

No. Vol I A
16700

NAME

Deep Bay Logging Co. Ltd.

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CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN
JAPANESE EVACUATION SECTION

PHONE PACIFIC 6131

PLEASE REFER TO

FILE NO. 13524

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

January 4, 1952

C
O
P
Y

T. G. Norris, Esq., K.C.,
602 West Hastings St.,
Vancouver 2, B.C.

Dear Sir:

Re: Deep Bay Logging Company Limited

I have received from Messrs. P.S. Ross & Sons, copy of your letter to Mr. Frederick Field, dated 20th December, 1951.

I note that your client, Mr. Kagetsu is afraid that if the Deep Bay Logging Company Limited is wound up, any monies payable under the finding of the Commissioner might be claimed by the Provincial Government in view of the fact that the Deep Bay Logging Company Limited would be no longer in existence.

You can be assured that there is no possibility of any such difficulty arising. 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.

Before any payment is made the person to whom the Custodian is prepared to make a payment must sign a form of Release and the cheque will then be issued to the individual and not to the company as an entity. Perhaps this may be better stated another way, viz. that if for any reason Mr. Kagetsu refused to accept the amount offered by the Government, in that case the award would not be paid to anyone. Funds for the payment of this particular award have not been placed to the credit of the Deep Bay Logging Company and it is only when a Release has been signed by the person to whom the Government is prepared to make a gratuitous payment of the sum recommended by the Commissioner that I have been given authority to issue a cheque, and only at that time are funds provided to meet the payment of such cheque.

As stated above, a form of Release will need to be signed. I would not be in a position to make a cheque payable to yourself unless a clause were inserted in the Release to this effect or if a separate authorization for payment to you was signed by each Releasor. However, I would be prepared (unless specially advised by Mr. Kagetsu to the contrary) to issue cheques in favour of the parties concerned and forward them to you for distribution.

I am aware that you are negotiating with Ottawa in connection with expenses apart from legal fees. As soon as Ottawa are prepared to make any such payment and the amount is decided upon, the cheque covering that

T. G. Norris, Esq., K.C.

January 4, 1952.

matter would be issued by this office and made payable direct to yourself.

I trust that the above will fully clarify this matter.

Yours truly,

F. G. Shears,
Director.

FGS/GN

c.c. Mr. Frederick Field.

16700

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

January 3rd, 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
E. Kageetsu

I enclose herewith copy of letter sent to
Messrs. Cowling, MacFavish, Watt, Osborne & Henderson,
Ottawa, today.

This for your information.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G
Encl.

16700

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

January 3rd, 1952.

Attention: Mr. Osborne.

Messrs. Gowling, MacTavish, Watt, Osborne
& Henderson,
Barristers & Solicitors,
56 Sparks Street,
Ottawa, 4, Ontario.

Dear Sirs:

Re: Deep Bay Logging Company
E. Kagetsu

I have been instructed by the Deputy Custodian to inform you that he has given careful consideration to Mr. Kagetsu's claim, and has reached the conclusion that payment of a further amount for expenditures other than legal fees may not be entertained.

As stated in earlier correspondence the Commissioner submitted his report to the Governor in Council and his functions under the Commission were thereby terminated.

The Government concurred in the recommendations and funds were made available to meet recommended claims. Therefor the Government considers that it has discharged its obligations to those most directly affected and to the general public.

Yours very truly,

K. W. Wright,
Chief Counsel.

KW/G

16700

Victoria Building,
70 Connor Street,
Ottawa, 4, Ontario.

January 3rd, 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 Co. - E. Kagetsu

Referring to my letter of the 18th ultimo enclosing copy of my memorandum of the 17th, the Deputy Custodian has returned same with the following comments endorsed at the foot thereof:

"Asst. Dep. Cust.: Att'n Chief Counsel:

"No go" - Please see my note for you at the bottom of your memo. of Dec. 14/51, to which was attached a copy of D.M.J.'s letter of Dec. 13/51 - let us "stick by" the Order in C. of June 20, 1950 (P.C. 3027)

28/12/51

C. Stein
Dep. Cust."

Yours very truly,

K. W. Wright,
Chief Counsel.

KW^h/G

56537

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

December 18th, 1951.

F. G. Shears, Esq.,
Director.
Office of the Custodian,
506 Royal Bank Building,
Vancouver, 2, B.C.

Dear Mr. Shears:

Re: Masuye Jinnouchi.

Following receipt of the letter from Mr. Varcoe indicating that a further Order in Council would be required if Mr. Justice Bird reviewed this and other cases, I have examined the file with a view to submitting a recommendation to the Deputy Custodian.

In the penultimate paragraph of your letter of 11th instant reference is made to the document produced to the Commissioner purporting to prove the death of Mrs. Jinnai. I also note in your letter of September 18, 1951, that the Commissioner did not accept this as sufficient proof of the death of Hatsu Jinnai.

I am not prepared to submit any recommendation until further evidence of death is produced, and suggest that you get in touch with Mr. Clyne or Tagashira or both and ask them to clarify this as soon as possible.

If satisfactory evidence is produced I will probably recommend that you be authorized to negotiate a settlement.

You might tell them that the Vancouver Office is to be closed very soon and that they should give the matter immediate attention.

Yours very truly,

K. W. Wright,
Chief Counsel.

KW/c

56537

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

December 18th, 1921.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, 2, Ontario.

Dear Mr. Shears:

Re: Hirokichi Yamanaka
Deep Bay Logging - E. Kagetsu
Mrs. Maeyo Jimmouchi.

I enclose herewith copies of memoranda
sent to the Deputy Custodian re the above cases.

This for your information.

Yours very truly,

R. W. Wright,
Chief Counsel.

REB/G
Enc.

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

ADDRESS ALL
COMMUNICATIONS
TO THE
CUSTODIAN'S OFFICE

PLEASE REFER
TO
FILE NO. **16700**

Ottawa, December 17th, 1951.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

Re: Deep Bay Logging Co. - E. Kagetsu

Reference is made to your memorandum of 1st instant asking for the opinion of the Deputy Minister of Justice on the question of the Commissioner being functus officio, and for additional information on the matter of allowance to this claimant for expenditures other than legal fees. The opinion of the Deputy Minister of Justice was sent to you under date of 14th instant.

Commissioner Bird made no reference to allowance for such expenses when presenting his recommendation in this case. His report under date of March 24th, 1950 recommends payment of \$51,750.00, but Kagetsu refuses to accept the amount pending settlement of the claim for \$31,794.45 covering expenses which he alleges were incurred.

Mr. John C. Osborne of Messrs. Gowling, McTavish, Watt, Osborne & Henderson, has been informed that allowance for the vast majority of items would not be considered, and he wishes to see you about the matter. Mr. Wright states he advised Mr. Osborne that such expenses as had been allowed were based on 5% of the awards and, in his opinion, Kagetsu stood little chance of receiving more generous treatment. Mr. Osborne's attention was also drawn to the fact that no allowance for expenses was recommended by the Commissioner, but Mr. Osborne countered that this was possibly overlooked and went so far as to suggest that Col. Norris may not have known that solicitors for other claimants were submitting such claims. It is possible that Col. Norris was unaware of what others were pressing for and it is also possible that Commissioner Bird might allow the additional 5% if we were permitted to ask for a recommendation at this stage.

Under date of the 10th instant Mr. Shears furnished us with a review of the case and outlined discussions before the Commissioner on the general question of expenses. He also suggested a payment of an amount up to \$5,000.00 in order to effect settlement but I am not disposed to agree with this. I feel that we should confine our consideration to the matter of allowing 5% of the \$51,750.00 award, i.e. \$2,587.50.

Enclosed you will find the following:

- Copy Report Mr. Justice Bird dated 24th March, 1950.
- " Expense Claim filed by Kagetsu for \$31,794.45.
- " Letter from F. G. Shears to K. W. Wright dated 10th December, 1951.

Asst. Dep. Cust. :
Att'n chief counsel :
Please see my note for
you at the bottom of your memo. D
"No go"
you at the bottom of the
Dec. 14/51, to which was
attached a copy of the
D. M. J.'s letter of Dec. 13/51 -
let us "stick by" the Order in C.
of June 20, 1950 (P.C. 3027).
C. Stein
28/12/51 - Dep. Cust.

A. H. Mathieu,
Assistant Deputy Custodian.

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, fore-shore 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 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 (*those before mentioned*) (my italics) contain trees of a size and quality which, under normal conditions can be profitably marketed. These are the merchantable 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."

Herethe 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 shown 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, ^{that} I consider/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 timoer 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 shewn 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 shown 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 showed 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 than 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 from 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 timoer 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 thelogged 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.

The claimants had constructed and in operation at the date of evacuation a logging railway which comprised $8\frac{1}{2}$ 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 behind 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 made 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.

March 24th 1950.

(sgd.) H.I. BIRD
Commissioner.

Ottawa, December 17th, 1951.

MEMORANDUM FOR THE DEPUTY CUSTODIANRe: Deep Bay Logging Co. - E. Kagetsu

Reference is made to your memorandum of 1st instant asking for the opinion of the Deputy Minister of Justice on the question of the Commissioner being functus officio, and for additional information on the matter of allowance to this claimant for expenditures other than legal fees. The opinion of the Deputy Minister of Justice was sent to you under date of 14th instant.

Commissioner Bird made no reference to allowance for such expenses when presenting his recommendation in this case. His report under date of March 24th, 1950 recommends payment of \$51,750.00, but Kagetsu refuses to accept the amount pending settlement of the claim for \$31,794.45 covering expenses which he alleges were incurred.

Mr. John C. Osborne of Messrs. Cowling, McTavish, Watt, Osborne & Henderson, has been informed that allowance for the vast majority of items would not be considered, and he wishes to see you about the matter. Mr. Wright states he advised Mr. Osborne that such expenses as had been allowed were based on 5% of the awards and, in his opinion, Kagetsu stood little chance of receiving more generous treatment. Mr. Osborne's attention was also drawn to the fact that no allowance for expenses was recommended by the Commissioner, but Mr. Osborne countered that this was possibly overlooked and went so far as to suggest that Col. Norris may not have known that solicitors for other claimants were submitting such claims. It is possible that Col. Norris was unaware of what others were pressing for and it is also possible that Commissioner Bird might allow the additional 5% if we were permitted to ask for a recommendation at this stage.

Under date of the 10th instant Mr. Shears furnished us with a review of the case and outlined discussions before the Commissioner on the general question of expenses. He also suggested a payment of an amount up to \$5,000.00 in order to effect settlement but I am not disposed to agree with this. I feel that we should confine our consideration to the matter of allowing 5% of the \$51,750.00 award, i.e. \$2,587.50.

Enclosed you will find the following:

- Copy Report Mr. Justice Bird dated 24th March, 1950.
- " Expense Claim filed by Kagetsu for \$31,794.45.
- " Letter from F. G. Shears to K. W. Wright dated 10th December, 1951.

A. H. Mathieu,
Assistant Deputy Custodian.

KWW/G

Ottawa, December 17th, 1951.

MEMORANDUM FOR THE DEPUTY CUSTODIANRe: Hirokichi Yamanaka

Referring to your memoranda of the 30th ultimo and 1st instant I enclose reports from Mr. Shears which furnish most of the information you asked for.

Following receipt of Mr. Shears' letter of 3rd instant, Mr. Wright asked for an explanation of the statement made in the 4th paragraph, viz. "we consider these accounts were neither vested nor taken over". The Director's explanation is given in the letter received under date of 10th instant.

Regulation 4 of Order In Council P.C. 2483 dated 27th March, 1942, reads as follows:

"Regulation twelve is hereby rescinded and the following substituted therefore:

"12(1) Subject as hereinafter in this Regulation provided, as a protective measure only, all property situated in any protected area of British Columbia belonging to any person of the Japanese race (excepting fishing vessels subject to Order in Council, P.C. 288 of January 13, 1942, 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 is turned over to the Custodian by or on behalf of the owner, or which the owner, on being evacuated from the protected area, is unable to take with him, shall be vested in and subject to the control and management of the Custodian as defined in the Regulations Respecting Trading with the Enemy, (1939); provided, however, that no commission shall be charged by the Custodian in respect of such control and management.

"(2) The Custodian, may, notwithstanding anything contained in this Regulation, order that all or any property whatsoever, situated in any protected area of British Columbia, belonging to any person of the Japanese race shall, for the purpose of protecting the interests of the owner or any other person, be vested in the Custodian, and the Custodian shall have full power to administer such property for the benefit of all such interested persons, and shall release such property upon being satisfied that the interests aforesaid will not be prejudiced thereby.

"(3) For the purposes of the control and management of such property by the Custodian, the Consolidated Regulations Respecting Trading with the Enemy, (1939), shall apply mutatis mutandis to the same extent as if the property belonged to an enemy within the meaning of the said Consolidated Regulations."

Doubtless Mr. Cameron will rely on the words underlined and it would appear somewhat difficult to overcome such an allegation. The special vesting orders issued in respect of properties of Japanese Associations are not on all Fours and, in my view, do not assist us in any in so far as this case is concerned.

Therefor I agree with Mr. Shears that under all the circumstances the payment of \$1,000.00 suggested by Mr. Cameron might be favourably considered by the Custodian.

I enclose the following:

Memorandum to you November 24th, 1951.
Copies of your memoranda of 20th ultimo & 1st instant.
Copy of letter from F.G. Shears of December 3, 1951.
Lists of accounts attached to letter from F. G. Shears
December 3rd, 1951.
Copy of letter from F. G. Shears to K. T. Wright dated
December 10th, 1951.
Copy of Order in Council P.C. 1665 dated 4th March, 1942.
Copy of Order in Council P.C. 2483 dated 27th March, 1942.

Your further instructions herein would be appreciated.

A. H. Mathison,
Assistant Deputy Custodian.

KW/G
Encls.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

56178

Ottawa, December 14th, 1951.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

I enclose herewith, for your information, copy of letter received from the Deputy Minister of Justice under date of 13th instant.

I understand that Mr. Wright is obtaining further reports from Mr. Shears relative to Hirokichi Yamanaka, Deep Bay Logging Company - E. Kagetsu and Mrs. Masuye Jinnouchi.

A. H. Mathieu,

Assistant Deputy Custodian.

"Asst. Dep Custodian; Att'n Chief Counsel: 28/12/51

You will recall I have always held and expressed (verbally and in writing, I think) the view that the Com'r was "functus officio". This view is now confirmed by the opinion of the D.M.J. of the 13th inst.

I also feel there should be (or rather, that there is) an end to this business of considering, allowing and paying claims, after all that has been done and the very considerable amounts that have been paid. We have the recommendations of the Com'r and the Order in C. of June 20/1950 (P.C. 3027). Implementation thereof should be our limit, ...unless the Govt. should see fit to reopen these matters, set up a new Com'n or take some other step towards consideration and possible satisfactions of these late claims.

C. Stein
Dep. Cust."

56178

Ottawa, December 14th, 1951.

MEMORANDUM FOR THE DEPUTY CUSTODIAN

I enclose herewith, for your information, copy of letter received from the Deputy Minister of Justice under date of 13th instant.

I understand that Mr. Wright is obtaining further reports from Mr. Shears relative to Hirokichi Yamanaka, Deep Bay Logging Company - E. Kagetsu and Mrs. Masuye Jimmouchi.

A. H. Mathieu,
Assistant Deputy Custodian.

KWE/c

DEPARTMENT OF JUSTICE

CANADA

Please address
The Deputy Minister of Justice
Ottawa.

Ottawa, December 13th, 1951.

Dear Sir:

On December 7th, Mr. Bright 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 "Punctus Officiis".

The Commissioner has undoubtedly completed his inquiry and could not resume the case 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,
Ottawa.

16700

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

December 12th, 1951.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver 2, B.C.

Dear Mr. Shears:

Re: Deep Bay Logging Co. Ltd.
Case 1388

I have for acknowledgment your letters of the 10th instant, and wish to thank you for submitting a complete review and recommendation.

Your report will be presented to the Deputy Custodian and you will be advised as to the result.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

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FILE NO.....

506 Royal Bank Bldg.,
Vancouver, 2, B.C.,

December 10, 1951.

K. W. Wright, Esq., K.C.,
Chief Counsel,
Office of the Custodian,
Victoria Bldg.,
Ottawa, Ont.

Dear Ken:

Re: Deep Bay Logging Co. Ltd.

The first pages in the enclosed letter regarding Deep Bay, except for the opening paragraph, are similar to what I have already written. I felt this desirable so that the whole case might be fairly fully presented. I then added some additional material, leading up to a recommendation for your consideration.

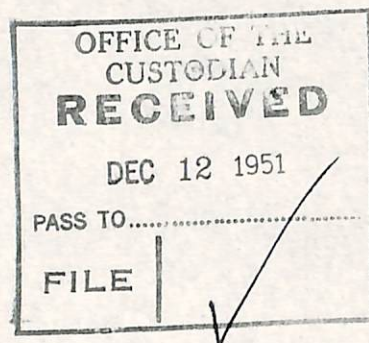
I will mail a letter regarding Jinnouchi tomorrow.

Yours very truly,



F. G. Shears,
Director.

FGS/GM



CANADA
DEPARTMENT OF THE SECRETARY OF STATE

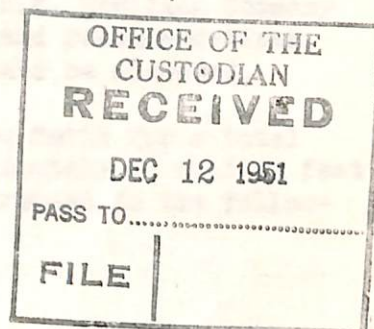
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FILE NO. 13524

506 Royal Bank Bldg.,
Vancouver 2, B.C.,
December 10, 1951.

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



Dear Mr. Wright:

Re: Deep Bay Logging Co. Ltd.
Case 1388

I have your request for particulars in regard to the claim being made for "Expenses Apart from Legal Fees" in connection with the above Case.

At the risk of being somewhat lengthy, I am first giving you an outline of this case as it was presented at the Commission Hearings as this may have a bearing on the question of the amount of Expenses which can be considered as valid.

This company carried on a logging operation situated at Fanny Bay on Vancouver Island. Practically all the shares were owned by E. Kagetsu, the actual shareholders being as follows:

Eikichi Kagetsu	3,949 shares
Kagetsu & Co. Ltd.	500 shares
Tsuratoro Kagetsu	200 shares
Sadanori Kikuchi	200 shares
Sawaichi Irizawa	50 shares
Manji Ushizawa	100 shares
Carl M. Stewart	<u>1 share</u>

5,000 shares

Some of the timber limits (Block 195) were personally owned by E. Kagetsu but under the claim both the company and Kagetsu's personal timber was included.

The operations were formerly carried on under Kagetsu's management by employees who were also persons of the Japanese race. The evacuation policy necessitated the closing down of the operations. P.S. Ross & Sons were first appointed as supervisors and later Mr. Frederick Field of that firm was appointed Controller with powers of a liquidator.

The Assistant Timber Controller requested that everything possible be done to resume operations and Kagetsu agreed that the property should be advertised and offered for sale. Tenders were called for and closed on the 11th of May, 1943 in regard to Block 195 and on the 30th of August, 1943 for the Deep Bay timber and other assets.

The valuation of Block 195 made by Eustace Smith was -

Fir, Cedar and Pine	22,376,000 feet @ \$3.00 per M.	\$ 67,128.00
Hemlock and Balsam	<u>8,618,000 feet @ \$1.50 per M.</u>	<u>12,922.00</u>
Total	30,994,000 feet	<u>\$ 80,050.00</u>

The Commissioner referred to Eustace Smith as --"a timber cruiser and valuator

K.W. Wright, Esq., K.C.

10th Dec. 1951.

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--"

A tender for \$93,000.00 was received from the H.R. McMillan Company and this timber limit was sold, based on the appraisal and recommendations of Eustace Smith and the Liquidator that this offer should be accepted.

The Deep Bay assets were also valued by Eustace Smith for a total sum of \$88,972.91. This covered an estimate of approximately 14 million feet of timber and railway and other equipment. It was advertised in the following parcels:

Timber
Railway Equipment
Gas Donkeys
Steam Donkeys
Tractor and Compressor
Buildings
Miscellaneous

No acceptable tender was received for the property as a whole, \$75,000.00 being the highest bid that was obtained. An offer of \$40,000.00 was received from the H.R. McMillan Company for the timber limits, and upon the recommendation of Eustace Smith and P.S. Ross & Sons, this portion of the Deep Bay assets was sold. Over a period of time the equipment was also sold by the Liquidator and the final gross realization from both timber and equipment amounted to \$80,434.87 for items originally valued as above for \$88,972.91.

A claim was originally filed by Kagetsu through Mr. Brewin of Cameron, Weldon & Brewin. At the initial hearings on Nov. 8, 1948 Mr. Norris with his partner Mr. Baldwin together with Mr. Brewin, appeared for the claimant. Changes were made in the original claim, the amended claim placed before the Commissioner being as follows:

	<u>Claim Value</u>	<u>Sale Price</u>	<u>Net Claim</u>
Blk. 195 Timber	\$247,500.00	\$ 93,000.00	\$154,500.00
Deep Bay "	292,039.00	40,000.00	252,039.00
Locomotive etc.	23,029.00	14,500.00	8,529.00
Gas Donkeys etc.	22,925.00	13,000.00	9,925.00
Wire Rope etc.	15,591.80	7,104.53	8,487.27
MacKenzie St. Property	5,500.00	4,300.00	1,200.00
Pontiac Car	1,396.00	1,025.00	371.00
Use of Railway	28,260.00		28,260.00
Loss of Boom Chains	822.75		822.75
	<hr/>	<hr/>	<hr/>
	\$637,063.55	\$172,929.53	\$464,134.02

The presentation of this claim, the evidence of witnesses and presentation of argument, occupied 16 days and there are 1382 pages of transcript and 61 exhibits filed. The evidence indicated that prior to evacuation, Carl Stewart acting as Kagetsu's agent, had made some endeavours to sell the Deep Bay and Kagetsu properties. In regard to Block 195, they appeared to have had an offer for \$85,500.00 cash, or alternatively \$100,000.00 on a stumpage basis, payments being spread over 2 1/2 years. However, Kagetsu's price at that time was said to have been \$125,000.00. In regard to the Deep Bay timber Kagetsu's estimate of quantity appeared to be between 17 and 18 million feet, and the best offer received was \$2.75 per M.

In addition to evidence in regard to the quantity of timber and the fair market price per thousand at the time of sale, considerable evidence was given in regard to the bearing which the accessibility of timber has upon a profitable forestry operation, the cost of extraction in some cases leaving only a small margin of profit. The increased utilization and value of timber

K.W. Wright, Esq. K.C.

10th Dec. 1951.

of a smaller size which developed since the date of sale was also the subject of much evidence and discussion. In regard to these matters the Commissioner stated:

"I am satisfied that the very marked difference in opinion between witnesses has arisen from the factors of merchantability and accessibility of the timber.

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."

In regard to Block 195, the amended claim was for 55 million feet at \$4.50 per M. It was shewn that Kagetsu's original estimate was 50 million at \$3.75 per M and evidence shewed that this timber was purchased in 1937 for \$75,000.00. However evidence in regard to the quantity of timber actually removed from this property since the sale by the Custodian, apart from the greater utilization of smaller timber in logging operations during recent years, caused the Judge to consider that 6 million more feet of merchantable timber existed on the property at the time of sale. He saw no reason to conclude that the price at which the Custodian sale was made, viz. \$3.00 per M, was not adequate and his recommendation was for an award of 6 million feet at \$3.00, viz. \$18,000.00.

In regard to Deep Bay timber, it was shewn that this was bought by the Company from time to time at prices varying from \$1.10 to \$2.00 per M over a period of 20 years. Kagetsu acknowledged that the most accessible timber had been removed before 1942 and that the operation was in the nature of a salvage operation at the time the Custodian took over. As previously mentioned, Kagetsu's estimate of quantity was between 17 and 18 million. The basis of the sale was on Eustace Smith's cruise of 14 million. In view of the fact that claimants' evidence indicated that 16 million feet had been cut since the sale was made and that some additional timber remained, the Commissioner was prepared to accept 17 million as the quantity of merchantable timber at the time of Custodian sale, and recommended an award of the difference of 3 million at a price of \$2.50 per M for the type of timber on the Deep Bay limits.

The claim also included the value of felled and bucked timber which was on the ground at the time of sale. There was no dispute in regard to quantity of 2½ million feet, but the Commissioner accepted evidence that in spite of this timber having been felled for over 18 months, its value should be considered to have been \$5.00 per M or a total value of \$12,500.00

10th Dec. 1951.

rather than the value of \$4500.00 included in Eustace Smith's appraisal, a difference of \$8000.00.

The claimants were able to produce evidence which satisfied the Commissioner that there were approximately 5500 acres of logged-off land containing immature timber which operators now considered of real value in re-forestation schemes and for which the Commissioner recommended an award of \$1.50 an acre.

The claim in connection with equipment was for more than \$27,000.00. It concerned a very large number of items and after lengthy discussion between counsel for the claimant and Government counsel, a proposed settlement of \$8,000.00 was submitted to the Commissioner who after thorough examination, included this amount in his final recommendation.

The sum recommended for award which covers items for which a claim was made of over \$460,000.00, is therefore made up as follows:

Block 195	\$ 18,000.00
Deep Bay	7,500.00
Deep Bay felled and bucked	8,000.00
500 acres immature timber	8,250.00
40 Buildings Deep Bay	1,000.00
Railway	1,000.00
Logging Equipment	<u>8,000.00</u>
	\$ 51,750.00

Coming to the specific question of expenses there is very little on actual record in regard to the question of payment by the Government for expenses of claimants or their solicitors. In the opening proceedings before the Commissioner, December 3, 1947, Mr. Brewin referred to provisions under the Public Inquiries Act for the appointment of experts to compile special technical and statistical information and stated "We may find we shall have to ask your Lordship to assist the claimants to get information in that way." The Commissioner replied - "What you have in mind Mr. Brewin, is some assistance from appraisers or valuers in relation to land claims."

In a report made by Mr. Hunter to Mr. Varcoe in April, 1948 under the heading - "Possibility of Settlement", Mr. Hunter states - "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 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."

In reply to your letter of May 25, 1950 in which you enclosed a copy of a teletype from the Canadian Ambassador to the United States to the Secretary of State for External Affairs, Canada, I concluded my memorandum -

"In view of the fact that the Commissioner has

10th Dec. 1951.

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.

MR. 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.

MR. 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%?

MR. 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. A Statutory Declaration was filed with the Commissioner by Mr. McMaster for the payment of expenses incurred, amounting to \$57,978.99 and the Commissioner made the following recommendation:

// ALLOWANCE TO CLAIMANTS FOR EXPENDITURES MADE
BY THEM ON THE PRESENTATION OF CLAIMS TO
THE INQUIRY, EXCLUSIVE OF LEGAL FEES

Counsel for the claimants have requested that a special report be made on this subject.

A statutory declaration has been filed by R.J. McMaster, Esquire, who acted throughout the Inquiry as one of the Counsel for the claimants. This declaration, which is attached hereto, shows that the claimants had disbursed or assumed liability for the sum of \$57,978.99 in respect of the various items shown in Schedule 4 to the declaration. There are also attached hereto letters on the same subject received by me from McMaster under date of February 4th and March 8th 1950.

I have no means of verifying the statement of these disbursements, but would accept Mr. McMaster's statement that he is satisfied such expenditures have been made. The total expenditure is somewhat less than 5% of the aggregate sum recommended for payment to the claimants. The Inquiry continued for two years and four months, during which time the claims of 1371 persons were investigated. Each of the claims related to one or more parcels of real or personal property, the average claim involving three such parcels.

The foregoing are matters which I think might properly be

10th Dec. 1951.

taken into consideration in determining whether any compensation is to be made to the claimants to reimburse them for the undoubtedly heavy expense to which they have been put in the presentation of their claims.)

In view of the fact that the Commissioner stated he had no means of verifying the amount of these disbursements, you asked that I examine all material in Mr. McMaster's possession. As a result, a fairly extensive breakdown was secured and a copy of McMaster's letter dated June 29, 1950 and a schedule of 11 pages were sent to you enclosed in my letter dated July 5, 1950. This account was for the total sum which has been allowed in connection with the presentation of practically all of the 1300 claims. It included travelling expenses across Canada for quite a number of persons, the expenses of experts who went into considerable detail in providing statistical information, clerical work for the purpose of presenting this great number of claims in such a manner as to save the time of the Commission. Compared with the volume of material and effort in all these cases, it is impossible to consider that the amount claimed for expenses in the one case of the Deep Bay Logging Company is in any way justifiable. In addition to this, I do not think it can be disputed that the Deep Bay case was the most confused presentation of the whole Inquiry.

Right at the commencement, the Commissioner stated:

"So little consideration is shown by the claimant. Here is the situation, Mr. Norris. I have a great many of these claims. I am going to have to sit for another six months to a year. I have specifically asked each counsel concerned to endeavour to be ready when a case goes on and I have asked both counsel co-operate to permit the hearings to be proceeded with expeditiously. I do not think in this case the claimant's solicitor, has given the information that would warrant government counsel in thinking there was going to be any claim made for agricultural land, and I will go further in that and say I do not think Mr. Norris thought about it until it was brought up for the first time in the presentation of the Royston case."

Later in the evidence the Commissioner again stated:

"This difficulty arises because of the fact your people were not ready when you should have been. I am giving you the opportunity to get ready. In the circumstances I do not feel I should penalize the government by denying them the right to cross-examine on this Deep Bay feature."

This case commenced on November 8, 1948. Amendments and changes were made five or six times during the hearings. A cruise report was presented at the commencement and leave was asked to amplify this report later and on Nov. 26th the Commissioner again referred to the fact that - "We are still waiting for Mr. Schultz's Report."

Due to long delays, Mr. McPherson who was representing the Government, was not able to continue with this case, and after adjournment, it was almost a year later before it was again taken up by Mr. Braidwood then representing the Government.

Evidence indicates that the cruise made by Mr. Schultz in regard to Block 195 occupied 3 days of Schultz's time and 6 days for another party, and was only a 4% cruise of 979 acres. They came into Court with Schultz's estimate of the timber which was on the Deep Bay property on which their claim was made, and in this case the evidence is that two days had been spent on the field, but that the entire job would have taken about 4 days. During the hearing, leave was asked to complete this survey and this was presented when the case re-opened a year later - Nov. 14, 1949, at which time it was stated that the work was done in November and December, of 1948 by Mr. Schultz and a forest engineer and two assistants and that they were on the ground for 18 days. The evidence showed that it was done when the snow was on the ground and that the work could have been done in

10th Dec. 1951.

less than half the time under normal conditions. An aerial survey of the timber limits was filed, but the Commissioner was aware that this was taken over 5 years after the Custodian sale of this property.

The only comments which the Commissioner made in regard to Schultz's work was that in regard to Block 195 it was a 4% cruise of the entire area, taken after the area had been logged to the extent of 80% of the whole. In connection with Schultz's evidence regarding the Deep Bay limits, the Commissioner stated - "It is not conceivable that the total area contained 100% more timber than was estimated by E & N Railway cruises, which must have been the case if Schultz's evidence is accepted.

You will recall that we liquidated the N.S. McNeil Co. Ltd. which was an enemy asset comprising over 22,000 acres at Port McNeil on Vancouver Island containing around 400,000,000 feet of timber and which was sold for \$600,000.00. This area was thoroughly cruised by Eustace Smith and he was brought in as a consultant from time to time during the administration and liquidation of this property, and his total bill for all services was \$6,000.00. Mr. Eustace Smith's services in connection with cruising the Deep Bay property only amounts to \$700.00. The charge for Schultz's work is listed as \$7,739.54. Taking the size of the operation and other facts into consideration, this is an amount for which I cannot recommend that the Government should be responsible.

Other items in the account are also out of line with anything which was allowed to the Co-Operative Committee claimants. \$638.50 is listed for S. ITO as an interpreter. The amount for interpreters in McMaster's account is \$748.56. In their case they were dealing with numerous individual Japanese across Canada who could not speak English. No interpreter was actually required in the presentation of the Deep Bay case. All the witnesses, including Mr. Kagetsu, thoroughly understood and spoke English.

In no previous case has allowance been made for any personal expenses of the claimant. In this case \$839.05 is listed for E. Kagetsu. \$938.10 is also listed for his son H. Kagetsu, described as a Forest Engineer. H. Kagetsu's evidence was simply as an employee of the company and he was called to try to explain certain entries in the company's books relative to markings on logs, indicating the locality from which they were produced. Included in Mr. Norris's account are what is stated to be "Liquidation Expenses Charged by the Custodian", amounting to over \$18,000.00. This refers to P.S. Ross & Sons' administration, and a breakdown of the amount mentioned is as follows:

DEEP BAY LOGGING COMPANY

Watchman's Wages	\$ 5,842.22
Tax Deductions	1,242.92
Telephone A/C	457.20
Car & Truck Storage	130.09
Handling Material	1,000.80
Appraisals	700.00
Advertising	312.09
Repairs	51.21
Gas & Oil	62.89
Exchange etc.	31.89
Control & Liquidation Fees	4,980.00
Control & Liquidation Expenses	269.79
Retainer - C.M. Stewart	1,250.00
Locke, Guild, Land & Sheppard	831.28

\$17,162.38

EIKICHI KAGETSU

Land Registry Office	8.50
Locke, Guild, Land & Sheppard	331.40
Examining & Advertising Prop. 195	452.29
P.S. Ross & Sons - Services rend	650.00
North Van. Properties -	
Disbursements	19.00
Fees for services re affairs	20.00
Charges for shipping Bonds	16.65
	\$ 1,497.84

Dec. 10, 1951.

There would be no previous example of such items as listed above being assumed by the Government, and they have no bearing upon the presentation of the claim.

As previously mentioned, the award in this case is \$51,750.00. It may be of interest to note that the award which has been paid in connection with the Royston Lumber Co. claim was \$69,950.00 P.S. Ross & Sons' fees and disbursements in this case were \$18,279.19. Both claims were for timber limits and equipment and were somewhat comparable. The evidence in the Royston case occupied 10 days and 46 exhibits were filed. This case was handled by Mr. MacLennan a former partner of Mr. Norris. Mr. MacLennan's expenses for his client were included in the Co-Operative Committee account referred to on page 7 of this report, the amount being \$618.64, in addition to which there were appraisal fees of \$570.00.

The fact that the Commissioner's award was \$51,750.00 on a claim of \$464,000.00 would indicate that the whole claim was extravagant and the present request for compensation exceeds the limit of the basis of any previous allowances. Throughout the whole Inquiry there has been no suggestion that the Government would assume any responsibility for expenses in excess of 5% of the amount awarded, and the amounts paid to the Co-Operative Committee fell within that percentage.

If this basis is used, the expenses allowable would be 5% of \$51,750.00, viz. \$2,587.50. If it can be argued that this particular case justified some added consideration, the expense account could perhaps be analyzed and amounts for the various items listed determined in the light of some of the information given in this letter.

The following items in my opinion, should be removed entirely:

H. S. Arikado

Expenses in connection with the preparation of a claim has not been paid in any other case. There appears to be no valid reason why it was necessary for this man to come to Vancouver. He only appeared on the stand for 5 minutes and had to admit that some figures he was dealing with were "before his time"

\$ 832.55

S. ITO - Interpreter.

As stated, no interpreter was required and even if one had been necessary, an interpreter could have been procured at Vancouver.

638.50

E. Kagetsu - This is the claimant, and no claimant has been allowed expenses for presenting his claim

839.05

H. Kagetsu - This is the son of the claimant. Evidence indicated that he appeared on the stand only as a result of Government's cross-examination of his father. He dealt with figures in the books of the company, but admitted he never kept books and did not know a great deal about them. The Commissioner remarked to Government counsel "I do not see that you need pursue this any further. It is obvious that these figures are to a degree unreliable".

938.10

Liquidation Expenses

As mentioned, these were fees paid to the Liquidator appointed by the Custodian and are not expenses connected with the presentation of the claim

18,660.22

These amounts total \$21,908.42 and would leave a balance of \$9,886.03 to be dealt with.

December 10, 1951.

K. W. Wright, Esq., K.C.

The large item in this amount is \$7,739.54, for the account of C.H. Schultz, Forest Engineer for Cruising. As previously stated, this sum is entirely out of line with any amounts paid by the Custodian for timber cruising on this or larger timber areas. If it is argued that Schultz did engage in considerable effort by way of cruising and the preparation of figures and charts, it may be said that much of this work was considered by the Commissioner to be so unrelated to the timber on the area at the time it was sold that it is our contention that it was an unnecessary expense which the claimant incurred and for which the Government should not be responsible.

In my judgment, somewhat similar circumstances obtained in regard to William Byers' expense of \$822.06. While the amount shown for Mr. F.A. Brewin's travelling expenses may be equitable, this case was actually presented by Mr. Norris and his Associates who are of course resident in this city.

While I admit that any change in the amounts claimed might have to be made in a somewhat arbitrary manner, from my over-all knowledge of this case, I would be prepared to recommend a settlement on the following basis:

W. J. Allison	\$ 14.00
Fred B. Brown	7.00
F. A. Brewin	423.60
Wm. Byers	400.00
Campbell & Pound	37.50
J. W. Clement	203.00
Harold Gardiner	15.00
Sidney L. Johnson	7.00
James Leckie	100.00
Florence M. Marguilese	311.70
Pete Marwick Co.	35.00
Charles M. Pretty	7.00
R. E. Swanson	7.00
C. D. Schultz	2,500.00
Miscellaneous	156.63

\$ 4,224.43

The amount awarded by the Commissioner in connection with the sale of this property by P.S. Ross & Sons has not yet been accepted by the claimants. I understand they are waiting the outcome of a settlement in regard their claim for expenses.

If it is felt that a little more generous approach can be given to this matter than I have outlined above, and partial consideration given to some of the items I have entirely eliminated, I would suggest that a settlement of \$5,000.00 might be given favourable consideration in order to bring this matter to a conclusion.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN

16700

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

December 7th, 1951.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, B.C.,

Dear Mr. Shears:

Re: Deep Bay Logging Company and
E. Kagetsu Claim for Expenses other
than Legal Fees.

As you are aware this case is being considered
by Mr. Stein.

Your letter in regard to Yamanaka was a summary
and incorporated a recommendation. It would be appreciated if
you would send me a somewhat similar letter dealing with the
matter now before us, and put forward a recommendation as to
what we should do and the reasons therefor. Please send this
in duplicate in order that I may send a copy to Mr. Stein.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G

56178

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

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 (Mayuse 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 (Hirokiichi 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. Morris, 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, November 26th, 1951.

MEMORANDUM FOR MR. G. STEIN, K.C.

Re: Japanese Claims Commission
Deer Bay Logging Co. & E. Kagetsu Claims

You will recall that Col. T. G. Morris, K.C., of Vancouver, through his Agent, Mr. John C. Osborne of Messrs. Gotling, MacFavish, Watt, Osborne & Henderson, presented an account for expenses amounting to \$31,794.45 incurred by E. Kagetsu in respect of the above claims.

In accord with your instructions I informed Mr. Osborne that by submitting his report Commissioner Bird had terminated his functions under the Commission, and as no award had been made in reference to these expenses there was nothing the Custodian could do.

Mr. Osborne has been in touch with the Department of Justice, and Justice takes the position that the matter is one primarily for the Custodian.

Incidentally Kagetsu refused to sign release until this matter is settled, therefore cheque for \$51,750.00 to cover the award has not been issued.

Mr. Osborne informed me a few days ago that he wishes to see you, and he will call for an appointment. In order to refresh your memory I enclose the following material:

- Copy of Report of Mr. Justice Bird dated March 24, 1950.
- " " Order in Council P.C. 3027 dated June 20, 1951.
- " " Claim for Expenses - E Kagetsu, dated May 28, 1951.
- " " Letter from P. G. Shoars to K. W. Wright dated June 27, 1951.
- Memo. to Mr. Stein, K.C. from K. W. Wright dated July 4, 1951.
- Memo. to Mr. C. Stein, K.C. from K. W. Wright, dated July 12, 1951.

K. W. Wright.

KWH/G
Attach.

16700

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

November 26th, 1951.

John C. Osborne, Esq.,
Messrs. Gowling, MacFavish, Watt, Osborne
& Henderson,
Barristers & Solicitors,
56 Sparks Street,
Ottawa, Ontario.

Dear Mr. Osborne:

Re: Japanese Claims Commission,
Deep Bay Logging Co. & E. Kagetsu
Claims.

With further reference to our recent conversation this is to advise that a memorandum outlining the above claim has been forwarded to Mr. C. Stein, K.C., Under Secretary of State.

I suggest that you telephone Mr. Stein for an appointment to discuss the matter.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL
COMMUNICATIONS
TO THE
CUSTODIAN'S OFFICE

PLEASE REFER
TO
16700
FILE NO.

1951 NOV 27 AM 9:25

Ottawa, November 26th, 1951.

UNDER SECRETARY
OF STATE

MEMORANDUM FOR MR. C. STEIN, K.C.

Re: Japanese Claims Commission
Deep Bay Logging Co. & E. Kagetsu Claims

You will recall that Col. T. G. Norris, K.C., of Vancouver, through his Agent, Mr. John C. Osborne of Messrs. Cowling, MacTavish, Watt, Osborne & Henderson, presented an account for expenses amounting to \$31,794.45 incurred by E. Kagetsu in respect of the above claims.

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- " " Letter from F. G. Shears to K. W. Wright dated June 27, 1951.
- Memo. to Mr. Stein, K.C. from K. W. Wright dated July 4, 1951.
- Memo. to Mr. C. Stein, K.C. from K. W. Wright, dated July 12, 1951.

*Who in Justice Dept?
Is there an opinion
from the D.M.G.?
If so, I want to see it.
1/12/51 - C. Stein*

Asst. Dep. Cust. -

KWW/G
Attach.

K. W. Wright.

*Att'n Chief Counsel.
Have you obtained the D.M.G.'s views (informally) on the question of the Com'r being "functions of office" and our being limited to the terms of P. C. 3027 of June 20, 1950? See my note in your memo. of July 12/51 - (or applicable to) Is there nothing whatever about the costs of this claimant, either in the Com'r's award on this claim (I have not found any mention of costs or expenses therein) or in his report on "Allowance to claimants for expenditures made by them on the presentation of claims..." (See page 7 of Mr. Shears' letter of June 27/51)? Is the latter report applicable to this case? If so, in what way? Is that all there is on the subject of costs?
1/12/51 - C. Stein
Dep. Cust.*

16700

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

November 26th, 1951.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, 2, B.C.

Dear Mr. Shears:

Re: Japanese Claims Commission.
Deep Bay Logging Co. & E. Kagetsu Claims.

Will you kindly send me a copy of Mr.
Justice Bird's Report No. 1388 re the above case. I
have forwarded my copy to Mr. Stein and require one for
our file.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G.

J-175

Victoria Bldg., 7 O'Connor St.,
Ottawa, Ontario
June 9, 1951

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, B. C.

Re: Deep Bay Logging Company Ltd.
Your File No. 13524

Dear Mr. Shears:

I have for acknowledgment your communication of the 2nd instant and wish to advise that I have not as yet received the schedule referred to by Mr. Norris.

This matter appears to be one which might be submitted to Mr. Justice Bird and I would appreciate your views as to this suggestion.

Yours very truly,

K. W. WRIGHT
CHIEF COUNSEL

16700
KWW/JF

Ottawa, October 30th, 1951.

MEMORANDUM FOR MR. MATHIEU

Re: Mrs. Masuye Jinnouchi - Case 143
Life Insurance

I attach communication received from Mr. Shears under date of 23rd instant. This was sent as a result of an interview I had with Mr. Olmsted of the Department of Justice.

A copy of the attached was sent to Mr. Olmsted under date of the 25th instant with the following:

"Reference is made to the writer's recent interview with your Mr. Olmsted, when it was suggested that a report dealing with Mr. Clyne's interest in this case be obtained from the Director of our Vancouver Office.

Enclosed you will find copy of communication received from the Director under date of the 23rd instant.

You will observe that Mr. Shears is of opinion that if we accept responsibility the award should be in the neighborhood of \$3800. You will also note the suggestion that the three cases under review, viz. Masuye Jinnouchi insurance claim for \$5500, Hirokichi Yamanaka claim for failure on the part of the Custodian to collect outstanding accounts and Kagetsu and Deep Bay Logging claim for expenses other than legal fees, should be settled by negotiation without further reference to Commissioner Bird.

Mr. A. J. P. Cameron, M.P., has agreed to call upon you and discuss the Yamanaka claim, and Mr. John Osborne of Messrs. Gowling, MacTavish & Company, hopes to receive instructions to see you about the Kagetsu case from his principal, Col. T. G. Norris, K.C., of Vancouver.

You understand that the Custodian intends to close the Vancouver Office not later than March 31st, 1952, and in view of this it is desirable to complete contentious cases with the least possible delay.

Will you be good enough to let me hear from you at your early convenience."

Will you be good enough to return the attached with your comments in due course.

K. W. Wright.

KWW/G

56537

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

October 25th, 1951.

ATTENTION: Mr. R. A. Olmsted

P. P. Varcoe, Esq., K.C.
Deputy Minister of Justice,
Department of Justice,
Ottawa, Ontario.

Dear Mr. Varcoe:

Re: Mrs. Masayo Jimmouchi - Case 143
Life Insurance

Reference is made to the writer's recent interview with your Mr. Olmsted, when it was suggested that a report dealing with Mr. Clyne's interest in this case be obtained from the Director of our Vancouver Office.

Enclosed you will find copy of communication received from the Director under date of the 23rd instant.

You will observe that Mr. Shears is of opinion that if we accept responsibility the award should be in the neighbourhood of \$3200. You will also note the suggestion that the three cases under review, viz. Masayo Jimmouchi insurance claim for \$5500, Hirokichi Yamnake claim for failure on the part of the Custodian to collect outstanding accounts and Kagetsu and Deep Bay Logging claim for expenses other than legal fees, should be settled by negotiation without further reference to Commissioner Bird.

Mr. A. J. P. Cameron, H.P., has agreed to call upon you and discuss the Yamnake claim, and Mr. John Osborne of Messrs. Cowling, MacFavish & Company, hopes to receive instructions to see you about the Kagetsu case from his principal, Col. T. G. Morris, K.C., of Vancouver.

You understand that the Custodian intends to close the Vancouver Office not later than March 31st, 1952, and in view of this it is desirable to complete contentious cases with the least possible delay.

Will you be kind enough to let me hear from you at your early convenience.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/C
Enc.

16700

Victoria Building,
7 O'Connor Street,
Ottawa, 4, 1951.

July 30th, 1951.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, B.C.

Dear Mr. Shears:

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

I enclose herewith copy of letter
addressed to Messrs. Gowling, MacTavish, Osborne &
Henderson today.

This for your information.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G
Enc.

16700

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

July 30th, 1951.

Messrs. Gowling, MacTavish, Watt,
Osborne & Henderson,
Barristers & Solicitors,
56 Sparks Street,
Ottawa, 4, Ontario.

Dear Sirs:

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

With reference to your communication of June 21st, 1951 and the claim furnished by Colonel T. G. Norris, K.C., it would appear that the Commissioner is functus officio.

By submitting his report to the Governor-in-Council pursuant to his appointment and terms of reference, the Commissioner in our opinion has terminated his functions under the Commission.

Yours very truly,

K. W. Wright,
Chief Counsel.

KWW/G

July 26, 1951.

MR. WRIGHT-

Re: Japanese Claims Commission

The answer to the question, whether or not the Commissioner is functus officio, seems to me to depend on (1) the terms of his appointment and (2) the terms of his report. In other words, if he has completed his job, it seems to me he is functus officio.

By P.C. 1810, as amended by P.C. 3737 the Commissioner is appointed to "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".

If the Commissioner has examined into each claim and made his report, then it seems to me his work is completed and that he became functus officio on making his report to the G-in-C, unless that report contains some reservation to the contrary.

P.C. 3027, it seems to me, is nothing more than the Custodian's authority to carry out the Commissioner's recommendations. At any rate, I see nothing in it to indicate any intention to extend the Commission.


If there is no reservation in the report, I would think the onus would be upon the person who contends he is not functus officio.

The following definition is from "Corpus Juris" - "Functus officio". Literally "having discharged his duty" "Having fulfilled the function, discharged the office, or accomplished the purpose and therefore of no further force or authority"; Applied to an officer whose term has expired and who has consequently no further official authority - and also to an instrument, power, agency, etc., which has fulfilled the purpose of its creation and is therefore of no further virtue or effect.

I looked up a text book on Latin maxims, another on legal maxims and a text book on Royal Commissions, but found nothing in them to help me.

Re Yamanaka-

In the third paragraph of his letter of July 17th. Mr. Brewin suggests- a reference on the point as to "whether it is fair and equitable" that any payment should be made to Yamanaka and, if so, what amount. As the first reference was on the point as to a fair and reasonable compensation, it seems to me that there would be little likelihood of the second reference which he suggests being allowed. At any rate, I note from p. 4 of Mr. Scheer's letter of July 5th. that the Commissioner had ruled that he was unable to read into the terms of reference any attempt to include the collection of accounts. It would appear that any attempt to have the matter reviewed by the Commissioner would not be likely to meet with success. I would think the matter could only be handled by way of a new reference or that it might be decided as a matter of Government policy.



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 in Council on the 17th 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

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 Custodian 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.


for A. D. P. Heaney
Clerk of the Privy Council.

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
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16700
FILE NO.

July 12, 1951

1951 JUL 12 PM 12:09

UNDER SECRETARY
OF STATE

MEMORANDUM FOR MR. C. STEIN, K.C.

RE: Japanese Claims Commission
Deep Bay Logging Co. & E. Kagetsu

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

My view is that the Commissioner is not "functus officio" nor is the Custodian restricted to recommendations for payments made prior to the date when P.C. 3027 was passed. This opinion was confirmed by Mr. Olmsted, Counsel, Department of Justice, in the course of an interview had in his office yesterday afternoon.

It is pointed out that the Order in Council does not terminate the Commissioner's appointment nor does it specify that the Custodian is to make only those payments which the Commissioner recommended in his report of April 6, 1950.

The matter of future claims was raised by our Auditors a few months ago. They felt there was need to officially determine the appointment to avoid claims being put in. I stated that it would be appropriate to do so when all claims recommended for payment in the report were settled. Reference was made to the fact that many Japanese who failed to appear before the Commission have sought relief since the report was issued and that we have turned down all such appeals. However, I went so far as to suggest that in the course of the next few months we might receive a few meritorious claims which should be dealt with by the Commissioner. That is precisely what has happened. Since then, two cases (the one before you and one being advanced by A.J.P. Cameron, M.P.) have arisen which, from a practical and political standpoint, should, in my opinion, be reviewed.

You will observe that according to Mr. Shears' report of 26th ultimo (copy attached) the Deep Bay Logging Company claim has not been paid. I submit that the interests of all would best be served if you approve my making such a proposal when I discuss this case with Mr. Osborne. Mr. Olmsted agrees that by dealing with the problem in this manner there will be no ground for complaint to the Minister of Justice or the Secretary of State.

I return memorandum of the 4th instant and attachments for your further consideration please.

Asst. Deputy Custodian:

Att'ny Chief Counsel: K. W. WRIGHT

KWW/JF
Attach.

Surely, unless appropriate reservation or provision to the contrary be made with due authority, the submitting by the Commissioner of his report to the Gov. in Council pursuant to his appointment and terms of reference terminates his functions under the commission. And I do not see that P.C. 3027 can be construed as extending or renewing the appointment or commission and the powers of the Com'r. When that O.C. was passed the Com'r had submitted his final report to the Gov. in C. and it was, in fact, consideration of that report that led to the passing of the O.C. We have therefore no alternative but to reject any claim not coming within the terms of the recommendations of the Com'r and P.C. 3027. If the Norris or Kagetsu claim does not fall within the O.C. and

and said recommendations, we must turn it down, as we have others. - You might fast Mr. Varcoe (D.M.G.) informally if he agrees with my view, 15/1 C. Stein. Reply by Custodian.

16700

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K. W. Wright

KWW/JF
Attach.

16700

July 4, 1951

MEMORANDUM FOR MR. C. STEIN, K.C.

RE: Japanese Claims Commission
Deep Bay Logging Co. & E. Kagetsu

Colonel T. G. Norris, K.C., of Vancouver has presented a statement of expenses incurred by E. Kagetsu in respect of claims of Deep Bay Logging Company Limited and the said E. Kagetsu. You will observe from the enclosed copy that claim is made for \$31,794.45, including liquidation expenses charged by the Custodian, amounting to \$18,660.22.

Mr. John Osborne of Messrs. Gowling, MacTavish, Watt, Osborne & Henderson, who is acting as Agent for Col. Norris, wishes to discuss the matter with me but before arranging an appointment, I would like to know if you agree with my ideas on the matter.

I am of opinion that we should not consider payment of more than 5% of the award (\$51,750.00). This would amount to \$2,567.50 which is a far cry from the amount of \$31,794.45 claimed. Payment of the suggested amount, in my view, should only be made on the recommendation of Hon. Mr. Justice Bird. Such a recommendation would meet the requirements of P.C. 3027, dated 20th June, 1950.

In accord with my request, Mr. Shears submitted a complete report under date of 27th ultimo. You will note from the final paragraph that Mr. Shears suggested payment of 25% or 30% of the costs after deleting liquidator's expenses. Therefore we are not very far apart inasmuch that on the basis of 25% he would allow \$3,283.00.

I enclose copies of the following:

1. Claim for expenses filed by E. Kagetsu under date of May 28, 1951.
2. Report from F. G. Shears to K. W. Wright, June 27, 1951.
3. Order in Council P.C. 3027, dated June 20, 1950.

An expression of your views would be appreciated.

KWE/JF
Encl.

K. W. WRIGHT

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FILE NO. **16700**

July 4, 1951

1951 JUL 5 AM 9:30

UNDER SECRETARY
OF STATE

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Mr. Wright:

KWW/JF
Encl.

*Is the Commissioner not
"functus officio"
and are we not restricted to
what he recommended in
adoption of P.C. 3027?*

K. W. Wright
K. W. WRIGHT

*his reports to the Gov. in C. prior to the
C.S. 10/7/51*

16700

July 4, 1951.

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KWW/JF
Encl.

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506 Royal Bank Bldg.,
Vancouver, B.C.,
June 27, 1951.

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

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Dear Mr. Wright:

Re: Deep Bay Logging Co. Ltd.
Case 1388

I received your letter of the 23rd instant in which you ask for a report regarding the operations and the claim filed by the above.

This company carried on a logging operation situated at Fanny Bay on Vancouver Island. Practically all the shares were owned by E. Kagetsu, the actual shareholders being as follows:

Elkichi Kagetsu	3,949 shares
Kagetsu & Co. Ltd.	500 shares
Tsuratoro Kagetsu	200 shares
Sadanori Kikuchi	200 shares
Sawaichi Irizawa	50 shares
Manji Ushizawa	100 shares
Carl M. Stewart	<u>1 share</u>

5,000 shares

Some of the timber limits (Block 195) were personally owned by E. Kagetsu but under the claim both the company and Kagetsu's personal timber was included.

The operations were formerly carried on under Kagetsu's management by employees who were also persons of the Japanese race. The evacuation policy necessitated the closing down of the operations. P.S. Ross & Sons were first appointed as supervisors and later Mr. Frederick Field of that firm was appointed Controller with powers of a liquidator.

The Assistant Timber Controller requested that everything possible be done to resume operations and Kagetsu agreed that the property should be advertised and offered for sale. Tenders were called for and closed on the 11th of May, 1943 in regard to Block 195 and on the 30th of August, 1943 for the Deep Bay timber and other assets.

The valuation of Block 195 made by Eustace Smith was -

Fir, Cedar and Pine	22,376,000 feet @ \$3.00 per M.	\$ 67,128.00
Hemlock and Balsam	<u>8,618,000 feet @ \$1.50 per M.</u>	<u>12,922.00</u>
Total	<u>30,994,000 feet</u>	<u>\$ 80,050.00</u>

The Commissioner referred to Eustace Smith as --"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--"

A tender for \$93,000.00 was received from the H.R. McMillan Company and this timber limit was sold, based on the appraisal and the recommendations of Eustace Smith and the Liquidator that this offer should be accepted.

The Deep Bay assets were also valued by Eustace Smith for a total sum of \$88,972.91. This covered an estimate of approximately 14 million feet of timber and railway and other equipment. It was advertised in the following parcels:

Timber
Railway Equipment
Gas Donkeys
Steam Donkeys
Tractor and Compressor
Buildings
Miscellaneous

No acceptable tender was received for the property as a whole, \$75,000.00 being the highest bid that was obtained. An offer of \$40,000.00 was received from the H.R. McMillan Company for the timber limits, and upon the recommendation of Eustace Smith and P.S. Ross & Sons, this portion of the Deep Bay assets was sold. Over a period of time the equipment was also sold by the Liquidator and the final gross realization from both timber and equipment amounted to \$80,434.87 for items originally valued as above for \$88,972.91.

A claim was originally filed by Kagetsu through Mr. Brewin of Cameron, Weldon & Brewin. At the initial hearings on Nov. 8, 1948 Mr. Norris with his partner Mr. Baldwin together with Mr. Brewin, appeared for the claimant. Changes were made in the original claim, the amended claim placed before the Commissioner being as follows:

June 27, 1951.

	<u>Claim Value</u>	<u>Sale Price</u>	<u>Net Claim</u>
Blk. 195 Timber	\$247,500.00	\$ 93,000.00	\$154,500.00
Deep Bay "	292,039.00	40,000.00	252,039.00
Locomotive etc.	23,029.00	14,500.00	8,529.00
Gas Donkeys etc.	22,925.00	13,000.00	9,925.00
Wire Rope etc.	15,591.80	7,104.53	8,487.27
MacKenzie St. Prop.	5,500.00	4,300.00	1,200.00
Pontiac Car	1,396.00	1,025.00	371.00
Use of Railway	28,260.00		28,260.00
Loss of Boom Chains	822.75		822.75
	<hr/>	<hr/>	<hr/>
	\$637,063.55	\$172,929.53	\$464,134.02

The presentation of this claim, the evidence of witnesses and presentation of argument, occupied 16 days and there are 1382 pages of transcript and 61 exhibits filed. The evidence indicated that prior to evacuation, Carl Stewart acting as Kagetsu's agent, had made some endeavours to sell the Deep Bay and Kagetsu properties. In regard to Block 195, they appeared to have had an offer for \$85,500.00 cash, or alternatively \$100,000.00 on a stumpage basis, payments being spread over 2½ years. However, Kagetsu's price at that time was said to have been \$125,000.00. In regard to the Deep Bay timber Kagetsu's estimate of quantity appeared to be between 17 and 18 million feet, and the best offer received was \$2.75 per M.

In addition to evidence in regard to the quantity of timber and the fair market price per thousand at the time of sale, considerable evidence was given in regard to the bearing which the accessibility of timber has upon a profitable forestry operation, the cost of extraction in some cases leaving only a small margin of profit. The increased utilization and value of timber of a smaller size which developed since the date of sale was also the subject of much evidence and discussion. In regard to these matters the Commissioner stated:

"I am satisfied that the very marked difference in opinion between witnesses has arisen from the factors of merchantability and accessibility of the timber.

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

June 27, 1951.

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."

In regard to Block 195, the amended claim was for 55 million feet at \$4.50 per M. It was shewn that Kagetsu's original estimate was 50 million at \$3.75 per M and evidence shewed that this timber was purchased in 1937 for \$75,000.00. However evidence in regard to the quantity of timber actually removed from this property since the sale by the Custodian, apart from the greater utilization of smaller timber in logging operations during recent years, caused the Judge to consider that 6 million more feet of merchantable timber existed on the property at the time of sale. He saw no reason to conclude that the price at which the Custodian sale was made, viz. \$3.00 per M, was not adequate and his recommendation was for an award of 6 million feet at \$3.00, viz. \$18,000.00.

In regard to Deep Bay timber, it was shewn that this was bought by the Company from time to time at prices varying from \$1.10 to \$2.00 per M over a period of 20 years. Kagetsu acknowledged that the most accessible timber had been removed before 1942 and that the operation was in the nature of a salvage operation at the time the Custodian took over. As previously mentioned, Kagetsu's estimate of quantity was between 17 and 18 million. The basis of the sale was on Eustace Smith's cruise of 14 million. In view of the fact that claimants' evidence indicated that 16 million feet had been cut since the sale was made and that some additional timber remained, the Commissioner was prepared to accept 17 million as the quantity of merchantable timber at the time of Custodian sale, and recommended an award of the difference of 3 million at a price of \$2.50 per M for the type of timber on the Deep Bay limits.

The claim also included the value of felled and bucked timber which was on the ground at the time of sale. There was no dispute in regard to quantity of $2\frac{1}{2}$ million feet, but the Commissioner accepted evidence that in spite of this timber having been felled for over 18 months, its value should be considered to have been \$5.00 per M or a total value of \$12,500.00 rather than the value of \$4500.00 included in Eustace Smith's appraisal, a difference of \$8000.00.

The claimants were able to produce evidence which satisfied the Commissioner that there were approximately 5500 acres of logged-off land containing immature timber which operators now considered of real value in re-forestation schemes and for which the Commissioner recommended an award of \$1.50 an acre.

The claim in connection with equipment was for more than \$27,000.00. It concerned a very large number of items and after lengthy discussion between counsel for the claimant and Government counsel, a proposed settlement of \$8,000.00 was submitted to the Commissioner who after thorough examination, included this amount in his final recommendation. The sum recommended for award which covers items for which a claim was made of over \$460,000.00, is therefore made up as follows:

Block 195	\$ 18,000.00
Deep Bay	7,500.00
Deep Bay felled and Bucked	8,000.00
500 acres immature timber	8,250.00
40 Buildings Deep Bay	1,000.00
Railway	1,000.00
Logging Equipment	<u>8,000.00</u>
	\$ 51,750.00

There is very little on actual record in regard to the question of payment by the Government for expenses of claimants or their solicitors. In the opening proceedings before the Commissioner, December 3, 1947, Mr. Brewin referred to provisions under the Public Inquiries Act for the appointment of experts to compile special technical or statistical information and stated "We may find we shall have to ask your Lordship to assist the claimants to get information in that way." The Commissioner replied - "What you have in mind Mr. Brewin, is some assistance from appraisers or valuers in relation to land claims."

June 27, 1951.

In a report made by Mr. Hunter to Mr. Varcoe in April, 1948 under the heading - " Possibility of Settlement", Mr. Hunter stated - "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 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."

In reply to your letter of May 25, 1950 in which you enclosed a copy of a teletype from the Canadian Ambassador to the United States to the Secretary of State for External Affairs, Canada, I concluded my memorandum -

"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 & 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.

MR. 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.

June 27, 1951.

MR. 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%?

MR. 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. A Statutory Declaration was filed with the Commissioner by Mr. McMaster for the payment of expenses incurred, amounting to \$57,978.99 and the Commissioner made the following recommendation:

ALLOWANCE TO CLAIMANTS FOR EXPENDITURES MADE
BY THEM ON THE PRESENTATION OF CLAIMS TO
THE INQUIRY, EXCLUSIVE OF LEGAL FEES

Counsel for the claimants have requested that a special report be made on this subject.

A statutory declaration has been filed by R.J. McMaster, Esquire, who acted throughout the Inquiry as one of the Counsel for the claimants. This declaration, which is attached hereto, shows that the claimants had disbursed or assumed liability for the sum of \$57,978.99 in respect of the various items shown in Schedule 4 to the declaration. There are also attached hereto letters on the same subject received by me from McMaster under date of February 4th and March 8th 1950.

I have no means of verifying the statement of these disbursements, but would accept Mr. McMaster's statement that he is satisfied such expenditures have been made. The total expenditure is somewhat less than 5% of the aggregate sum recommended for payment to the claimants. The Inquiry continued for two years and four months, during which time the claims of 1371 persons were investigated. Each of the claims related to one or more parcels of real or personal property, the average claim involving three such parcels.

The foregoing are matters which I think might properly be taken into consideration in determining whether any compensation is to be made to the claimants to reimburse them for the undoubtedly heavy expense to which they have been put in the presentation of their claims.

In view of the fact that the Commissioner stated he had no means of verifying the amount of these disbursements, you asked that I examine all material in Mr. McMaster's possession. As a result, a fairly extensive breakdown was secured and a copy of McMaster's letter dated June 29, 1950 and a schedule of 11 pages were sent to you enclosed in my letter dated July 5, 1950. This account was for the total sum which has been allowed in connection with the presentation of practically all of the 1300 claims. It included travelling expenses across Canada for quite a number of persons,

June 27, 1951.

the expenses of experts who went into considerable detail in providing statistical information, clerical work for the purpose of presenting this great number of claims in such a manner as to save the time of the Commission. Compared with the volume of material and effort in all these cases, it is impossible to consider that the amount claimed for expenses in the one case of the Deep Bay Logging Company is in any way justifiable. In addition to this, I do not think it can be disputed that the Deep Bay case was the most confused presentation of the whole Inquiry.

Right at the commencement, the Commissioner stated:

"So little consideration is shown by the claimant. Here is the situation, Mr. Norris. I have a great many of these claims. I am going to have to sit for another six months to a year. I have specifically asked each counsel concerned to endeavor to be ready when a case goes on and I have asked both counsel co-operate to permit the hearings to be proceeded with expeditiously. I do not think in this case the claimant's solicitor, has given the information that would warrant government counsel in thinking there was going to be any claim made for agricultural land, and I will go further in that and say I do not think Mr. Norris thought about it until it was brought up for the first time in the presentation of the Royston case."

Later in the evidence the Commissioner again stated:

"This difficulty arises because of the fact your people were not ready when you should have been. I am giving you the opportunity to get ready. In the circumstances I do not feel I should penalize the government by denying them the right to cross-examine on this Deep Bay feature."

This case commenced on November 8, 1948. Amendments and changes were made five or six times during the hearings. A cruise report was presented at the commencement and leave was asked to amplify this report later and on Nov. 26th the Commissioner again referred to the fact that - "We are still waiting for Mr. Schultz's Report."

Due to long delays, Mr. McPherson who was representing the Government, was not able to continue with this case, and after adjournment, it was almost a year later before it was again taken up by Mr. Braidwood then representing the Government.

Evidence indicates that the cruise made by Mr. Schultz in regard to Block 195 occupied 3 days of Schultz's time and 6 days for another party, and was only a 4% cruise of 979 acres. They came into Court with Schultz's estimate of the timber which was on the Deep Bay property on which their claim was made, and in this case the evidence is that two days had been spent on the field, but that the entire job would have taken about 4 days. During the hearing, leave was asked to complete this survey and

June 27, 1951.

this was presented when the case re-opened a year later - Nov. 14, 1949, at which time it was stated that the work was done in November and December, of 1948 by Mr. Schultz and a forest engineer and two assistants and that they were on the ground for 18 days. The evidence showed that it was done when the snow was on the ground and that the work could have been done in less than half the time under normal conditions. An aerial survey of the timber limits was filed, but the Commissioner was aware that this was taken over 5 years after the Custodian sale of this property.

The only comments which the Commissioner made in regard to Schultz's work was that in regard to Block 195 it was a 4% cruise of the entire area, taken after the area had been logged to the extent of 80% of the whole. In connection with Schultz's evidence regarding the Deep Bay limits, the Commissioner stated - "It is not conceivable that the total area contained 100% more timber than was estimated by E & N Railway cruises, which must have been the case if Schultz's evidence is accepted.

You will recall that we liquidated the N.S. McNeil Co. Ltd. which was an enemy asset comprising over 22,000 acres at Port McNeil on Vancouver Island containing around 400,000,000 feet of timber and which was sold for \$600,000.00. This area was thoroughly cruised by Eustace Smith and he was brought in as a consultant from time to time during the administration and liquidation of this property, and his total bill for all services was \$6,000.00. Mr. Eustace Smith's services in connection with cruising the Deep Bay property only amounts to \$700.00. The charge for Schultz's work is listed as \$7,739.54. Taking the size of the operation and other facts into consideration, this is an amount for which I cannot recommend that the Government should be responsible.

Other items in the account are also out of line with anything which was allowed to the Co-Operative Committee claimants. \$638.50 is listed for S. ITO as an interpreter. The amount for interpreters in McMaster's account is \$748.56. In their case they were dealing with numerous individual Japanese across Canada who could not speak English. No interpreter was actually required in the presentation of the Deep Bay case. All the witnesses, including Mr. Kagetsu, thoroughly understood and spoke English.

In no previous case has allowance been made for any personal expenses of the claimant. In this case \$839.05 is listed for E. Kagetsu.

June 27, 1951.

\$938.10 is also listed for his son H. Kagetsu, described as a Forest Engineer. H. Kagetsu's evidence was simply as an employee of the company and he was called to try to explain certain entries in the company's books relative to markings on logs, indicating the locality from which they were produced. Included in Mr. Norris's account are what is stated to be "Liquidation Expenses Charged by the Custodian", amounting to over \$18,000.00. This refers to P.S. Ross & Sons' administration, and a breakdown of the amount mentioned is as follows:

DEEP BAY LOGGING COMPANY

Watchman's Wages	\$ 5,842.22	
Tax Deductions	1,242.92	
Telephone A/C	457.20	
Car & Truck Storage	130.09	
Handling Material	1,000.80	
Appraisals	700.00	
Advertising	312.09	
Repairs	51.21	
Gas & Oil	62.89	
Exchange etc.	31.89	
Control & Liquidation Fees	4,980.00	
Control & Liquidation Expenses	269.79	
Retainer - C.M. Stewart	1,250.00	
Locke, Guild, Lane & Sheppard	<u>831.28</u>	
		\$17,162.38

EIKICHI KAGETSU

Land Registry Office	8.50	
Locke, Guild, Lane & Sheppard	331.40	
Examining & Advertising Prop. 195 -	452.29	
P.S. Ross & Sons - Services rend.	650.00	
North Van. Properties - Dis-		
bursements	19.00	
Fees for services re affairs	20.00	
Charges for shipping Bonds	<u>16.65</u>	
		\$ 1,497.84

There would be no previous example of such items as listed above being assumed by the Government, and they have no bearing upon the presentation of the claim.

As previously mentioned, the award in this case is \$51,750.00. It may be of interest to note that the award which has been paid in connection with the Royston Lumber Co. claim was \$69,950.00. P.S. Ross & Sons' fees and disbursements in this case were \$18,279.19. Both claims were for timber limits and equipment and were somewhat comparable. The evidence in the Royston case occupied 10 days and 46 exhibits were filed. This case was handled by Mr. MacLennan a former partner of Mr. Norris. Mr. MacLennan's expenses for his client were included in the Co-Operative Committee account referred to on page 7 of this report, the amount being \$618.64, in addition to which there were appraisal fees of \$570.00.

June 27, 1951.

The fact that the Commissioner's award was \$51,750.00 on a claim of \$464,000.00 would indicate that the whole claim was extravagant and the present request for compensation exceeds the limit of the basis of any previous allowances. Throughout the whole Inquiry there has been no suggestion that the Government would assume any responsibility for expenses in excess of 5% of the amount awarded, and the amounts paid to the Co-Operative Committee fell within that percentage.

With the information now supplied, I trust that you will be in a position to properly assess this claim. Even if it were considered that this particular case had special merits in regard to costs, it would appear that the liquidator's expenses of \$18,660.22 should be deleted and 25% or 30% of the rest of the charges would still leave this claim in a more favourable position in regard to expenses than has been afforded to any other claimant.

Yours very truly,



F. G. Shears,
Director.

FGS/GN

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

506 Royal Bank Bldg.,
Vancouver, B.C.,
June 26, 1951.

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

Dear Mr. Wright:

Your day letter telegram was received at 1:35. I am enclosing an itemized list of securities held in our Investment Account, totalling \$1,754,000.00 which is the same figure as appears in my last Annual Report. On instructions from Ottawa, credit for the par value of these bonds as at April 12, 1946, was given to the former owners of these securities whose names are also shown on the enclosed list. The interest which has since accrued from these bonds has been placed in No. 1 Account, Income Account.

In addition to the above we also hold a number of share certificates for the Enemy Accounts as designated on the attached list. Some of these securities we believe, have no market value.

Payment of claims under Justice Bird's Commission is for the time being almost at a standstill. Since our last report of May 1st only 24 releases have been received. The present position is shown on the statement enclosed. You will note that of the 43 outstanding claims, 7 of these claims total \$68,217.85. The remaining 36 claims are all under \$1,000.00, averaging approximately \$325.00.

We understand that the Co-Operative Committee have sent out letters to their clients suggesting the advisability of completing and returning the Custodian release form without further delay. If thought advisable, it may be necessary for this office to write direct to these claimants if releases remain outstanding.

We have obtained the Microfilming machine last week and Mr. Bruns of the Eastman Company installed it and gave us instructions regarding its operation last Thursday. We are now getting into stride and I estimate that this particular work should be finished in September. At the present time I only have in mind the micro-filming of Evacuee files and records. Enemy files and accounts will require consideration when Evacuee matters have been finalized.

As already arranged, Mr. Brown is leaving at the end of August and I am working towards winding up most of the outstanding work by the end of the year, and being able to reduce the staff to the two girls, Mr. Good and myself. While we are not having the hectic times of early days, the office still remains consistently busy.

Yours very truly,

F. G. Shears,

Director.

FGS/GN.
Encls. 3.

BONDS HELD IN INVESTMENT ACCOUNTS

\$110,000.	Dominion of Canada	3%	1st March, 1954.
149,000.	"	"	1st November, 1956.
102,000.	"	"	1st May, 1957.
68,000.	"	"	1st Jan. 1959.
166,000.	"	"	1st June, 1960.
334,000.	"	"	1st February, 1962.
115,000.	"	"	1st October, 1963.
636,000.	"	"	1st September, 1966.
<hr/>			
\$1,680,000.00			

\$ 10,000.	C.N.R.	4 1/2%	1st September, 1951.
7,000.	"	4 1/2%	1st February, 1956.
2,000.	"	4 1/2%	1st July, 1957.
<hr/>			
\$ 19,000.00			

\$ 20,000.	Prov. of B.C.	4 1/2%	2nd April, 1955.
35,000.	"	%	24th September, 1959.
<hr/>			
\$ 55,000.00			

\$1,754,000.00

FORMER OWNERS OF THE ABOVE SECURITIES WHOSE ACCOUNTS HAVE BEEN CREDITED

	<u>Dom. of Canada</u>	<u>C.N. Rlwy</u>	<u>Prov. of B.C.</u>
Nippon Soda Co.	\$ 102,500.	\$	\$
Chuhei Fukuhara	285,000.		
Komura Brothers Co.	23,000.		
O. Kondo Co.	14,200.		
T. Maikawa Stores Ltd.	68,000.		
Deshaw Co.	22,000.		
Toru Tamura	50,000.	2000.	
Canamoku Co.	15,000.		
Jisaburo KASHO	25,000.		
Mrs. Haruo KITAMURA	3,000.		
Genji KODAMA	11,000.		
Tomekichi MAIKAWA	20,000.		
Kapiichi SHIRAISHI	5,500.		
Masahide TOKUNAGA	5,500.		
Shinya YOSHIDA	2,500.		
Trans Pacific Lumber Co. - Enemy Shareholders	5,000.		
Yamashita Shipping Co.	5,000.		
Cameron Lake Logging Co.	10,000.		
Japan & Canada Trust Savings	55,000.	17,000.	55,000.
Teiji Noritake	2,500.		
Yokichi KASHO	100.		
Frank Koiuji SUYAMA	200.		
H.M. McNeil Trading Co.	825,000.		
T. Matsuyama Co.- Nanaimo Shipyards Ltd.	110,000.		
Union Fish Company	15,000.		
<hr/>			
\$1,680,000.	\$19,000.	\$55,000.	

Total - \$1,754,000.00

SHARE CERTIFICATES AND SECURITIES OTHER THAN CANADIAN

BONDS HELD FOR ENEMY ACCOUNTS

File No.

125	Japan & Canada Trust Savings	250 Shares Trojan Oil Co. \$18,000. Imperial Japanese Gov. Bonds 6½%, 1954 Yen 50 do Francs 6000 do
167	Fumio KAJIRO	200 Shares California Alberta Oil Co.
168	Canada Daily News	£3000 Sterling do
271	Tomekichi MAIKAWA	700 Shares Bridge River Consolidated Gold Mines Ltd.
384	Fyimoto AKIYMA	500 Shares Minto Gold Mines Ltd.
538	Isamu ONOH	15 Shares Canadian Pacific Railway Common Stock
934	Jusuke YANAGI	200 Shares Leitch Gold Mines Ltd. Francs 6500 Imperial Japanese Gov. Bonds 4% 180 Shares Meridian Mining Co. Ltd. 1000 " Federal Gold Mining Co. Ltd. 350 " Fairview Amalgamated Gold Mines Ltd. 1000 " Dentonia Gold Mines Ltd. 500 " Commoil Ltd. 2/40th of 1 Unit Atlas British Dominion Oil Co. 2/40th of 1 Unit Alberta Oil Incomes Ltd.
1364	Otohachi TSUCHIKAWA	2 Paper Bills, 50 Sen each
1373	Rikimatsu TABATA	4 Japanese Coins 3 x 50 Sen Bills 1 x 1 & 1 x 10 Yen Bills 36 Japanese Coins 3 x 50 Sen Bills, 17 Japanese Coins 4/40 of 1 Unit Maryland Petroleum Ltd. 1 x 100 Yen, 3 x 10 Yen Bills 20 Shares New Pacific Holdings 9 x 50 Sen Bills, 25 Japanese Coins 25 x 10 Yen Bills \$40.00 Kelowna Growers Exchange Bonds.
1378	Katanzo NISHI	300 Shares Duthie Gold Mines Ltd.
1383	Eikichi KOYAMA	\$1000.00 Imperial Japanese Government 5½% Bonds.
1386	Ryataro KITA	Yen 1000 Imperial Japanese Government 3½% Bonds.
1387	Kichiyi KAWAGUCHI	\$2000.00 Imperial Japanese Government 6½% Bonds.
1391	Shosaku IWASAKI	Francs 200 Imperial Japanese Government 3½% Bonds.
1401	Shinya YOSHIDA	
1402	Shuichiro SHOJI	
1426	Tokutoro FUSHIMA	
1536	Okayamaku Overseas Assn.	
1567	Ishii KO	
1621	Zenzo YAMASHITA	

26th June, 1951.

JAPANESE PROPERTY CLAIMS COMMISSION

Claims paid previous Statement	1257	\$1,213,695.63
" " to June 26, 1951	<u>24</u>	<u>24,957.50</u>
	1281	\$1,238,653.13
Claims unpaid	<u>43</u>	<u>79,969.69</u>
TOTAL CLAIMS	1324	\$1,318,622.82
Received from Ottawa	\$1,218,622.82	
" " "	<u>25,000.00</u>	\$1,243,622.82
Claims paid as above		<u>1,238,653.13</u>
Balance om hand - -		\$ <u>4,959.69</u>

Included in the above 43 unpaid claims
are the following:

Case No. 1388 (Deep Bay Logging Co.)	\$51,750.00
" " 165	7,647.40
" " 872	4,044.45
" " 1016	2,056.66
" " 809 & 810	1,481.00
" " 508	<u>1,238.34</u>
	\$68,217.85
<u>36</u> Claims (averaging \$325.00)	<u>11,751.84</u>
<u>43</u>	<u>\$79,969.69</u>

Amt of sale

Amt of claim \$ 464,134

Amt of Award \$ 51,750

1400 pages of Evidence - 60 Exhibits
200 of which were argument.

Block 195	Claim 247.500	Sold by Govt for 93000
11 Blocks of land	292,039	40.000
Logging Ry.	28,260	
Logging Equipment	62,368	34.604
Dwelling	5500	4300
Car	1396.00	1025

As to Car & dwelling

Claims will be disposed of by a grant. between Council
on basis of over all recomd. made by Com: in respect to
ppt of the same nature
Summary of Awards

Block 195 - 18000

Other lands - 7500

road 8000

8250

1000

Railway 1000

Logging Equip 8000

51,750

see pages
of Com
report

N.B. Question's raised on investigation occupied 16 full day sessions

Deep Bay Kagabu

Assets were sold for 172,929

Valuation by claimant 637,063

Am't of claim 464,134

Am't of award 51,750

Expenses awarded Cooperation 58000

represents 5% of the amt awarded

then client

On 5% basis - award 51750

amt which we might allow \$2600

Col Norris files claim for \$31,794.

This claim includes legal expenses by Cust for to P.S.R.

31794
18652

13135

17162
1497

18,659

247 500

292 039

28 260

62 368

5 500

✓ ✓ ✓ 396

63 7.063

172 929

464,134

93000

40000

34604

4300

1075

175,929

517³505

2587.5'0

16700

Victoria Bldg., 7 O'Connor St.,
Ottawa, Ontario
June 25, 1951

Messrs. Cowling, MacTavish, Watt,
Osborne & Henderson,
Barristers and Solicitors,
56 Sparks Street,
Ottawa, Ontario

Attention: Mr. J. Osborne

Re: Deep Bay Logging Company Limited
and E. Kagetsu

Dear Sirs:

We have for acknowledgment your communication of the 21st instant, with enclosure.

Mr. Wright will be absent from the office for several days due to teeth extractions but the matter will be brought to his attention upon his return.

Yours very truly,

(Miss) J. Foy
Secretary

16700

Victoria Bldg., 7 O'Connor St.,
Ottawa, Ontario
June 23, 1951

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, B. C.

Re: Deep Bay Logging Company Limited

Dear Mr. Shears:

I have for acknowledgment your communication of the 13th instant.

Some days before your letter arrived, Mr. John Osborne of Gowing, McTavish, Watt, Osborne & Henderson called at the office and in accord with my request has now filed the statement. I enclose copy of his communication of the 21st instant.

Unfortunately I have to visit the dentist Monday for further extractions and will be absent from the office for a few days.

In order to avoid delay it would be appreciated if you would compile a memo outlining the Deep Bay logging history, i.e., our administration and subsequent claim by Kagetsu which was dealt with by the Commissioner. It would be desirable to summarize his findings rather than refer to the Judgment. The matter of suggested 5% allowance should also be reviewed and conclude with recommendation as to what the Custodian should do with Kagetsu's expense claim.

Your report will be submitted to the Deputy Custodian and I might point out that he prefers all memoranda to cover all the facts - in other words, present the complete picture in one document.

Yours very truly,

K. W. WRIGHT
CHIEF COUNSEL

KWW/JF
Encl.

GOWLING, MACTAVISH, WATT, OSBORNE & HENDERSON

BARRISTERS & SOLICITORS

E. GORDON GOWLING, K.C.
DUNCAN K. MACTAVISH, K.C.
J. DOUGLAS WATT, K.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, K.C., LL.D.

CABLE, HERSON
TELEPHONE 2-1781

56 SPARKS STREET
OTTAWA,
CANADA

June 21, 1951

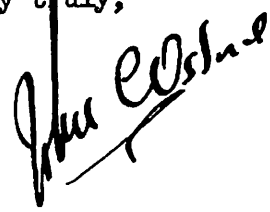
K.W. Wright, Esq., K.C.,
Office of the Custodian of Enemy Property,
Victoria Bldg.,
Ottawa, Ontario.

Dear Mr. Wright,

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

You will recall that I discussed Mr. Kagetsu's expense claim with you briefly the other day and, in accordance with your request, I am enclosing herewith duplicate copies of the statement that Colonel T.G. Norris, K.C. has forwarded to me. I understand that Colonel Norris lodged a claim for these expenses with Mr. Fred Shears, the local representative of the Custodian in Vancouver and he was apparently under the impression that Mr. Shears would forward it to you. However, I gather that it has not reached you through this channel and I am making the statement available so that you will have an opportunity of considering it. When this has been done, I would very much like to discuss the matter with you further so that I may report to my principal.

Yours very truly,



JCO:MJH
Encl.

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 13524

FILE NO.....

506 Royal Bank Bldg.,
Vancouver, B.C.,
June 13, 1951.

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

Dear Mr. Wright:

Re: Deep Bay Logging Company Ltd.
Your File J-175

I am in receipt of your letter of June 9th and on phoning Mr. Norris's office I find that Norris will be out of town for some weeks. However, from what I gathered, the schedule to which I referred may not have been sent directly to your office, but to someone in Ottawa who I presume will in due course present it to you. In the meantime therefore there is nothing further that can be done.

You make the suggestion that this matter might be submitted to Mr. Justice Bird, but as I have advised you in another letter, the Judge will be in England until the end of October. In addition to this I suspect that if the matter were presented to him his only comment would be that the payment of any expenses would be a matter of policy.

What I was trying to indicate in my previous letter was that even if funds were provided for the payment of expenses apart from legal fees, that in Mr. Hunter's opinion in the early days of the Inquiry such an amount should not exceed 5% of the amount awarded and that the sum paid to The Co-Operative Committee was within this amount of 5%.

So that you may have the details of this account before you prior to receiving it from some other source, I am enclosing herein a copy of the Schedule which Mr. Norris sent to us.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN
Encl.

Japanese Losses Claim No. 1388 Schedule
of expenses incurred by Eikichi Kagetsu
in respect of the claims of Deep Bay
Logging Company Ltd. and the said Eikichi
Kagetsu.

Professional Services:

Allison, W.J., logger and mill operator witness at the hearing	\$14.00
Arikado, H.S., former bookkeeper of Mr. Kagetsu, services rendered in assisting in preparation of claim, travelling from the East and living expenses, 38 days	832.55
Brown, Fred B., logger, witness at hearing, one day	7.00
Brewin, F.A., Barrister & Solicitor, travelling and living expenses of attendance at hearing, 15 days (Solicitors fees of \$1800.00 not charged)	423.60
Byers, William, consulting forester and timber broker witness at hearing and general adviser	822.06
Campbell & Pound Ltd., real estate agents, valuation and compilation of comparative sale evidence	37.50
Clement, J.W., agrologist, witness at hearing, service rendered in surveying agricultural land	203.00
Gardiner, Harold, forest engineer, witness at hearing and adviser, one day	15.00
Ito, S., interpreter for counsel, travelling from the East and return and living expenses, 21 days	638.50
Johnson, Sidney L., witness at hearing	7.00
Kagetsu, E., Mr. Kagetsu's personal expenses in coming from Ontario to attend and give evidence at the hearing, travelling and living expenses for 59 days	839.05
Kagetsu, H., forest engineer, organizing evidence and technical advice, travelling from Ontario and return, and living expenses	938.10
Leckie, James, Preliminary clerical work in briefing date from files of T.G. Norris and Custodian	100.00
Marguilese, Florenece M., searching Forestry Depart- ment and Land Registry files in Victoria	
Fee \$ 180.00	
Disbursements <u>131.70</u>	311.70
Peat, Marwick, Mitchell & Co., accountants, ad- vising and preparing statements	35.00
Pretty, Charles N., timber broker, witness at hearing, one day	7.00
	<hr/>
Carried Forward	5231.06

Swanson, R.E., chief inspector, Department of Railways, witness at hearing, one day	Brought Forward	5231.06
		7.00

Schultz, C.D., forest engineer, considerable services rendered in cruising and mapping on Vancouver Island		7739.54
--	--	---------

Miscellaneous

Exchange	1.87	
Express	2.32	
Forest Service	38.00	
Land Registry Office	.50	
Maps & Blueprints	11.75	
Proportionate expense of trip to Toronto by Mr. Norris in preparation for hearing	56.25	
Registrar of Companies	1.50	
Telephone and telegraph	41.42	
		156.63

Liquidation expenses charged by the Custodian

To Deep Bay Logging Company Ltd.	17,162.38
To Eikichi Kagetsu	1,497.84
	<hr/>
	\$31,794.45

I confirm the above as the total of disbursements for which I wish to claim.

E. KAGETSU
Eikichi Kagetsu

May 28th, 1951.

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. 13524

506 Royal Bank Bldg.,
Vancouver, B.C.,
June 13, 1951.

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

OFFICE OF THE CUSTODIAN RECEIVED	
JUN 15 1951	
PASS TO.....	
FILE	

Dear Mr. Wright:

Re: Deep Bay Logging Company Ltd.
Your File J-175

I am in receipt of your letter of June 9th and on phoning Mr. Norris's office I find that Norris will be out of town for some weeks. However, from what I gathered, the schedule to which I referred may not have been sent directly to your office, but to someone in Ottawa who I presume will in due course present it to you. In the meantime therefore there is nothing further that can be done.

You make the suggestion that this matter might be submitted to Mr. Justice Bird, but as I have advised you in another letter, the Judge will be in England until the end of October. In addition to this I suspect that if the matter were presented to him his only comment would be that the payment of any expenses would be a matter of policy.

What I was trying to indicate in my previous letter was that even if funds were provided for the payment of expenses apart from legal fees, that in Mr. Hunter's opinion in the early days of the Inquiry such an amount should not exceed 5% of the amount awarded and that the sum paid to The Co-Operative Committee was within this amount of 5%.

So that you may have the details of this account before you prior to receiving it from some other source, I am enclosing herein a copy of the Schedule which Mr. Norris sent to us.

Yours very truly,

F. G. Shears
F. G. Shears,
Director.

FGS/GN
Encl.

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. 13524

506 Royal Bank Bldg.,
Vancouver, B.C.,
June 2, 1951.

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

Dear Mr. Wright:

Re: Deep Bay Logging Company Ltd.

This morning I received a letter dated June 1st from Mr. T. G. Norris, Barrister & Solicitor, in which was enclosed a statement headed - "Japanese Losses Claim No. 1388 Schedule of expenses incurred by Eikichi Kagetsu in respect of the claims of Deep Bay Logging Company Ltd. and the said Eikichi Kagetsu". The total shown is \$31,794.45. The letter states that a copy of this schedule was sent to the Custodian's Office in Ottawa and I presume it will come to your desk.

As you are aware, the liquidation of the Deep Bay Logging Company was carried out by Mr. Field of P.S. Ross & Sons, and the Government was represented by Mr. G. W. McPherson at the Claims Hearings. The award recommended and appearing on Appendix A to the Commissioner's Report is for \$51,750.00. This award has not yet been paid. There were nearly 1400 pages of transcript of evidence and over 60 exhibits.

You will notice that as well as listing what are described as "professional services" and "miscellaneous expenses", that liquidation charges amounting to \$18,660.22 are included in the total. I presume this account has been rendered in view of the fact that claimants represented by the Co-Operative Committee on Japanese Canadians were awarded expenses apart from legal fees. These expenses were, as you know, approximately \$58,000.00 and represented about 5% of the amount awarded to their clients.

11A 22 000000
CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

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FILE NO.....

- 2 -

K. W. Wright, Esq., K.C.

June 2, 1951.

In the early days of the Inquiry it was suggested by Mr. Hunter that 5% of the amount awarded would be a reasonable sum to be allowed to cover costs apart from legal fees.

I do not know what consideration I may think should be given to the account rendered by Mr. Norris, but on a 5% basis, in view of the fact that the award was \$51,750.00, the amount would only be around \$2600.00.

Yours very truly,

F. G. Shears

F. G. Shears,
Director.

FGS/GN

- 2 -

Japanese Losses Claim No. 1388 Schedule
of expenses incurred by Eikichi Kagetsu
in respect of the claims of Deep Bay
Logging Company Ltd. and the said Eikichi
Kagetsu.

Professional Services:

Allison, W.J., logger and mill operator witness at the hearing	\$14.00
Arikado, H.S., former bookkeeper of Mr. Kagetsu, services rendered in assisting in preparation of claim, travelling from the East and living expenses, 38 days	832.55
Brown, Fred B., logger, witness at hearing, one day	7.00
Brewin, F.A., Barrister & Solicitor, travelling and living expenses of attendance at hearing, 15 days (Solicitors fees of \$1800.00 not charged)	423.60
Byers, William, consulting forester and timber broker witness at hearing and general adviser	822.06
Campbell & Pound Ltd., real estate agents, valuation and compilation of comparative sale evidence	37.50
Clement, J.W., agrologist, witness at hearing, service rendered in surveying agricultural land	203.00
Gardiner, Harold, forest engineer, witness at hearing and adviser, one day	15.00
Ito, S., interpreter for counsel, travelling from the East and return and living expenses, 21 days	638.50
Johnson, Sidney L., witness at hearing	7.00
Kagetsu, E., Mr. Kagetsu's personal expenses in coming from Ontario to attend and give evidence at the hearing, travelling and living expenses for 59 days	839.05
Kagetsu, H., forest engineer, organizing evidence and technical advice, travelling from Ontario and return, and living expenses	938.10
Leckie, James, Preliminary clerical work in briefing date from files of T.G. Norris and Custodian	100.00
Marguilese, Florenece M., searching Forestry Depart- ment and Land Registry files in Victoria	
Fee	\$ 180.00
Disbursements	<u>131.70</u>
	311.70
Peat, Marwick, Mitchell & Co., accountants, ad- vising and preparing statements	35.00
Pretty, Charles N., timber broker, witness at hearing, one day	7.00

Carried Forward

5231.06

Brought Forward	5231.06
Swanson, R.E., chief inspector, Department of Railways, witness at hearing, one day	7.00
Schultz, C.D., forest engineer, considerable ser- vices rendered in cruising and mapping on Vancouver Island	7739.54

Miscellaneous

Exchange	1.87
Express	2.32
Forest Service	38.00
Land Registry Office	.50
Maps & Blueprints	11.75
Proportionate expense of trip to Toronto by Mr. Norris in prepar- ation for hearing	56.25
Registrar of Companies	1.50
Telephone and telegraph	<u>41.42</u>

156.63

Liquidation expenses charged by the Custodian

To Deep Bay Logging Company Ltd.	17,162.38
To Eikichi Kagetsu	<u>1,497.84</u>
	<u>\$31,794.45</u>

I confirm the above as the total of
disbursements for which I wish to
claim.

E. KAGETSU
Eikichi Kagetsu

May 28th, 1951.

VIA AIR MAIL

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

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FILE NO. 13524

506 Royal Bank Bldg.,
Vancouver, B.C.,
June 2, 1951.

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

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VIA AIR MAIL

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FILE NO.....

- 2 -

K. W. Wright, Esq., K.C.

June 2, 1951.

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I do not know what consideration you may think should be given to the account rendered by Mr. Norris, but on a 5% basis, in view of the fact that the award was \$51,750.00, the amount would only be around \$2600.00.

Yours very truly,



F. G. Shears,
Director.

FGS/GN

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I confirm the above as the total of
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claim.

"E. KAGETSU"
Eikichi Kagetsu

May 28th, 1951.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

506 Royal Bank Bldg.,
Vancouver, B.C.
February 7, 1951.

K. W. Wright, Esq.,
Chief Counsel,
Office of the Custodian,
Victoria Bldg.,
7 O'Connor Street,
Ottawa, Ont.

Dear Mr. Wright: Japanese Property Claims Commission

You will be interested to know that we have now received the Commissioner's written recommendations in regard to the "special cases" which, while being outside the terms of reference he considered should be granted awards.

We are enclosing herewith a copy of these recommendations together with a schedule listing the distribution and amount of these additional awards.

The total appearing on Appendix I of the original report was \$1,222,829.26

Legal expenses authorized for
payment to the Co-Operative
Committee was \$58,377.96, to
which has been added an addi-
tional amount of \$200.00 which had
been omitted..... 58,577.96

The total of the additional awards
amount to 37,215.60

Bringing the total amount
recommended to \$1,318,622.82

A copy of the Commissioner's report has been sent to those solicitors interested, together with Release forms for signature of those to whom these are to be paid.

Yours very truly,

F. G. SHEARS

Director

Telephone Call From Mr. K. W. Wright, May 23/51

Re: Expenses of Claimants' Counsel

June 26, 1950 - Letter to Wright.

"I understand that the amount claimed and supported by affidavit, is approximately \$57,000.00. While the Commissioner recommended that favourable consideration should be given to the payment of counsel's expenses, I am not aware whether he recommended this or any particular sum."

June 29, 1950 - Letter from Wright.

"As to the claim of \$57,000.00, the Commissioner indicated he had no means of verifying the statements of disbursements. It would appear necessary for you to examine all the material in Mr. McMaster's possession and make a recommendation in respect to payment."

July 5, 1950 - Letter to Wright

"I considered it desirable to discuss this matter with the Commissioner, and the Honourable Mr. Justice Bird read Mr. McMaster's letter and examined the items in the supporting schedule. The Commissioner expressed the opinion that all types of work covered by these charges had been very useful and necessary, and could rightly be classed as "expenses other than legal fees."

"He indicated that, considering the amount of the total awards and the length of time of the Inquiry, the total sum claimed would not appear to be excessive."

At a conference between the Commissioner and Counsel for the Japanese and Counsel for the Government, held In Camera, March 17, 1949, Hunter states:

"The Commissioner is waiting for a detailed statement from Counsel for the Japanese before he makes a definite recommendation, but it has been suggested that 5% of the total awards would be reasonable sum in lieu of costs."

July 5, 1950 - Same Letter to Wright.

"In reviewing this whole matter, and having guidance of the Honourable Mr. Justice Bird, and taking into consideration the purposes for which these expenses were incurred, and being satisfied that the amounts stated are substantially correct, I am prepared to recommend that favourable consideration should be given to payment of this amount."

July 11, 1950 - Letter from Wright.

"I wish to advise that the Deputy Custodian has approved payment and you may therefore act accordingly."

February 7, 1951 - Letter to Wright.

"You will be interested to know that we have now received the Commissioner's written recommendations in regard to the "special cases" which, while being outside the terms of reference, he considered should be granted awards. We are enclosing herein a copy of these recommendations together with a schedule."

The amount of \$58,577.96 was included in this schedule but there was no actual written recommendation by the Commissioner, the same as we obtained in regard to "special cases".

May 23, 1951 - Phone call from Wright.

In the interview with Mr. Wright the Auditors stated that there was no written recommendation from the Commissioner in regard to this payment. Order in Council No. 3027 authorized payments recommended by the Commission, including reimbursement to claimants of expenditures made by them, exclusive of legal fees. They stated that my references in letter of July 5th concerning my interview with the Commissioner was only hearsay and not a recommendation.

The Audit report has not actually been tabled. Ottawa desire if possible, that the Audit Report should omit any reference to the payment having been made without a proper recommendation from the Commissioner. To make this possible, Ottawa would appreciate a specific recommendation that the amount was reasonable and should be paid.

If possible, Ottawa would like a written recommendation, to be in Ottawa not later than Monday morning.

I handed to Director, Custodian's office shortly before February 7, 51, recommendations for payment of sums there set out to claimants whose claims were considered as special cases outside terms of references, included in which was recommendation for payment of claimant's disbursements incurred on proof of claims amounting to \$58,577.96.

Am presently laid up in hospital -

Director can furnish you with copy of the memo re recommendations. If anything further req'd it must await my return to my chambers.

"H. S. BIRD"

COPY

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

July 11th, 1950.

F. G. Shears, Esq.,
Director,
Office of the Custodian,
506 Royal Bank Building,
Vancouver, B.C.

Dear Mr. Shears:

Re: Japanese Claims Commission.

Reference is made to your letter
of the 5th instant, relative to Counsel's Expenses
amounting to \$58,377.96.

I now wish to advise that the Deputy
Custodian has approved payment and you may therefore
act accordingly.

Yours very truly,

K. W. Wright,
Chief Counsel.

KW/G

C A N A D A

DEPARTMENT OF THE SECRETARY OF STATE

Office of the Custodian

506 Royal Bank Bldg.,
Vancouver, B.C.
June 26, 1950.

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

Dear Mr. Wright: Re: Japanese Claims Commission

This will acknowledge the following;

Private and confidential letter, June 22nd
Memorandum F. Gordon Bradley to the Gov-Gen. in Council,
June 17th
Memorandum Charles Stein to the Minister of Justice,
June 19th
Your letter June 23rd
Copy of Order-in-Council P.C. 3027
Your letter June 24th
Copy of form of Release and
Affidavit of Witness.

Matters arising from this correspondence are
replied to as follows:

Settlement of 16 cases outside the scope of
Inquiry. I assume that the file which you state you have
received from the Department of Justice consists of approximately
70 pages, bound together as "Recommendations for Special
Consideration of Claims outside the Terms of Reference", and
I have a copy of this.

I am of the opinion that if it were possible
for you to come to Vancouver, that a settlement could be
arranged following the same procedures adopted by the Commissioner.
In a recent conversation with Mr. Justice Bird in regard to these
cases, he intimated that a satisfactory agreement might be
reached between counsel for the Japanese and ourselves, but
that if required, he would gladly review any cases where mutual
agreement was not reached.

In some cases the Commissioner has already
indicated the amount of a possible award, but in other cases
further study of the claim and evidence would be required. It
should not be overlooked that while reference has been made
to 16 cases, this springs from the fact that the Commissioner
made 16 memorandums in regard to the consideration of claims
outside the terms of reference, but some of these memorandums, as
for instance the memorandum regarding fishing vessels, covers
25 individual claims, and 5 claims are covered by the Port
Essington Property memorandum. Moreover, in regard to his
memorandums on bulb farm property and Hakoda Bay properties,
actual awards have already been recommended and are included in
Appendix A, and these memorandums together with his memorandums
on chattels overall percentage and greenhouse properties merely
explain the method by which he arrived at fair market value.

Disatisfaction with awards. In this

June 26, 1950.

connection I have nothing of a special nature to report. I gather from Mr. McMaster that he is not aware of any large scale disagreement and that in the main the claimants will be satisfied. The "New Canadian" of June 17th reports that the J.C.C.A. will now proceed with plans to present a claims brief to the Government, but Mr. McMaster thinks this may be a gesture on their part to show that they are doing everything possible for their members. The brief would likely be along the lines that the Terms of Reference were not wide enough, and as we know, that matter was dealt with by the Government at the time the Commissioner was appointed.

The "New Canadian" also intimates that the Co-Operative Committee will ask the Government to pay interest on the amounts awarded. In this connection Mr. McMaster informs me that this matter is under advisement by Justice Department. I mentioned to Mr. McMaster that this office had never given consideration to the question of interest on funds held by the Custodian, but in such cases of course, the money was available to the Japanese (except for working arrangements which we had with the Security Commission at the time the Japanese were located in interior housing settlements.) Mr. McMaster contends that the fact that awards have been made is proof that his clients were entitled to a larger sum at the time of sale, on which interest would have accrued if it had been paid to the Japanese at that time. If there is any possibility of the question of interest being considered, I would suggest that a decision should be arrived at before distribution of any awards is made, and even if the matter is given favourable consideration, I would hope that an arbitrary date would be set (such as the date of commencement of the Commission), and not the actual "date of sale", as this would differ in regard to each item of property, both real and personal. Consideration of interest on a million and a quarter dollars for several years would of course amount to a large sum.

Counsels' Expenses. I understand that the amount claimed and supported by affidavit is approximately \$57,000.00. While the Commissioner recommended that favourable consideration should be given to the payment of counsels' expenses, I am not aware whether he recommended this or any particular sum. It would appear necessary for this amount to be decided without delay, as I understand from Mr. McMaster that until they know what amount they will receive, they are unable to arrive at the proportionate amount which each of their clients is to be charged for legal services.

Procedure for Distribution of Awards. Your instructions are that all cheques are to be made payable to the claimants, but that it would be in order to send these to counsel for the claimant providing we received a written undertaking from him not to hand over the cheque until the Release form is signed. In discussing this matter with Mr. McMaster, it is suggested that he and other counsel proceed to secure from their clients a Release in the form you have supplied, and at the same time obtain from their clients a specific order for the payment by the Custodian for the amount of fees they authorize for payment to their counsel. As and when we receive this Release and authorization, we would then be in a position to issue two cheques - one in favour of the claimant and one to the counsel for the amount of fees authorized. By this method we would not

K. W. Wright, Esq.

-3-

June 26, 1950.

have a large number of cheques issued which might be outstanding for quite a while before they are deposited. In fact, the form of Release would authorize us to credit each claimant with the full amount of his award and payments either to himself or other persons would then follow the policy which has been in effect for the administration of funds in Evacuee Accounts during the past several years.

Yours very truly,

(Sgd F.G. Shears)

F. G. Shears,
Director.

FGS/GN

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

Office of the Custodian

Address all
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to the
Custodian's Office

506 Royal Bank Building,
Vancouver, B. C.

July 5, 1950.

PLEASE REFER
TO

File No.....

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

Dear Mr. Wright:

Re: Expenses of Claimants' Counsel

Your letter of June 29th brings the above matter to my attention in order that a recommendation may be made with respect to payment of this account. As you are aware, Mr. McMaster made a Statutory Declaration, dated June 23rd, with schedule attached, in support of a claim of \$57,978.99.

In my opinion, the schedule was not in sufficient detail, and at a conference with Mr. McMaster I requested a more extensive breakdown of the totals shown, together with an explanation of various items. I am enclosing herein a copy of his letter dated June 29th and the revised schedule of 11 pages prepared in greater detail and with further information.

I considered it desirable to discuss this matter with the Commissioner, and the Honourable Mr. Justice Bird read Mr. McMaster's letter and examined the items in the supporting schedule. The Commissioner expressed the opinion that all of the types of work covered by these charges has been very useful and necessary, and could rightly be classed as "expenses other than legal fees". While he was not prepared to express a definite opinion as to the amount claimed for each item shown, he indicated that, considering the amount of the total awards and the length of time of the Inquiry, the total sum claimed for all the services rendered, would not appear to be excessive. However, he would not express any definite opinion in regard to the amounts shown for such items as salaries for officers of the National Executive of the J.C.C.A., as he considered that payment of these accounts would have to be decided as a matter of policy.

In regard to services rendered by officers of the J.O.C.A. on a monthly basis, Mr. McMaster informs me that while these persons were employees of that organization, they were on loan to the Co-Operative Committee and performed valuable services in securing co-ordination among the claimants, and agreement and approval to methods which were used in an endeavour to curtail the length of time of the Inquiry. Without their co-operation and services it may have been necessary for Government Counsel to have argued each case before the Commissioner, and still further extended the period of the Inquiry.

While fairly large sums are shown as having been paid to persons employed by counsel in their own offices, I am satisfied that these were straight disbursements to cover the special work for which they were employed in relation to the Claims Commission. This applies to Mr. J.G. Leckie and Mr. A.E. Cobus, and I have Mr. McMaster's assurance that the same situation existed in regard to Mr. Gilbert at Toronto.

In regard to an item of \$1993.00 which have been charged for stenographic and clerical work done by the staff of Campbell, Brazier & Company, no actual check of this amount can be made, as this is an allocation for part time work done over the period of the Inquiry. However, my personal knowledge of the Commission work carried on by Mr. McMaster's staff leads me to believe that the allocation of this amount is not unreasonable. The sum of \$1310.90 for Land Registry searches includes an amount of \$1000.00 paid to six law students. The object of this work was to secure information in regard to prices at which properties adjacent and comparable to Japanese properties had changed hands.

The sum of \$16,553.00 is shown as payments to appraisers. As indicated in Mr. McMaster's letter, Mr. I. B. Hower was paid at the rate of \$35.00 a day. I find that the Clement Consulting Services charged \$50.00 a day and the Universal Appraisal Company rendered accounts for specific cases with which they dealt. I was somewhat concerned with the large amount involved, especially as I understand that Mr. Hower engaged a Mr. Armstrong to carry out the actual inspection of a number of properties, doubtless at a lesser rate than the arrangements he himself had made. However, Mr. McMaster assures me that Mr. Hower carried out the work they considered most important and was directly responsible to them for all the reports and valuations he submitted. I have examined the accounts submitted by the appraisers employed by Counsel for the Japanese and find they agree with the amounts listed in the schedule. Counsel lay great emphasis on the value they obtained from the results of these investigations, relating as they do for the most part to properties sold to the Director, The Veterans' Land Act. The Commissioner obtained the services of some appraisers in the course of the Inquiry, and the Honorable Mr. Justice Bird informs me that the rates charged by those employed by Counsel for the Japanese were not more than those paid by the Commission.

I have made a check of vouchers covering other payments, and Mr. McMaster has shown me their ledger accounts in which charges in connection with travelling and other expenses have been posted. Insofar as items disbursed by the Toronto Committee are concerned, I am not able to do this, but in these cases the amounts shown appear to be in line with the rest of the account.

I am drawing your attention to a conference between the Commissioner and Counsel for the Japanese and Counsel for the Government held In Camera on March 17, 1949. This was the occasion when certain proposals for settlement of claims on a percentage basis was being discussed, and tentative recommendations made by the Commissioner. At the conclusion of this session the question of payment of costs was mentioned, Mr. McMas

ter stating that an amount equivalent to 5% of the awards might be recommended by the Commissioner for this purpose, Mr. Hunter, Government Counsel, having made this offer. A memorandum prepared by Mr. Hunter in connection with this matter reads as follows:-

"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."

At this time it was not anticipated that the total awards would amount to as much as the Commissioner finally recommended, but on the basis of the actual recommendation, an allowance of 5% for expenses would be over \$61,000.00, and you will observe that the sum now being asked is not quite as much as this amount.

It should be noted that the total of the present account is \$58,377.96 which exceeds by \$398.97 the amount previously shown on Mr. McMaster's Statutory Declaration. However, I am satisfied that the present figures may be used in place of some amounts previously estimated.

In reviewing this whole matter, and having the guidance of the Honourable Mr. Justice Henry Bird, and taking into consideration the purposes for which these expenses were incurred, and being satisfied that the amounts stated are substantially correct, I am prepared to recommend that favourable consideration should be given to the payment of the sum of \$58,377.96 as compensation for disbursements made for the presentation of the Japanese claims, exclusive of legal fees. If this account is passed for payment, I am advised that cheque should be issued in favour of the Co-Operative Committee on Japanese Canadians, and be forwarded to Mr. F. A. Brewin.

You are aware that claimants were originally required by the Co-Operative Committee to deposit a sum of 1% of the amount of their claims, and at a later date a further assessment was made. Mr. McMaster assures me that if the above account for expenses is paid by the Government, the amounts received by the Co-Operative Committee will be applied on Counsel's accounts for purely legal fees.

Yours very truly,

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.

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.

Mr. Shears:

June 29th, 1950.

- 2 -

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 infrequently 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

June 29th, 1950.

- 3 -

have been incumbent upon us to more fully employ the services of Br. 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. Fukushima:	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:	<u>14.00</u>	\$ 748.56

Consultative Committee, Toronto 1318.75
(Over a quarter of the Co-operative Committee claimants were heard in Toronto, being mostly the older generation, many of whom speak little English)

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:	<u>889.05</u>	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

<u>Campbell Brazier & Co.</u>	290.83	
<u>Toronto Committee</u>	265.92	
<u>Virtue's Committee</u>	<u>103.00</u>	\$ 659.75

POSTAGE AND EXPRESS:

<u>Campbell Brazier & Company</u>	150.00	
<u>Toronto Committee</u>		
Express	19.30	
Incidentals	40.04	
Postage	<u>193.30</u>	252.64
<u>Virtue's Committee</u>		
Phone calls and postage:	10.00	
Shipping filing cabinets:	15.95	
Packing filing cabinets for shipment:	<u>4.00</u>	<u>29.95</u> 432.59

TRANSPORTATION:

<u>Campbell Brazier & Company</u>	815.02	
<u>Virtue's Committee</u>	<u>267.25</u>	1082.27

TRAVELLING, LIVING EXPENSES & MEALS:

<u>Campbell Brazier & Company</u>	2429.64
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(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):

<u>Toronto Committee</u>	2097.65
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(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)

<u>Virtue's Committee:</u>	299.40	
	195.20	
	140.00	
	116.25	
	295.35	
	142.25	
	15.00	
	<u>300.00</u>	<u>1503.45</u> \$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 Alberta 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 Consulting 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
Mar. 1950	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:	<u>500.00</u>	\$ 575.00

HALLS RENTAL AND MISCELLANEOUS:

Toronto Committee:

70.50

Virtue's Committee:

3.60	
8.44	
96.98	
66.26	
1.40	
.77	
<u>26.50</u>	<u>203.95</u>
	274.45

Royston Lumber Company case
(Arthur MacLennan)

618.64

TOTAL	\$ 58,377.96
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CAMPBELL BRAZIER & CO.

Per: R. J. McMaster.

E & O.E.

June 23, 1950.

SADAJIRO ASARI

Claim for value,

Fishing vessel "GLENDALE V" -	\$3,353.00
Charter hire -	<u>4,725.00</u>
	<u>\$8,078.00</u>

SUMMARY prepared from Commissioner's report.

Owner of motor vessel "Glendale V", 33.8 tons gross.

Claimant alleges vessel cost \$18,000.00 when built in 1940. H. Bell Irving & Co. Ltd., held a mortgage on it dated June 4th, 1940, for \$8,000.00.

Claimant asks for \$3,353.00, being differences between value of boat and equipment at \$18,000.00 and \$14,647.00 being amount he received.

Claimant also asks for charter hire at \$21.00 per day for period January 14 - August 26, 1942 - \$4,725.00.

In the opinion of the Crown, the evidence establishes that the Director of Marine Services agreed to pay an undetermined sum as charter hire and has established a prima facie case for a reasonable amount, i.d. \$4,725.00.

With regard to the value of the vessel, exhibits filed show that a member of the Disposal Committee informed claimant that the Department of Munitions and Supply had fixed the selling price as the value at the date the vessel was requisitioned and was told "if you are not satisfied with this price you must go to the Exchequer Court in Ottawa and await their decision". Exhibits also indicate that this ultimatum was given to another claimant, C. Nakamura.

Commissioner concludes proposed price was accepted unwillingly and that claimant entitled to \$3,353.00.

NOTE:

This claim is a matter for consideration by the Director of Marine Services.

C O P Y

June 23, 1950.

UKICHI NITSUI

Special report on Claim relating to a Fishing Vessel held by the Commissioner to be outside the terms of reference.

Claim for -

\$1,552.97

SUMMARY prepared from Commissioner's report.

Owner of motor vessel "Silver Spring" which was, as documents adduced establish, requisitioned for hire on a bare boat basis, "terms of charter hire to be determined later" on April 11, 1942. On June 5th, 1942, the Secretary, Advisory Board, on requisitioning advised claimant that a meeting would be held on June 10th. There was no evidence before the Commissioner that rate was ever determined. Claimant testified rate was \$10.00 a day.

The Commissioner finds that the vessel was under charter for 91 days and that claimant has established a prima facie case for \$910.00.

The Disposal Committee had the vessel appraised in 1942 at \$3,750.00 and it was sold to the Director, Marine Services. Claimant alleges it had a fair market value of \$4,000.00.

Claimant has established entitlement to \$250.00 and, as regards equipment delivered to Navy upon surrender of his vessel, as shown by Exhibits filed, the sum of \$392.97. Total \$1,552.97.

Note: See Mr. F. G. Shear's letter to Mr. K. W. Wright, dated June 27th, 1950. This claim has been adjusted to read - \$1,160.00.

C O P Y

June 23, 1950.

KUNIMATSU SAIMOTO

Special report on claim relating to a fishing vessel held by the Commissioner to be outside the terms of reference.

Claim for loss of gear -	\$ 80.82
Charter -	<u>2,318.65</u>
	<u>\$2,399.47</u>

SUMMARY prepared from Commissioner's report:

Claimant had a 60 h.p. Diesel fishing vessel, 39 tons gross, when Director of Marine Services requisitioned it in February, 1942, for charter to Munitions and Supply. Its value was estimated by the claimant at \$10,000.00.

The Disposal Committee appraised it in May, 1942, at \$8,750.00. In August, 1942, the Department purchased it.

The vessel was, therefore, held by the Director, Munitions and Supply, for 168 days before purchase. This boat, claimant states, normally chartered at \$32.00 a day, bare boat basis, but claimant would accept \$15.00 per day or \$2,520.00 less depreciation of 5%, leaving \$2,318.65.

As there is no documentary evidence in this case, as there is in other similar cases, it was not possible for the Commissioner to reach any conclusion.

If, however, there is declared to have been an understanding that the boat was to be on a charter basis, then he considers the sum of \$2,318.65 to be fair and reasonable.

Claimant also showed that certain gear on the vessel when first taken was missing when it was requisitioned for purchase by the Department. An inventory is available in Exhibits of Claim No. 211.

On the basis of the overall recommendation of 45% made in the formal investigation, the claimant asks \$80.82 which the Commissioner considers fair and reasonable.

C O P Y

June 23, 1950.

UNION TRADING COMPANY LIMITED

Claim

Charter -

\$13,460.00

The following are extracts from Commissioner's report:

"This corporation owned certain fishing vessels which were surrendered to the Navy soon after December 7th 1941, pursuant to Orders in Council relating to Japanese owned fishing vessels. The great majority of the shares of the corporation were then held by a Japanese, Toyojuro Nakamoto, and his Japanese wife.

The Director of Marine Services, by telegram dated December 31st 1941, formally requisitioned two of the vessels, - M/V "BARCLAY SOUND" and M/V "WESTERN MAID" for hire on a bare boat basis, the hire rate to be fixed later, as appears from a telegram marked as "Exhibit 1" in Claim #1396. However, possession actually had been taken by the D. M. S. on December 9th, 1941.

These vessels remained under charter to the Director, until September 15th 1942, when both vessels were requisitioned for purchase by a department of the Government, and later were sold to private purchasers through the Japanese Fishing Vessels Disposal Committee.

After hearing the evidence in support of the claim, I held that the claim as presented did not fall within the terms of reference laid down in the several Orders in Council relating to this Enquiry. However, I consider that in the circumstances the claimant has a justifiable claim for charter hire in respect of the M/V "BARCLAY SOUND" and M/V "WESTERN MAID", covering the period before mentioned, as well as for the value of the missing equipment as at the date of removal by the Navy. This conclusion is founded upon the telegram of the Director of Marine Services (Exhibit 1) and the subsequent use of the vessel by the D. M. S. which, in my opinion, constituted a contract under which the D.M.S. must be held to have agreed to pay a reasonable charter hire for the period of use which, from the evidence, I would assess at \$20.00 and \$17.00 per diem respectively.

...../2.

C O P Y.

June 23, 1950.

UNION TRADING COMPANY LIMITED

Extracts continued:

I therefore recommend payment to the claimant of the sum of \$10,660.00, made up as follows:

- | | |
|---|---------------|
| 1. Charter hire M/V "BARCLAY SOUND" December 9th 1941 to September 15th 1942, i.e., 280 days at \$20.00 per diem- | \$ 5,600.00 |
| 2. Charter hire M/V "WESTERN MAID" December 9th 1941 to September 15th 1942, i.e. 280 days at \$17.00 per diem- | 4,760.00 |
| 3. Equipment losses - | <u>300.00</u> |
| | \$10,660.00 |

I make no recommendation in respect of loss of charter fees for M/V "B.C. PRIDE" or M/V "MARMAE", since the position of the claimant is no different from that of any other person of Japanese origin whose vessel or motor vehicle was required to be surrendered to a Government authority forthwith after the declaration of war. However, it is to be observed that Nelson Bros. Limited benefited by the seizure to the extent that the company had the use of these vessels for 10 days in the case of M/V "B.C. PRIDE" and for 96 days in the case of M/V "MARMAE", without payment of charter fees, due to the fact that charters existing at December 9th 1941 were terminated by the surrender, resulting in a corresponding loss to the claimant, amounting to \$400.00 in the case of M/V "B.C. PRIDE" and \$2400.00 on M/V "MARMAE".

In the result, Nelson Bros. Limited appear to have benefited at the expense of the claimant by way of unpaid charter fees in the sum of \$2800.00, due to the action of the Naval authorities in seizing the vessels and handing the same over to Nelson Bros. Limited for use by them."

C O P Y

June 23, 1950.

CHOSUKE NAKAMURA

Claim concerns six motor vessels and two
scows requisitioned by the Navy -

\$41,827.25

Claims:

1. Charter hire on three vessels at rates equivalent to what they had been earning amounts to -	14,387.50
2. On another vessel -	1,700.00
" " " " -	1,360.00
" scows -	816.00
3. Difference between alleged fair market value of three motor vessels and the price at which they were sold by the Disposal Committee -	22,170.00
4. Cost of repairs to one vessel of damage done while in the custody of the Navy -	379.45
5. Amount charged to claimant for commissions and survey fees and deducted from prices obtained for vessels by Disposal Committee -	1,014.30
	<u>\$41,827.25</u>

The Commissioner rejected the claims as they were not within the terms of reference.

CONCLUSIONS reached by Commissioner:

Claim No.

1. Through production of documents and telegrams claimant established a prima facie case for - plus \$11,950.00
1,287.50
2. With regard to our vessel, the "Nootka Sound" he finds prima facie of contract and would pay - 750.00
3. Finds prima facie proof that fair market value in August, 1942, when the three vessels were sold to Munitions and Supply, was \$67,000.00. That the Disposal Committee sold at a price below fair market value. The Commissioner preorts that the Japanese Fishing Vessels Disposal Committee, which had laid down a definite policy with respect to determination of sale price, did not follow that policy. The policy was to have the vessels appraised, add 15% as a safety factor thereby making a "suggested negotiating price". While the prices obtained averaged over 5% higher than the "suggested negotiating price", it appears that the

Carried forward - \$13,987.50

.../2

June 23, 1950.

CHOSUKE NAKAMURA

CONCLUSIONS reached by Commissioner continued:

Claim No.

Brought forward -	\$13,987.50
3. cont'd - claimant was prevailed upon to accept the appraised value. The Commissioner finds claimant should receive an additional	10,170.00
4. Proof adduced was inconclusive. It falls short of proving that the damage was done by Naval authorities.	
5. The Disposal Committee charged claimant for commissions on sale of all vessels in addition to survey costs of Lloydes. Claimant established that he personally negotiated the sale of all vessels. Deduction of any amount for commissions was therefore improper. Commissioner finds claimant entitled to -	1,014.30
	<hr/>
	\$25,171.80
	<hr/> <hr/>

NOTE:

This claim is a matter for consideration by the Director of Marine Services and the Minister of Munitions and Supply.

C O P Y

THE FIGURES ON THESE STATEMENTS APPEAR ON THE
BREAKDOWN OF SCHEDULE OF DISBURSEMENTS

STATEMENT OF
EXPENDITURES INCURRED BY THE NATIONAL JCCA ON CLAIMS WORK

1. National Executive Secretary - 5 months period, Sept.
1947, to Jan. 1948.....\$1,250.00
2. National Headquarter's Office Secretary - 4 months
period, Sept. 1947 to Jan. 1948 750.00

(Drafting, printing and distribution of claim forms
and considerable other related informational and
instructional material in English and in Japanese.
Providing complete information, advice and assist-
ance in the filing of claims to claimants directly
and through JCCA channels and other media. Attending
to considerable correspondence on claims matters with
claimants).
3. National Executive Secretary - 7 mos. during 11 month
period, Feb. 1948 - Dec. 1948 .. 1,750.00
4. National Headquarter's Office Secretary - 7 mos. during
11 mos. period, Feb. 1948 - Dec.
1948.....,..... 1,050.00

(Printing and distribution of pre-hearing claim forms
in English and in Japanese. Directing and completing
the tabulation of claims. Providing for claimants'
interpreters. Interviewing claimants and providing
for and giving direct assistance to claimants prior
to claimant's hearings. Attending to considerable
correspondence on claims matters with claimants.
Enabling the functioning of the JCCA organizational
machinery throughout Canada which has greatly assisted
the work of the Commission during claimants' hearings).
5. National Executive Secretary - 1 month during period of
April, 1949 to May, 1949 250.00

(Special trip across Canada to consult with the Provincial
JCCA Chapter executives enabling the presenta-
tion of the Commissioner's over-all settlement propos-
al to claimants at various local claimants meetings.
Further attended claimants meetings in various centres
to explain the settlement proposal, etc.)
6. British Columbia JCCA General Secretary - 4 mos. Oct.
1947 to Jan. 1948..... 600.00

(Attending to the complete distribution of claims forms
and related material to B.C. claimants. Attending
to numerous detailed matters pertaining to the provid-
ing of direct assistance to claimants in the filing
of claims throughout the Province).
7. B.C. JCCA President - 21 days, during November, 1947,
@ \$8.00 per day..... 168.00

(Travelling throughout British Columbia attending claim-
ants meetings to fully inform and explain the Terms of
Reference and related matters pertaining to the sub-
mission of claims for property losses to the Commission)
8. B. C. JCCA General Secretary - 3 mos. Jan. 1948 to June,
1948 450.00

(Attending to the work of providing assistance to claim-
ants prior to claimants' hearings before the Commission
including the providing of interpreters and enabling the
function of the B. C. JCCA machinery which has greatly
assisted the work of the Commission during claimants'
hearings).

TOTAL

\$6,268.00

COPY OF STATEMENT FORWARDED TO CAMPBELL BRAZIER & COMPANY

BY VIRTUE, RUSSELL & MORGAN
Lethbridge

Travelling expenses Virtue & Russell to Ottawa - May 6 to 11, 1947	299.40
Miscellaneous disbursements V & R - May 6, 1947 to Nov. 30, 1947	3.60
Travelling expenses V & R to Vancouver - Nov. 30, 1947 to Dec. 4, 1947	195.20
Paid Miscellaneous disbursements V & R - November, 1947 to Jan. 6, 1948	8.44
Travelling expenses V & R to Vancouver - Jan. 7, 1948 to Jan. 12, 1948	140.00
Miscellaneous disbursements V & R - January, 1948 to Sept. 19, 1948	96.98
Travelling expenses V & R to Vancouver - September 19, 1948 to September 25, 1948	116.25
Disbursements V & R - Sept. 19, 1948 to Jan. 31, 1949	66.26
Travelling expenses to V & R to Vancouver - Jan. 31, 1949 to Feb. 16, 1949	295.35
Disbursements V & R. Jan. 31, 1949 to March 12, 1949	1.40
Travelling expenses V & R to Vancouver - March 12, 1949 to March 18, 1949	142.25
Disbursements V & R - Jan. 12 to March 22, 1949	.77
Committee in connection with making up of claims	586.20
Telephoning and like expenses of committee including travelling	103.00
Paid by Committee wages of Harry Aoki (clerk employed in preparing claims, etc.)	1500.00
Expenses of Harry Aoki	121.54
Printing	372.24
Expenses of Taber District Committee re claims, travelling expenses, etc.	26.50
To travelling expenses A. G. Virtue to Vancouver, B.C. September 17th, 1949 to October 1st, 1949	267.25
To paid miscellaneous phone calls and postage	10.00
To paid packing filing cabinet for shipment to Vancouver - September 10th	4.00
To paid shipping filing cabinet from Vancouver to Lethbridge	15.95

To meals, hotel, taxi, etc. in Toronto, Ontario
conferring with Mr. Brewin 15.00

To travelling and clerical expenses of Southern
Alberta Central Committee since 12th April,
1949, and up to conclusion of whole matter,
estimated 300.00

84,687.58

STATEMENT OF EXPENSES INCURRED RE
JAPANESE CLAIMS COMMISSION BY CO-
OPERATIVE COMMITTEE ON JAPANESE CAN-
ADIANS OTHER THAN EXPENSES BILLED BY
CAMPBELL, BRAZIER & CO. UP TO APRIL
28th, 1949.

Audit of Co-operative Committee Accounts re Claims Commission 1947-48	75.00
Bank Exchange	52.00
Caretaker and Hall Rental (For meetings of claimants and preparation of evidence)	70.50
Clerical and Stenographic (This covers the salary of Mr. Gilbert who in Eastern Canada did the same work in preparing written summaries of evidence as Mr. Leckie, and also all additional stenographic assistance required).	3298.42
Express	19.30
Incidentals	40.04
Interpreters	1318.75
Rental of Typewriters	115.50
Postage	193.30
Supplies, printing and stationery	889.05
Telephone and Telegraph	265.92
Transportation, travelling and hotels (This includes expenses of counsel, also expenses of clerical assistance having to travel to such places as Port Arthur, Fort William and Kapuskasing, etc.)	2097.65
Auditing, taxing and winding up, etc.	500.00

\$ 8935.43

STATEMENT OF

J. ARTHUR MacLENNAN

Re: ROYSTON LUMBER COMPANY LIMITED

1948

Oct. 4th to 8th	Paid travelling expenses J. A. MacLennan, G. K. Uchiyama and K. Kaminishi, Vancouver to Nanaimo to Courtenay to Cumberland to Royston to Victoria, including hotels and meals for J. A. MacLennan, and payment of photostatic copies of plans and other exhibits in possession of E. & N. Land Development Co., Victoria. (This trip was necessary for the purpose of interviewing witnesses and obtaining further particulars for proper presentation of this claim).	\$106.49
Oct. 9th	Paid Process Server service of subpoenas on witnesses:	6.00
Oct. 11th	Paid witness fees and expenses of A. J. Edwards on hearing of claim - Mr. Edwards travelling from Royston to Vancouver.	33.90
	Paid witness fees and expenses of witness Frank McHugh travelling from Victoria to Vancouver:	25.15
Oct. 15th	Paid attendances expenses and witness fees of William Byers who testified on hearing: Paid Universal Appraisal Co. for attendances and witness fees of witness Skelding. (Mr. Skelding spent a great deal of time with Counsel for the Claimant in preparation of the evidence on the valuation of the equipment and approximately 3 days on the hearing, and his fee was considered very reasonable).	47.50 300.00
Oct. 21st	Paid exchange on cheque received from Toronto Committee:	1.25
Nov. 15th	Paid conduct money witnesses Stekl and Brown appearing under subpoena:	8.00
Nov. 28th	Paid McIntosh, McVicar & Dinsley, Chartered Accountants of Vancouver. (This firm of accountants was retained on behalf of the claimant for analyses of voluminous financial statements of the Liquidator of Royston Lumber Co. Ltd.)	75.00

1949

Nov. 9th

Paid telegrams to G. K. Uchiyama, K. Kaminishi and Iwasa and long distance telephone calls re presentation of arguments and further information required:

3.70

Nov. 30th

Paid long distance telephone calls Vancouver to Victoria and Nanaimo for further information on preparation of argument:

8.15

Paid postage and miscellaneous disbursements:

3.50

\$ 618.64

JAPANESE PROPERTY CLAIMS COMMISSION

Claim No. 1388

Kagetsu -- Deep Bay Logging Company Limited

4-40-41

MEMORANDUM

OF

ARGUMENT

FOR

RECONSIDERATION OF

AWARD AS TO

COMPENSATION

AND EXPENSES

1

JAPANESE PROPERTY CLAIMS COMMISSION

Claim No. 1388

Kagetsu -- Deep Bay Logging Company Limited

10

MEMORANDUM

OF

ARGUMENT

FOR

RECONSIDERATION OF

AWARD AS TO

COMPENSATION

AND EXPENSES

30

I N D E X

<u>Outline:</u>	Block 195, Cowichan Lake District	1
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Block 195, Cowichan Lake District:

(a) Volume	5
(b) Value	12

Deep Bay Property:

(a) Standing timber	18
(b) Felled and Bucked and Cold-Decked timber..	35
(c) Immature Stands	36

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1

JAPANESE PROPERTY CLAIMS COMMISSION

Claim No. 1388

Kagetsu - Deep Bay Logging Company Limited

MEMORANDUM OF ARGUMENT FOR RECONSIDERATION
OF AWARD AS TO COMPENSATION AND EXPENSES

10

O U T L I N E

The Report of the Commissioner on this claim, dated March 24th 1950, indicates that the Commissioner has overlooked certain vital matters and ignored others that materially affect the result, to the serious prejudice of the claimant.

The items of the claim to which these matters relate are as follows:

1. Block 195, Cowichan Lake District:

(a) Volume:

20

- (i) The Commissioner rejected the evidence of C. D. Schultz, one of the foremost forest engineers in British Columbia, and on the question of volume relied on the evidence of Eustace Smith, and Keith Shaw, manager of the Company which purchased the timber on sale by the Custodian. The Government scales of the timber taken off Block 195 since the sale by the Custodian show that an overrun of over 70% more than the estimates on which the Commissioner based the compensation has actually been taken off the

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property up to November 1951 and logging operations are still in progress. These complete scale figures were of course not available at the hearing as the cut had not been made.

10

- (ii) The Schultz cruise which was made in 1948 was in fact made on the basis of 1943 conditions and the Government scales bear out his estimates, yet the Commissioner stated that because of the different conditions which prevailed in 1948 the Schultz cruise could not be considered as accurate.

- (iii) Eustace Smith's cruise was not a real cruise at all a mere check of previous cruises.

- (iv) On grounds which are patently unsound the Commissioner disregarded a cruise made by A. F. Sheehan which further substantiates the claim.

(b) Value:

20

The Commissioner valued this timber at only \$3.00 per M.B.M. but the evidence amply justifies a figure of \$4.50 per M.B.M.

2. The Deep Bay Property:

(a) Standing Timber:

(i) Volume:

30

- (1) The Commissioner relied on the cruise made by Smith which was a mere check of a previous cruise.

- (2) Schultz cruised this area at 56,500 M. The Government scales up to November 1951 already

1 show an actual overrun of 100% over Smith's cruise, and there is still more timber to be cut. These scale figures were not and could not be available at the hearing.

(ii) Quality:

The quality of the timber in this area was unusually high and it was not, as the Commissioner found, a mere salvage operation.

(iii) Price:

10 The evidence amply justifies the price of \$4.00 per M.B.M. claimed.

(iv) Additional Factors:

- 20
- (1) The operation was a going concern when Kagetsu left, but nothing was allowed for this. The Commissioner made no allowance for compulsory taking and gave no reason for denying it.
 - (2) The removal of Kagetsu from the operation resulted in the loss of valuable personal contacts.
 - (3) The terms of sale imposed by the Custodian had an adverse effect on tenders.
 - (4) Kagetsu was denied access to his records when drafting his initial claim.

(b) Felled and Bucked and Cold-Decked Timber:

- 30
- (1) The value of this set by the Commissioner at \$5.00 per M.B.M. should be increased to \$6.50 per M.B.M.

(ii) On an additional 700 M. of cold-decked timber,

1 a further \$3.50 per M.B.M. should be added for yarding, cold-decking and overhead costs.

(c) Immature Stands:

This claim should be revised upward to at least \$5.00 per acre.

3. Logging Railway on Deep Bay Property:

This had a value of 50¢ per M.B.M. of timber, or a total value of \$28,260.00.

10 4. Buildings:

The award should be revised to \$4,000.00.

5. Costs:

20 The failure to award a proper item for expenses in connection with this claim results in the greatest discrimination against the claimant as there was no justification for failing to make such an allowance in this particular case. As the expense of presenting evidence in this case was exceptionally heavy (not due to any fault of the claimant) it is submitted that a special increased allowance should be made. The fact that the actual cut of timber since the sale by the Custodian on figures now available indicates that the Commissioner's figures are out of line by 70% to 100%, is ample justification for such an increased allowance.

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SUMMARY OF AMOUNTS CLAIMED IN RESPECT
OF THE VARIOUS ITEMS SOLD BY THE
CUSTODIAN, SHOWING COMPARISON WITH
AMOUNTS AWARDED BY COMMISSIONER:

Block 195, Cowichan Lake District:

55,000 M feet at \$4.50 per M.B.M.	\$247,500.00
Sale price	93,000.00
	<hr/>
Amount claimed	154,500.00

Amount awarded:

37,000 M at \$3.00
per M.B.M.

\$111,000.00

Less sale price

93,000.00

18,000.00

Amount now claimed

\$136,500.00

Deep Bay Property:

(a) Standing timber:	
54,00 M at \$4.00 per M.B.M.	216,000.00

(b) Felled and Bucked:	
2,500 M at \$6.50 per M.B.M.	16,250.00
700 M piled for loading at \$3.50 per M.B.M.	2,450.00

(c) Immature Stands:	
5,569 acres at \$5.00 per acre	27,845.00

262,545.00

Sale price (items (a), (b) and (c)
sold in one block)

40,000.00

Amount claimed

222,545.00

Amount awarded:

(a) Increase in volume
of standing timber

3,000 M at \$2.50

7,500.00

(b) Felled and Bucked:

2,500 M at \$5.00 less

\$4500. sale price

8,000.00

(c) Immature stands:

5500 acres at \$1.50

8,250.00

23,750.00

Amount now claimed

198,795.00

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1 Logging Railway, Deep Bay:

Value to claimant, 56,520,000 feet
at 50¢ per M feet of timber \$ 28,260.00

(Value to purchaser, 4½ miles at
\$2,500 per mile = \$11,125.00.)

Amount awarded 1,000.00
Amount now claimed 27,260.00

Buildings:

10 Amount claimed 4,000.00
Amount awarded 1,000.00
Amount now claimed 3,000.00
TOTAL AMOUNT NOW CLAIMED \$365,555.00

#####

	<u>Amount Claimed</u>	<u>Amount Awarded</u>
1. Block 195	\$154,500.00	\$ 18,000.00
20 2. Deep Bay	222,545.00	23,750.00
3. Logging Railway, Deep Bay	28,260.00	1,000.00
4. Buildings	4,000.00	1,000.00
Total amount claimed	\$409,305.00	\$ 43,750.00
Less total awarded	43,750.00	
TOTAL AMOUNT NOW CLAIMED	<u>\$365,555.00</u>	

1. Block 195, Cowichan Lake District:

(a) Volume:

Sale to H.R.
MacMillan
Export Co.
on basis of
Smith's cruise.

This block was sold by the Custodian to H. R. MacMillan Export Company Limited on June 15th 1943 for the sum of \$93,000.00. In respect of this timber the claimant seeks compensation of \$154,500.00 on the basis that the actual value as of the date of sale was \$247,500.00, being 55,000 M feet of timber (the volume estimated by Mr. Kagetsu himself, page 25 of transcript) at a value of \$4.50 per M.B.M., the difference being the sum of \$93,000.00 already realized. On this claim the Commissioner awarded a sum of only \$18,000.00 on the basis of his finding that the stand contained only 37,000 M feet valued at only \$3.00 per M.B.M., giving a total value of \$111,000.00.

It can readily be seen that the claim and the award differ markedly both as to the value and as to the quantity of the timber.

Smith's and
Schultz's
reports.

In considering the acceptability of the tender received from the MacMillan Company prior to the time of the sale, the Custodian relied on a cruise made by Eustace Smith. Mr. Smith estimated that Block 195 contained 31,000 M feet of timber. The claim is based on a cruise made by Charles D. Schultz in late 1948. The Commissioner at page 6 of his report intimated that the difference in the volumes shown in the two cruises was due to a failure on the part of Mr. Schultz to take sufficient

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notice of the factors of merchantability and accessibility as they affected the economic conditions of the forest industry between the date of sale and the date of his cruise, and to his failure to avoid the influences of changed conditions occurring subsequently to the date of sale. At this point, the Commissioner finds that it is unnecessary to reconcile the differences between the results of the two cruises as he feels that there is another method of arriving at an estimate of the timber contents of the Block, and that is by disregarding the two cruises altogether and relying on an estimate made by Mr. Keith Shaw.

10

Government
Scales reveal
inaccuracy of
Smith's cruise.

20

The evidence from timber scales indicated that Block 195 and the adjacent Block 403 were logged together after the sale and that up to September 1948 a total of 58,752,003 feet of timber had been removed from the two blocks. From this point forward, all the Commissioner's findings in respect of this Block depend on the passing estimate made by Mr. Keith Shaw of the H. R. MacMillan Company that there was about 12,000 M feet remaining on the two areas. The actual words used by Mr. Shaw, after remarking that 58,000 M had already come off, were that he "hoped to get 70,000 M feet" (see page 913 of transcript). Mr. Shaw made no cruise -- he merely examined the area. The inaccuracy of this method of assessment is indicated by one of the witnesses -- apparently that was the old

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method of cruising timber before the modern cruising methods were adopted (see transcript page 856, Smith). There is no comparison between such an estimate and a detailed, scientific survey such as was prepared by Mr. Schultz.

10

The Government scales of timber coming off this area from the time when the scales which were filed in evidence before the Commissioner were completed (58,752,003 feet by September 1948 at about which time Mr. Shaw made his estimate) to date show how inaccurate were the figures on which the Commissioner relied.

Government scales show over 70% overrun in excess of Smith's cruise and Shaw's estimate, with logging operations still in progress.

★(See Appendix "B")

These subsequent scales show that a further 19,314,699 feet of timber has been cut up to November 1951, giving a grand total of 78,066,702 feet for the two Blocks.★ And the logging has still not been completed. From this it is clear that there has already been a 61% overrun on the very estimate which the Commissioner used as the basis for his award to the claimant in respect of this Block.

30

Taking a more precise figure for Mr. Shaw's estimate -- 11,248,000 feet (70,000,000 less 58,752,000) -- the percentage of overrun is found to be 71.7%. This rough estimate of Mr. Shaw's is the basis of the Commissioner's finding with respect to Block 195 and furthermore, although this estimate has already been exceeded by nearly 72%, logging operations are still in progress.

1

In addition, the comparative smallness of the volumes shown as cut during 1951 is fully explained by the fact that adverse logging conditions seriously limited the duration of the logging season in that year. An exceptionally dry summer produced a fire hazard to combat which the Forest Branch of the Government curtailed logging operations over a considerable period.

10

With regard to Mr. Smith's cruise of Block 195 the following points should be stressed:

In the first place, it is scarcely credible that from 1923 when Mr. Smith made his first cruise of the Block until 1940 when he checked this cruise, the volume of timber on Block 195 should have increased only 1,000 M feet, from 30,000 M feet to 31,000 M feet, especially when one considers the increase in utilization which took place in the interval.

20

Further, any favourable assumptions that might be made with regard to the intensity of a cruise which reveals a 3% increase in the timber content of a large tract of land are in marked conflict with the fact that two years later it was again necessary for Mr. Smith and Mr. Shaw to visit the area in order to check for "peeler" logs.

30

The Commissioner makes the same criticism of the results disclosed by the timber scales and the estimate made by Mr. Shaw that he used as a

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The Commissioner adjusts the timber scale figures and Shaw's estimate by 10% to conform to 1943 conditions and yet uses this point to attack Schultz's cruise.

basis for disregarding altogether the Schultz cruise: namely that they were based on economic conditions which varied considerably from those existing at the date of the sale. However, in the case of the scale reports and Mr. Shaw's estimate, the Commissioner makes an allowance for the variation in the conditions. He says at page 9 of the report: "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". No reason is given for not applying this discount to the extremely accurate Schultz cruise.

10

Schultz cruise was in fact based on 1943 conditions.

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If this were done, on the basis that the 55,000 M feet found by Mr. Schultz equalled 110% of the volume in 1943, an approximate figure of 50,000 M feet for 1943 is arrived at. Further, while we are prepared if necessary to agree to the 10% adjustment factor for varying economic conditions, it should be stressed that the Schultz cruise was in fact made on the 1943 basis and generous allowances were made in respect of breakage and logging conditions which are noted on page 1 of the Schultz Cruise Report, Exhibit 15, being 30% for cedar, 20% for hemlock and balsam and 15% for fir.

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In the course of the inquiry it was disclosed that a cruise of this area had been made in 1925 by A. F. Sheehan who found a volume of some 49,720 M

1
Sheehan's
cruise.

feet. As this cruise was made at the same time as Smith's earlier cruise and on the same basis of utilization and as, if accurate, it would dovetail very well with Mr. Schultz's findings with regard to the area, it was necessary for the Government's case that the value of Mr. Sheehan's cruise be discounted. After Mr. Smith had seen Mr. Sheehan's Cruise Report and had "talked it over with him" (transcript, page 845, line 28) Mr. Sheehan wrote a letter dated April 5th 1943 recapitulating the position taken in his Cruise Report. Unfortunately Mr. Sheehan's testimony was not available to the Commission as he was not within the jurisdiction. However, a careful examination of Mr. Sheehan's original report, which is Exhibit 5, indicates that his subsequent letter (Exhibit 3 to Exhibit 36) is not an explanation of it, but a refutation. As suggested by Counsel for the claimant at the hearing (transcript page 1223) the whole tone of Mr. Sheehan's letter is that of a man who has recanted at the suggestion of someone else. While the letter says that the 1925 cruise was made with a view to "logging and milling the timber right there on the ground" and this is the view taken by the Commissioner in his reasons, an examination of the Cruise Report reveals otherwise.

20
The Sheehan report is set forth on five pages:

30
The first page is an analysis in the form of a table showing the results of the cruise and indicating that 62% of the timber was fir.

1 On the second page are some remarks by Mr. Sheehan. He refers to 6,000 M feet of fallen timber which he has not included but which could be taken out if a milling operation were carried on in conjunction with the logging. The tenor of all of Mr. Sheehan's other remarks concerning milling in conjunction with logging are along the same line as this one, namely that while the report is an ordinary cruise made without reference to the use of a mill in the woods Mr. Sheehan was strongly of the opinion from his examination of the area that such an operation would greatly increase the output to be obtained from the Block. The 6,000 M feet is not included but "if the timber is milled in conjunction with the logging ... all of this down timber (should be) accounted for" (Exhibit 5, page 2). The report continues: "There is another additional supply on the ground that if properly handled could be added to the estimate." "If a small portable mill were to be put in ... "

20 For the purposes of his cruise, Mr. Sheehan divided the Block into Lots A, B and C: On Lot A he found 17,110 M feet of timber and he finds the fir to be 25% No. 1. He adds the following remark: "If a mill were operated in conjunction with the logging, the percentages of No. 1 stock would be increased ... " Mr. Sheehan then remarks what a fine output could be had from the comparatively small hemlock, larch and cedar if a sawmill were employed.

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On Lot B Mr. Sheehan finds 16,390 M feet of timber containing fir which will run to 40% No. 1. and that "if operated in conjunction with a mill the No. 1 stock will be increased ... " There are similar remarks with reference to Lot A about the hemlock, larch and cedar.

On Lot C Mr. Sheehan found 16,220 M feet, but he makes no reference to a sawmill.

10

This view of the Sheehan Report was forcibly presented in argument by Counsel for the claimant and at the time of the hearing the Commissioner appears to have agreed with it (transcript, page 1224, lines 17 to 21). However, in his report he discounts the Sheehan cruise altogether (page 8).

(b) Value:

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Kagetsu's holdings were Crown granted and therefore royalty free.

With regard to the value per M.B.M. of the timber on Block 195 and on the Deep Bay property, there are certain factors which are common to both: In the first place, both of these tracts were part of the small percentage of Crown granted timber existing in the Province and were hence royalty free, a circumstance which effects a saving to the operator of about \$1.00 per M.B.M. (transcript, Byers at page 331, Brown at page 577). Further, the fact that the timber was Crown granted resulted in the additional advantage that in normal times the logs could be exported to more profitable markets (Schultz at page 1031). This advantage was considered by Mr. Brown (page 570) to have an

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added value of 50¢ to \$1.00 per M.B.M.

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Some attempt was made by Counsel for the Crown to draw a large distinction between sales made on a lump sum basis and those made on a stumpage basis, that is according to the amount of logs actually produced. However, while a lump sum payment produces immediate cash, the frequency with which overruns on the timber occur and the extent of those overruns when the cruise on which the sale is based is unreliable or outdated, produce the result that in the long run sales on a stumpage basis net more money to the vendor. Further, contracts can be written on terms that the stumpage payments shall be dependent on the market price for logs in which case the benefit of a future rise in the log market is not lost to the vendor. On the whole, the manner of contract is very much dependent upon the parties negotiating and the circumstances of the particular case, which is shown by the wide variation between the estimates of the expert witnesses on this point. Both Mr. Pretty and Mr. Byers considered that a 10% discount for cash was a reasonable amount to be allowed (transcript, pages 635 and 326 respectively)

20

Quality of
timber unusually
high. 30

There was a good deal of testimony to the effect that Block 195 contained a very high quality stand of timber, and there was also evidence that the situation was favourable for logging. Mr. Smith

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in his report (Exhibit 53) says that he found "good logging grounds". Mr. Schultz testified that the nature of the ground made for easy road construction (transcript, page 516). With regard to the quality of the timber itself, Mr. Frederick Brown, a logger of some twenty-eight years' experience was able to say after an examination of the scales of the timber coming off this Block that the fir and hemlock were of a very good grade (page 578).

10

Similar evidence was given by William Byers, timber broker and consultant and former Chief Scaling Supervisor of British Columbia. In his opinion, it was a very desirable type of timber as it contained percentages of the higher types of timber considerably above average (pages 264-265). Mr. Sheehan's Report (Exhibit 5) indicates that he thought this a very high grade of timber and this is especially apparent when one considers the relatively inferior utilization prevalent at the time of his cruise.

20

Cash value
well over
\$3.00 per M.

The actual value of the timber on Block 195 at the date of the sale was considerably in excess of \$3.00 per M.B.M. which was the basis on which it was sold to the H. R. MacMillan Export Company Limited.

30

The effective date of sale of Block 195 was found by the Commissioner to be June 15th 1943 (page 4 of his report). As evidence of the price of standing timber at the date of sale of Block 195, reference is made to the figures given on page BB29 of Exhibit 55, the Report of the Forest Branch for 1943, showing the average price on Government timber sales

1 during that year. The average price per M.B.M. of various species sold in the Vancouver Forest Area was:

Fir	\$2.76
Cedar	\$2.95
Hemlock	\$1.48
Balsam	\$1.42

10 Making allowances for royalty, value of exportable feature, and a 10% reduction for cash sale, we have the following:

	<u>Stumpage</u>	<u>Royalty</u>	<u>Export</u>	<u>Total</u>	<u>Total less 10% for cash</u>
Fir	2.76	1.22	.75	4.73	4.26
Cedar	2.95	1.22	.75	4.92	4.43
Hemlock	1.48	.60	.75	2.83	2.55
Balsam	1.42	.60	.75	2.77	2.49

20 It cannot be disputed that 10% would be the maximum deduction to be allowed for cash. The H. R. MacMillan Company acquired this timber for \$3.00 per M.B.M. and were selling it, on the basis of the prices given by Mr. Shaw at page 902, to the Stoltze Logging Company for an adjusted average price of \$3.12 per M.B.M. If the deduction for cash is greater than 10%, the H. R. MacMillan Company would in effect be selling this timber for less than they paid for it, which is scarcely credible.

30 If these prices are applied to the percentage volumes found by Schultz, namely 39.6% fir, 32.9% hemlock, 13.7% balsam, 12.6% red cedar, 0.1% yellow cedar and 1.1% pine, it is found that the average price for the timber is \$3.43 per M.B.M. But it

1 must be remembered that this determination is made without consideration of the following factors:

- 10 (a) the figures taken from the report were the average figures only, whereas the evidence clearly indicated that the quality of the timber in Block 195 was well above average and the exhibits from which these average figures were taken show that the prices actually averaged as high as \$6.50 for fir and cedar and \$5.50 for hemlock and balsam in the higher grades. Taking for example the fir which Mr. Schultz testified averaged over the Province in 1944 3% No. 1, 52% No. 2 and 45% No. 3. The consolidated scale sheet attached to this memorandum, which has been taken from the Government scale records for Blocks 195 and 403, shows the fir to be 10.6% No. 1, 62.6% No. 2 and 26.8% No. 3. The difference between these grades and those for the yearly average is obvious. Suffice it is to say that the average prices quoted above should be sharply increased before they can be applied to the timber in Block 195.
- 20 (b) The competition in bidding for the sales which are recorded in the report was severely limited because the size and nature of the stands meant that neighbouring operators only were interested (transcript, Byers, pages 275 and 357).
- 30 (c) The buyer would obtain title to the land in

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the case of a purchase of Block 195, whereas in the ordinary timber sale no title passes.

- (d) There were onerous covenants limiting the time within which the timber could be held before being cut in the case of the Government timber sales. The fact that similar covenants were exacted by the Custodian should be kept in mind when considering whether the sale price obtained by him reflected the fair market value of the property.

10

These additional factors are sufficient reason to increase the appraisal of the timber on Block 195 to \$4.50 per M.B.M.

Mr. Keith Shaw of the MacMillan Company gave evidence to the effect that shortly after the purchase of Block 195 by his Company, namely on August 10th 1943, a contract was executed by his Company with the Stoltze Logging Company whereby the latter Company was to buy the logs off Block 195 at the following prices:

20

Fir and Pine	\$4.50 per M.B.M.
Cedar and Yellow Cedar	\$3.25 per M.B.M.
Hemlock and Balsam	\$2.00 per M.B.M.

However, these stumpage prices varied and were to be increased to the current prices at the time the logs were scaled. At page 921 to 923 the Commissioner gives a resumé of the provisions of the stumpage contract made between the MacMillan and the Stoltze

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1

Companies, and even with the valuable provision that the price was to be on a sliding scale, he concludes with the remark that the provisions of the contract imposed an unusually heavy burden on the logger over and above what is normally in a logging contract. The figures above quoted and which were at one time the price at which the timber was sold to the Stoltze Company indicate an overall price per M.B.M. of approximately \$3.12 on a percentage analysis of the Block from cutting records of 40.0% fir and pine, 10% cedar and 50% hemlock, balsam and others. Add to the figure of \$3.12 the cost of the abnormal impositions upon the purchaser provided for in the contract and it will be seen that the contract is more inclined to show a value of \$4.50 per M.B.M. than a value of \$3.00.

10

The sale of the Deep Bay timber to Fletcher was on a similar basis.

20

2. The Deep Bay Property:

(a) Standing timber:

(1) Volume:

Smith's cruise
only a check.

In the case of the Deep Bay property, liquidation proceeded on the basis of the estimate of Eustace Smith of 16,598 M feet as the volume of timber remaining on the land at the time of the sale. The evidence clearly shows that Mr. Smith's cruise of the area was made merely for the purpose of ascertaining the minimum volume that it

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contained. This is apparent from one of his reports to the liquidators (Exhibit 45, schedule 2) in which he says:

"I made a general examination of the timber ... and while this was not a systematic cruise, the check I made should give a fair idea of the amounts accessible ... My check would indicate that the cruise ... is all there."

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Further, the following appears in his testimony at page 863 of the transcript:

"THE COMMISSIONER: The figure you estimate is a confirmation of the prior cruise rather than your own figures?

A. That's right. After I had cruised it I felt sure the timber was there."

E. & N. estimates
and Smith's cruises
notoriously low.

The testimony concerning the accuracy of the E. & N. cruises of the kind which Mr. Smith was checking indicates that it was quite usual for a purchase of E. & N. timber to cut a large overrun above the estimate which had formed the basis for the selling price. (pages 27, 28, 29 and 38, Kagetsu; and 383, Allison). There was also testimony to the effect that Eustace Smith's cruises were notoriously low (page 631, Pretty).

Schultz's cruise is
a much more thorough
examination.

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It will be recalled, as mentioned previously, that the Commissioner stated ^{that} a 10% greater volume of then merchantable timber will have been removed in 1947 than a competent cruiser would

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have stated to be merchantable in 1943. The overrun on Mr. Smith's cruise is nearly 100% and it would appear therefore that, on the Commissioner's own reasoning, Mr. Smith would not be classified as a competent cruiser.

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The two cruises were made on entirely different bases -- one was a rough check, the other a careful inventory. Mr. Smith took five days with one other man (transcript, page 854) -- Mr. Schultz took eighteen days with three other men (page 1000). The cruises are in no way comparable.

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On page 2 of Exhibit 61, which is Charles D. Schultz's report on his inventory of the timber in the Deep Bay area, it is shown that in making his estimate of the timber content of the Blocks Mr. Schultz deducted 30% for cedar and hemlock and 20% for balsam and fir to cover "breakage and defect from inspection of the ground and timber conditions". The total deduction on this account was 11,143 M feet.

While Mr. Schultz included in his cruise a report on the volume of timber between 12" and 18" D.B.H., the claimant did not include any amount in respect of this timber in his claim, because of the possible doubts that might be raised as to its "accessibility".

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The Government scale records show that from the time of the sale of the Deep Bay property to date, the following amounts of timber have

Government scales
prove an overrun
of nearly 100%

been removed:

To December 1948	16,721,024 ft. (Exhibit 22)
Jan. - Dec. 1949	5,852,700 ft. (Appendix "A")
Jan. - Dec. 1950	6,002,982 ft.
Jan. - Nov. 1951	<u>2,654,128 ft.</u>
TOTAL to Nov. 1951	<u><u>31,230,834 ft.</u></u>

In addition, sufficient timber for several years' operating remains. The enforced closures due to exceptionally dry weather seriously curtailed the logging season during the year 1951 and this accounts for the drop in the volume cut in that year as compared with the previous years.

Subsequent events are tending more towards substantiating Mr. Schultz's findings of 56,500 M feet than either Mr. Smith's estimate of 16,598 M feet or the Commissioner's finding of 19,500 M feet, which included 2,500 M felled and bucked timber. It will be noticed that the Commissioner disregarded Schultz's cruise because he thought it showed 100% more than the E. & N. estimate, and yet the Government scales already show almost 100% more than Mr. Smith found in his estimate.

The evidence adduced by the claimant and the reports of the Forest Branch of the British Columbia Government prohibits any explanations of the difference between the reports of Mr. Smith and Mr. Schultz on the basis that Mr.

1 Smith properly excluded hemlock on his cruise of the area. In fact, the market for hemlock was very high in both 1943 and 1944 (transcript pages 99 and 105, Burke), so much so in fact that the large New Westminster Mill of the Alaska Pine Company cut hemlock in the main rather than fir in the early forties (pages 847-848, Smith). Some logging operators took out hemlock only in 1943, one being the Pioneer Logging Company at Port McNeill (page 1095, Schultz). The report of the Forest Branch for 1943 (Exhibit 55 at page 22) shows that hemlock ranked as the next species to fir in the volume of timber cut in that year.

10 One of the reasons for the large divergence between Mr. Schultz's findings and those of the Commissioner is to be found at page 11 of the Commissioner's Report, lines 12 to 16. The Commissioner says:

20 "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 16,000 M feet, further that additional timber remained of which no estimate was furnished at the inquiry."

and at lines 31 to 32:

30 "... leaving an undetermined quantity of standing timber."

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The statement that there was no evidence of the remaining timber is not correct. Reference is made to Mr. Schultz's report of his findings (Exhibit 61, page 5) which indicates that Mr. Schultz cruised 29,999 M feet of timber 18" D.B.H. and over, and estimated an additional 9,800 M feet in areas which he had not cruised.

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Commissioner's finding means 4.5 million feet in 1948 when Schultz cruised 29.9 million and estimated a further 9.8 million.

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The Commissioner's finding in respect of the Deep Bay timber was 17,000 M feet of standing timber as at the date of sale (bottom of page 11 of his report). The actual amount of timber scaled from the date of sale to December 1948 was 16,721,024 (Exhibit 22), but 2,500 M feet of this was already felled and bucked, leaving the amount cut at 14,221,024 feet. On the generous assumption that up to the time of the Schultz cruise in November 1948 only 14,000 M feet had been cut and for the sake of argument taking the Commissioner's adjustment figure of 10% and applying it over the whole period from the time of the sale, in order to translate the 14,000 M feet into 1943 figures we find that this cut represents approximately 12,500 M feet of the 17,000 M feet found by the Commissioner. If we take Mr. Schultz's finding -- 29,999 M feet cruised and 9,800 M feet estimated, making a total standing timber of 39,799 M feet and again merely for the sake of argument, applying the Commissioner's

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10% factor, we arrive at a comparable 1943 figure of 36,000 M feet for the whole or 27,000 M for the cruised timber alone.

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This means that if the Commissioner's findings are to stand, the only conclusion can be that while the Commissioner's finding indicates that only 4,500 M of timber remained standing at the time of Mr. Schultz's cruise, Mr. Schultz in fact cruised 27,000 M feet of standing timber and estimated the total content remaining at 36,000 M feet -- and this is after making every concession against the accuracy of the Schultz report, although, as indicated above, Mr. Schultz conservatively has made very generous allowances in this respect in the report itself.

Government scales as indicated above already show that 31,230,834 feet have been removed as against 19,500 M the Commissioner estimated the stand to contain.

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There is one further matter in respect of which the Commissioner has fallen into error in assessing the volume of the timber on the Deep Bay property. At page 11 of his report, lines 19 to 26, the Commissioner sets out what is to his mind strong evidence of the inaccuracy of Mr. Schultz's report:

"The estimate by Schultz shows half as much timber on three blocks, two of which were partly logged, as the entire area was estimated to contain when bought by the claimants. Conservative as the E. & N. cruises are shown to have been, it is not conceivable that the total area contained 100% more timber than was estimated by E.

1 & N. Railway Company cruises which must be the case if the Schultz estimate is accepted."

10 This then is the basis on which the Commissioner has refused to rely on the painstaking and exhaustive enquiry made by Mr. Schultz and has relied instead on the general appraisal of Mr. Eustace Smith who was however only interested in seeing whether a previous cruise was "all there" and whose cruise was not made on a systematic basis (transcript, page 829, Smith).

It will be noted that at page 11, line 3 of his report, the Commissioner says:

"There is evidence that the entire area of eleven blocks, when acquired by the claimants from the E. & N. Railway Company was estimated to contain 88,000 M feet."

20 This no doubt is the figure which the Commissioner has in mind when making his criticism of the Schultz Cruise. In fact, as will be seen from Exhibit 63, the volume of 88,552 M feet represents the total of the E. & N. cruises for eight blocks only, namely Blocks 198, 256, 267, 276, 274, 504, 566 and 617. The same exhibit shows the volume on ten blocks as 96,585,100 feet. There was evidence that up to the time of the sale by the Custodian some 112,431 M feet had been cut from Kagetsu's Deep Bay property. Add to this Schultz's estimate of the remainder at its full amount without any allowance for changed conditions,

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that is 56,520 M feet, and a total of 168,520 M feet is arrived at as the total volume both before and after the sale. The difference between this and the E. & N. cruises is 71,935 M feet, which makes the overrun 74%.

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If the 10% allowance is made on the Schultz cruise, the figure for the volume remaining at the time of the sale by the Custodian is 51,382 M feet. The total volume would then be 163,815 M feet, the difference between this and the amount indicated by the E. & N. cruise 67, 230 M feet and the percentage overrun only 70.0% which is considerably below the 100% which the Commissioner held sufficiently inconsistent with his own knowledge of the subject, of which he took judicial notice, to entitle him to disregard altogether the evidence given by Mr. Schultz as to the results of his cruise.

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As indicated above, the Government scales will in a year or so show that 100% more timber has been cut than Eustace Smith estimated the Deep Bay area to contain at the time of the sale by the Custodian. Mr. Smith's cruise was, as has been shown, based on the prior E. & N. estimate. It follows therefore that the Commissioner's premise that any cruise which shows 100% more timber than the volume at which the lands was sold by the E. & N. must be disregarded, must itself fall to the ground. The more logical attitude would be to disregard any cruise which

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1 shows 50% of the volume at which the timber is finally scaled.

10 In his comparison of the volume found by Mr. Schultz on three Blocks with the total volume disclosed by the E. & N. cruises, the Commissioner is no doubt referring to Blocks 617, 504 and 566, since Schultz shows these as containing the greatest amount of timber. The factors of merchantability and accessibility and the conservative nature of the E. & N. cruises rule out any possibility that the E. & N. cruises included timber below 18" D.B.H., and further the claim with regard to the Deep Bay property is limited as previously mentioned to timber of 18" D.B.H. and over. In order that the Schultz cruise may best be compared with the E. & N. cruises therefore the estimates for 18" D.B.H. and over only should be referred to.

20 As shown in Exhibit 61 on the consolidated table of volumes at page 26, the net volume of timber 18" D.B.H. and over which Mr. Schultz found on these three Blocks is as follows:

Block 617	18,602 M feet
Block 504	7,513 M feet
Block 566	<u>2,331 M feet</u>
TOTAL	<u><u>28,446 M feet</u></u>

30 Thus in fact Schultz has found about a quarter as much timber on these three blocks as the whole was found to contain by the E. & N. ^{cruise} /, although

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this comparison does not take into consideration so much of the 16,721 M feet as came off the Blocks between the date of sale and the date of the Schultz cruise. However, even if these three Blocks did contain half as much timber as the E. & N. cruises indicated the whole area to contain, this is not a sufficient ground on which to reach the conclusion that Schultz's estimated volume on the three Blocks is absurd in the absence of evidence that the relative areas of all the Blocks and the quality of the timber stands on each were the same. In fact, the areas on the Blocks varied from as little as 387 acres for Block 256 to 1400 acres for Block 276.

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Further, as mentioned previously the volumes estimated by the E. & N. are not a safe basis for comparison. Evidence was given that such estimates have always been low (page 383, Allison) and that systematic cruising methods were not inaugurated until 1940 (page 829, Smith). Add to this the fact that some of the sales were made as far back as 1929 when utilization was considerably lower than at the date of sale by the Custodian and it is not surprising that the claimant and his successors should find such a large overrun. Mr. Smith, while undoubtedly capable of making a more accurate cruise, was not called upon to do so on this occasion. The suspicions of Counsel for

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the claimant were at once aroused when it was noticed that the estimate by the E. & N. of the volume for Block 617, namely 7,298 M feet, was identical with the volume report by Eustace Smith for that same Block. (See Smith's letter to P. S. Ross & Son, October 24th 1944, and his report of August 16th 1923 where he says "my check would indicate that the cruise of 7,298 M feet is all there", -- schedules 8 and 2 respectively to Exhibit 45). When asked to account for this on cross-examination, Mr. Smith first denied that any reference had been made by him to the earlier E. & N. cruise (page 860, transcript), but on reconsideration he admitted that what he had done was merely to check the E. & N. cruise (page 862).

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(ii) Quality:

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With regard to the quality of the timber in the Deep Bay area, the following opinions were expressed during the course of the hearing:

The grades in fir were very much above average. (Byers, page 257)

Mr. Schultz said "it is an extensive area and it is relatively speaking an easy country". (page 1079)

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He took strong exception to the suggestion that all that remained was a salvage operation and to the suggestion that the bodies of timber remaining here were patches. (Page 1090)

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In confirmation of Mr. Schultz's description of the operation, it might be pointed out that whereas the so-called patches which formed the Deep Bay timber sale measured respectively 994, 652 and 176 acres in size (see map annexed to Exhibit 61) the average size of Government timber sales in the Vancouver district in 1944 was only 164 acres (Exhibit 56, page 36). Fair sized operations have taken place in the area for six years.

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The Commissioner has accepted Mr. Smith's classification of the operation as one of salvage, but that conclusion must surely have been reached on the basis of the volume which he found the area to contain. As already demonstrated, the Commissioner was under a misapprehension as to the evidence which had been given and his classification of the operation as one of salvage must therefore fall with his findings as to volume. In fact, as Mr. Schultz's cruise shows, one-third of the timber content of the stand remained to be cut.

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(iii) Price:

Price should
be \$4.00 per
M.B.M.

With regard to price, the evidence of sales of comparable stands of timber which occurred at or around the time of the sale of the Deep Bay property by the Custodian should be stressed. Mr. W. J. Allison, a well-known logger, referred to a purchase of 16,000 M feet of timber at

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Nanoose on Vancouver Island for a lump sum payment which worked out to \$4.93 per M.B.M. (transcript, page 367). Mr. Allison thought therefore that \$4.00 per M.B.M. was a very reasonable price for the Deep Bay stand (page 405). Mr. Schultz who had in fact seen the timber to which Mr. Allison was referring, testified that it was inferior to that contained on the Deep Bay property (pages 521, 1033). Mr. Brown gave evidence of a sale of a block of timber at Harrison Bay, British Columbia, in 1944 for a price of \$2.75 per M.B.M. This block however carried royalty and the timber from it was not exportable and in Mr. Brown's opinion it would probably have fetched \$3.75 or \$4.00 if it had been royalty-free (page 577). Further, he gave evidence of a purchase of a block in 1945 eleven miles from tidewater and very comparable to the Deep Bay property for \$4.75 per M.B.M. (pages 568 to 570). Mr. Charles N. Pretty, a timber broker, told in his testimony of a sale negotiated in 1943 on which the price was according to his calculations \$4.75 per M.B.M. (pages 623 to 627). The size of this timber was comparatively small and Mr. Pretty suggested at least \$3.75 per M.B.M. cash for the Deep Bay area timber.

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The average bids received by the Government for timber sales in 1944 were as follows (Exhibit 56, page DD37):

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Fir	\$2.57
Cedar	\$2.95
Hemlock	\$1.58
Balsam	\$1.64

When similar allowances are made as were made with regard to Block 195 (see page 15 of this memorandum) we have the following result:

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	<u>Stumpage</u>	<u>Royalty</u>	<u>Export</u>	<u>Total</u>	<u>Less 10% for cash</u>
Fir	\$2.57	1.22	.75	4.54	4.09
Cedar	2.95	1.22	.75	4.92	4.43
Hemlock	1.58	.60	.75	2.93	2.64
Balsam	1.64	.60	.75	2.99	2.69

According to the percentages of the various species found in the Schultz cruise (Exhibit 61, page 3), namely fir 32.5%, cedar 12.7%, balsam 7.8% and hemlock (in which is included all other species) 47%, the average price per M.B.M. for the stand is \$3.44.

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Again noting the factors which have not been considered in this calculation -- the better than average quality of the Deep Bay stand, the slight competition which gave rise to the figures above quoted and the fact that title went with the Deep Bay land -- it is seen that a figure of \$4.00 per M.B.M. is easily arrived at.

Additional
factors.

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There are many additional factors which, while no numerical value can be set on them in order to ascertain the exact degree in which they have

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adversely affected the value of the claimant's property, must not be overlooked if justice is to be done.

Kagetsu's operations were a going concern when he left, but not sold as such

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In the first place, the Commissioner has not set any value upon the fact that the claimant's logging operation was a going concern (transcript pages 43-44). In the words of Mr. Byers (pages 266 to 267) "it was very efficiently managed and as far as forest protection and utilization was concerned it was as good as any other" and "it was what we consider one of the better managed operations".

10% allowance for compulsory taking refused.

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Strong arguments were advanced by Counsel for the claimant that an additional award of 10% should be made for compulsory taking, as decided by the Supreme Court of Canada in Diggon-Hibben V. The King (1949) S.C.R. 712. The Commissioner has referred to this case at page 5 of his report but he merely says that the case is not applicable to sales made by the Custodian and gives no reason for this decision.

Loss of value due to personal absence of Kagetsu.

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The removal of the claimant from the field of operations upon the expropriation and sale of his property resulted in a loss to the timber operation of the benefits to be derived from the personal contacts established by the claimant. The chief one of these was an understanding between the claimant and the officers of the E. & N. Railway Company that he would have the option to purchase a large adjacent tract of timber.

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Terms of sale by
Custodian resulted
in lower price.

The terms of sale extracted by the liquidators were very unattractive to the industry (see Exhibits 28 and 46): there was to be no warranty of title, a provision for the immediate cutting of the timber (transcript, pages 726, 727, Wray) and a provision that the highest bid would not necessarily be accepted. Mr. Brown pointed out the adverse effect of the stipulation as to early logging as preventing any element of speculation for a future lucrative market from entering into the consideration of prospective purchasers and that this would have had a special value since at that time the upward trend of the timber market was well known (page 587).

10
There are certain other factors which most seriously prejudiced Mr. Kagetsu in making his claim:

Kagetsu was denied
access to his own
records.

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After the time of his evacuation, he did not have access to records which were vital to the evaluation of the various properties. He was forced to rely on his memory and to resort to guesses even at the time of drafting his initial claim (pages 93, 115, 118, 137, 180 to 181, 184, Kagetsu).

Documents missing.

Further, certain documents which would have been of assistance at the time of the inquiry were not available because they had been lost. (page 481, Baldwin, and page 738, Wray).

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For these reasons the early estimates which the claimant made as to the value and the size of

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the logging operation should not prejudice the later claim made on the basis of more detailed information.

(b) Felled and Bucked and Cold-Decked Timber:

Price should
be \$6.50 per
M.B.M.

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There was some 2,500 M. feet of felled and bucked timber in the woods at the time of the sale. Since the Commissioner's finding of \$2.50 per M.B.M. as the value of the standing timber was far too low and since the value of the felled and bucked timber is dependent on the stumpage price of the standing timber (page 13 of report), an increase should be made in the value of the felled and bucked timber equal to the amount by which the standing timber is considered to have been undervalued.

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For a stumpage price of \$2.50 per M.B.M., the Commissioner set a value of \$5.50 per M.B.M. of logs cold-decked, so that an increase of the stumpage price to \$4.00 means at the least that the value of the felled and bucked timber should be increased to \$6.50.

700 M feet of
cold-decked logs
worth an addition-
al \$3.50 per
M.B.M.

There is a further omission by the Commissioner which should be rectified. At pages 51 to 52 of his testimony the claimant pointed out that some 700 M feet of the felled and bucked logs had been piled ready for loading.

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By reference to page 2 of Exhibit 62, the proportionate cost of this part of the operation can be determined. The cost of cold-decking is estimated to be \$1.50 per M.B.M., the cost of

1 yarding alone (not including loading) can be considered as at least \$1.50 of the total of \$2.75 for the two operations. To this must be added a proportionate amount of the overhead which would very easily be 50¢. The total cost of piling logs ready for loading can therefore be considered to be \$3.50 per M.B.M. and for the 700 M feet of timber which had undergone that further stage of the logging operation, a further sum of \$2,450.00 should be awarded.

10 The award of \$12,500.00 made by the Commissioner under this heading should therefore be increased to \$18,700.00 made up as follows:

2,500 M feet at \$6.50	\$16,250.00
700 M feet at \$3.50	2,450.00
	<u>\$18,700.00</u>

(c) Immature Stands:

20 The value of this item as determined by the Commissioner at \$1.50 per acre (page 14 of his report) is far too low and should be revised upward in line with the values shown on the letter from the British Columbia Forest Service which is copied on page 22 of Exhibit 61.

30 From this letter it is apparent that the Forest Service in estimating fire damage placed a value of up to \$28.00 per acre for sixty-year stands in 1944. The Commissioner purported to make his award on the basis of the value of these lands to the claimant, and yet the value which the Commissioner

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has found is far below their value to the claimant.

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It must be remembered that the claimant continued to pay taxes on these lands and in some instances had done so over a great number of years. The price of Government wild lands was \$5.00 per acre (transcript page 1168, Smith) and even if that value were set upon the claimant's land the award would have been \$27,500.00. Mr. Schultz's report shows a value of \$7.75 per acre on the average (Exhibit 61, page 20) based on Forest Service values.

In these circumstances, the award should be at least \$5.00 per acre and the full award of \$43,225.00 as claimed and as supported by evidence should be given full consideration.

3. Logging Railway on Deep Bay Property:

Logging
railway had
peculiar
value to
claimant

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The railway line at Deep Bay had a peculiar value to the claimant. Smaller logging operators, whose numbers increased greatly during the war, preferred to invest their money in trucking operations because of the smaller amount of capital and planning required for a successful operation. The majority of the smaller operators were not experienced in railway operations and this meant that the Deep Bay property had a greater value to the claimant or to any other logger who had had that experience.

Railway was
worth at least
50¢ per M ft.
of timber.

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The claimant places a value of 50¢ per M feet of timber on the railway that existed at the date of sale. It must be pointed out that, contrary to the Commissioner's understanding (page 15 of his report), this value has not been set with a view to logging any lands other than those which

1 are the subject matter of this claim. Mr. Eustace Smith, although he did not himself consider it feasible to use the railway, conceded that if put into use, it would have a value of 50¢ on every M feet of timber for which it was available (transcript page 807). Mr. Allison, a logger very familiar with railway operations, gave testimony to the effect that just prior to 1944 railway logging was supposed to be economical (page 367). At page 368 he testified that his company computed that a railway line
10 had a value of 10¢ per mile per M feet of available timber. As the Deep Bay property contained eight and one-half miles of standard gauge railway, a claim of 85¢ per M feet would be justified.

Further, there was no evidence given as to the claimant's intention of converting to truck hauling, and judging by the fact that he had just spent \$4,000.00 for a brand new speeder and by the success of the operation under his own management, it is clear that he had every
20 intention of continuing to run a railway operation.

The value to the owner can therefore be considered to be 50¢ times 56,520, or such other amount as may be determined as the amount of standing timber remaining at Deep Bay at the time of sale.

Even if it is the value to the purchaser which is considered, which it is not, the value of \$1000.00, set by the Commissioner for the four and one-half miles of road bed actually used, is too low. The amount awarded by the Commissioner works out at \$225.00 per mile. The
30 opinions as to the cost of roads in the Deep Bay area varied, but the figures \$6,000.00 and \$10,000.00 (page

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1164) would seem to cover the range of opinions. Mr. Smith considered that the "break through" could be done for \$4,000.00 per mile but that further surfacing work would be required. Even if it was necessary to widen the rail grade, the grade itself could not have had a value of less than \$2,500.00 per mile, making a total value for the four and one-half miles utilized of \$11,250.00.

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The fact that the railroad was not itself sold is not conclusive evidence of the fact that it had no value. Astute purchasers, like the officers of the H. R. MacMillan Company, realized that by not bidding for the railroad, they would receive the use of the road bed gratis.

4. Buildings:

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Kagetsu claimed for the value of his buildings, which consisted of 20 family residences, 10 bunk houses, a community hall, a new office, and eight other buildings, the sum of \$4,000.00. They were insured for \$10,000.00. (transcript, page 52, Kagetsu).

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The Commissioner points out (page 14 of his report, lines 30 to 33) that various witnesses testified that these buildings were not suitable for Occidental crews (principally because the bunks were short) and were therefore valueless to an Occidental purchaser. However, they had a very real value to the claimant and, although the Commissioner makes a passing reference to this as a basis for compensation, he recommends an award of a mere \$1,000.00, an obvious sop without any foundation in the evidence. This figure therefore should be revised upward to \$4,000.00.

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5. Costs:

In preparing his claim and conducting the hearing before the Commissioner, the claimant has incurred expenses in excess of \$30,000.00, apart from Counsel fees. The Commissioner, however, obviously through an oversight, has failed to make any recommendation as to costs.

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In the case of some of the claims, the award as to costs has been made on the basis of 5% of the total awards, but this is completely unsatisfactory in the present case, which was the largest claim before the Commission in British Columbia. The claims as to which the percentage was applied were almost entirely claims in respect of farming properties of small value and values were easy to determine. In those cases, no questions of increased utilization of timber, scaling, fluctuating market values, timber estimates and so on, arose.

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The hearing went on for sixteen days and its detailed and complex nature necessitated the collecting of a mass of technical and expert evidence. More especially was this so because Kagetsu himself had, through the action of the Government, been forced to be absent from his operations for such a long period.

The value and importance of this evidence and particularly the major item of the Schultz cruise is borne out by subsequent events, for the Government records of the timber actually cut now prove Schultz's careful estimates to have been entirely accurate.

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The proper basis for the settlement of the claim for costs is to make allowance for actual disbursements,

1 including travelling expenses and of course the costs
of liquidation.

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APPENDIX "A"TIMBER SCALED FOR T'SABLE RIVER LOGGING COMPANY
UNDER TIMBER MARK 2K9 IN F.B.M.

(Exhibit 22 Figures brought up-to-date)

	Mar - Nov 1946	Jan - Dec 1947	Jan-- Dec 1948	Jan - Dec 1949	Jan - Dec 1950	Jan - Nov 1951	Totals
Fir							
#1	113,489	325,136	384,142	258,508	263,728	146,489	1,491,492
#2	1,308,632	1,532,655	2,425,077	1,902,943	2,380,671	822,311	10,372,019
#3	611,103	407,424	1,179,066	1,157,388	1,246,673	291,118	4,892,772
TOTAL	2,033,224	2,265,215	3,988,215	3,318,639	3,891,072	1,259,918	16,756,283
Cedar							
#1	72,518	144,809	12,861	41,193	84,422	19,346	375,149
#2	573,992	1,050,391	354,546	358,039	396,952	217,933	2,951,853
#3	455,187	667,435	646,138	518,246	665,819	216,212	3,169,037
TOTAL	1,101,697	1,862,635	1,013,545	917,478	1,147,193	453,491	6,496,039
Hemlock							
#1	22,198	63,865	51,030	51,358	112,534	32,082	333,067
#2	149,241	625,703	177,038	166,872	265,588	108,115	1,492,557
#3	400,528	876,093	392,231	719,365	310,998	388,355	3,087,570
TOTAL	571,967	1,565,661	620,299	937,595	689,120	528,552	4,913,194
Balsam							
TOTAL	397,774	617,655	300,097	463,971	257,021	312,665	2,349,183
Cypress							
#1			1,985		1,051	3,031	6,067
#2		31,274	33,444	10,405	512	17,080	92,715
#3	8,727	80,387	97,751	66,600	3,307	47,172	303,944
TOTAL	8,727	111,661	133,180	77,005	4,870	67,283	402,726
Pine							
#1				1,322			1,322
#2	619	9,949	19,749	49,358	1,297	18,180	99,152
#3	22,941	26,519	26,715	40,363	1,667	14,039	132,244
TOTAL	23,560	36,468	46,464	91,043	2,964	32,219	232,718
Others							
TOTAL	10,094		12,886	46,969	10,742	-	80,691
GRAND TOTAL	4,147,043	6,459,295	6,114,686	5,852,700	6,002,982	2,654,128	31,230,834

APPENDIX "B"

TIMBER SCALED FOR STOLTZE LOGGING CO. LTD. UNDER TIMBER MARK 1C6

(Exhibit 23 brought up-to-date)

	Feb - Dec 1944	Jan - Dec 1945	Jan - Dec 1946	Jan - Dec 1947	Jan - Dec 1948	Jan - Dec 1949	Jan - Dec 1950	Jan - Nov 1951	Totals
Fir									
#1	81,251	553,026	776,770	604,130	800,049	309,818	69,101	123,296	3,317,441
#2	3,393,636	2,887,834	2,939,085	2,900,708	2,686,995	2,440,392	1,138,298	1,178,864	19,565,812
#3	1,407,226	920,978	1,101,860	1,439,071	1,245,839	989,182	629,660	639,114	8,372,930
TOTAL	4,882,113	4,361,838	4,817,715	4,943,909	4,732,883	3,739,392	1,837,059	1,941,274	31,256,183
Cedar									
#1	6,012	77,362	281,007	173,725	37,002	31,915	3,085	16,904	627,012
#2	210,843	715,637	1,650,139	1,022,661	607,303	218,942	75,333	97,568	4,598,426
#3	468,019	480,726	1,008,924	892,132	603,491	374,696	242,360	215,591	4,285,939
TOTAL	684,874	1,273,725	2,940,070	2,088,518	1,247,796	625,553	320,778	330,063	9,511,377
Hemlock									
#1			173,344	171,198	65,485	61,937	12,464	6,135	490,563
#2			703,714	1,015,573	690,760	670,097	198,893	85,949	3,364,986
#3			1,777,399		974,475		842,889	334,328	3,929,091
Ungraded	3,448,950	2,242,028	1,073,982	3,766,046	1,879,727	2,669,271			15,080,004
TOTAL	3,448,950	2,242,028	3,728,439	4,952,817	3,610,447	3,401,305	1,054,246	426,412	22,864,644
Balsam									
TOTAL	32,786	569,580	4,079,933	4,391,897	2,286,804	743,363	19,631	64,525	12,188,519
Cypress									
#1			11,316	54,797	25,258	7,007			98,378
#2		1,976	61,318	240,054	86,656	9,511	2,361	360	402,236
#3		3,243	57,369	316,423	116,841	11,082	2,388	4,383	500,647
TOTAL		5,219	130,003	611,274	228,735	27,600	4,749	4,743	1,012,323
Pine									
#1	1,238	6,318	2,194		4,461	3,988			14,211
#2	124,639	118,971	47,610	10,282	42,927	78,315	44,154	1,258	468,156
#3	67,525	59,112	23,862	10,157	30,086	52,741	33,807	625	287,915
Ungraded			110,750	223,577					334,307
TOTAL	193,402	184,401	184,416	244,016	77,474	135,044	77,961	1,883	1,098,597
Others	2,483				19,770	109,006	3,800		135,059
GRAND TOTAL	9,244,608	8,636,791	15,880,576	17,232,431	12,203,909	8,781,263	3,318,224	2,768,900	78,066,702