Custodian 40,000.00

(d) Loss Claimed $252,039.00

Item No. 2 (a)

The value in use of the railway (reserved from the claimant's recommendation of settlement dated November 18,1948) 28,260.00

Item No. 3

Parcel C on the Custodian's analysis chart, Railway Equipment and Railroad, being

(a) Type of property 1 sixty-ton Shay Locomotive
18 Logging Railway Cars
1 Flat Railway Car
2 Push cars
2 Speeders
8 miles of railroad
60 tons of coal

(b) Value $23,029.00

(c) Sold by Custodian $14,500.00

(d) Loss Claimed $8,529.00

Item No. 4

Parcels D. and F of the Custodian's analysis chart being

(a) Type of property Clyde Gas Donkey
Empire Gas Donkey
Skagit Gas Donkey
Cletrac Tractor
Compressor and Accessories

(b) Value $22,925.00

(c) Sold by Custodian $13,000.00

(d) Loss Claimed $9,925.00

Item No. 5

Part of Parcel H on the Custodian's analysis chart being

(a) Type of property Wire Rope
Blocks
Straps, clevises, etc.
Felling and bucking tools
Miscellaneous Tools

(b) Value $15,591.80

(c) Sold by Custodian $ 7,104.53

(d) Loss claimed $8,487.27

Item No. 6

(a) Street Address 5286 McKenzie St. Vancouver, B. C.

(b) Legal Description Lots 47 and 48 Block 29, District 1 2027

(c) Type of property Residence

(d) Interest in property Sole Owner

(e) Value $5,500.00

(f) Sold by Custodian $4,300.00

(g) Loss Claimed $1,200.00

Item No. 7

(a) Description — Pontiac Sedan 1942 Lic.No. 65445

(b) Value — $1,396.00

(c) Sold by Custodian — $1,025.00

(d) Loss Claimed — $ $371.00

Surrendered to R. C. M. P. on behalf of Custodian, Hastings Park, Vancouver March 12th, 1942

Item No. 8

Lost by Custodian being

A. Boom chains left on the premises at Deep Bay
(a) at Blacksmith shop - 610
(b) at boominggrounds - 30

640

Credited by Custodian 317

Lost 323

Value 323 x $2.25 $726.75

B. 1,200 ft. wire rope @ 8¢ per fot. 96.00

Loss Claimed $822.75

TOTAL CLAIM FOR real and personal property $464,134.02

DOMINION OF CANADA)
)
TO WIT:)
)

IN THE MATTER of a Commission to investigate claims of Japanese Canadians for Property losses

AND IN THE MATTER OF the claim of Mr. Eikichi Kagetsu of the City of Toronto in the County of York, Retired Logger, and Deep Bay Logging Company Limited.

I, Eilichi Kagetsu of the City of Toronto, in the County of York,

DO SOLEMNLY DECLARE THAT:

The information set out in the claim form hereto is true and correct to the best of my knowledge, information and belief, and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of "the Canada Evidence Act".

DECLARED before me at the City)
of Vancouver, in the Province)
of British Columbia, this 16th)
day of November, A. D. 1949.)

(B)

A COMMISSIONER for taking Affidavits within British Columbia.

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

December 16th, 1952.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver 8, B.C.

Dear Mr. Shears:

Re Deep Bay Logging Co. Ltd.

I have for acknowledgment your letter of 13th instant, and enclose herewith copies which were omitted from my letter of 11th.

The omission herein is regretted.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encl.

(1)

Ottawa, December 15, 1952.

Angus MacInnis, Esq., M.P.,
House of Commons,
Ottawa 4, Ontario.

Dear Mr. MacInnis:

Re: Japanese Property Claims Commission
Claim No. 1388 K. Kagetsu, Deep Bay
Logging Company Limited.

The Minister, as you are aware, is absent in Newfoundland and it is for this reason that I am replying to your letter of 5th instant.

The file reveals that last summer this case was carefully reviewed by Honourable Mr. Bradley following numerous representations and receipt of considerable material filed in support of an application to increase the amount of the award recommended by Mr. Justice Bird.

On July 7th, 1952, the Minister decided not to increase the award of $51,750. made by Commissioner Bird, but did agree to grant an additional $2,587.50 in final settlement of a claim for expenses other than legal fees incurred in the presentation of the claim.

This offer has not been accepted by Mr. Kagetsu and there the matter stands.

May I point out that the evidence of witnesses and presentation of argument before the Commissioner occupied 16 days, and there are 1,384 pages of transcript apart from 61 exhibits. Following thorough examination of such submissions the Commissioner handed down his reasons for recommending the award in a 16 page document.

I should also point out that the position of the Custodian in regard to the payment of claim awards is that while the recommendations of the Commissioner have been accepted by the Government in so far as the amount recommended is concerned, the payment of the amount recommended is on a purely ex gratia basis.

With the information now supplied I trust you will agree that the utmost consideration has been extended in an effort to properly assess this claim.

Yours very truly,

Teresa Maloney,
Executive Assistant to
The Secretary of State.

Ottawa. December 15th, 1952.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: British Columbia Japanese evacuee claims
and re: claim No. 1388 - E. Kagetsu,
Deep Bay Logging Co. Ltd.

I have for acknowledgment your memorandum of 10th instant with enclosure, and in accordance with your request enclose letter, in triplicate, addressed to Mr. MacInnis for Miss Maloney's signature.

You will recall that on 7th July, 1952, the Minister dealt with three cases, viz. Kagetsu, Yamanaka and Jinnouchi.

On 10th July, 1952, I wrote Mr. John Osborne and offered to pay the award of $51,750. together with $2,587.50 for expenses other than legal fees provided the usual release forms were completed by Kagetsu. The necessary release forms have not been received, therefor cheques for the amounts of award and expenses have not been issued.

Re: Claim of Mrs. Masuye Jinnouchi for
Insurance.

The original claim was for $5,000. The Minister established a maximum of $3,842.55, and authorized Mr. Shears to effect a settlement. The case was settled for $1,900. which is slightly less than 50% of the amount authorized, and you will recall that this information was conveyed to you by letter addressed to London, England.

A cheque for $1,900. was issued and we have a complete release on file.

Re: HirokichiYamanaka

The Minister ruled that no payment was to be made to this claimant other than the award of $2,056.66 recommended by Mr. Justice Bird. Messrs. A. J. P. Cameron, Q.C., M.P., and Mr. F. A. Brewin, Q.C., finally concluded that it was useless to make any further representations in regard to the claim for Yamanaka's accounts. Accordingly they had their client complete the necessary release form and payment of the Commissioner's award was made.

I return Mr. MacInnis's letter dated 5th ultimo addressed to Honourable Mr. Bradley.

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encl.

File 16700

Ottawa, December 15th., 1952.

MEMORANDUM FOR FILE

Re: Deep Bay Logging Co. Ltd.
E. Kagetsu

The following is an excerpt from the Minutes of Meeting of the Administration Board Friday, December 12th., 1952.

"A Memorandum from the Deputy Custodian dated 10th instant, together with copy of letter from Angus MacInnes, M.P. to Honourable Mr. Bradley, were read.

The Chairman stated that this matter had been decided by Honourable Mr. Bradley on July 7th., 1952, and that on July 10th a letter was sent to Mr. Osborne, Ottawa Agent for Colonel Norris, indicating that the Custodian would pay the award of $51,750. together with $2,587.50 for expenses other than legal fees provided the usual release forms were completed by Kagetsu.

The Chairman also reported that he would draft a letter to Mr. MacInnes for signature of the Executive Assistant to the Secretary of State and send same to the Deputy Custodian. "

K. W. Wright

KWW/K

4615 West 9th Avenue
Vancouver -8
December 13th 1952

K.W.Wright Esq. Q.C
Chief Counsel
Office of the Custodian,
Ottawa

re Deep Bay

Dear Mr Wright,

Your letter Dec. 11th just received (Saturday noon) However the enclosures referred to were omitted so that I am unable to make any comments at the present time. You will doubtless have them mailed at once.

Yours very truly,

F.G.Shears.

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

December 11th, 1952.

F. G. Shears, Esq.,
4615 West 9th Avenue,
Vancouver, B.C.

Dear Mr. Shears:

Re: Deep Bay Loggomg - E. Kagetsu
Claim No. 1388

You have been asking for a report on developments herein.

For your information and early comments I enclose copies of the following:

Memorandum from Mr. Stein under date of December 10, 1952.
Letter to Hon. Mr. Bradley from Mr. Angus McInnes, M.P., under date of December 5, 1952.

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encls.

MD

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN
RECEIVED
DEC 10 1952
PASS TO
FILE

Ottawa, December 10, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

Re: British Columbia Japanese evacuee claims
and re: claim No. 1388 - E. Kagetsu,
Deep Bay Logging Co. Ltd.

With reference to my memorandum of July 8th last, herewith is a letter received by the Secretary of State from Mr. Angus MacInnis, M.P., dated the 5th instant, asking for a review of the above noted claim. I do not think I have heard from you either concerning this case or the case of Mrs. Jinnouchi, since sending you my said memorandum, except when I spoke to you very briefly yesterday about the matter.

At first sight, I would think that the reply to be made to Mr. MacInnis is that Kagetsu's claim has been finally disposed of as far as we are concerned (subject to what may have transpired since my memorandum of July 8th with respect to the offer of $2,587.50 for expenses which was to be made to this claimant), this after repeated careful review and consideration upon considerable representations made on behalf of the claimant in the course of the last year or two. However, I shall be pleased to have your comments and a draft reply for my consideration. Please prepare the reply for the signature of the Minister's Executive Assistant and explain therein that she is replying in the absence of the Minister.

C. Stein

C. Stein,
Deputy Custodian.

Jos St Dumont

MD

COPY
FMM

CANADA

Department of the Secretary of State

Ottawa, December 10, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

Re: British Columbia Japanese evacuee claims
and re: claim No. 1388 - E. Kagetsu,
Deep Bay Logging Co. Ltd.

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(Signed) C. STEIN

C. Stein,
Deputy Custodian.

(per M. Dumont).

MD

Ottawa, December 10, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

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and re: claim No. 1388 - E. Kagetsu,
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C. Stein,
Deputy Custodian.

MD

Ottawa, December 10, 1952.

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Deputy Custodian.

COPY
NMM

HOUSE OF COMMONS
CANADA

O t t a w a
December 5, 1952

Honorable F. G. Bradley,
Secretary of State,
O t t a w a

Dear Mr. Bradley:

Re: Japanese Property Claims Commission, Claim No. 1388 E. Kagetsu, Deep Bay Logging Co. Ltd.

My attention has been drawn to the award made by the Custodian of enemy alien property in the above claim. Perhaps I should have said the award made by the Commissioner who was appointed to look into these claims.

I have carefully examined the records in regard to this claim and I am firmly of the opinion that a grave injustice has been done to Mr. Kagetsu. It seems clear to me that the Commissioner overlooked certain important facts in connection with this claim. Before touching on some of them, may I say that it has always been my opinion that the initial mistake made in regard to all these claims was that the persons concerned were considered as enemy aliens and not as Canadian citizens which most of them were.

In the Kagetsu claim there were two blocks of timber as well as certain logging equipment and felled and bucked logs, etc. The timber claims were Block 195, Cowichan Lake District and the Deep Bay property. To show that there was something very definitely wrong with Commissioner Bird's calculations in respect to the timber on these tracts is the fact that in the one case 70% more timber has already been taken off the property, and logging is not yet completed, than Commissioner Bird had agreed was on the property. In the other case, 100% more timber has been cut and taken off the property than the Commissioner allowed was on the property in the first place. The figures of the timber already cut are from provincial government sources and I do not think there can be any doubt of their correctness. It might be stated that these figures were not available at the time of the hearing. I am also informed that the timber on Mr. Kagetsu's property was of high quality and not merely a salvage operation as maintained by the Commission.

Besides these facts which would be important in any transaction of this nature, there is another aspect of this case which was not, it seems to me, given due consideration by the Commissioner. When Mr. Kagetsu was removed from the Pacific Coast of British Columbia, his property was a going concern. No allowance was made for the compulsory taking over of the property and, indeed, no reason was given for refusing it. The fact of the matter is that Mr. Kagetsu was a victim of the prejudice against persons of Japanese origin which prevailed at the time the properties were disposed of. I am almost sure that if a settlement could have been delayed for a few years, Mr. Kagetsu's properties would not have been confiscated or if they were he would have received an amount nearer their true value. Now that we have made a soft peace with Japan, who was the enemy, I think we should re-consider the deal given Mr. Kagetsu by the Commissioner.

I have given some illustrations of what I consider to be mistakes made or wrong conclusions arrived at by the Commissioner. There are many, many more. Consequently, I think his case should be reviewed in the more tolerant circumstances of the present time.

As I have already stated Mr. Kagetsu was a Canadian citizen having been granted citizenship in 1909. In 1936 he was invited to participate in the Vimy Pilgrimage. I think this should be satisfactory proof that Mr. Kagetsu was considered to be a good citizen of Canada and should not have been penalized for the actions of the Government of Japan. I would urge you to give the case further consideration. I would be glad of an opportunity to discuss this matter with you in greater detail. This is the only large claim in all of the many property claims considered by Commissioner Bird.

At the time of the Canadian Bar Association Convention in British Columbia this fall, I had the pleasure of hearing Sir John Morris, jurist of repute from the United Kingdom speaking at a special convocation of the University of British Columbia. Two sentences in his speech struck me particularly and I believe they apply in this case. He said:

> "Surely there are few more satisfying experiences than to help set right an injustice. Injustice should be righted wherever, whenever and however it appears".

I believe that an injustice has been done in Mr. Kagetsu's case and I believe that steps should be taken to have that injustice righted.

Yours very truly,

(Sxxxxx) - Angus MacInnis, M. P.

House of Commons
Canada

O t t a w a
December 5, 1952

OFFICE OF THE
DEC 6 1952
SECRETARY OF STATE

Honorable F. G. Bradley,
Secretary of State,
O t t a w a

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Re: Japanese Property Claims
Commission, Claim No. 1388
E. Kagetsu, Deep Bay
Logging Co. Ltd.

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> "Surely there are few more satisfying experiences than to help set right an injustice. Injustice should be righted wherever, whenever and however it appears".

I believe that an injustice has been done in Mr. Kagetsu's case and I believe that steps should be taken to have that injustice righted.

Yours very truly,

Angus MacInnis, M. P.

Ottawa, July 15th, 1952.

MEMORANDUM:

Re: Deep Bay Logging Company
Hirokichi Yamanaka
Mrs. Masuye Jinnouchi

The following is an excerpt from the Minutes of Meeting of the Administration Board Friday, July 11th, 1952.

"A memorandum from the Deputy Custodian covering the Minister's interview with the Deputy Custodian and Chairman of the Administration Board, was read.

Mr. Wright informed the Board that he had written to the Solicitors for Deep Bay Logging Company and Hirokichi Yamanaka, and had also instructed Mr. Shears to negotiate a settlement with Tagashira and Mr. Clyne."

K. W. Wright.

KWW/G

16700

Ottawa, July 15th, 1952.

MEMORANDUM:

Re: Deep Bay Logging Company
Hirokichi Yamanaka
Mrs. Masuye Jinnouchi

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K. W. Wright.

KWW/G

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

July 10th, 1952.

John Osborne, Esq.,
Gowling, MacTavish, Osborne & Henderson,
Barristers & Solicitors,
88 Metcalfe Street,
Ottawa 4, Ontario.

Dear Mr. Osborne:

Re: Japanese Property Claims Commission
Claim No. 1388 - Kagetsu - Deep Bay
Logging Company Limited.

I am directed by the Deputy Custodain to inform you that the Secretary of State has examined very carefully the claim of the above named, covering expenses other than legal fees.

The Minister has decided to offer you 5% of the award of $51,750.00, i.e. $2,587.50, in final settlement of the claim for expenses incurred in the presentation of same to the Bird Commission. This 5% is authorized by the Honourable Mr. Bradley on the basis of the informal recommendation of Mr. Justice Bird in favour of certain other claims.

It has also been decided that no payment is to be made further than the award of $51,750.00 as recommended by Mr. Justice Bird herein.

Before remitting we will require a release form, duly executed, as well as authority to pay solicitors fees direct. Colonel Norris is probably familiar with our requirements, but if not Mr. Shears, former Director in Vancouver, will furnish same. The office in Vancouver is closed but Mr. Shears may be contacted at 4615 West 9th Avenue, Vancouver, B.C.

In accord with the request made in your letter of May 30th, 1952, I return the following Exhibits:

Exhibit 5 - copy of Sheenan's cruise of Block 195, made about 1923.
Exhibit 36 - P. S. Ross & Sons' report on tenders for Block 195, dated May 21st, 1943.
Exhibit 53 - copy of Eustace Smith's report of Block 195, dated March 23rd, 1940.
Exhibit 55 - Annual Report of Forest Branch for 1943.
Exhibit 45 - P.S. Ross & Sons' Report on Liquidation of Deep Bay Logging Co. Ltd. dated March 19th, 1945.
Exhibit 22 - Extract from Government Scale of logs cut under timber mark 2K9.
Exhibit 23 - Extract from Government Scales of logs cut under timber mark 1C6.

Exhibit 61 - Schultz's report on a forest inventory of the Deep Bay operation, dated December 1948.

Exhibit 56 - Annual Report of Forest Branch for 1944.

Exhibit 62 - Schultz's stumpage appraisal of merchantable timber on Deep Bay operation, dated December 1949.

Yours very truly,

K. W. Wright,
Chairman, Administration Board,
and Chief Chairman.

KWW/G
Encls.

MD

Ottawa, July 8, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

Re: British Columbia Japanese evacuee claims
and re: Deep Bay Logging Co.(Kagetsu),
Hirokichi Yamanaka and
Mrs. Masuye Jinnouchi

The Chairman of the Administration Board and myself yesterday discussed these three cases with the Minister, when he read in our presence my draft memorandum for him of March 8, 1952, and some of its appendices and we gave him supplementary information in the course of the interview.

The Minister made the following decisions:

1. Deep Bay Logging Co. and M. Kagetsu: 5% of the award of $51,750, i.e. $2,587.50 to be offered in final settlement of their claim for expenses incurred in the presentation of their claims to the Bird Commission. This 5% allowance is authorized by the Minister on the basis of the informal recommendation of Mr. Justice Bird in favour of a group of claimants, pursuant to which recommendation and to the specific provision in this connection contained in P.C. 5037 of June 20, 1950, an amount of $58,577.96 was paid for such expenses to the said group (whose claims were handled by the Co-operative Committee on Japanese-Canadians).

The said provision in P.C. 5037 reads:

> "....including the reimbursement to claimants of expenditures made by them, exclusive of legal fees, on the presentation of their claims to the Commission".

Otherwise, no review is to be made of or payment to be made further to the award of $51,750 made by the Bird Commission to these claimants.

2. Hirokichi Yamanaka: No payment is to be made to this claimant further to the award of $2,056.66 made in his favour by the Bird Commission.

3. Mrs. Masuye Jinnouchi: Compensation not exceeding $3,842.55 is to be paid to this claimant, Mr. Shears to be requested to negotiate with her and reach the best possible settlement within that ceiling.

C. Stein,
Deputy Custodian.

MD

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

Ottawa, July 8, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

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and re: Deep Bay Logging Co.(Kagetsu),
Hirokichi Yamanaka and
Mrs. Masuye Jinnouchi

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C. Stein

C. Stein,
Deputy Custodian.

Ottawa, June 26th, 1952.

MEMORANDUM:

Re: British Columbia Japanese Evacuee Claims

The following is an excerpt from the Minutes of Meeting of the Administration Board Wednesday, June 25th, 1952.

A memorandum from the Chairman addressed to the Deputy Custodian under date of 23rd instant, incorporating recommendations regarding settlement of claims of the Deep Bay Logging Company, Hirokichi Yamanaka and Mayuse Jinnouchi, was read.

The Board approved the recommendations therein.

File under

K. W. Wright.

KWW/G

16760

Ottawa, June 23, 1952.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: British Columbia Japanese Evacuee Claims.

Deep Bay Logging Company: As you are aware most of the brief which Mr. John Osborne presented on behalf of Col. T. G. Norris, Q.C., outlines reasons for reconsideration of the compensation award amounting to $51,750. The question of allowing costs apart from the legal expenses is only dealt with at pages 4, 40 and 41, and in the course of our interview Mr. Osborne stated that he could not condense the argument put forward by Col. Norris with respect to such costs. Apart from the brief, Mr. Osborne left certain exhibits all of which are referred to in Col. Norris' memorandum.

Mr. Osborne was advised that it was doubtful if the Government would reopen the matter to the point of reviewing Mr. Justive Bird's award. The claim was originally filed by Kagetsu through Mr. Brewin and at the initial hearing Col. Norris and his partner, Mr. Baldwin, together with Mr. Brewin appeared for the claimant.

According to a report received from Mr. Sheers about a year ago the evidence of witnesses and presentation of arguments occupied 16 days and there are 1,382 pages of transcript apart from 61 exhibits.

In the course of the hearing changes were made in the original claim and the amended claim submitted to the Commissioner amounted to approximately $464,000. The fact that the Commissioner's award was $51,750 on a claim for $464,000 indicates that the whole claim was extravagant and the present request for compensation for expenses exceeds the limit of the basis of any previous allowances.

Mr. Osborne appears to realize that he has little chance to succeed in so far as the application to review the award is concerned. However, he emphasizes that Col. Norris' brief should be studied and hopes that as a result of representations therein you may be influenced to allow more than 5% of the award to cover costs apart from legal expenses. Mr. Osborne wishes to see you about the matter before you reach a decision.

In my memorandum to you of December 17, 1951, it was pointed out that mr. Sheers suggested payment of an amount up to $5,000 in order to effect settlement. You were informed that I was not disposed to agree with the recommendaion and thought we should confine our consideration to the matter of allowing 5% of $51,750. i.e. $2,587.50. The opinion advanced at that time still holds.

Hirokichi Yamanaka: The facts in this case have been fully covered in earlier memoranda but I wish to comment briefly on Mr. Brewin's letter you under date 5th ultimo. In paragraph two page two Mr. Brewin states that Mr. Yamanaka's claim is based on the fact that -

a) He suffered a substantial economic loss as a result of the evacuation, and

b) The Custodian assumed the task of collecting accounts receivable and failed to press the matter to a satisfactory conclusion.

As to a) - the fact that Yamanaka may have suffered economic loss as a result of evacuation is beside the point as this argument could be used with equal or greater force in connection with matters other than accounts receivable. Yamanaka may yet be able to make collections even though it is not possible to say to what extent such an effort might be effective.

One may only gather from Mr. Brevin's letter and from conversations which I had with Mr. A. J. P. Cameron, M.P., a short time ago, that no effort has been made by Yamanaka or his agents to collect the accounts. Therefore it must be said that the value or the collectibility of the accounts is a matter of conjecture.

As to b) - a special department was set up in our Vancouver Office to collect accounts owing to Japanese who had been evacuated.

The Debtors were contacted by letter and asked to pay. They were written to up to three times at least. The result of this correspondence was relayed to the Japanese creditor. He was told either that the Debtor would not reply, or that the Debtor claimed the account had been paid, or that the Debtor claimed he had no money to pay, or that he would pay at a later date, or that he refused to pay, or any other reason that was given for non payment.

For the most part this policy concerned Japanese who had an average of perhaps ten or a dozen accounts. When we consider the present case which involves a large number of accounts and in which the major portion of his declared assets seemed to lie, it would appear that our policy should have been carried out to at least the usual extent even if not more so.

Mr. Shears admitted that when this file first came to his attention he was annoyed to find it had been so badly handled both by our staff and by the agents appointed to look after the matter. He further admits that the circumstances were such that if anything more effort might have been made to collect, instead of which our administration did not match up to the average of the usual procedure. In other words the case is so to speak in a class by itself. He also feels that as the Government has paid considerable sums in awards, the acceptance of responsibility to the extent of $1,000 on a purely gratuitous basis would be justified on grounds that our handling of this particular file was not above criticism.

I agree with your view that Yamanaka would have little chance of succeeding in an action against the Custodian but am inclined to go along with Mr. Shears in order to get rid of a nuisance value.

Mrs. Mayuse Jinnouchi: A claim was made before Commissioner Bird for the sum of $5,500, on the basis of the failure to pay premiums so that these policies would have been in force at the time of Mrs. Jinnai's death. The Commissioner heard the evidence and reported as follows:

The evidence in my judgment, supports the following conclusion:

That the policies of insurance were in good standing at December 20th, 1942.

That the policies provided for the benefits outlined.

That on December 20th, 1942, Tagashira, on behalf of the claimant, instructed H. D. Campbell to pay maturing assessments on the policies.

That Campbell had sufficient funds in his hands, the property of Tagashira, to pay such assessments made in respect of those policies.

That as a result of non-payment of the premiums these policies lapsed.

That in the matter of these policies Campbell acted primarily as agent for the Custodian in whom Tagashira's assets were vested; and that Tagashira had reasons to believe, and did believe, that Campbell then acted in such capacity.

In my opinion cancellation of these policies resulted from the failure of the Custodian or of his agent Campbell to pay assessments pursuant to the instructions given Campbell by Tagashira, a copy of which was sent to and received by the Custodian in December 1942.

The claim was for $5,500. However, Mr. Shears has taken up the question of the value of these policies with the two Mutual Associations and the value of the policies at the time of the stated death of Mrs. Jinnai, was as follows:

B.C. Mutual Benefit Association	$2500.00	
Less assessments and dues	265.45	Net $2234.55
Provident Mutual Benefit Association	$1800.00	
Less assessments and dues	192.00	Net $1608.00
	A Total of	$3842.55

Mr. Shears has taken the position all along that the Custodian should accept responsibility for the payment of $3,842.55 and that he be authorized to negotiate with Mr. Clyne and Mr. Tagashira and arrive at a compromise settlement. If this procedure is adopted Mr. Shear would make a recommendation for payment of a specific sum which in any case would not exfeed the sum of $3,842.55 the full amount payable at the time of death.

In a memorandum to you under date of February 14th, 1952, I suggested that it would be wise to permit Mr. Shears to negotiate a settlement with Mr. Clyne and Tagashira.

Since retirement Mr. Shears has taken care of several matters for us in Vancouver without charge other than minor out of pocket expenses. The Board feels that the best interests of the office are served in this manner but are mindful of the fact that in all fairness we should in due time submit a recommendation to you relative to payment of a small honorarium. If you agree with my recommendation that Mr. Shears negotiate, I know that he will gladly do so and

and will, as heretofore, place the matter of compensation for such services secondary. Mr. Shears is chiefly concerned with rendering the Custodian assistance in the finalizing of these tag ends.

I attach the following:

Memorandum of Argument for reconsideration of awards.

Schedule of Exhibits.

Exhibit 5 - copy of Sheehan's cruise of Block 195, made about 1923.

Exhibit 36 - P.S. Ross & Sons' report on tenders for Block 195, dated May 21st, 1943.

Exhibit 53 - copy of Eustace Smith's report of Block 195, dated March 23rd, 1940.

Exhibit 55 - Annual Report of Forest Branch for 1943.

Exhibit 45 - P.S. Ross & Sons' Report on Liquidation of Deep Bay Logging Co., Ltd., dated March 9,1945.

Exhibit 22 - Extract from Government Scales of Logs cut under the timber mark 2K9.

Exhibit 23 - Extract from Government Scales of logs cut under timber mark 106.

Exhibit 61 - Schultz's report on a forest inventory of the Deep Bay operation, dated December 1948.

Exhibit 56 - Annual Report of Forest Branch for 1944.

Exhibit 62 - Schultz's stumpage appraisal of Merchantable timber on Deep Bay operation, dated December 1949.

R. W. Wright.
Chairman, Administration Board
and Chief Counsel.

EA
Attach.

13524

Legal Section
DJS/EA

Victoria Building,
7 O'Connor Street,
Ottawa 4, Canada.

June 18, 1952

Messrs. P. S. Ross & Sons,
Royal Bank Building,
Vancouver, British Columbia.

Dear Sirs:

Re: Deep Bay Logging Company, Limited.

I enclose herewith, Custodian's cheque #27234, dated June 14, 1952, drawn in your favour for the sum of $75.00 in full of your account as rendered March 25, 1952.

Yours truly,

D. J. Sinclair,
Solicitor.

DEPARTMENT OF SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

REQUISITION FOR CHEQUE

OTTAWA, June 13th. 1952

FILE NO. 13524

SECTION CASH

CHEQUE PAYABLE TO P.S. ROSS & SONS

RE VANCOUVER, B.C.

ADDRESS

CHEQUE TO BE FORWARDED TO PAYEES
(Name)
VANCOUVER
(Address)

IN THE AMOUNT OF
CAN. $ 75.00
U.S. $
£

PARTICULARS Balance of fees due to March, 1952, for services rendered in the liquidation of the Deep Bay Logging Co. Limited.

CHARGE TO DEEP BAY LOGGING CO., LIMITED
JAPAN EVACUEEs SECTION,
Royal Bank of Canada Spec. a/c NO. 10051

(Requisitioned by)

BALANCE OF ACCOUNT AS AT
CAN. $ 75.00 Pers. Est.
U.S. $
£

CERTIFIED CORRECT:
DATE JUN 13 1952
(Accountant in Charge)

APPROVED FOR PAYMENT:
DATE JUN 13 1952
(Assistant Deputy Custodian)

CASHIER'S MEMO.
CHEQUE NO. 27234
DATE JUN 14 1952
BANK Royal Bank of Canada
ACCOUNT #10051
(Cashier's Initials)

L.-M. CO. A37121-40M-11-45 REV.

GOWLING, MacTAVISH, OSBORNE & HENDERSON
BARRISTERS & SOLICITORS

E. GORDON GOWLING, Q. C.
DUNCAN K. MacTAVISH, Q. C.
ROBERT M. FOWLER
JOHN C. OSBORNE
GORDON F. HENDERSON
RONALD C. MERRIAM
ADRIAN T. HEWITT
JOHN CAMPBELL VIETS
G. PERLEY-ROBERTSON
DAVID WATSON
E. PETER NEWCOMBE

COUNSEL
LEONARD W. BROCKINGTON, Q. C., LL. D.

TELEPHONE 2-1791
CABLE, HERSON

88 METCALFE STREET
OTTAWA, 4,
CANADA

May 30, 1952

K.W. Wright, Esq., Q.C.,
Office of the Custodian,
Ottawa, Ontario.

Dear Mr. Wright,

Re Japanese Property Claims Commission
Claim No. 1388--Kagetsu--Deep Bay
Logging Company Limited

I am enclosing herewith a copy of a Memorandum of Argument for reconsideration of award as to compensation and expenses prepared by Colonel T.G. Norris, Q.C. which you will find self-explanatory. The question of costs is dealt with particularly at pages 40 and 41 but we specifically request consideration of the complete submission.

In addition to the copy of the Memorandum referred to above, I am enclosing herewith the Exhibits which appear on the attached Schedule and which are referred to in the Memorandum. I will appreciate it if you will return the Exhibits to me after they have served your purpose.

Yours very truly,

John C Osborne

JCO:MJH
Encl.

SCHEDULE

Exhibit 5 - copy of Sheehan's cruise of Block 195, made about 1923.

Exhibit 36 - P. S. Ross & Sons' report on tenders for Block 195, dated May 21st 1943.

Exhibit 53 - copy of Eustace Smith's report of Block 195, dated March 23rd 1940.

Exhibit 55 - Annual Report of Forest Branch for 1943.

Exhibit 45 - P. S. Ross & Sons' Report on Liquidation of Deep Bay Logging Co. Ltd., dated March 19th 1945.

Exhibit 22 - Extract from Government Scales of logs cut under timber mark 2K9.

Exhibit 23 - Extract from Government Scales of logs cut under timber mark 1C6.

Exhibit 61 - Schultz's report on a forest inventory of the Deep Bay operation, dated December 1948.

Exhibit 56 - Annual Report of Forest Branch for 1944.

Exhibit 62 - Schultz's stumpage appraisal of merchantable timber on Deep Bay operation, dated December 1949.

File 16700

Ottawa, May 27th, 1952.

MEMORANDUM FOR FILE

Re: Deep Bay Logging Company

The Deputy Custodian phoned me yesterday and stated that he had discussed the matter of this claim with Mr. Osborne of Messrs. Gowling, MacTavish, Watt, Osborne & Henderson, and had agreed to allow Mr. Osborne another week, i.e. 2nd proximo, to file his brief.

K. W. Wright.

KWW/G

16700

Victoria Building,
7 O'Connor Street,
Ottawa 4, Ontario.

May 17th, 1952.

F. G. Shears, Esq.,
3906 West 12th Avenue,
Vancouver, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company

In your letter of April 28th you asked for a report on the present position of the additional claims.

Herewith you will find copy of memorandum from Mr. Stein dated 14th instant relative to the Yamanaka claim as well as Deep Bay Logging. A copy of Mr. Brewin's letter is also enclosed.

In order to get your mind off the task of remodelling your home, may I ask you to read these and let me have your comments.

You will observe that I am asked to submit another recommendation and that all cases are going before the Minister in the near future.

Please return the copy of Mr. Stein's memorandum when you reply.

Thanking you for your co-operation,

Yours very truly,

K. W. Wright,
Chairman, Administration Board
and Chief Counsel.

KWW/G
Encls.

Re: Hirokichi Yamanaka

A memorandum from the Deputy Custodian dated May 14th, 1952, together with copy of letter from Messrs. Cameron, Weldon, Brewin & McCallum dated 5th instant, were read.

The Chairman reported that this material had been sent to Mr. Shears for comment, and upon receipt of his reply the matter would be submitted to the Board for further consideration.

The Chairman also reported that he had been in touch with Mr. John Osborne of Messrs. Gowling, MacTavish, Watt, Osborne & Henderson, and/arranged /had that Mr. Osborne would submit a brief on the Deep Bay Logging case to the Deputy Custodian on or before Monday, the 26th instant.

MD

May 14, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

Re: British Columbia Japanese evacuee claims
re: claim of Hirokichi Yamanaka

Please refer to my memorandum for the file of March 22nd last, to my letter of March 21st last to Mr. Brewin, to my memorandum for you of March 14th last and to my telephone conversation with you of yesterday. Herewith is Mr. Brewin's reply, dated the 5th instant, to my letter to him of March 21st. As I told you by telephone yesterday, it seems to me that in 1946, when Yamanaka moved to Toronto, or at such earlier date, if it was earlier, as the Custodian returned his assets to him, he should have attempted to collect the accounts in question or to assign them for such consideration as he could get. In fact, if the accounts were never vested in the Custodian, Yamanaka should have taken such steps during the period when his real property or the proceeds of its sale were in the hands of the Custodian.

It seems to me also that since 1946 and up to this date he should have made or continue to make such attempts and that unless and until he can show that he has made serious attempts of that nature and that they have been of no avail, we should reject his claim, on this if on no other ground.

Why should he be entitled to take for granted and to ask us to take for granted that these accounts have become uncollectible and valueless through the Custodian's fault? And it seems to me that we are entitled to raise this objection even if we assume that he is right in his contention that, though the said accounts may not have been vested in the Custodian, we made ourselves responsible, de facto so to speak, for the collection of the accounts through our intervention in the matter (see, for instance, the fourth paragraph of Mr. Brewin's reply of the 5th instant).

I am therefore still more reluctant than ever to recommend to the Minister any compromise settlement of this claim.

5 6537

You told me that we had not yet received from Mr. Osborne the brief that he was to submit to us on behalf of Mr. Norris in connection with the Deep Bay Logging Company expense claim. I asked you, in the course of our telephone conversation to communicate (by telephone) with Mr. Osborne and tell him that this had been delayed so long that we now had to advise him that unless we received his brief or further representations within, say a week, we could not wait any longer and would have to submit the matter to the Minister on the basis of the present material. I asked you to explain to Mr. Osborne that this was holding up two other somewhat related claims. I think you were also to try again to get Mr. Osborne to say whether there was any chance of his principals accepting $2,587.50, i.e. 5% of the award made by the Commission to the Company, which is about all we could agree to pay if we were prepared to make a compromise settlement of this expense claim (on the basis of the "unofficial" recommendation made by the Commissioner in favour of a group of claimants, which was approximately 5% of the award, which 5% we in fact have paid pursuant to that recommendation).

Please let me have (as soon as possible after the expiration of the extension of time you have granted Mr. Osborne) your recommendation in these three cases, in the light of the foregoing and of any further representations you might receive from Mr. Osborne in the Deep Bay Logging Company case.

C. Stein,
Deputy Custodian.

MD

May 14, 1952.

MEMORANDUM

FOR THE CHAIRMAN, ADMINISTRATION BOARD

Re: British Columbia Japanese evacuee claims
re: claim of Hirokichi Yamanaka

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Please let me have (as soon as possible after the expiration of the extension of time you have granted Mr. Osborne) your recommendation in these three cases, in the light of the foregoing and of any further representations you might receive from Mr. Osborne in the Deep Bay Logging Company case.

C. Stein,
Deputy Custodian.

CAMERON, WELDON, BREWIN & MCCALLUM
Barristers & Solicitors

Sterling Tower
TORONTO 1, Canada

May 5, 1952

Department of the Secretary of State of Canada,
OTTAWA, Ontario.

Attention: Mr. C. Stein, Q.C.
Under Secretary of State

Dear Mr. Stein:

Re: Hirokichi Yamanaka

I must apologize for not having answered sooner your letter of March 21. I was away from the office for some little time through illness.

Fortunately through my long connection with the Commission and the fact that it was partly as a result of the representations made by me to the former Prime Minister and Minister of Justice and Secretary of State that the Commission was appointed, and I feel I am in a good position to answer the points raised in your letter.

First of all, it is quite clear that the Commissioner did rule that claims for accounts receivable were outside the terms of reference. I attended in Vancouver when this matter was argued at length and that is the ruling which he made. No doubt from time to time as individual cases come before him he did make further comments in regard thereto.

In regard to the statement made by the Commissioner on the 7th of May, 1948, which you quote, I am inclined to agree with the statement made therein that the Custodian had no responsibility to recover accounts receivable. However, in the present case the correspondence indicates that instead of advising Mr. Yamanaka to this effect, the Custodian did in fact assume the task of seeking to collect the accounts receivable.

I also note your reference to the Commissioner's observation that accounts that the claimant is prepared to write down by 50% must be rather of doubtful value. We quite agree with this observation as it is obvious that in a supply business of this sort some bad accounts will accumulate and we are not claiming or expecting to receive 100%, nor even at the present time 50% of the accounts receivable. This does not mean, however, that these accounts receivable had no value whatever. The success of the Custodian in respect of the Japanese claims indicates that some effort made to collect on the spot would have secured at least some substantial results from the Occidental and Indian claims.

.....

In the last clear paragraph on page 1 of your letter you raise the point that it might be going beyond the Government's policy for the Custodian to re-open the matter and to accept and pay this or any other similar claims. I think I can say that probably one of the reasons why the matter of accounts receivable was not included in the terms of reference was that neither those, such as myself, responsible for making representations seeking the appointment of the Commission, nor the officials of the Government, gave any thought to the particular problem of accounts receivable which would not come up in very many cases. The main problem involved properties sold by the Custodian under the policy of liquidation.

Mr. Yamanaka's claim for consideration is based on the fact that (a) he suffered a substantial economic loss as a result of the evacuation, and (b) the Custodian assumed the task of collecting the accounts receivable and failed to press the matter to a satisfactory conclusion.

With great respect, it does not seem to me to affect the justice or propriety of Mr. Yamanaka's claim that in setting up the Commission the Government dealt with a different situation, namely the liquidation of actual property which was a far more common situation, and failed to give attention at that time to the problem of such a case as his. I quite agree with your statement at the foot of page 1 that consideration and settlement of claims on behalf of Japanese evacuees cannot go on indefinitely. I am not aware of what other claims have been presented to you, although as General Counsel for the Co-Operative Committee I am aware that it is natural that certain claimants should be dissatisfied and present further claims.

Nevertheless the statement in my previous letter to you of March 11 was made advisedly that the Yamanaka case was, if not unique, on of two or three other similar cases. I have had a general acquaintance with all of the claims of the Japanese Canadians and I cannot recall where a similar situation existed, namely that, first of all, there were such a substantial body of accounts receivable in an area removed from the Custodian's office in Vancouver and in which the claimant himself was not in a position to take any steps, and in which the Custodian took upon his shoulders the task of collection and then was unable to follow it through effectively. I feel that I can state quite positively that a favourable consideration of this particular claim will not give rise to a series of other similar claims.

The other point you raise in your letter in regard to these accounts themselves, is whether assuming the accounts to have been collectible at the time of the evacuation, they have since become uncollectible, or whether this was the result of the evacuation and the intervention of the Custodian in the matter.

.....

Dept. of the Secretary of State, May 5, 1952

As I have suggested before, it is quite impossible to say with precision what accounts amongst those for which claim is made were in fact collectible. My recollection is that they ran back for three or four years prior to the evacuation early in 1942. Mr. Yamanaka tells me that the accounts were largely for those in the fishing and hunting industry and that they were paid seasonally, that is to say when the persons to whom supplies were given were in funds; that he was on friendly terms with a large number of these customers whom he knew personally, and that by and large very few accounts while he was there turned out to be uncollectible. I think it is a fair assumption that had there been no evacuation, a substantial proportion of the accounts for which claim is made would have been recovered.

The effect of the evacuation was that in 1942 Mr. Yamanaka had to leave his residence at Prince Rupert and his business and that he proceeded first of all to Victoria Park in Vancouver and from thence to a relocation center or camp at Slocan City. He remained there until approximately 1946 when he and his family moved to Toronto and have been here since.

I think it is clear that while Mr. Yamanaka was at Slocan, whatever the legal position, he would have had a difficult time in collecting these accounts personally. If it would be necessary to proceed to suit in respect to any of the accounts, he would not have been available to give evidence unless released from the camp, or to instruct solicitors on the spot. When he came to Toronto, quite apart from the difficulties of proof, the situation would become hopeless. The accounts are a large number of small accounts which presumably would have to be sued for in small debts court. Presumably when he was out of jurisdiction not only would it have been a very substantial expense for Mr. Yamanaka to have had to attend at Prince Rupert while all of these cases were being heard, but in addition as he was resident out of the jurisdiction, he would probably have had to furnish security for costs in a prohibitive amount. Whatever might be the legal situation, therefore, the practical difficulties of collection after the evacuation and after he cam to Toronto would have been insuperable.

Mr. Yamanaka informs me that he did consult solicitors after he came to Toronto in 1947 and that he received the advice that any endeavour by him to collect on these old accounts at that late date would be hopeless.

There is also, of course, the question which you raise as to the applicability of the Statute of Limitation. This I think is an open question. The Statutes of Limitation would apply to a very large number of these accounts were it not for Section 53 of the Trading with the Enemy Regulations. I have very grave doubts whether Section 53 applies. As you will note, the provision of P.C. 469 of January 19th, 1943

.....

apply "for the purpose of liquidation, sale and other disposition of property."

The question of the collection of accounts receivable might well, in accordance with the ruling of the Commissioner in this case that accounts receivable were not property and did not legally vest in the Custodian, have fallen outside the governing clause of P.C. 469.

If he could not do it profitably, how could the Custodian and why then should the Custodian be held in any sense responsible? C.S.

Referring to the last paragraph of your letter on page 3, you ask as to what evidence exists of the fact that the accounts had become uncollectible when Yamanaka resumed administration of his affairs. I would say that while it is impossible to be specific in these matters, it is obvious that small accounts of this sort are more difficult to collect after the passage of four, five or six years as people move away, die and cannot be traced and the expense of so doing in respect to small accounts is prohibitive. In addition, there is the expense which would be involved, as I have already explained, in putting up security for costs in respect to any action that would be brought, and the further prohibitive expense of having Mr. Yamanaka return to Prince Rupert and presumably live there while the various cases came on for hearing. There is very little doubt that at this stage, even if there were a legal right in Mr. Yamanaka to collect, the debtors might well feel that the practical obstacles were such as to make it unnecessary for them to concern themselves with payment.

As I have mentioned, there is the additional legal point that in my view a very strong argument to be made is that the Statutes of Limitation would have barred many of these accounts. It would be impossible to demonstrate this point without trying it out in Court.

I think it is also clear from what I have said that this situation was due to the evacuation and that the intervention of the Custodian and the evacuation together prevented Mr. Yamanaka from proceeding with the normal collection of the accounts.

As you know well, when the Courts are satisfied that some injury has been done and loss results, they will not refuse to make an award simply because it is impossible to estimate precisely what the damages are. A reasonable assessment is made. In the suggestion made in my letter of March 11 I said that while the payment of $1,000.00 would not begin to compensate for Mr. Yamanaka's loss, I would be prepared to advise him to accept such an amount in full payment of his claims and as compensation for his loss. Frankly, I think the suggestion entirely inadequate but I realize that unless Mr. Yamanaka were to enter action against the Custodian which would be a lengthy and expensive business, he has to depend on recognition by the Secretary of State and the Government as to the justice of his claim.

He would have no chance of succeeding, I think, and Mr. Brewin knows it.
C.S.

Dept. of the Secretary of State, May 5, 1952.

I earnestly hope that my representations in regard to Mr. Yamanaka's case will receive serious consideration and that a final decision will be arrived at. Apart from the details in this matter, it is clear to me that Mr. Yamanaka, as a business man suddenly removed from his place of business has, in the circumstances, sustained a very real loss through no fault of his own and that the spasmodic intervention of the Custodian in regard to the collection of accounts receivable certainly contributed to this result.

Yours very truly,

CAMERON, WELDON, BREWIN & McCALLUM

per F.A. Brewin.

FAB:gh

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131

PLEASE REFER TO

FILE NO.

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

3906 West 12th Avenue
Vancouver, B.C.
April 28th 1952

K.W.Wright Esq., Q.C.
Chief Counsel
Office of the Custodian
Ottawa.

Deep Bay Logging Co.

Dear Mr Wright,

I have just received from Mr Field some information I have been waiting for in connection with the exact shareholdings in the above company. I can now start to prepare a form of release to cover the award of $51,750 made by the Commissioner.

What is the present position regarding the additional claim made for the payment of charges other than legal fees? I understood they wanted this matter settled before being prepared to close out the matter of accepting the award. There is really no actual connection between the two matters but I will wait until I hear from you if any settlement or arrangement has been made recently.

Yours truly,

F.G.Shears

F.G.Shears

OFFICE OF THE CUSTODIAN
RECEIVED
APR 30 1952
PASS TO.....
FILE

OFFICE OF THE CUSTODIAN
RECEIVED
MAY 5 1952
PASS TO.....
FILE

1670

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE

PLEASE REFER TO

FILE No. 13524

506 Royal Bank Bldg.,
Vancouver 2, B.C.,
March 31, 1952.

OFFICE OF THE CUSTODIAN
RECEIVED
MAY 5 1952
PASS TO.....
FILE

K. W. Wright, Esq., Q.C.,
Chief Counsel,
Office of the Custodian,
Victoria Building,
7 O'Connor St.,
Ottawa 4, Ontario.

Dear Mr. Wright:

We have just received from P.S. Ross & Sons, their final Report in connection with the liquidation of the Deep Bay Logging Company ~~and Kagetsu & Co. Ltd~~.

They have rendered the enclosed account for $75.00. I presume that you will o.k. this and pass it on to Mr. Arpin for payment, to be charged to Evacuee Trust Account No. 13524 which is the Deep Bay Logging Company account.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN
Encl.

Royal Spec. Pc No 10051

Balance of agents fees re liquidation of The Deep Bay Logging Co Ltd

ESTABLISHED 1858

CABLE ADDRESS PHILROSS

P. S. Ross & Sons

CHARTERED ACCOUNTANTS

MONTREAL TORONTO WINNIPEG
CALGARY VANCOUVER
SAINT JOHN, N.B.

25th March, 1952

Deep Bay Logging Co. Ltd.
c/o Office of the Custodian
506 Royal Bank Building
Vancouver, B. C.

Encl. 13524.

in account with

P. S. Ross & Sons

November, 1947 to March, 1952	TO Additional services rendered between marginal dates covering formal liquidation of Company	
	OUR FEE	$ 75.00

Payment approved
CHAIRMAN, ADMINISTRATION BOARD AND CHIEF COUNSEL
13.6.52

Ottawa, March 22, 1952.

MEMORANDUM FOR THE FILE:

Re: British Columbia Japanese evacuee claims

With reference to the Chief Counsel's memorandum for me of the 20th instant, I may have to change some parts of my draft memorandum to the Minister or to its appendix E as a result of my recent correspondence with Mr. Brewin (Yamanaka case) and perhaps also as a result of the brief Mr. John Osborne, of the firm of Gowling, MacTavish & Watt, Ottawa, is to submit to us on behalf of Colonel Norris in connection with Deep Bay Logging Company's expense claim.

C. Stein

C. Stein,
Under Secretary of State
and Deputy Custodian.

Ottawa, March 20th, 1952.

56537

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: British Columbia Japanese evacuee claims

Reference is made to your memorandum of the 10th instant with your draft memorandum to the Minister.

I agree that it is far better to present the longer memorandum in order that the Minister may have the facts as well as possible implications which might arise from settlement.

A letter went forward to Mr. Clyne some days ago apologizing for delay and explaining that the Jinnouchi case is being considered along with two other cases.

As to your footnote on page 2 of the enclosed draft, the Commissioner recommended awards in respect of 1,324 claims in the amount of $1,318,622.82, of which $4,174.80 represented part ownership which belonged to persons of the Japanese race not resident in Canada, leaving the final amount payable $1,314,448,02. You are aware that the terms of reference of the Commission restricted the inquiry to claims of persons of the Japanese race who were resident in Canada on July 18, 1947 and of corporations of which the majority of the shares were formerly owned by such persons.

As to the amount recommended re copst of presentation of claims, we have on file long hand memorandum of Mr. Justice Bird made in Vancouver General Hospital May 23rd, 1951, as follows:

> "I handed to Director, Custodian's Office, shortly before Feb. 7, 1951, recommendations for payment of sums there set out to claimants whose claims were considered as special cases outside terms of reference, included in which was recommendation for payment of claimants' disbursements incurred in proof of claims amounting to $58,577.96.
>
> Am presently laid up in hospital. Director can furnish you with copy of this memo of recommendations. If anything further required it must await my return to my chambers."

Re footnote page 3 -

The amount of $1,254,121.02 covering 1296 awards includes the sum of $58,577.96 paid for expenses other than legal fees.

Re footnote on page 7 -

This was taken care of in your draft letter to Mr. Brewin.

No further word has been received from Mr. Osborne re presentation of Colonel Norris' brief to you.

I return your draft memorandum to the Minister together with supporting material.

K. W. Wright,
Chief Counsel.

KWW/G
Encl.

Ottawa, March 4th, 1952.

MEMORANDUM TO THE SECRETARY OF STATE

Re: Claims of Persons of the Japanese Race evacuated from the Protected Area of British Columbia.

On the 18th July, 1947 Order in Council P.C. 1810 was passed approving the appointment of the Honourable Mr. Justice Henry I. Bird, Commissioner of the Inquiries Act, to inquire into and report upon claims of the above named.

The Commissioner's report dated April 6th, 1950 was accepted by the Government and Order in Council P.C. 3037 dated 20th June, 1950 authorised the Custodian to carry out the recommendations of the Commissioner.

The Commissioner recommended awards in respect of 1324 claims.

1296 awards have been paid amounting to	$1,254,121.02
28 claims remain unpaid amounting to	60,327.00
Total	$1,314,448.02

The amount of $60,327.00 unpaid includes an award for the Deep Bay Logging Company for the sum of $51,750.00. Mr. T. G. Norris, Q.C., who presented the case before the Commission has made representations through Mr. John Osborne, of the firm of Gowling, MacTavish, Watt, Osborne & Henderson, claiming $31,794.45 for expenses which he alleged were incurred in the presentation of this case. Expenses apart from legal fees have been allowed in other cases to various counsel representing Japanese claimants, the amount paid for expenses being approximately 5% of claims award.

Mr. Norris' claim of $31,794.45 includes expenses of F. S. Ross & Sons amounting to $18,660.22, which have no connection with expenses for presentation of claim before the Commissioner. Many items served no helpful purpose to the Commissioner, therefore I see no reason why the Government should accept responsibility for unnecessary outlay.

In a letter dated January 10, 1952 Mr. Sheare, Director of the Vancouver Office stated:

> "I feel confident that if the Commissioner was still functioning that Mr. Justice Bird would see no reason why Mr. Norris' claim should not be afforded the same treatment as the percentage awarded to counsel who represented the Co-Operative claimants. While 5% of the Deep Bay Logging Company award would amount to $2,587.50, because of the difference in the type of this case, viz. a sizeable timber proposition compared with the majority of cases involving farms and real and personal property it might not be considered unreasonable to exceed the percentage in this particular case ----- and that $5,000.00 might even be considered."

Last Saturday Mr. Osborne informed Mr. Wright that he had just received a lengthy brief from Col. Norris and expects to submit same for my consideration in the course of the next week.

A somewhat similar situation exists in regard to the case of Hirokichi Yamanaka who declined to accept an award of $2,056.00 relative to real property pending the outcome of negotiations on his behalf by Mr. A.J.P. Cameron, Q.C., M.P., in regard to collection of accounts owing at the time of evacuation.

Yamanaka operated several retail stores in the northern area of British Columbia, and in the course of business extended credit to Japanese, Indians, fishermen and other citizens, and at the time of his evacuation had accounts receivable amounting to roughly $20,000.00. Mr. Cameron has been pressing Yamanaka's claim on the grounds that the Custodian assumed responsibility for collection, and alleges that his client suffered loss due to the negligence of the Custodian to collect. They are willing to accept $1,000.00.

At the hearing before the Commissioner on May 7th, 1948 Mr. Best, Counsel for Yamanaka, commented as follows:

"As I understand it no claims are being allowed for accounts receivable."

The Commissioner replied as follows:

"No. The ruling on that was that if the Custodian undertook to recover accounts receivable and did receive the money or any money, I hold the Custodian accountable to the claimant for whatever he received, but the Custodian has no responsibility to recover accounts receivable."

There is one other case which was considered outside the Terms of Reference in regard to which the Commissioner made a special report. The claim is based on the failure of the Custodian, or his agent, to pay insurance premiums on contracts wherein Mrs. Mamyo Jinmouchi was named the beneficiary. As a result of non-payment of premiums the policies lapsed prior to the death of the insured. The claim of $5,500.00 was rejected by the Commissioner on the grounds that he was not permitted to recommend an award under the Terms of Reference.

Mr. Justice Bird's findings are in part as follows:

"That on December 20th, 1942, Taguchira on behalf of the claimant instructed H. D. Campbell to pay maturing assessments on the policies.

That Campbell had sufficient funds in his hands.

That in the matter of these policies Campbell acted primalily as agent for the Custodian.

In my opinion cancellation of these policies resulted from the failure of the Custodian, or his agent Campbell, to pay assessments."

Mr. H. R. Clyne, Manager of Yorkshire and Canadian Trust Company, Limited, Vancouver, was informed that the claim could not be entertained as the Commissioner had submitted his report and his functions under the Commission were thereby terminated. In a letter to me under date of 6th instant he asked if there were any objections to his obtaining an opinion from Parliamentary representatives on the point of honour involved, and indicated that the matter might be brought to the attention of parliament.

Mr. Shears reported that the value of the policies at the death of Mrs. Matsu Jinmai amounted to $3,842.55. Mr. Shears considers a comprise settlement is justified and requested authorization to negotiate, indicating that if this procedure was adopted he would later make a recommendation for the payment of a sum not exceeding $3,482.00.

I have reviewed the three claims and instructed the Custodian's officers that there should be an end to considering, allowing and paying claims after all that has been done and the very considerable amounts that have been paid. I feel that fulfillment of the Commissioner's recommendationshould be our limit unless the Government desires to set up a new Commission or take other steps towards possible satisfaction of these claims.

Under Secretary of State
and Deputy Custodian.

Ottawa, March 4th, 1952.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: Claims of Persons of the Japanese Race evacuated from the Protected Area of British Columbia.

In accord with your memorandum of 23rd ultimo I attach a memorandum to the Minister for your signature.

I also return letter forwarded to you by Mr. Clyne under date of 6th ultimo.

You will note that I spoke to Mr. Osborne on Saturday and that he intends to submit a brief to you relative to the Deep Bay Logging expense claim.

K. W. Wright.

KW/G
Encl.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE

PLEASE REFER TO

FILE No. 13524

506 Royal Bank Bldg.,
Vancouver 2, B.C.,
February 25, 1952.

OFFICE OF THE CUSTODIAN
RECEIVED
FEB 28 1952
PASS TO.....
FILE

K. W. Wright, Esq., Q.C.,
Chief Counsel,
Office of the Custodian,
Victoria Bldg.,
7 O'Connor St.,
Ottawa 4, Ontario.

Dear Mr. Wright: Re: Deep Bay Logging Co. Ltd. - Case 1388

I have your letter of the 21st asking us to prepare the Form of Release in connection with the above claim.

In so far as a Release to cover the award recommended by the Commissioner, we have had a rough draft prepared for some time, but have been waiting for some information from P. S. Ross & Sons before actually completing this Release.

You may know that E. Kagetsu was the chief shareholder in the Deep Bay Logging Co. Some shares in the Deep Bay concern were held by Kagetsu & Company and in addition some assets dealt with under the Deep Bay claim such as Block 195 were owned personally by E. Kagetsu.

While the bulk of the award will go to E. Kagetsu, there are a few others involved who will have to sign Releases. The specific amount due to each will be established as soon as I receive Mr. Field's final report. The company is now being finally wound up and Mr. Field is to let me have a final report shortly and we can then supply the figures which will be needed in the Release.

K. W. Wright, Esq., Q.C. FEBRUARY 25, 1952.

In so far as the matter of payment to Mr. Norris for expenses apart from legal fees is concerned, will any Release be necessary? This is a matter apart from the Company's claim. No release was obtained when payment of fees of a similar nature was made to The Co-Operative Committee for the expenses of McMaster and other lawyers.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN

Ottawa, February 25, 1952.

MEMORANDUM

FOR THE ASSISTANT DEPUTY CUSTODIAN :

Attention: Chief Counsel

Re: Claims of Mrs. M. Jinnouchi (file No.56537),
E. Kagetsu (file No. 56178) and
Hirokichi Yamanaka (file No. 16700).

Please refer to your memorandum for me of the 14th instant and to our telephone conversation of yesterday, also to the letter from Mr. Shears to you dated the 18th instant re Mrs. M. Jinnouchi's claim.

Please prepare for my signature a memorandum addressed to the Secretary of State and Custodian outlining as briefly as possible the setting up of the Bird Commission, the submission of its recommendations to the Government, the passing of Order in Council P.C. 3027 of June 20, 1950, the total amount involved in the award and/or recommendations of the Commission (approximately $1,300,000, I think), the total amount we have paid to date (or to the end of 1951) and the balance that remains to be paid. Also the stand I took on these three claims (which is, I think, as outlined at the top of p. 4 of your said memorandum of the 14th instant); also the pros and cons of paying or not paying anything on these three claims.

Please do your best to set out only the essential facts of the background and of these three particular cases.

...

Mr. Clyne's threat to have the matter raised in Parliament (and his interest in the matter) should be mentioned. The memorandum should not run to more than two pages.

With respect to the Kagetsu case, you may want to have a word with Mr. John Osborne, of the firm of Gowling, MacTavish and Watt, to find out how the matter now stands, as far as he is concerned. However, if you do this, be very careful not to commit us in any way, even to the extent of letting him know that the matter is being placed before the Minister. Mr. Osborne, at this time, may be able to say what the minimum figure is for which his client would settle.

C. Stein,
Under Secretary of State
and Deputy Custodian.

16700

Victoria Building,
7 O'Connor Street,
Ottawa, 4, Ontario.

Febfuary 21st, 1952.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company Limited.

Will you kindly prepare release herein in triplicate, (leave the consideration blank) and forward same to me at your early convenience.

The necessary documents should be available on our file for signature as if and when settlement is effected.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G

16700

Victoria Building,
7 O'Connor Street,
Ottawa, 4, Ontario.

January 12th, 1952.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver 2, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company Limited

I have for acknowledgment your communication of the 10th instant, with enclosures as stated.

Please accept our thanks for your co-operation herein.

Yours very truly,

K. W. Wright,
Chief Counsel.

KW"/G

VIA AIR MAIL

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL COMMUNICATIONS TO THE CUSTODIAN'S OFFICE

PLEASE REFER TO

FILE NO.....

506 Royal Bank Bldg.,
Vancouver 2, B.C.,
January 10, 1952.

OFFICE OF THE CUSTODIAN
RECEIVED
JAN 12 1952
PASS TO.....
FILE

K. W. Wright, Esq., K.C.,
Chief Counsel,
Office of the Custodian,
Victoria Bldg.,
7 O'Connor St.,
Ottawa 4, Ontario.

Dear Mr. Wright:

Re: Deep Bay Logging Company Limited

I have received your letter of the 8th instant with enclosures. These enclosures are returned as requested, and in addition I am sending you in duplicate, Mr. McMaster's letter dated June 29, 1950 and the Breakdown of Schedule of Disbursements totalling $58,377.96. This is the letter and schedule which I duscussed at that time with Mr. Justice Bird. As stated in my letter of July 5th, 1950, which is returned herein, the Commissioner indicated that considering the amount of the total awards and the length of time of the Inquiry, the sum which was claimed for all services rendered, did not appear excessive. The amount of $58,377.96 which was paid to the Co-Operative Committee covers a vast amount of detailed work in connection with nearly 1300 cases which as you know, were heard all across Canada.

By an examination of Mr. McMaster's records, I satisfied myself that the disbursements had been made and that they approximated 5% of the amount of the sum awarded, which was the percentage Government counsel Hunter was prepared to accept as a fair allowance which could be paid to counsel for Japanese claimants for expenses apart from legal fees chargeable to their clients.

I feel confident that if the Commission was still functioning that Mr. Justice Bird would see no reason why Mr. Norris's claim should not be afforded the same treatment as the percentage awarded to counsel who represented the Co-Operative claimants.

While 5% of the Deep Bay award would amount to $2587.50, because of the difference in the type of this case, viz. a sizeable timber proposition, compared with the majority of cases involving farms and real and personal property, it might not be considered unreasonable to exceed this percentage in this particular case.

VIA AIR MAIL

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

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PLEASE REFER TO

FILE NO.....

K. W. Wright, Esq., K.C.

Jan. 10, 1952.

You have my recent letter of December 10th in which I give reasons why I was prepared to recommend for payment certain items in Mr. Norris's account which totalled $4,224.43, and that $5,000.00 might even be considered.

Mr. Norris is claiming $31,794.45 but this amount includes liquidation expenses incurred by P. S. Ross & Sons totalling $18,660.22 which have no connection with expenses for presentation of the claim before the Commissioner. Deducting this amount would leave the sum of $13,134.23. My letter of the 10th of December indicates that certain items are included in this amount which in my judgment should be eliminated. In regard to some items it may be unfortunate from the claimant's point of view that these expenses were incurred, as from my knowledge of this case and its presentation, I am of the opinion they were unnecessary and served no helpful purpose to the Commissioner and in regard to which there is no reason why the Government should accept responsibility.

I think that you have all the information which is available and I trust that it will be helpful in dealing with the claim which is before you.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN
Encls.

Campbell, Brazier, Fisher, McMaster & Johnson
Barristers and Solicitors

The Royal Bank Building,
675 West Hastings Street,
VANCOUVER, B.C.

June 29th, 1950.

COPY

Mr. F. G. Shears,
Office of the Custodian,
Department of the Secretary
of State,
Royal Bank Building,
Vancouver, B. C.

Dear Mr. Shears:

Pursuant to our discussions, we are enclosing herewith a breakdown of the Schedule of Disbursements re the Japanese Claims Commission made by this firm, the Toronto Committee, Mr. Virtue's Committee and the J. C. C. A. We have set out considerable detail as to the items which we expended or for which we have liability. Concerning the various Committees, we enclose herewith copies of the statements which we have received from them for your perusal.

We are also enclosing a schedule showing the breakdown of actual total expenses in relation to Schedule IV of the Statutory Declaration which the writer filed with the Commissioner. You will observe that the actual disbursements are some $398.97 greater than those appearing in the schedule filed with the Commissioner. We have shown in the comparison the items which are over the schedule filed with the Commissioner and the one item which is under. The reason for this discrepancy is that it was necessary for us to estimate certain expenses in filing the schedule with the Commissioner and the actual expenses have exceeded the amount shown except in the amount of appraisals. The major items on which we are over are clerical and travelling and living expenses. At the time we filed the statement with the Commissioner we anticipated being able to release Mr. Leckie at an earlier date than was possible to do. The reason why the travelling and living expenses are so much over is that in preparing the statement for the Commissioner we overlooked an account for transportation and living expenses which had been submitted to us by Mr. MacLennan with respect to his attendance at Greenwood. Our anticipated expenses on appraisals at the time of filing the statement of the Commissioner was slightly higher than what actually turned out to be the case.

Throughout the breakdown of schedule of disbursements we have endeavoured to give detail with regard to the major disbursements. However, we think it only proper to comment concerning three matters. With regard to Mr. Leckie's services I think you are fully aware that he did not limit his efforts to the usual office hours particularly when we were in the interior of the Province dealing with the preparation of claims he frequently worked ten to twelve hours a day and even after returning to the City he put in a great deal of overtime work. His services were invaluable in the preparation of material and I am sure that you will agree that this was a necessary and reasonable expense. Had the services of such a person as Mr. Leckie not been available to counsel for the claimants, there is not the slightest doubt that the proceedings would have been prolonged considerably. It would have been impossible for the writer as counsel to have been as well prepared on the proceedings before the Commissioner and on the discussions amongst counsel.

With regard to appraisals, you will observe that a large proportion of the expenses in this regard was paid to Mr. I.B. Hewer. Mr. Hewer's main function was to obtain information for us with regard to farm properties and to appraise individual farm properties for us. We paid Mr. Hewer $35.00 per day plus car allowance and out-of-pocket expenses. The Commission had some experience in recent years in hiring appraisers and I think you will agree that this rate was not out of line. We might state that the writer had frequent reports from Mr. Hewer and frequent consultations with him and satisfied himself throughout the proceedings that despite the daily rate Mr. Hewer produced satisfactorily. In addition to providing us with reports and material as to general market conditions relating to farm lands in 1943 and specific comparable sales on Occidental property, Mr. Hewer did the bulk of the appraisals of the individual farms upon which distribution of the over-all is based. You will readily appreciate that this was a difficult task as in many cases there had been substantial alterations or changes in the lands and premises and it was necessary for him to satisfy himself as to the conditions at the date of sale. All of the work which he did was basic to building up the case for the claimants with regard to the D.V.L.A. purchases and while results of that work did not appear in the evidence to any great extent other than on the proposed schedule of distribution it had to be undertaken in order to develop the other approaches to the problem which featured more eminently in the evidence. With respect to disbursements with regard to the statistical study and the charge for the services of Mr. Cobus at $2500.00, I have made some comment with regard to this on the breakdown of disbursements.

I think you saw enough of Mr. Cobus' activities to recognize that he had exceptional ability as well as special training, particularly with regard to the type of work which was involved in the statistical study. As stated in the statement we have not included in this charge for his services, charges for any of his services when he appeared as counsel. Mr. Cobus spent long hours on the statistical studies not infreqnently working on Saturday afternoon and Sunday as well as working overtime at night a great number of times. Had his services not been available, it would

have been incumbent upon us to more fully employ the services of Dr. Drummond which I think you will readily realize would be far more expensive.

If the breakdown of schedule of disbursements together with the statements of other counsel delivered to you are insufficient detail to satisfy you so that you may recommend payment of the disbursements in the sum of $58,377.96, I would greatly appreciate being so advised. If, on the other hand, you have any doubts with regard to any of the items, or wish further explanations, I would very much appreciate your communicating with the writer with a view to getting these matters clarified before you give any recommendation to Ottawa.

With respect to our conversation the other day, you may rest absolutely assured that any monies that the Co-operative Committee in Toronto has collected from the claimants with their retainers will be credited to the claimants in the event of the Crown paying all of the disbursements either by direct payment to them or by application upon their proportionate share of the counsel fees payable by them.

Thanking you for your co-operation in dealing with this matter expeditiously, I am,

Yours very truly,

CAMPBELL BRAZIER FISHER McMASTER & JOHNSON,

Per: "R. J. McMaster"

McM:McC
encls.

BREAKDOWN OF SCHEDULE OF DISBURSEMENTS RE
JAPANESE CLAIMS COMMISSION

INTERPRETERS

Campbell Brazier & Co.,

Dec. 1947	K. Kobayashi:	37.50		
Feb. 1948	K. Kobayashi:	38.54		
Apr. 1948	S. Homma:	130.00		
Apr. 1948	I. Fukashima:	25.00		
May 1948	M. Masuda	100.00		
May 1948	K. Kobayashi:	160.27		
June 1948	S. Homma	211.25		
Nov. 1948	S. Tagami:	32.00		
Nov. 1948	S. Tagami:	14.00	$ 748.56	
	Consultative Committee, Toronto (Over a quarter of the Co-operative Committee claimants were heard in Toronto, being mostly the older generation, many of whom speak little English)		1318.75	
	Virtue's Committee:		121.54	$2188.85

SUPPLIES

Campbell Brazier & Co.

(Extra copies of transcript, forms for presentation of evidence, copies of Government reports and Department of Agriculture Reports for use in preparation of evidence and filing, maps, record books, files, paper, etc. Rent of calculating machine):		473.00	
Toronto Committee			
Rental of typewriters:	115.50		
Supplies, printing and stationery:	889.05	1004.55	
Virtue's Committee			
Printing		372.24	$1849.79

STENOGRAPHIC AND CLERICAL:

Campbell Brazier & Co. 2080.55

($1993. has been charged for stenographic and clerical work done by our staff in connection with the receipt of claims, making files therefor, caring for the files and all correspondence. This is exclusive of stenographic and clerical work incidental to counsel work. All of the files for the Toronto Committee were kept in our office and at one time Virtue's files were here also. This charge relates to a period of well over two years)

STENOGRAPHIC AND CLERICAL, continued

J.C.C.A.	$3134.00	
(This represents half of the account submitted by the J.C.C.A. and is split on an arbitrary basis with the heading "Clerical")		
Virtue's Committee:	586.20	$5800.75

CLERICAL

Campbell Brazier & Co.	$8172.54	
(This entirely represents amounts paid to J.G. Leckie for clerical assistance in preparation of claims, both for hearing of claimants and for arriving at "settlement". He was employed from January, 1948 to late April, 1950. Salary was $250.00 for the first month and $300.00 a month thereafter. The odd figures represent expenses which might have been charged to travelling and living expenses and bank charges):		
Toronto Committee	3298.42	
(This covers the salary of Mr. Gilbert who did similar work to Mr. Leckie and also additional stenographic service required)		
J.C.C.A.	3134.00	
(Split with stenographic and clerical on an arbitrary basis)		
Virtue	1500.00	
(Paid to Mr. Aoki, Clerk employed in preparation of claims)		16,104.96

BANK EXCHANGE

Campbell Brazier & Co.	45.96	
Toronto Committee	52.00	97.96

SEARCHES

Campbell Brazier	1310.90
(Mainly Land Registry searches. All properties were searched to check on re-sales and for preparation of statistical material. This sum includes search charges and charges for services of students who did work.)	

WITNESS FEES:

Campbell Brazier & Co.	138.60

TELEPHONE AND TELEGRAPH

Campbell Brazier & Co.		290.83	
Toronto Committee		265.92	
Virtue's Committee		103.00	$ 659.75

POSTAGE AND EXPRESS:

Campbell Brazier & Company		150.00	
Toronto Committee			
Express	19.30		
Incidentals	40.04		
Postage	193.30	252.64	
Virtue's Committee			
Phone calls and postage:	10.00		
Shipping filing cabinets:	15.95		
Packing filing cabinets for shipment:	4.00	29.95	432.59

TRANSPORTATION:

Campbell Brazier & Company		815.02	
Virtue's Committee		267.25	1082.27

TRAVELLING, LIVING EXPENSES & MEALS:

Campbell Brazier & Company		2429.64	

(Certain items of transportation are included in this; where the account covers travelling expenses this covers expenses of McMaster, Fisher, Leckie, Cobus, and MacLennan upon hearing of claims in the interior of B.C. as well as miscellaneous meals for overtime work in Vancouver):

Toronto Committee		2097.65	

(This includes expenses of counsel and expenses of clerical assistance travelling to such places as Port Arthur, Fort William and Kapaskasing, etc. including transportation, travelling and hotels)

Virtue's Committee:			
	299.40		
	195.20		
	140.00		
	116.25		
	295.35		
	142.25		
	15.00		
	300.00	1503.45	$6030.74

The major portion of this expense represents Virtue 's expenses travelling back and forth to Vancouver from Lethbridge for various hearings and includes living expenses. The last item covers travelling and clerical expenses of the Southern Alberts Committee.

APPRAISALS

Campbell Brazier & Co.

May, 1948	I. B. Hewer:	500.00	
June 1948	I. B. Hewer:	833.10	
July 1948	I. B. Hewer:	400.00	
July 1948	I. B. Hewer:	652.35	
September	I. B. Hewer:	1164.13	
October	I. B. Hewer:	1183.62	
October	I. B. Hewer:	1937.25	
October	I. B. Hewer:	9.65	
October	Clement Consulting Service	250.00	
November	" " "	100.00	
November	" " "	483.26	
November	Universal Appraisal	275.00	
December	I. B. Hewer:	966.54	
Jan. 1949	I. B. Hewer:	1115.42	
Feb. 1949	I. B. Hewer:	411.12	
Mar. 1949	I. B. Hewer:	287.39	
Apr. 1949	Fraser Valley Lands:	612.50	
Apr. 1949	N. M. Armstrong:	765.12	
Apr. 1949	Fraser Valley Lands:	367.50	
May 1949	I. B. Hewer:	707.91	
June 1949	I. B. Hewer:	89.65	
June 1949	Universal Appraisal	250.00	
June 1949	H. M. Hall	100.00	
July 1949	Wm. Byers:	15.00	
July 1949	Wm. Byers:	24.75	
July 1949	Clement Cunsulting Service	384.50	
Oct. 1949	Guilding & Foley:	25.00	
Nov. 1949	Universal Appraisal	30.00	
Nov. 1949	B.C. Land & Investment Ltd.	150.00	
Jan. 1950	I. B. Hewer:	10.00	
Jan. 1950	O. H. New:	25.00	
Feb. 1950	Universal Appraisal	15.00	
Feb. 1950	F. J. Merrick:	100.00	
Feb. 1950	Clement Consulting Service	55.88	
Feb. 1950	J. Dorgan:	5.00	
Mar. 1950	H. M. Hall:	25.00	
Mar. 1950	S. C. Cory:	10.00	
Mar. 1950	Clement Consulting Service	1000.00	
	Balance owing Clement Consulting Service:	1217.28	$16,553.92

STATISTICAL STUDY

Campbell Brazier & Co.

Oct. 1948	Mr. Dodwell (University)	18.00	
Nov. 1948	Dr. Drummond on account	150.00	
Nov. 1948	Wm. Byers	37.50	
Dec. 1948	W. Harper (Photostatic copy of chart)	3.29	
Mar. 1949	Moresby & Farr	100.00	
	Balance owing Dr. Drummond	1850.00	
	Services of A.E. Cobus	2500.00	4,658.79

(Mr. Cobus was engaged a little over three months on preparations and organization of statistical work for which he was qualified by education. During this period he worked most Saturday afternoons and Sundays and a great many evenings as well as during the daytime). (Nothing has been included in this charge for his services as counsel).

AUDITING, TAXING AND WINDING UP:

Toronto Committee:

Auditing fee paid:	75.00		
Conservative estimated expense of further auditing and winding-up proceedings:	500.00		$ 575.00

HALLS RENTAL AND MISCELLANEOUS:

Toronto Committee:		70.50	
Virtue's Committee:	3.60		
	8.44		
	96.98		
	66.26		
	1.40		
	.77		
	26.50	203.95	274.45
Royston Lumber Company case (Arthur MacLennan)			618.64
TOTAL			$ 58,377.96

CAMPBELL BRAZIER & CO.

Per: R. J. McMaster.

E & O.E.

VIA AIR MAIL

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

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506 Royal Bank Bldg.,
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January 10, 1952.

OFFICE OF THE CUSTODIAN
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K. W. Wright, Esq., K.C.,
Chief Counsel,
Office of the Custodian,
Victoria Bldg.,
7 O'Connor St.,
Ottawa 4, Ontario.

Dear Mr. Wright:

Re: Deep Bay Logging Company Limited

I have received your letter of the 8th instant with enclosures. These enclosures are returned as requested, and in addition I am sending you in duplicate, Mr. McMaster's letter dated June 29, 1950 and the Breakdown of Schedule of Disbursements totalling $58,377.96. This is the letter and schedule which I duscussed at that time with Mr. Justice Bird. As stated in my letter of July 5th, 1950, which is returned herein, the Commissioner indicated that considering the amount of the total awards and the length of time of the Inquiry, the sum which was claimed for all services rendered, did not appear excessive. The amount of $58,377.96 which was paid to the Co-Operative Committee covers a vast amount of detailed work in connection with nearly 1300 cases which as you know, were heard all across Canada.

By an examination of Mr. McMaster's records, I satisfied myself that the disbursements had been made and that they approximated 5% of the amount of the sum awarded, which was the percentage Government counsel Hunter was prepared to accept as a fair allowance which could be paid to counsel for Japanese claimants for expenses apart from legal fees chargeable to their clients.

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I think that you have all the information which is available and I trust that it will be helpful in dealing with the claim which is before you.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN
Encls.

16700

Victoria Building,
7 O'Connor Street,
Ottawa, 4, Ontario.

January 8th, 1952.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, 2, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Company Limited.

I have for acknowledgment your communication of the 4th instant.

Mr. Osborne, local agent for Mr. Norris, intends to discuss the matter of allowing expenses other then legal fees with Mr. Stein next week.

I have to get together all the material which leads up to the payment of $58,577.96 to the Japanese Co-Operative Committee, and have gone through the files in an effort to assemble relevant material. A set is enclosed in order that you may go over it and then go through your papers and add anything that has been omitted. Please return the enclosed with any additional material in duplicate. Any general comments in connection with the matter will also be appreciated.

I have suggested to Mr. Stein that if this matter was referred to Mr. Justice Bird he might allow 5% of the award as in other cases, but you already have his decision not to make a further payment.

Mr. Osborne hopes to persuade the Deputy Custodian to make an even more substantial allowance than I have suggested, and that is why we have to present the whole picture in connection with the $58,577.96 disbursement.

An early reply will be appreciated.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G
Encls.

CANADA

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Chief Counsel,
Office of the Custodian,
Victoria Building,
7 O'Connor St.,
Ottawa 4, Ontario.

Dear Mr. Wright:

Re: Deep Bay Logging Company Limited

You will be interested in the progress of matters connected with the Deep Bay Company.

I enclose letter received by Mr. Frederick Field and copy of my reply to Mr. T. G. Norris.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN
Encl.

T. G. NORRIS, K. C.

C
O
P
Y

602 Hastings Street West,
Vancouver 2, B. C.
20th December, 1951

Frederick Field, Esq., C.A.,
c/o Messrs. Frederick Field & Co.,
Chartered Accountants,
Royal Bank Building,
Vancouver 2, B. C.

Dear Sir:

re: Deep Bay Logging Company Limited

I understand from you that the Custodian is anxious to complete the winding up of the Deep Bay Logging Company Limited. I have pointed out to you that the Deep Bay Logging Company Limited is one of the claimants with Mr. Kagetsu before Mr. Justice Bird's Commission. My client is afraid that if the Deep Bay Logging Company Limited is wound up, any monies payable under the finding of the Commissioner would be claimed by the Provincial Government in view of the fact that the Deep Bay Logging Company Limited would be no longer in existence.

Will you let me know whether or not it would be possible to obtain from the Secretary of State an assurance that the monies payable under the finding of the Commissioner would be paid to me for disbursement to the shareholders, even although the Company was no longer in existence. This assurance should also apply to any amounts paid in respect of expenses or costs and other monies which are the subject matter of discussion at the present time with the officials of the Department.

I may say that my clinet does not wish to accept the amount of the award at the present time in view of the fact that he has made and wishes to make further representations with reference to the amount payable to him.

Yours faithfully,

"T. G. NORRIS"

HOWARD SMITH
GENOA BOND