

B-2027 Iwasaki, Torazo v. The Queen

1967-1970

1/7

R14188

vol. 2619

TARIFF ITEM

36	Continued Discovery of Suppliant	\$ 100.00
36	Attendance on Commission Evidence of Suppliant	50.00 ✓
36	Cross-Examination of Suppliant on Commission	100.00 ✓
36 A	Negotiations with Counsel to facilitate trial	400.00 ✓
37	Counsel Fees at Trial: First counsel - first day	400.00 ✓
	Second counsel- first day	300.00 ✓
	First counsel - three subsequent days	900.00 ✓
	Second counsel- three subsequent days	600.00 ✓
39	Motion for Judgment	20.00 ✓

20 ✓
260 ✓
280 ✓

DISBURSEMENTS:

TARIFF ITEMS	\$ 4,002.00
Statement of Defence	\$ 1.00
Notice to Produce Documents	.10
Amended Statement of Defence	1.00
Notice of Motion for a further Discovery	.10
Order for further Discovery	2.00
Office copy of Order for a further Discovery	.10
Note	.10
Demand for Particulars	.10

DISBURSEMENTS:

Notice to Admit Documents	\$.10
Notice of Motion to Limit Trial	.10
Consent to Limit Trial	.10
Order to Limit Trial	2.00
Office copy of Order to Limit Trial	.10
Judgment	2.00
Filing Bill of Costs	.10
Taxation of Costs	2.00
Allocateur	1.00
Appointment to Tax	.25
Transcript of Discovery	57.30
Transcript of further Discovery and Commission Evidence	31.60
Fees to Interpreter on Discovery, Commission and at Trial	145.00

TOTAL \$ 246.15

TARIFF ITEMS \$ 4,002.00
DISBURSEMENTS 246.15

PRESENTED AT 4,248.15

TAXED OFF

ALLOWED AT

\$ 3988.15

The above Bill of Costs was taxed by me this day and
allowed at the sum of \$ 3988.15

DATED at Vancouver, British Columbia, the 12th day of May, 1970.

DEPUTY REGISTRAR

Monday, September 30th, 1968.
 Before the honorable F. F. Heywood.
 File: - B 2022.

H. L. Lott
 Reporter

Tora 20 Iwasaki

Suppleant

B. A. Llan
 Registrar

Her Majesty The Queen

Respondent.

D. W. Small

Apparing for the Suppleant.

~~W. R. MacLeod~~
~~W. R. MacLeod~~

Apparing for the Respondent.

N. D. H. H. H.
 R. W. Llan.

Called: 10:40.

M. MacLeod opens - speaks.
 He agrees on certain exhibits

Exhibit 1-	Deed of land 10/12/40.
" 2-	Proclamation of War.
" 3-	Order-in-Council 9760.
" 4-	" " 288
" 5-	" " 168
" 6-	" " 174
" 7-	" " 1486
" 8-	" " 1542
" 9-	Government Notice 26/2/42.
" 10-	Order-in-Council 1665
" 11-	" " 2983
" 12-	Description of property.
" 13-	Letter 16/5/42
" 14-	" 23/6/1-
" 15-	" 24/6/1-
" 16-	" 4/7/42.
" 17-	" 29/7/42.
" 18-	" 27/8/42

Exhibits 19-	Letter	17/9/42.
20	"	19/9/42.
21	Order-in-Council.	769.
22	Certificate of Vesting	
23	Letter	20/4/43
24	"	10/5/43.
25	"	" 15/43.
26	"	10/6/43.
27	"	15/6/43.
28	Order-in-Council	8529
29	Catalogue of Property for Sale.	
30	Letter	27/6/44
31	"	27/6/44.
32	"	5/7/44.
33	"	5/8/44.
34	"	8/8/44.
35	"	8/8/44.
36	"	14/8/44.
37	"	23/8/44.
38	"	23/8/44.
39	"	28/8/44.
40	"	1/9/44.
41	"	6/11/44.
42	"	27/1/45.
43	"	7/2/45.
44	"	15/2/45.
45	"	1/3/45.
46	Deed of Land	1/3/45.
47	Letter	20/3/45.
48	Statement of Accounts	16/4/45.
49	Telephone Directory	23/4/45.
50	Letter	24/5/45.
51	"	23/5/45.
52	"	2/6/45.
53	"	14/6/45.
54	"	30/1/46.
55	"	4/2/46.
56	"	11/2/46.
57	"	11/2/46.
58	Order-in-Council	1810

Exhibit 59	Letter	15/8/47.
60	"	19/8/47.
61	"	28/8/47.
62	"	17/2/48
63	"	(no date) Japan etc. by Japan etc. by Japan etc.
64	"	7/5/48
65	"	18/5/48
66	"	5/10/48
67	Chadwell	5/4, 932.99 5/10/48
68	Monaghan	12/11/48
69	Letter	14/11/49.
70	"	12/12/49.
71	"	12/12/49.
72	Report of Commission	
73	Appendix re Fair Market Value.	
74	Conclusion - claim of T. Ivarak.	
75	Re case.	
76	Authority to pay fee.	
77	List of burials.	
78	Chadwell	8/11/50.
79	Letter	8/11/50
80	Chadwell	8/11/50 - 8/11/50.
81	Proclamation	
82	Text of Citizenship	
83	Booklet "Trading with the Enemy"	
84	"	"Depence of Canada Population"
85	"	"
86	Transcript - Exam. of T. Ivarak.	
87	Transcript	5/10/40
88	"	11/10/40
89	"	29/12/42
90	"	4/12/43
91	"	3/11/44.
92	"	26/11/45
93	"	8/5/46
94	Admission of course.	

Admission for recess

11:30
11:57

Mr. Tullis states he wishes to
file Admission of Guilt as to all
exhibits filed so far. 11:52.

Mr. MacLeod opens case - gives
background of case 11:54.

Adjourned until 2:30 P.M. 12:46
Resumed 2:51

Mr. MacLeod continues. 2:52

Case for Plaintiff 2:54.

Adjourned for recess 2:55
Resumed 2:47.

Mr. Tullis begins his case 2:48

Case for Defendant
Adjourned for recess 3:04
Resumed 3:23.

Mr. MacLeod states he will not
have any rebuttal evidence. Asks that
argument be heard tomorrow
morning 3:25

Adjourned to 11/10/68 @ 10:30 AM 3:26.

Tuesday, October 1, 1968

Urasaki

Two Queen

2nd Day

Mr. Lightburn
Reporter

Called: 10:33.

B. Alan
Register

Mr. MacLeod begins argument 10:34.
Resumed for recess 11:43
Resumed 11:53.

Mr. MacLeod continues 11:54
Resumed for recess. 12:17
Resumed 12:30

Mr. MacLeod continues 12:31
Resumed until 3:00 P.M. 12:40
Resumed 3:07.

Mr. MacLeod continues 3:08

Exhibits 5-8 - Booklet "Trading with the Enemy" 1938

Mr. MacLeod begins reply 3:32

Resumed until 2/10/68 4:19
@ 10:30 AM

Tuesday, October 2, 1968
Lusack.

Queen

3rd Day

Mr. Coffer
Reporter

Called 10:35 -

B. Hall
Reporter

Mr. Mullins continues
Reply

10:36

Resumed for news

11:42
11:53

Mr. Mullins continues. 11:54

Resumed until 2:30 P.M. 1:04

Resumed 2:33

Mr. Mullins continues 2:34

Resumed for news. 3:31

Resumed 3:41

Mr. Mullins continues 3:42

Resumed until 3/10/68
@ 10:30 P.M. 4:23

Thursday, October 3, 1968

Iwakaki

Queen

4th Day

Mr. Barnes
Reporter

Called: 10:38

B. Allan
Registrar

Mr. Mullins continues argument
10:39.

Adjourned for recess
11:40
11:53.

Mr. MacLeod replies
11:54

Adjourned until 2:30 PM.
12:53

Resumed
2:36

Mr. MacLeod continues reply
2:37

Judgment Reserved
2:44

Tuesday May 14, 1968.

Before The Honorable J. A. Sheppard

Registered:
Referee:
In Chambers.

File # B. 2027.

Between:-

Torazo Tutsaki

Suppliant

- and -

Her Majesty The Queen Respondent.

Motion of Deputy Attorney General of Canada:-
① Suppliant to attend for further examination for discovery re: question on page 9 of discovery.
② To examine suppliant for discovery upon reply and Tinter of issue filed by him on 27-3-68.

Counsel for ~~the~~ Suppliant:- M. A. Macleod.
Respondent:- N. Mullins.

Case called:- 10.32.

Mr. Mullins opens:- 10.33
Counsel are agreed on Motion ②
Re: Examination of Suppliant on reply & Tinter of issue.
Mr. Mullins Proceeds with motion ① 10.36
Mr. Macleod replies 11.25
Mr. Mullins argues 11.52
adjourned at 11.56
Resumed at 12.13

Judgment:- Motion ② - order as agreed by counsel to examine suppliant for discovery on reply and Tinter of issue.



UPREME COURT OF CANADA

COUR SUPREME DU CANADA

JUDGMENT

TORAZO IWASAKI

v.

HER MAJESTY THE QUEEN

JUGEMENT

TORAZO IWASAKI

c

SA MAJESTE LA REINE



17 February, 1970. - 17 février 1970.

(CONTINUED.)

Tuesday May 14 '68

Before the Honorable
J. H. Sheppard.

File # B. 2027

Register
Rife

Between :-

Toraro Iwasaki Suppliant
- and -
Her Majesty the Queen

Judgment on Motion ① :-

Questions 147, 148 & 149, of Exam. for discovery
of Suppliant must be answered after Suppliant
has informed himself.
Questions 82 + 83 + 86^{of} disc. must be
answered as above.

Suppliant must swear that he has informed
himself and is able to answer questions 105, 106, 9, 107.

Costs of Motion to Respondent in Cause.

Adjudged at :-

12.20

(180)

Friday, December 15, 1962

Before The Honorable F. F. Chappard
in Chambers.

Between:

TORONTO LUMBER

Supplicant

vs
Her Majesty The Queen

Respondent

File No: T-32027

Motion leave to amend Petition of Right

J. M. Barrett for Supplicant.

Called: 10:37

M. J. Barrett opens

10:38

Order. Documents allowed.

B-2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TOKAZO IWASAKI

Suppliant

-and-

HER MAJESTY THE QUEEN

Respondent

I N D E X

<u>Document</u>	<u>Page</u>	<u>Exhibit</u>
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* 3. P.C. 9760. Registration of Japanese	6 - 9	
4. P.C. 288. Disposal of fishing vessels	10 - 11	
5. P.C. 365 Authorizing protected area	12 - 13	
6. Order designating protected area	14 - 15	
7. P.C. 1486. Authorizing movement of persons	16 - 17	
8. P.C. 1542 Authorizing control of articles	17 - 18	
* 9. Order to leave protected area	18	
10. P.C. 1665. B.C. Security Commission	19 - 26	
11. P.C. 2483. Amending P.C. 1665	27 - 28	
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13. Letter: Simson to McPherson, May 16, 1942	30	
14. Letter: Simson to Mounat, June 23, 1942	31	
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16. Letter: Custodian to Iwasaki, July 4, 1942	33	
17. Letter: Custodian to Iwasaki, July 29, 1942	34	
18. Letter: Custodian to Iwasaki, Aug. 27, 1942	35	
* 19. Letter: Beckwith to Custodian, Sept. 17, 1942	36	
20. Letter: Custodian to Beckwith, Sept. 19, 1942	37	

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24. Letter: Custodian to Land Registry Office, May 10, 1943	43	
25. Letter: Custodian to Iwasaki, May 11, 1943	44	
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31. Letter: Custodian to Salt Spring Lands Ltd. June 27, 1944	91	
32. Letter: Custodian to G.W.T. Bush, July 5, 1944	92	
33. Letter: Wilson to Custodian, Aug. 5, 1944	93	
34. Letter: Custodian to Smith, Aug. 8, 1944	94	
35. Letter: Custodian to Salt Spring Lands Ltd. Aug. 8, 1944	95	
36. Letter: Salt Spring Lands Ltd. to Custodian Aug. 14, 1944	96	
37. Letter: Custodian to Capt. Smith Aug. 23, 1944	97	
38. Letter: Custodian to Salt Spring Lands Ltd. Aug. 23, 1944	98	
39. Letter: Salt Spring Lands Ltd. to Custodian Aug. 28, 1944	99	
40. Letter: Custodian to Salt Spring Lands Ltd. Sept. 1, 1944	100	
41. Letter: Custodian to Glen Lake Logging Nov. 6, 1944	101	
42. Letter: Custodian to Salt Spring Lands Ltd. January 27, 1945	102	
43. Letter: Iwasaki to Custodian, February 7, 1945	103	
44. Letter: Custodian to Iwasaki February 15, 1945	104	
45. Letter: Custodian to Land Registry Office March 1, 1945	105	
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47. Letter: Salt Spring Lands Ltd. to Custodian, March 20, 1945	110	

<u>Document</u>	<u>Page</u>	<u>Exhibit</u>
48. Statement of Adjustments April 16, 1945	111	
49. Acknowledgment of Salt Spring Lands Ltd. April 23, 1945	112	
50. Letter: Salt Spring Lands Ltd. to Custodian, May 22, 1945	113	
51. Letter: Custodian to Iwasaki May 23, 1945	114-116	
52. Letter: Custodian to Salt Spring Lands Ltd. June 2, 1945	117	
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54. Letter: Custodian to Mouat January 30, 1945	119	
55. Letter: Salt Spring Lands Ltd. to Custodian, February 4, 1946	120	
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57. Letter: Custodian to Iwasaki February 11, 1946	122	
58. P.C. 1810 Claims Commission	123-124	
59. Letter: Custodian to Iwasaki Aug. 15, 1947	125-126	
60. Letter: Iwasaki to Custodian Aug. 19, 1947	127	
61. Letter: Custodian to Iwasaki August 28, 1947	128	
62. Letter: Campbell & Co. to Iwasaki February 17, 1948	129	
63. Letter: Commission to Iwasaki	130	
64. Letter: Custodian to Mouat May 7, 1948	131	
65. Letter: Salt Spring Lands to Custodian May 18, 1948	132	
66. Letter: Custodian to Iwasaki October 5, 1948	133	
67. Cheque to Iwasaki for \$4,932.99 October 5, 1948	134	
68. Memorandum re Commission procedure	135-137	
69. Letter: Custodian to E. Smith November 14, 1949	138	
70. Letter: Land Registry Office to Custodian December 12, 1949	139	
71. Letter: Salt Spring Lands Ltd. to Custodian December 12, 1949	140	
72. Report of Claims Commission	141-207	
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74. Commission Conclusions on Iwasaki claim	214-216	
75. Release, October 28, 1950	217	
76. Authority to pay fees Oct. 28, 1950	218	

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77. Statement of fee payments	219	
78. [✓] Cheque to Co-operative Committee Nov. 8, 1950	220	
79. Letter: Custodian to Iwasaki Nov. 8, 1950	221	
+ 80. Cheque to Iwasaki for \$7,608.95 Nov. 8, 1950	222	
81. Proclamation to end War June 6, 1952	223	
82. Citizenship Certificate	224-225	

Documents not in Exhibit Book

83. P.C. 2512 Trading with Enemy Regulations	
84. P.C. 5295 Defence of Canada Regulations (1941)	
85. P.C. 8862 Defence of Canada Regulations (1942)	
86. Transcript of Iwasaki evidence before Commission	

see index



In the Exchequer Court of Canada

BETWEEN:

TORAZO IWASAKI,

Suppliant,

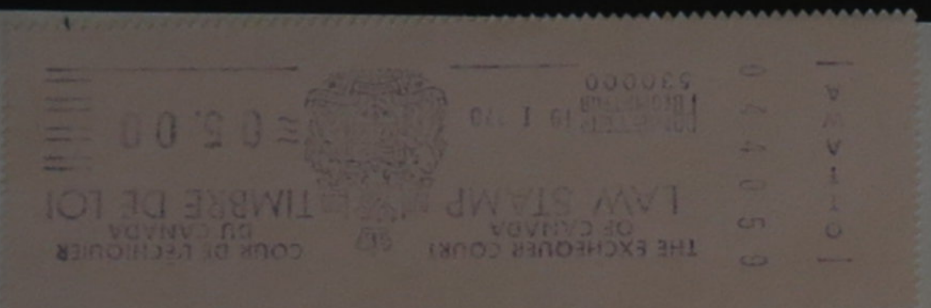
-and-

HER MAJESTY THE QUEEN,

Respondent.

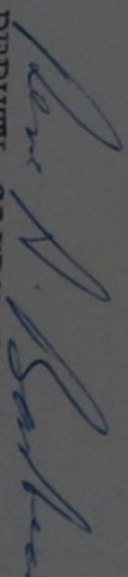
ORIGINAL RECORD TRANSMITTED TO THE SUPREME COURT
CANADA FOR THE PURPOSES OF THE APPEAL THERETO, PURSUANT
THE RULE OF SAID COURT IN THAT BEHALF, AND CONSISTING
OF THE FOLLOWING DOCUMENTS:

1. PETITION OF RIGHT
2. STATEMENT OF DEFENCE
3. DEMAND FOR DISCOVERY
4. AFFIDAVIT AS TO ~~EXM~~ DOCUMENTS
5. NOTICE OF MOTION DATED NOVEMBER 24, 1967
6. ORDER FILED DECEMBER 4, 1967
7. NOTICE OF MOTION DATED JANUARY 15, 1968
8. AFFIDAVIT OF J.R. MACLEOD
9. NOTICE OF MOTION DATED FEBRUARY 5, 1968
10. AMENDED PETITION OF RIGHT
11. ORDER FILED FEBRUARY 28, 1968
12. NOTICE OF MOTION DATED MARCH 4, 1968
13. AFFIDAVIT OF J.R. MACLEOD
14. AFFIDAVIT OF T. IWASAKI
15. AMENDED STATEMENT OF DEFENCE
16. SUPPLEMENTARY AFFIDAVIT OF T. IWASAKI
17. ORDER FILED MARCH 27, 1968
18. REPLY AND JOINDER OF ISSUE



19. NOTICE OF MOTION DATED MAY 1, 1968
20. ORDER FILED MAY 31, 1968
21. SUPPLEMENTARY AFFIDAVIT OF T. IWASAKI
22. NOTICE OF MOTION DATED AUGUST 7, 1968
23. NOTE
24. NOTICE OF MOTION DATED AUGUST 27, 1968
25. AMENDED REPLY AND JOINDER OF ISSUE
26. NOTICE TO ADMIT DOCUMENTS
27. NOTICE TO ADMIT FACTS
28. ORDER FILED SEPTEMBER 18, 1968
29. NOTICE TO ADMIT DOCUMENTS
30. NOTE OF COUNSEL FOR RESPONDENT
31. DEMAND FOR FURTHER AND BETTER PARTICULARS
32. NOTICE OF MOTION DATED SEPTEMBER 23, 1968
33. CONSENT DATED SEPTEMBER ~~XX~~ 23, 1968
34. REPLY TO DEMAND FOR FURTHER AND BETTER PARTICULARS
35. ORDER FILED OCTOBER 1, 1968
36. REASONS FOR JUDGMENT
37. JUDGMENT
38. EXAMINATION OF T. IWASAKI (2 vol) (RED FOLDER)
39. CERTIFIED RECORD & JUDGE'S RECORD & JUDGE'S PRONOUNCEMENT (RED FOLDER)
40. EXHIBITS 1 TO 95 (RED FOLDER)
41. NOTICE OF APPEAL TO THE SUPREME COURT OF CANADA
42. AGREEMENT AS TO CASE

DATED AT OTTAWA THE 19TH DAY OF JANUARY A.D. 1970.


DEPUTY CLERK OF PROCESS.



IN THE EXCHEQUER COURT OF CANADA
TO THE QUEEN'S MOST EXCELLENT MAJESTY,
TO WIT:

THE HUMBLE PETITION OF TORAZO IWASAKI,
of the City and County of Vancouver,
in the Province of British Columbia and
the Dominion of Canada, SHEWETH THAT:

1. Your Suppliant, a retired gentleman, resides at 4493 West 12th Avenue, in the City and County of Vancouver, Province of British Columbia and the Dominion of Canada.

2. At all material times to this action your Suppliant was the registered and actual owner of and continues to be beneficially and lawfully entitled to certain lands and premises within the Province and Dominion aforesaid and particularly known and described as:

Lots 3 and 4, North Salt Spring Island, Cowichan District, including Parcel "A" thereof (D.D. 58307-1) except that part of said Lot 4 lying South of said Parcel "A" and South of the South boundary of said Lot 3 and its production East to intersection with said Parcel "A".

3. On or about the 7th day of April, A.D. 1942, the Secretary of State of Canada, the Custodian of the aforesaid lands and premises, through his agent, Gavin C. Mouat, took custody of the aforesaid lands and premises in trust for and in the interest of your Suppliant.

4. On or about the 11th day of May, A.D. 1943, the Secretary of State acting in excess of his jurisdiction and without notice or compensation to your Suppliant and in breach of the aforesaid trust, filed or caused to be filed in the Land Registry Office, in the City of Victoria, within the Province and Dominion aforesaid, a Vesting Order No. 50930 against the title of the aforesaid lands and premises purporting to vest the aforesaid lands and premises to the

VANCOUVER



Custodian contrary to the laws of natural justice and to the provisions of the British North America Acts, 1867 to 1943, and Amendments thereto, and to the provisions of the Land Registry Act, R.S.B.C. 1936, and Amendments thereto.

5. On or about the 6th day of April, A.D. 1945, the aforesaid lands and premises were conveyed by the Secretary of State of Canada, acting in his capacity as Custodian and in excess of his jurisdiction, to the Secretary of State of Canada, and in turn, conveyed by the Secretary of State of Canada acting in excess of his jurisdiction to Salt Spring Lands Limited, a body corporate within the Province and Dominion aforesaid, all of which was done without notice to your Suppliant and in breach of the aforesaid trust, contrary to the laws of natural justice and contrary to the British North America Acts, 1867 to 1943, and Amendments thereto, and to the Land Registry Act, R.S.B.C. 1936, and Amendments thereto.

Your Suppliant therefore humbly prays that this Honourable Court grant judgment against the Queen's most excellent Majesty for:

(a) A Declaration that the Secretary of State of Canada acted in excess of his jurisdiction and in breach of trust in filing or causing to be filed Vesting Order No. 50930 against the title of the herein described lands and premises;

(b) A Declaration that the Secretary of State of Canada, acting in his capacity as Custodian, acted unlawfully and without or in excess of his jurisdiction and in breach of trust in conveying or causing to be conveyed the herein described lands and premises to the Secretary of State of Canada;



SUPREME COURT OF CANADA

Tuesday, 17 February, 1970.

PRESENT:

THE HON. MR JUSTICE FAUTEUX
THE HON. MR JUSTICE MARTLAND
THE HON. MR JUSTICE JUDSON
THE HON. MR JUSTICE RITCHIE
THE HON. MR JUSTICE HALL

BETWEEN:

TORAZO IWASAKI,
Appellant,

-and-

HER MAJESTY THE QUEEN,
Respondent.

The appeal from the judgment of the Exchequer Court of Canada dated 24 December, 1968, having come on to be heard before this Court on February 13, 16 and 17, 1970, in the presence of counsel for the appellant and for the respondent; upon hearing what was alleged by counsel aforesaid;

THIS COURT DID ORDER AND ADJUDGE that the appeal be dismissed with costs.

SETTLED this 23rd day of April, 1970.

COUR SUPREME DU CANADA

le mardi 17 février 1970.

PRESENTS:

L'HON. JUGE FAUTEUX
L'HON. JUGE MARTLAND
L'HON. JUGE JUDSON
L'HON. JUGE RITCHIE
L'HON. JUGE HALL

ENTRE:

TORAZO IWASAKI,
Appelant,

-et-

SA MAJESTÉ LA REINE,
Intimée.

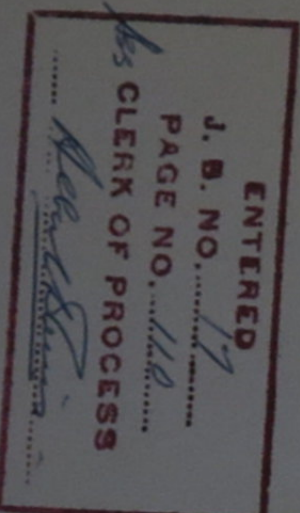
Le pourvoi de l'appelant à l'encontre du jugement de la Cour de l'Echiquier du Canada prononcé le 24 décembre 1968, étant venu pour audition en cette Cour les 13, 16 et 17 février 1970, en présence des procureurs de l'appelant et de celui de l'intimée, après avoir entendu ce qui était allégué par lesdits procureurs;

CETTE COUR A ORDONNE ET ADJUGE que le pourvoi soit rejeté avec dépens.

DETERMINE ce 23e jour d'avril 1970.

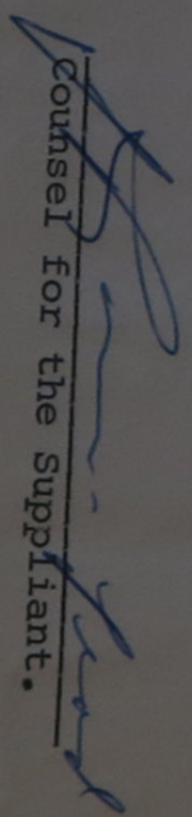
REGISTRAR

REGISTRAIRE



- (c) A Declaration that the Secretary of State of Canada acted unlawfully and in excess of his jurisdiction in conveying the herein described lands and premises to Salt Spring Lands Limited;
- (d) A Declaration that Vesting Order No. 50930 at all times material to this action was and continues to be invalid;
- (e) A Declaration that the conveyance of the herein described lands and premises on or about the 6th day of April, A.D. 1945, by the Secretary of State of Canada, acting in his capacity as Custodian, to the Secretary of State of Canada was and is unlawful and invalid;
- (f) A Declaration that the conveyance of the herein described lands and premises on or about the 6th day of April, A.D. 1945 by the Secretary of State of Canada to Salt Spring Lands Limited was and is unlawful and invalid;
- (g) An Order that Her Majesty the Queen return the lands and premises herein described to your Suppliant or, alternatively, that Her Majesty the Queen pay your Suppliant damages in the amount of \$1,500,000.00 of lawful money of Canada;
- (h) Costs of this action.

DATED at the County of Vancouver, in the Province of British Columbia, in the Dominion of Canada, this 5th day of September, A.D. 1967.


Counsel for the Suppliant.

The Suppliant prays for a statement of defence on behalf of Her Majesty the Queen within 4 weeks after the date of service hereof, or otherwise that the petition may be taken as confessed.

THIS PETITION OF RIGHT is filed by Mr. J. Raymond Macleod, of the firm of Messrs. Macleod & Small, Counsel for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

B-2027

IN THE EXCHEQUER COURT OF CANADA

OCT 10 1967
2

BETWEEN:

TORAZO IWASAKI,

SUPPLIANT,

- and -

HER MAJESTY THE QUEEN,

RESPONDENT.

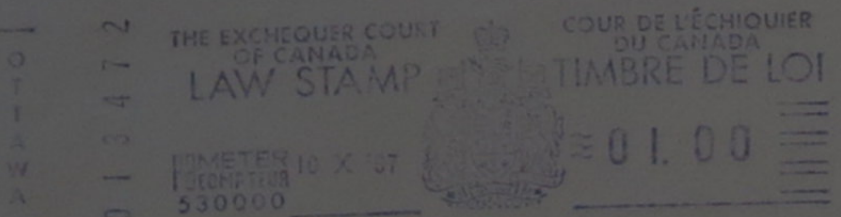
STATEMENT OF DEFENCE

Filed this 10th day of October A.D., 1967.

The Deputy Attorney General of Canada on behalf of Her Majesty in answer to the Petition of Right says as follows:

1. With regard to the Petition of Right as a whole he says:

- (a) at all material times prior to the making of Order in Council P.C. 2483 dated the 27th day of March, 1942, hereinafter referred to, the Suppliant was the owner of the lands described in paragraph 2 of the Petition of Right, which said lands are situated in an area that had been declared by the Minister of National Defence, pursuant to the provisions of the Defence of Canada Regulations, to be a protected area;
- (b) the Suppliant is a person of the Japanese Race and as such was, on the said 26th day of February, 1942, ordered by the Minister of Justice, pursuant to the said Defence of Canada Regulations, to leave the said protected area, and the Suppliant was evacuated therefrom;



- (c) by virtue of the said Order in Council P.C. 2483 dated the 27th day of March, 1942, made pursuant to the War Measures Act, the said lands became vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy (1939);
 - (d) on or about the 1st day of March, 1945, the said Custodian, pursuant to Order in Council P.C. 469 dated January 19, 1945, made pursuant to the War Measures Act, conveyed the said lands to Salt Spring Lands Limited;
 - (e) at no time material to the Petition of Right herein was the said Custodian an agent or servant of Her Majesty;
 - (f) the Petition of Right herein discloses no facts upon which it may be adjudged or declared that as against Her Majesty the Suppliant has any right whatever.
2. In the alternative he says that:
- (a) on or about the 28th day of October, 1950, the Suppliant for good and valuable consideration executed a Release in writing thereby releasing His Majesty the King in right of Canada and the said Custodian from all actions, claims and demands whatsoever in respect of, inter alia, the said lands;

(b) by virtue of the facts hereinbefore set forth, the Suppliant is barred by his laches and acquiescence from maintaining any claim that the said sale and conveyance of the said land be declared invalid or that Her Majesty account to him further or at all in respect thereof;

(c) the Suppliant's claim is barred by the Statute of Limitations, Revised Statutes of British Columbia, 1960, chapter 370, section 16, and his right and title, if any, to the said land were extinguished by virtue of section 41 of the said Act.

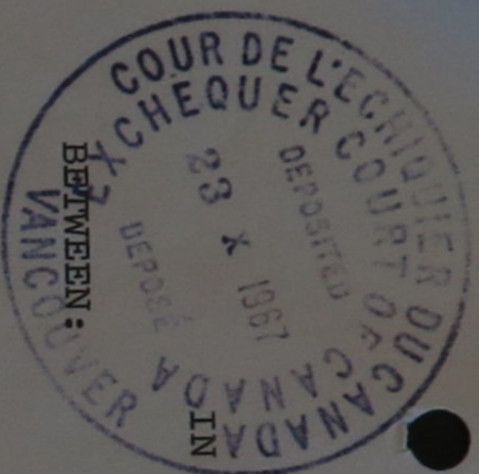
3. Except as herein expressly admitted, he denies the allegations of fact contained in paragraphs 1 to 5 both inclusive of the Petition of Right.

On behalf of Her Majesty, the Deputy Attorney General of Canada prays that it be adjudged that the Suppliant is not entitled to the relief sought in his Petition of Right and that Her Majesty is entitled to costs.

DATED at Ottawa this 10th day of October A.D. 1967.

D. S. MAXWELL
Deputy Attorney General of Canada.

No. B 2027



IN THE EXCHEQUER COURT OF CANADA

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

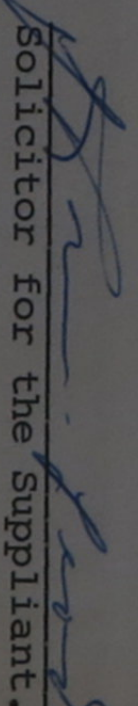
RESPONDENT

DEMAND FOR DISCOVERY

TAKE NOTICE that you are required within Five (5) days after service of this Notice upon you to make discovery upon oath of all books, papers, letters, copies of letters and other writings and documents which are now or have been in your possession, custody or power, or in the possession, custody or power of your solicitors or agents, solicitor or agent, or in the possession, custody or power of any other person or persons on your behalf, relating to the matters in question in this action.

AND FURTHER TAKE NOTICE that if such discovery is not made within Five (5) days after service of this demand an application will be made for an order compelling the same.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of October, A.D. 1967.


Solicitor for the Suppliant.

TO: The Respondent

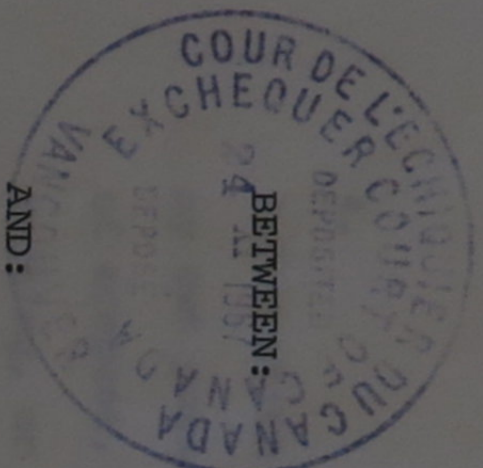
AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.



IN THE EXCHEQUER COURT OF CANADA

4
TORAZO IWASAKI

SUPPLIANT



AND:

HER MAJESTY THE QUEEN

RESPONDENT

AFFIDAVIT AS TO DOCUMENTS



I, J. RAYMOND MacLEOD, of 1022 Groveland Place,
in the Municipality of West Vancouver, in the County of
Vancouver, in the Province of British Columbia, Barrister
and Solicitor, MAKE OATH AND SAY as follows:

1. THAT I am Solicitor for the Suppliant, and as
such have knowledge of the matters hereinafter deposed to,
save those stated to be on information and belief.

2. THAT I have the following documents in my pos-
session which I do not object to produce:

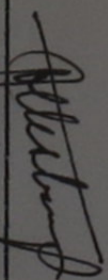
- (a) Deed of Land - Pottinger to Iwasaki;
- (b) True copy of Vesting Order No. 50930;
- (c) Certified copy of communique to the
Registrar, Land Registry Office in
Victoria, B.C. from the Department of
the Secretary of State, File G/59;
- (d) Deed of Land - Secretary of State of
Canada to Salt Spring Lands, Limited;
- (e) Torazo Iwasaki - Naturalization Certi-
ficate.

3. THAT I have the following documents which I
object to produce:

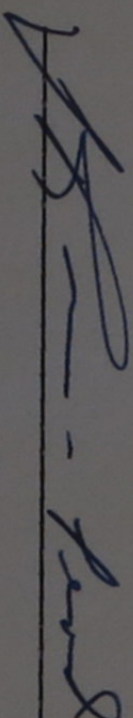
Minutes of evidence and letters
amounting to privileged communication
between Solicitor and client.

4. THAT according to the best of my knowledge, information and belief, I have not now, and never had, in my own possession, custody or power any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this Suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in Paragraphs 2 and 3 herein.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of)
British Columbia, this 24th day)
of November, A.D. 1967.)

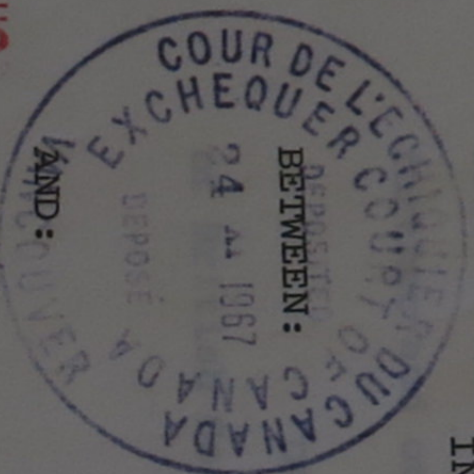


A Commissioner for taking Affi-)
davits within British Columbia.)

 - *James*

No. B 2027

IN THE EXCHEQUER COURT OF CANADA



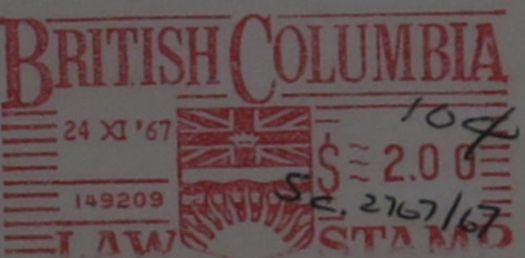
TORAZO IWASAKI

SUPPLIANT

HER MAJESTY THE QUEEN

RESPONDENT

NOTICE OF MOTION



TAKE NOTICE that this Honourable Court will be moved on behalf of the Suppliant at the Court House, 800 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, on Friday, the 1st day of December, A.D. 1967, at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as Counsel may be heard for an Order that the Suppliant have leave to amend the Petition of Right herein as follows:

(a) By deleting Paragraph 3 thereof and substituting therefor the following:

"3. On or about the 26th day of February, A.D. 1942, the Secretary of State of Canada, the Custodian of the aforesaid lands and premises, through his agent, Gavin C. Mouat, took custody of the aforesaid lands and premises in trust for and in the interest of your Suppliant.";

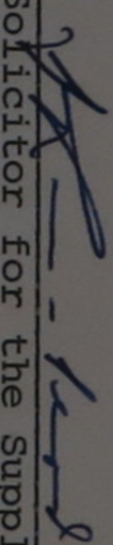
(b) By adding thereto the following:

"6. At all times material to this action the Secretary of State of Canada and/or the Secretary of State of Canada acting in his capacity as Custodian acted as agent, servant, officer or employee of His Majesty the King in right of Canada."

AND TAKE NOTICE that in support of this motion

will be read the pleadings and proceedings herein and such further and other material as Counsel may advise.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of November, A.D. 1967.


Solicitor for the Suppliant.

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS NOTICE OF MOTION is filed by Mr. J. Raymond Macleod, of the firm of Messrs. Macleod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

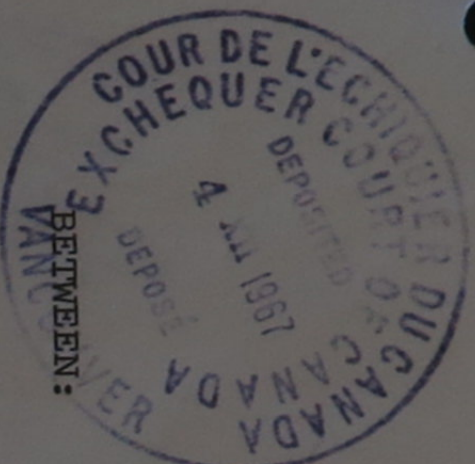
HER MAJESTY THE QUEEN

RESPONDENT

APPOINTMENT TO TAX

N. D. Mullins, Q.C.
Department of Justice
620-505 Burrard Street
Vancouver 1, B. C.

No. B 2027



IN THE EXCHEQUER COURT OF CANADA

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

BEFORE THE HONOURABLE

MR. F.A. SHEPPARD

IN CHAMBERS

:
: FRIDAY, the 1st day of
: DECEMBER, A.D. 1967.
:



UPON this motion coming on for hearing on the day and date hereof in the presence of James L. Barrett, Esq. of Counsel for the Suppliant, and no one appearing for the Respondent although duly served; AND UPON reading the pleadings and proceedings herein; AND UPON hearing the submissions of Counsel aforesaid;

IT IS ORDERED that the Suppliant have leave to amend the Petition of Right herein as follows:

(a) By deleting Paragraph 3 thereof and substituting therefor the following:

"3. On or about the 26th day of February, A.D. 1942, the Secretary of State of Canada, the Custodian of the aforesaid lands and premises, through his agent, Gavin C. Mounat, took custody of the aforesaid lands and premises in trust for and in the interest of your Suppliant.";



(b) By adding thereto the following:

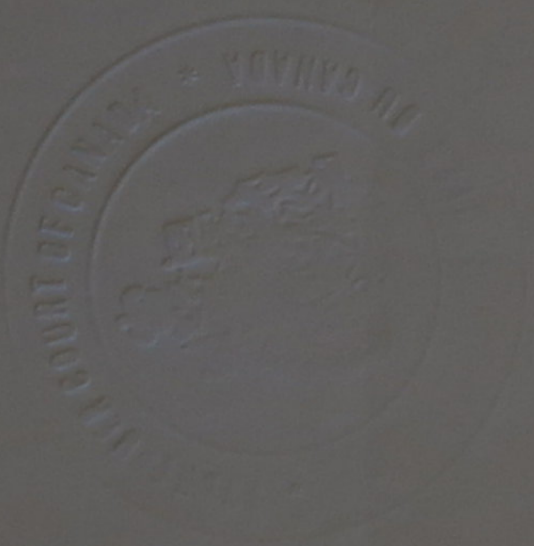
"6. At all times material to this action the Secretary of State of Canada and/or the Secretary of State of Canada acting in his

capacity as Custodian acted as agent, servant, officer or employee of His Majesty the King in right of Canada."

W. A. Sheppard
W. A.

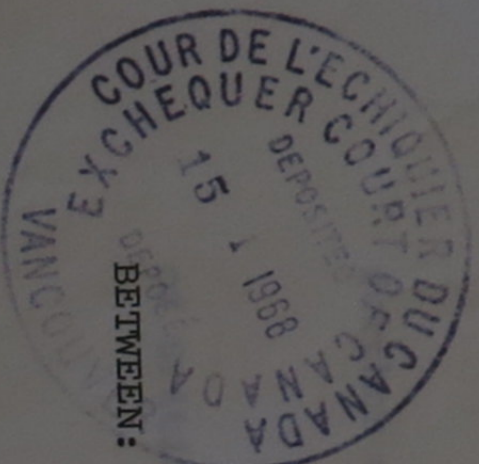
W. A. Sheppard
W. A.

W. A. Sheppard
Deputy Agent



No. B 2027

IN THE EXCHEQUER COURT OF CANADA



TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on behalf of the Suppliant at the 5th Floor, 900 West Hastings Street, Bank of Canada Building, in the City of Vancouver, in the Province of British Columbia, on Thursday, the 25th day of January, A.D. 1968, at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as Counsel may be heard for an Order that the Suppliant have leave to amend the Petition of Right herein by adding thereto after Paragraph 5 thereof the following:

"5A. On or about the 6th day of April, A.D. 1945 the Secretary of State of Canada acting in his capacity as Custodian and acting in his capacity as Secretary of State of Canada, fraudulently and in breach of his fiduciary relationship to your Suppliant conveyed or caused to be conveyed the aforesaid lands and premises to the aforesaid Salt Spring Lands Limited, a body corporate in which one Gavin C. Mouat, agent of the aforesaid Custodian, held a direct or beneficial interest, all of which was within the knowledge of the Secretary of State of Canada acting as such or in his capacity as Custodian, and all of which resulted in the aforesaid agent of the aforesaid Custodian being unjustly enriched."

AND TAKE NOTICE that in support of this motion will be read the pleadings and proceedings herein and such



further and other material as Counsel may advise.

DATED at the City of Vancouver, in the Province
of British Columbia, this 15th day of January, A.D. 1968.

A. R. MacLeod
Solicitor for the Suppliant.

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS NOTICE OF MOTION is filed by Mr. J. Raymond Macleod,
of the firm of Messrs. Macleod & Small, Solicitor for the
Suppliant, whose place of business and address for service
is 201 - 535 Thurlow Street, Vancouver 5, B.C.

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

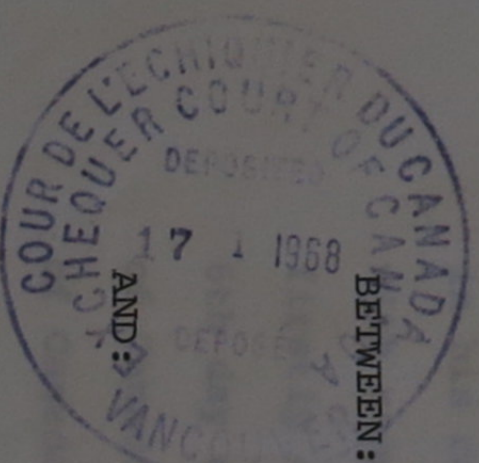
BETWEEN:

TORAZO IWASAKI

SUPPLIANT

HER MAJESTY THE QUEEN

RESPONDENT



A F F I D A V I T

I, J. RAYMOND MACLEOD, of 1022 Groveland Place, in the Municipality of West Vancouver, in the County of Vancouver, in the Province of British Columbia, Barrister and Solicitor, MAKE OATH AND SAY as follows:

1. THAT I am Solicitor for the Suppliant, and as such have knowledge of the matters hereinafter deposed to, save those stated to be on information and belief.
2. THAT this Affidavit is being filed in support of the Notice of Motion herein dated January 15th, A.D. 1968 and returnable Thursday, January 25th, A.D. 1968, to amend the Petition of Right herein.
- 3.

THAT I am informed by your Suppliant herein and verily believe that upon his being evacuated from the lands and premises which constitute the subject matter of this action, he was told by one Gavin C. Mounat, agent of the Secretary of State of Canada acting in his capacity as Custodian, that the aforesaid lands and premises would be held for your Suppliant and returned to him following the termination of Canada's conflict with Japan during the Second World War.

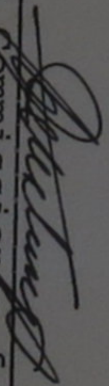
4. THAT I have caused a title search to be made on the title of the aforesaid lands and premises and as a result have ascertained that the Secretary of State of Canada acting

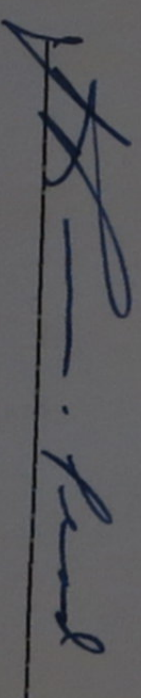


in his capacity as Custodian terminated his custodial duties with respect to the aforementioned lands and premises by firstly conveying the aforesaid lands and premises on the 6th day of April, A.D. 1945 to himself as Secretary of State of Canada and then on the same day, as Secretary of State of Canada conveying the lands and premises to Salt Spring Lands Limited, a body corporate within the Province of British Columbia.

5. THAT I have caused a search to be made on the Company records of the aforesaid Salt Spring Lands Limited, and as a result, have ascertained that at all times material to this action one Gavin C. Mouat, aforesaid, was a Director and Shareholder in the aforesaid corporate body.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of)
British Columbia, this 17th day)
of January, A.D. 1968.)


A Commissioner for taking Affidavits within British Columbia.)


Gavin C. Mouat

IN THE EXCHEQUER COURT OF CANADA

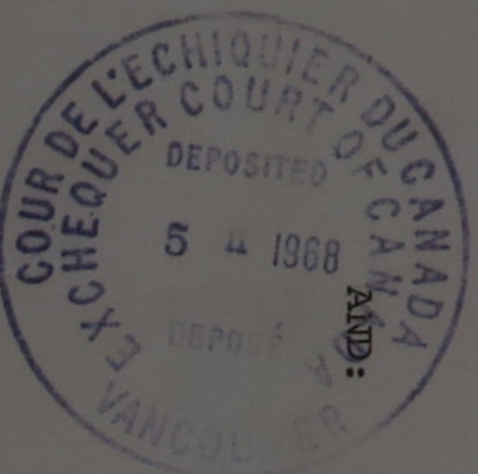
BETWEEN:

TORAZO IWASAKI

SUPPLIANT

HER MAJESTY THE QUEEN

RESPONDENT



NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on behalf of the Suppliant at the Court House, 800 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, on Thursday, the 8th day of February, A.D. 1968, at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as Counsel may be heard for an Order that the Suppliant have leave to amend the Petition of Right herein as follows:

(a) By deleting Paragraph 3 and substituting therefor the following:

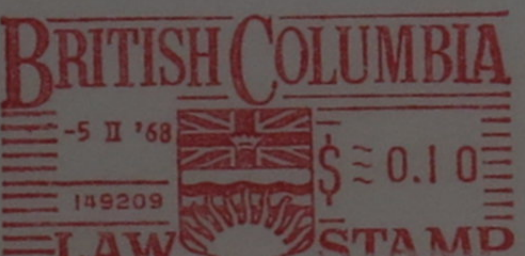
"3. On or about the 27th day of March, A.D. 1942, the Secretary of State of Canada, the Custodian of the aforesaid lands and premises, through his agent, Gavin C. Mounat, took custody of the aforesaid lands and premises in trust for and in the interest of your Suppliant.";

(b) By adding thereto the following:

"5A. The aforesaid conveyance as alleged in Paragraph 5 of the Petition of Right herein was fraudulent and constituted a breach of trust by the Secretary of State of Canada or the Secretary of State of Canada acting in his capacity as Custodian, particulars of the ~~fraud or~~ breach ^{under the} trust are as follows:"

(a) The Secretary of State of Canada acting in his capacity as Custodian held the aforesaid lands and premises in trust for your Suppliant; ^{in pursuance of the Statute and}

(b) The terms of the aforesaid trust were that the Custodian would return the aforesaid lands and premises to your



Suppliant at the end of World War Two;

Particulars of the facts since 1945 are as follows.

(c) The Secretary of State of Canada acting in his capacity as Custodian conveyed the aforesaid lands and premises to the Secretary of State of Canada who in turn conveyed the aforesaid lands and premises to Salt Spring Lands Limited, a body corporate within the Province and Dominion aforesaid. The aforesaid conveyances of the aforesaid lands and premises were done without any notice to your Suppliant and without any instructions from your Suppliant and without any lawful authority on the part of the Custodian;

(d) The said conveyance was not made by the Custodian in good faith in that Gavin C. Mounat, agent of the Secretary of State of Canada acting in his capacity as Custodian and to the knowledge of the Secretary of State of Canada acting in his capacity as Custodian held a direct or beneficial interest in the said Salt Spring Lands Limited.";

(c) By adding thereto the following:

"6. At all times material to this action the Secretary of State of Canada and/or the Secretary of State of Canada acting in his capacity as Custodian acted as agent, servant, officer or employee of His Majesty the King in right of Canada.";

(d) By adding thereto the following:

"7. At all times material to this action your Suppliant has been and is a citizen of Canada."

AND TAKE NOTICE that in support of this motion will be read the Affidavit of J. Raymond Macleod, sworn the 17th day of January, A.D. 1968 and filed, the Affidavit of J. Raymond Macleod, sworn the 2nd day of February, A.D. 1968 and filed, the pleadings and proceedings herein and such further and other material as Counsel may advise.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of February, A.D. 1968.

J. R. Macleod
Solicitor for the Suppliant.

TO: The Respondent

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS NOTICE OF MOTION is filed by Mr. J. Raymond Macleod,
of the firm of Messrs. Macleod & Small, Solicitor for the
Suppliant, whose place of business and address for service
is 201 - 535 Thurlow Street, Vancouver 5, B.C.

IN THE EXCHEQUER COURT OF CANADA

TO THE QUEEN'S MOST EXCELLENT MAJESTY,
TO WIT:



THE HUMBLE PETITION OF TORAZO IWASAKI,
of the City and County of Vancouver,
in the Province of British Columbia and
the Dominion of Canada, Amended pursuant
to the Order of The Honourable Mr. F.A.
Sheppard, pronounced the 15th day of
February, A.D. 1968, SHEWETH THAT:

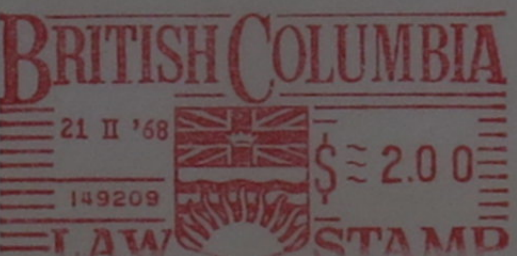
Your Suppliant, a retired gentleman, resides at
4493 West 12th Avenue, in the City and County of Vancouver,
Province of British Columbia and the Dominion of Canada.

2. At all material times to this action your Sup-
pliant was the registered and actual owner of and continues
to be beneficially and lawfully entitled to certain lands
and premises within the Province and Dominion aforesaid and
particularly known and described as:

Lots 3 and 4, North Salt Spring
Island, Cowichan District, inclu-
ding Parcel "A" thereof (D.D. 58307-1)
except that part of said Lot 4 lying
South of said Parcel "A" and South of
the South boundary of said Lot 3 and
its production East to intersection
with said Parcel "A".

3. On or about the 27th day of March, A.D. 1942, the
Secretary of State of Canada, the Custodian of the aforesaid
lands and premises, through his agent, Gavin C. Mounat, took
custody of the aforesaid lands and premises in trust for
and in the interest of your Suppliant.

4. On or about the 11th day of May, A.D. 1943, the
Secretary of State acting in excess of his jurisdiction and
without notice or compensation to your Suppliant and in
breach of the aforesaid trust, filed or caused to be filed
in the Land Registry Office, in the City of Victoria, within



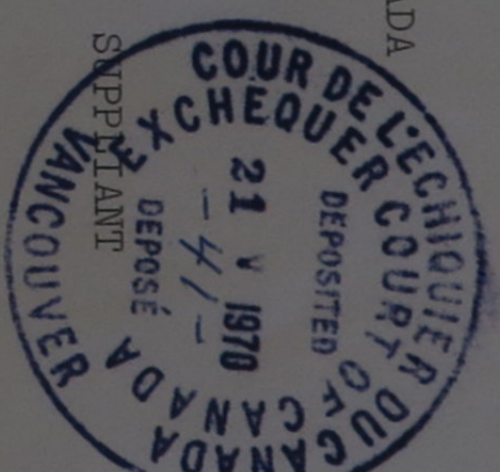
No. B 2027

25-6

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI



AND:

HER MAJESTY THE QUEEN

RESPONDENT

APPOINTMENT TO TAX

I HEREBY APPOINT Friday, the 12th day of June, A.D. 1970, at the hour of 11:00 o'clock in the fore noon, at my office at the Court House, 800 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, as the time and place for the taxation of the within Bill of Costs of the Respondent herein.



DATED at Vancouver, British Columbia, the 21 day of May, 1970.

J.P. Abel
DEPUTY REGISTRAR
B.H.

TO: The Suppliant

AND TO: J. R. Macleod, Esq.
His Solicitor

THIS APPOINTMENT is taken out by Norman D. Mullins, Q.C. of the Department of Justice, whose place of business and address for service is 620-505 Burrard Street, Vancouver 1, B. C.

the Province and Dominion aforesaid, a Vesting Order No. 50930 against the title of the aforesaid lands and premises purporting to vest the aforesaid lands and premises to the Custodian contrary to the laws of natural justice and to the provisions of the British North America Acts, 1867 to 1943, and Amendments thereto, and to the provisions of the Land Registry Act, R.S.B.C. 1936, and Amendments thereto.

5. On or about the 6th day of April, A.D. 1945, the aforesaid lands and premises were conveyed by the Secretary of State of Canada, acting in his capacity as Custodian and in excess of his jurisdiction, to the Secretary of State of Canada, and in turn, conveyed by the Secretary of State of Canada, acting in excess of his jurisdiction to Salt Spring Lands Limited, a body corporate within the Province and Dominion aforesaid, all of which was done without notice to your Suppliant and in breach of the aforesaid trust, and contrary to the laws of natural justice and contrary to the British North America Acts, 1867 to 1943, and Amendments thereto, and to the Land Registry Act, R.S.B.C. 1936, and Amendments thereto.

5A. The aforesaid conveyance as alleged in Paragraph 5 of the Petition of Right herein was fraudulent and constituted a breach of trust by the Secretary of State of Canada or the Secretary of State of Canada acting in his capacity as Custodian, particulars of the trust are as follows:

- (a) The Secretary of State of Canada acting in his capacity as Custodian held the aforesaid lands and premises in trust for your Suppliant pursuant to Statute and Regulations and Orders-in-Council passed thereunder;
- (b) The terms of the aforesaid trust were that the Custodian would return the aforesaid lands

and premises to your Suppliant at the end of World War Two;

Particulars of the fraud or breach of trust are as follows:

(a) The Secretary of State of Canada acting in his capacity as Custodian conveyed the aforesaid lands and premises to the Secretary of State of Canada who in turn conveyed the aforesaid lands and premises to Salt Spring Lands Limited, a body corporate within the Province and Dominion aforesaid. The aforesaid conveyances of the aforesaid lands and premises were done without any notice to your Suppliant and without any instructions from your Suppliant and without any lawful authority on the part of the Custodian;

(b) The said conveyance was not made by the Custodian in good faith in that Gavin C. Mouat, agent of the Secretary of State of Canada acting in his capacity as Custodian and to the knowledge of the Secretary of State of Canada acting in his capacity as Custodian held a direct or beneficial interest in the said Salt Spring Lands Limited.

6. At all times material to this action the Secretary of State of Canada and/or the Secretary of State of Canada acting in his capacity as Custodian acted as agent, servant, officer or employee of His Majesty the King in right of Canada.

7. At all times material to this action your Suppliant has been and is a citizen of Canada.

Your Suppliant therefore humbly prays that this Honourable Court grant judgment against the Queen's most

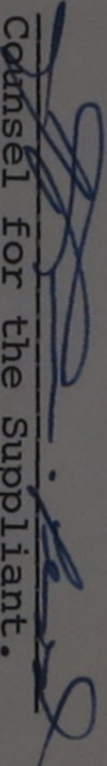
excellent Majesty for:

- (a) A Declaration that the Secretary of State of Canada acted in excess of his jurisdiction and in breach of trust in filing or causing to be filed Vesting Order No. 40930 against the title of the herein described lands and premises;
- (b) A Declaration that the Secretary of State of Canada, acting in his capacity as Custodian, acted unlawfully and without or in excess of his jurisdiction and in breach of trust in conveying or causing to be conveyed the herein described lands and premises to the Secretary of State of Canada;
- (c) A Declaration that the Secretary of State of Canada acted unlawfully and in excess of his jurisdiction in conveying the herein described lands and premises to Salt Spring Lands Limited;
- (d) A Declaration that Vesting Order No. 50930 at all times material to this action was and continues to be invalid;
- (e) A Declaration that the conveyance of the herein described lands and premises on or about the 6th day of April, A.D. 1945, by the Secretary of State of Canada, acting in his capacity as Custodian, to the Secretary of State of Canada was and is unlawful and invalid;
- (f) A Declaration that the conveyance of the herein described lands and premises on or about the 6th day of April, A.D. 1945 by the Secretary of State of Canada to Salt

Spring Lands Limited was and is unlawful and invalid;

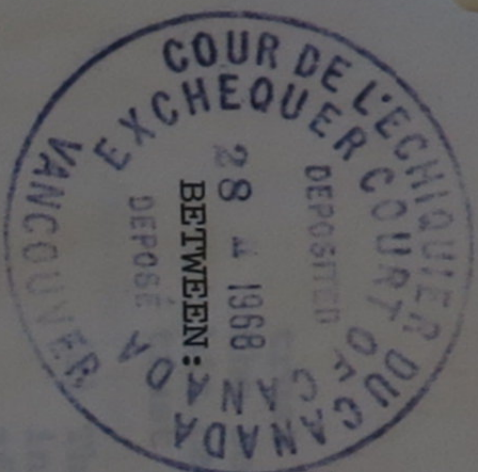
- (g) An Order that Her Majesty the Queen return the lands and premises herein described to your Suppliant or, alternatively, that Her Majesty the Queen pay your Suppliant damages in the amount of \$1,500,000.00 of lawful money of Canada;
- (h) Costs of this action.

DATED at the County of Vancouver, in the Province of British Columbia, in the Dominion of Canada, this 29 / 5 / 68 day of February, A.D. 1968.


Counsel for the Suppliant.

The Suppliant prays for a statement of defence on behalf of Her Majesty the Queen within 4 weeks after the date of service hereof, or otherwise that the petition may be taken as confessed.

THIS AMENDED PETITION OF RIGHT is filed by Mr. J. Raymond Macleod, of the firm of Messrs. Macleod & Small, Counsel for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver, B.C.



IN THE EXCHEQUER COURT OF CANADA

TORAZO IWASAKI

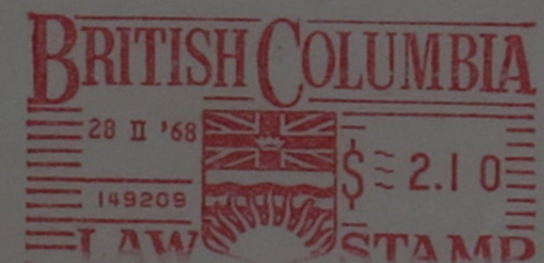
SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

BEFORE THE HONOURABLE : : THURSDAY, the 15th day
MR. F.A. SHEPPARD : : of FEBRUARY, A.D. 1968
IN CHAMBERS : :



UPON this motion coming on for hearing on the 25th day of January and 8th day of February, A.D. 1968, and on the day and date hereof in the presence of James L. Barrett, Esq. of Counsel for the Suppliant, and Norman D. Mullins, Esq. of Counsel for the Respondent; AND UPON reading the Affidavit of J. Raymond Macleod, sworn the 17th day of January, A.D. 1968 and filed, the Affidavit of J. Raymond Macleod, sworn the 2nd day of February, A.D. 1968 and filed; AND UPON reading the pleadings and proceedings herein; AND UPON hearing the submissions of Counsel aforesaid;

IT IS ORDERED that the Suppliant have leave to amend the Petition of Right herein as follows:

(a) By deleting Paragraph 3 and substituting therefor the following:

"3. On or about the 27th day of March, A.D. 1942, the Secretary of State of Canada, the Custodian of the aforesaid lands and premises, through his agent, Gavin C. Mounat, took custody of the aforesaid lands and premises in trust for and in the interest of your Suppliant.";

(b) By adding thereto the following:

"5A. The aforesaid conveyance as alleged in Paragraph 5 of the Petition of Right herein was fraudulent and constituted a breach of

trust by the Secretary of State of Canada or the Secretary of State of Canada acting in his capacity as Custodian, particulars of the trust are as follows:

- (a) The Secretary of State of Canada acting in his capacity as Custodian held the aforesaid lands and premises in trust for your Suppliant pursuant to Statute and Regulations and Orders-in-Council passed thereunder;
- (b) The terms of the aforesaid trust were that the Custodian would return the aforesaid lands and premises to your Suppliant at the end of World War Two;

Particulars of the fraud or breach of trust are as follows:

- (a) The Secretary of State of Canada acting in his capacity as Custodian conveyed the aforesaid lands and premises to the Secretary of State of Canada who in turn conveyed the aforesaid lands and premises to Salt Spring Lands Limited, a body corporate within the Province and Dominion aforesaid. The aforesaid conveyances of the aforesaid lands and premises were done without any notice to your Suppliant and without any instructions from your Suppliant and without any lawful authority on the part of the Custodian;
- (b) The said conveyance was not made by the Custodian in good faith in that Gavin C. Mouat, agent of the Secretary of State of Canada acting in his capacity as Custodian and to the knowledge of the Secretary of State of Canada acting in his capacity as Custodian held a direct or beneficial interest in the said Salt Spring Lands Limited.";
- (c) By adding thereto the following:

"6. At all times material to this action the Secretary of State of Canada and/or the Secretary of State of Canada acting in his capacity as Custodian acted as agent, servant, officer or employee of His Majesty the King in right of Canada.";
- (d) By adding thereto the following:

"7. At all times material to this action your Suppliant has been and is a citizen of Canada.";
- (e) By adding thereto the word 'and' to Paragraph 5 between the word 'trust,' and the word 'contrary' in the said Paragraph;

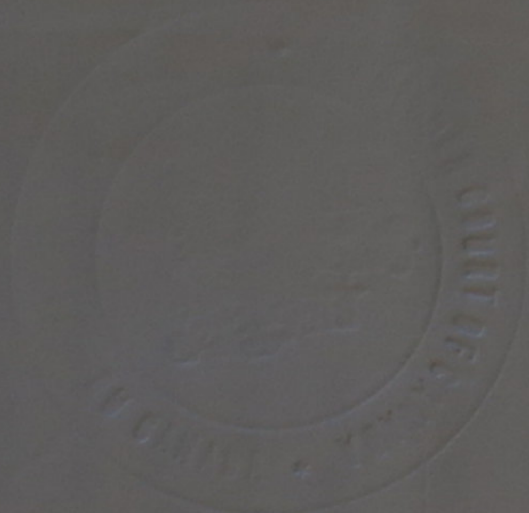
AND IT IS ORDERED that the Respondent herein have leave to file an Amended Statement of Defence to the Amended Petition of Right;

AND IT IS FURTHER ORDERED that the costs of this application be costs to the Respondent in any event of the cause in the cause.

Approved ~~as to form~~ :

James D. Sullivan
Counsel for the Respondent.

[Signature]
DEPUTY REGISTRAR



IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

HER MAJESTY THE QUEEN

RESPONDENT

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NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on behalf of the Suppliant at the 5th Floor, 900 West Hastings Street, Bank of Canada Building, in the City of Vancouver, in the Province of British Columbia, on Friday, the 8th day of March, A.D. 1968, at the hour of 10:30 o'clock in the forenoon, or so soon thereafter as Counsel may be heard for an Order that the Suppliant herein have leave to have his evidence taken in the presence of a Commissioner to be agreed upon by Counsel.

AND TAKE NOTICE that in support of this motion will be read the Affidavit of J. Raymond Macleod, sworn the 4th day of March, A.D. 1968 and filed, the pleadings and proceedings herein and such further and other material as Counsel may advise.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of March, A.D. 1968.

TO: The Respondent

[Signature]
Solicitor for the Suppliant

AND TO: D.S. Maxwell,
Deputy Attorney General
of Canada,
Solicitor for the Respondent.

THIS NOTICE OF MOTION is filed by Mr. J. Raymond Macleod, of the firm of Messrs. Macleod & Small, Solicitor for the Suppliant, whose place of business and address for service is 201 - 535 Thurlow Street, Vancouver 5, B.C.



No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT



AND:

HER MAJESTY THE QUEEN

RESPONDENT



A F F I D A V I T

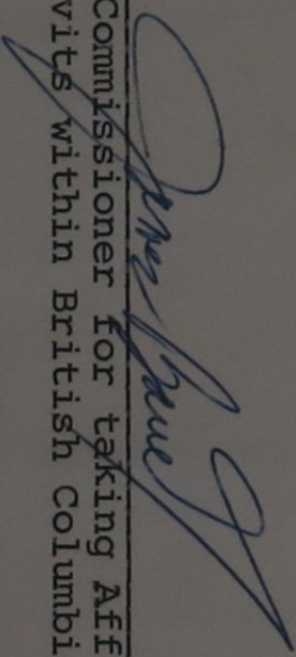
I, J. RAYMOND MACLEOD, of 1022 Groveland Place, in the Municipality of West Vancouver, in the County of Vancouver, in the Province of British Columbia, Barrister and Solicitor, MAKE OATH AND SAY as follows:

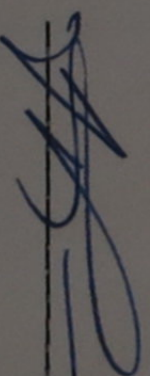
1. THAT I am Solicitor for the Suppliant herein, and as such have knowledge of the matters hereinafter deposed to, save those stated to be on information and belief.
2. THAT I am informed by the Suppliant herein and verily believe that he is presently 88 years of age, having been born on the 15th day of April, A.D. 1879.
3. THAT I have examined the Canadian Life Tables 1960-62 compiled by the Dominion Bureau of Statistics and as a result have ascertained that a male person living in Canada who is presently 88 years of age has a life expectancy of 3.64 years.
4. THAT I have considered normal exigencies of life including the incidents of sickness and accidents and as a result have concluded that there is a very distinct possibility that the Suppliant herein will meet his demise before

this action comes on for trial.

5. THAT in my opinion that in the interest of justice it will be necessary to have the Suppliant's evidence available for the record at trial.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of)
British Columbia, this 4th day)
of March, A.D. 1968.)


A Commissioner for taking Affi-)
davits within British Columbia.)


J. R. Ross

No. B 2027

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

BILL OF COSTS

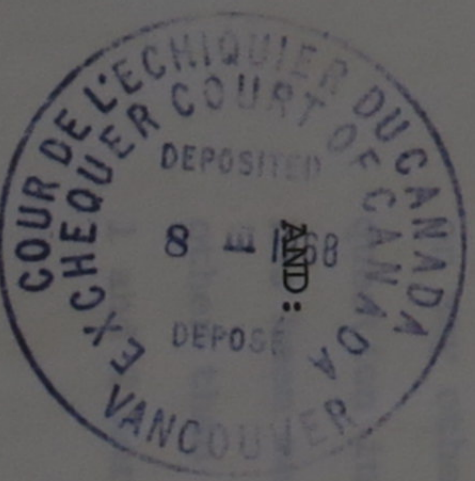
N. D. Mullins, Q. C.
Department of Justice
620-505 Burrard Street
Vancouver 1, B. C.

IN THE EXCHEQUER COURT OF CANADA

BETWEEN:

TORAZO IWASAKI

SUPPLIANT



HER MAJESTY THE QUEEN

RESPONDENT

AFFIDAVIT AS TO DOCUMENTS

I, TORAZO IWASAKI, of 4493 West 12th Avenue, in the City and County of Vancouver, in the Province of British Columbia, the above-named Suppliant, MAKE OATH AND SAY as follows:

1. THAT I have the following documents in my possession which I do not object to produce:

- (a) Deed of Land - Pottlinger to Iwasaki;
- (b) True copy of Vesting Order No. 50930;
- (c) Certified copy of communique to the Registrar, Land Registry Office in Victoria, B.C., from the Department of the Secretary of State, File G/59;
- (d) Deed of Land - Secretary of State of Canada to Salt Spring Lands Limited;
- (e) Torazo Iwasaki - Naturalization Certificate.

2. THAT I have the following documents which I object to produce:

Minutes of evidence and letters amounting to privileged communication between Solicitor and client.

3. THAT according to the best of my knowledge, information and belief, I have not now in



my own possession, custody or power, any deed, account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever relating to the matters in question in this Suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in Paragraphs 1 and 2 herein.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of)
British Columbia, this 17th day)
of March, A.D. 1968.)

Torazo Iwazaki
TORAZO IWASAKI

[Signature]
A Commissioner for taking Affi-)
davits within British Columbia.)

No. B 2027

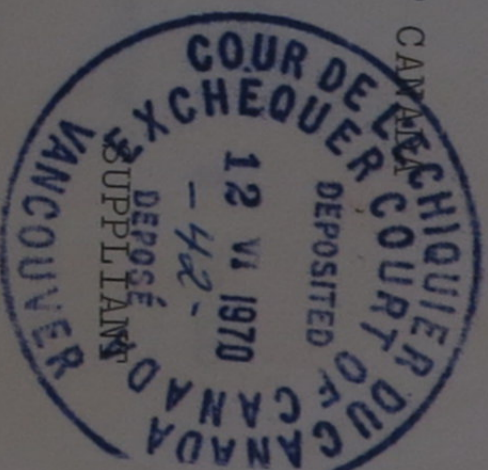
BETWEEN:

TORAZO IWASAKI

AND:

HER MAJESTY THE QUEEN

RESPONDENT



BILL OF COSTS

TARIFF ITEM

2	Defence	\$ 15.00
3	Statement of Defence	50.00
8	Preparation for Trial	100.00
9	Briefs at Trial: First counsel 20 folios @ 20¢	4.00
	Second counsel 20 folios @ 10¢	2.00
11	Application to Amend Petition of Right (consented to)	20.00
11	Application to Limit Trial Issues (by consent)	20.00
11	Application to Amend Petition of Right heard on January 25th, February 8th and February 15th, 1968	30.00 ✓
11	Application to take Commission Evidence	30.00 ✓
11	Application for Further Discovery	30.00 ✓

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10⁰⁰ - 11

TARIFF ITEM

20	11	Application to Amend Reply	\$ 30.00
15		Attendance of Solicitor on Discovery - 2 hours	16.00
17		Drawing Judgment	15.00
18		Taxation of Costs	15.00
20		Correspondence pending Suit	20.00
26		Drawing Statement of Defence - 7 folios @ 20¢, 21 folios @ 10¢	3.50
26		Drawing Amended Statement of Defence - 7 folios @ 20¢, 21 folios @ 10¢	3.50
26		Drawing Notice to Produce 2 folios @ 20¢, 6 folios @ 10¢	1.00
26		Drawing Notice of Motion for a further Discovery - 3 folios @ 20¢, 9 folios @ 10¢	1.50
26		Drawing Order for Further Discovery - 3 folios @ 20¢, 9 folios @ 10¢	1.50
26		Drawing Note - 2 folios @ 20¢, 6 folios @ 10¢	1.00
26		Drawing Notice to Admit Documents - 4 folios @ 20¢, 12 folios @ 10¢	2.00
26		Drawing Demand for Particulars - 5 folios @ 20¢, 15 folios @ 10¢	2.50
26		Drawing Notice of Motion to Limit Trial - 3 folios @ 20¢, 9 folios @ 10¢	1.50

TARIFF ITEM

26	Drawing Consent to Limit Trial - 2 folios @ 20¢, 6 folios @ 10¢	\$ 1.00
26	Drawing Order to Limit Trial - 3 folios @ 20¢, 9 folios @ 10¢	1.50
26	Drawing Admission of Counsel - 3 folios @ 20¢, 9 folios @ 10¢	1.50
26	Preparation of Exhibit Book for Court and Counsel 3 copies (500 folios each) 1500 folios @ 20¢	30.00
28	Conferences between Solicitor and Counsel 20 hours	200.00 ✓
29	Attendance on Interpreter prior to Discovery at Trial - 3 hours	3.00
30	Settling Statement of Defence	10.00
30	Settling Amended Statement of Defence	10.00
31	Advising on Evidence	10.00
34	Motion to Amend Petition of Right heard on January 25th, February 8th and February 15th, 1968	50.00 ✓
34	Motion for Commission Evidence	50.00 ✓
34	Motion for Further Discovery	50.00 ✓
34	Motion to Amend Reply	50.00
34	Motion to Limit Trial	50.00
36	Examination for Discovery of Suppliant - 2 hours	200.00

25 ✓
25 ✓
100 - 36