

148587

No. J. R. 10-410-45

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A) Department Justice
Ministère

B) File No. 148587
N° du dossier

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A) Letter dated: _____
Date de la lettre: _____

B) Memorandum dated: _____
Date de la note: _____

C) Judgment dated: _____
Date du jugement: _____

D) Other material dated: _____
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PAC Approval No. Approbation des APC No. <u>88/002</u>		Transfer to Historical Branch of P.A.C.* Dépôt à la division historique des A.P.C.*	
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À CONSERVER DANS CE DOSSIER

TO BE KEPT IN THIS FILE

157

WRJ/LB

10th May,

45

J.R. 10,410-45
Re: Lease - Japanese Language
Ass'n., Vancouver, B.C.

Dear Sir:

I acknowledge your letter of the 30th ultimo herein and I regret that it was impossible to let you have a reply thereto before last Thursday as requested by you.

You ask me to reconsider the advice given by me to the Department of National Defence on April 12th last with reference to the Japanese Language School to the effect that there cannot be a valid lease between the Secretary of State as Custodian of Enemy Property and His Majesty.

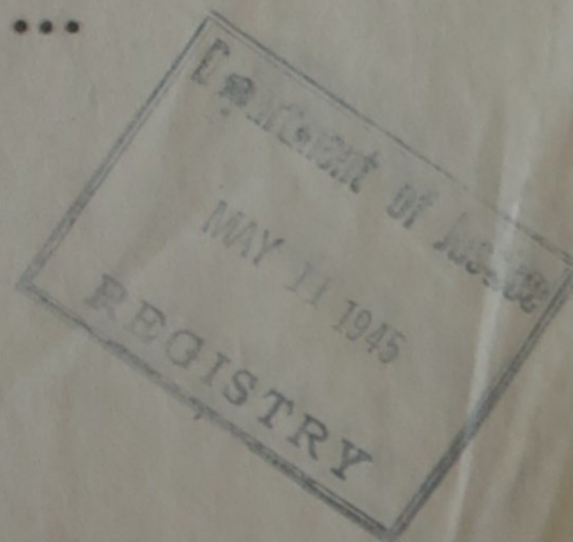
My understanding is that the Trading with the Enemy Regulations (1943) are applicable to the Japanese property held by the Custodian insofar as this question is concerned.

Section 6 of the Trading with the Enemy Regulations appoints the Secretary of State to receive, hold, manage, etc., property vested in him by the regulations and states that "he is hereafter referred to as 'the Custodian.'"

The situation briefly is that property in Canada which, prior to the coming into force of the regulations, belonged to enemy aliens has by the regulations been vested in the Secretary of State. The ultimate disposition of such property is of course left until after the peace treaty has been signed. The Secretary of State has no legal existence or status apart from that of the person by whom the office is held from time to time. Unless, therefore, the property is vested in him as a representative of the Crown for convenience of

...

G.W. McPherson, Esq.,
Executive Assistant,
The Custodian's Office,
Department of the Secretary of State,
Ottawa.



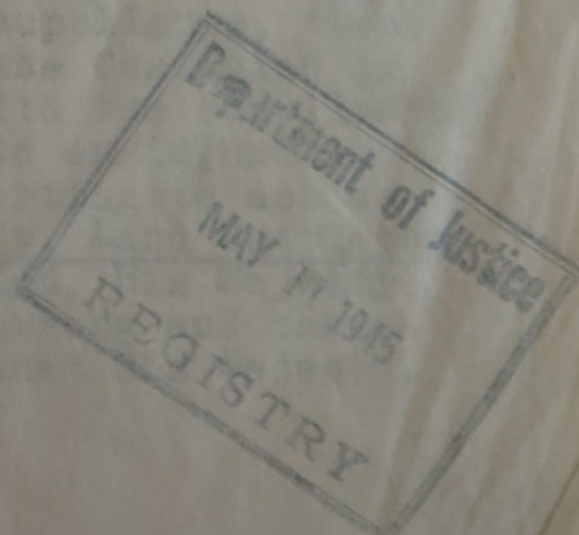
administration, it must be vested in him personally. I have been able to find no suggestion in the regulations that it is vested in him as trustee. Not only are there no beneficiaries specified, but quite clearly the former owners have no interest of a legal nature in the property. No one would suggest that the Secretary of State has any personal right to the property. I am therefore of opinion that it is vested in him as an officer of the Crown. This is the view I understand Mackenzie J.A. to have taken in the Shawaga case, (1943) 2 W.W.R. 188, when he said that the property was vested in the Custodian "as an officer of the Crown" so that "he may deal with them for the purpose of the 'welfare' or 'benefit of Canada in its prosecution of the war.'"

I might also point out that this is the view that was held in this department in 1943 at the time the present consolidation of the Trading with the Enemy Regulations was prepared and in this connection I have to refer you to paragraph (k) of my letter of August 6, 1943 where I pointed out that it was not accurate to describe the Custodian as "the Secretary of State for Canada acting in his capacity as Custodian."

In the Ritcher case, 1943 Ex.C.R. 64, and in the Japanese Petitions of Right, the Attorney General raised the point of law that a petition of right would not lie against the Crown in respect of property administered by the Custodian. The legal remedies available in connection with property administered by the Custodian depend in the first instance on the provisions of the appropriate regulations and quite clearly the regulations do not permit recourse by way of petition of right in the circumstances either of the Ritcher case or of the Japanese petitions.

Yours truly,

In the Japanese petitions of right, you did, I believe, rely largely on the Varcoe case for the proposition that the Custodian is not an agent of His Majesty. As I understood the claim in that case, it was for a declaration against the Custodian or a declaration in the nature of an injunction. Whether or not the Custodian is an agent of His Majesty, such claims could clearly not be enforced against the Crown by way of petition of right. If the Custodian is a trustee for the purposes of the law, any claim must be against him and not the Crown. It is something unlawful which they would be entitled to do something unlawful with the property or not be able to do something with the property. On the other hand, if the law is such that no action can be brought against



WRJ/LB

OTTAWA, 30th April, 1945.

MEMORANDUM FOR THE DEPUTY MINISTER:

J.R. 10,410-45

You will remember that Mr. McPherson of the Custodian's Office telephoned you last Saturday morning questioning the correctness of the opinion given by you on April 12th last herein.

I agree with the opinion as given by you, namely, that the Custodian is merely another name for the Secretary of State and that any rights or claims he may have under the Trading with the Enemy Regulations must be as agent of His Majesty. It would not appear, therefore, that he would have any claim against His Majesty as Custodian. The Order in Council vests the Japanese property in the Custodian (i.e. the Secretary of State) "as a protective measure only." These latter words would not appear to affect the legal position but are, it is submitted, only an indication of the legislative purpose.

The relevant cases are referred to by Mr. Driedger in his memorandum of April 12th. The case on which Mr. McPherson and his colleagues relied when we were revising the regulations in 1943 is the Shawaga case. Mackenzie, J.A. there expressed the opinion that the property was vested in the Custodian "as an officer of the Crown" so that "he may deal with them for the purpose of the 'welfare' or benefit of Canada in its prosecution of the war." I never could see how this supported the contention that the property was not vested in the Custodian as an agent of His Majesty.

The Ritcher case is, of course, a case under the regulations arising out of the last war and does not discuss the current regulations.

In the Japanese petitions of right, you did, I believe, rely inter alia on the Ritcher case for the proposition that the Custodian is not an agent of His Majesty. As I understand the claim in that case, it was for a declaration of trust as against the Custodian or a declaration in the nature of an injunction. Whether or not the Custodian is an agent of His Majesty, such claims could clearly not be enforced against the Crown by way of petition of right. If the Custodian is a trustee for the suppliants, then their remedy must be against him. If the Custodian is threatening to do something unlawful with the suppliants' property, then they would be entitled to an injunction against him whether or not he was purporting to act as an agent of the Crown. See Rattenbury v. Land Settlement Board, 1929 S.C.R. 52. On the other hand, His Majesty cannot, in the eyes of the law, do any wrong and therefore no injunction can be obtained against His Majesty.

See Young v.
S.S. Scotter
& Itar Chown

If the wrong is being done, it is being done by His Majesty's agents or servants and they cannot rely on any mandate from His Majesty.

It is also to be noted that by your letter of August 6, 1943, written before the last revision of the regulations, you advised the Under-Secretary of State in part as follows:

"(k) As I read regulation 6(1) and regulation 21, property is vested in the Secretary of State as such and the word 'Custodian' is merely an alternative name by which he is referred to in the regulations. The requirement in regulations 23, 24 and 27 that, when property is registered, certificates shall be issued in the name of 'the Secretary of State of Canada acting in his capacity as Custodian under the revised regulations respecting Trading with the Enemy (1943)' would not appear to be quite accurate. I would suggest that property should be vested in the Secretary of State of Canada pursuant to the Revised Regulations respecting Trading with the Enemy (1943)."

This advice was given on the assumption that the Secretary of State was acting as agent of His Majesty and that the words "acting in the capacity as Custodian" were meaningless. Your advice was, however, ignored.

It is submitted that it would take very clear words indicating a legislative intent that one of the Secretaries of State discharges duties imposed on him by statute or regulation otherwise than as an agent of His Majesty. I attach hereto your brief in the Japanese petition of right.

W.R.J.

733

April 12th,

45.

J.R. 10-410-45

Re: Japanese Language School -
1672 West First Avenue, Vancouver,
B.C. - Re: Damage to Premises.
Your: H.Q. 54-27-76-9-334 (JAG/L-3)

I have to refer to your letters of February 12th and April 3rd with reference to the above noted matter.

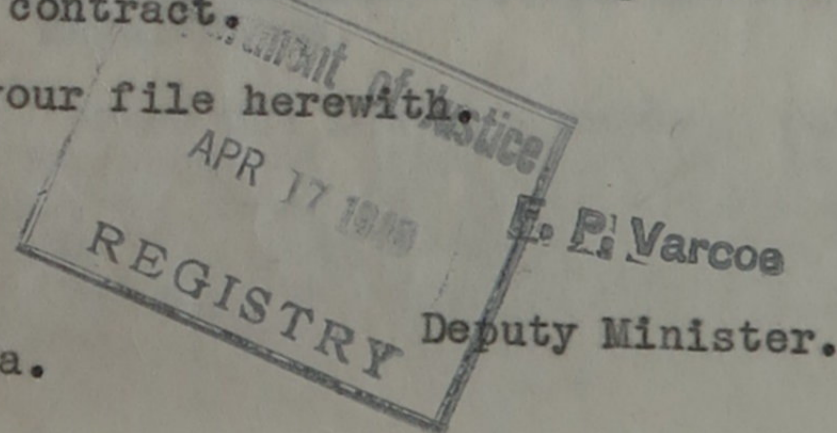
You ask to be advised whether your Department is under legal obligation to reimburse the lessor for the damages in question. Your Department, being a department of the Government of Canada, your question resolves itself into this, namely, is the Crown in right of Canada under any legal liability to the lessor, namely, the Secretary of State of Canada? The Secretary of State of Canada is himself an officer of the Crown in right of Canada and the answer to your question must, therefore, be in the negative.

With reference to your last question I suggest that this should be left to be answered in specific cases when they arise. I may add that it is possible for a lessee to be liable for damage to the demised property caused by third parties on the basis of contract. The tenant could by the terms of his contract render himself liable for damage of this character. So far as the Crown is concerned a petition of right will lie against the Crown for breach of contract.

I return your file herewith.

Encl.

The Deputy Minister (Army),
Dept. of National Defence, Ottawa.



EAD/CD

OTTAWA, April 12th, 1945.

MEMORANDUM FOR THE DEPUTY MINISTER:

J.R. 10-410-45

Re: Japanese Language School -
1672 West First Avenue, Vancouver

This is a reference from the Department of National Defence as to whether that department is under any legal obligation to reimburse the Custodian of Enemy Property for damages to certain premises leased by the department from the Custodian.

The property in question is the Japanese Language School of Vancouver and this property became vested in the Custodian under the provisions of Order in Council, P.C. 1665 of March 4th, 1942, as amended by P.C. 2483 of March 27th, 1942 (See Proclamations and Orders in Council relating to the War, Volume VI, pages 167 and 252). By virtue of an Order of the Minister of Justice, dated February 26th, 1942, all persons of the Japanese race were required to leave the protected area in British Columbia. This property was owned by the Kitsilano Japanese Language Association, all members of which are persons of the Japanese race. Regulation 12 of the above mentioned Order in Council provides inter alia that property which the owner on being evacuated is unable to take with him "shall be vested in and subject to the control and management of the Custodian". Sub-section (3) of this regulation provides that for the purposes of the control and management of such property the Consolidated Regulations respecting Trading with the Enemy shall apply mutatis mutandis to the same extent as if the property belonged to an enemy within the meaning of the Consolidated Regulations.

By a document, dated the 1st of November, 1943, "the Honourable the Secretary of State of Canada acting in his capacity as custodian under the revised Regulations respecting Trading with the Enemy (1943)" purported to lease to "His Majesty the King represented by the Honourable the Minister of National Defence" the property in question from "month to month from the date hereof, but not to exceed the period of one year" at a monthly rental of \$50.00 payable in arrears. The lease contains a covenant that the lessee will at all times during the continuance of the lease keep and at the expiration of the lease will yield up the demised property "in good and tenantable repair, accident and damage to the building from fire, storm, tempest or other casualty and reasonable wear and tear only excepted". The building was no longer required by military authorities and was, therefore, allowed to stand vacant with the result that vandals broke into the building and caused substantial damage. Your opinion is requested whether the Department of National Defence is under any legal obligation to reimburse the Custodian for the damages. A further general question in the following terms is asked:

" It is understood that there is a general rule that the Crown is only legally liable where there has been

.....

negligence on the part of servants or agents of the Crown and members of the armed forces. May advice be received, please, whether there is a rule of law that a tenant of a property is legally liable for damages to leased property caused by third parties, regardless of negligence of the tenant, and if so, whether such rule of law would apply against the Crown."

With regard to the first question I am of opinion that there is no such liability as is suggested by the Department. It is clear that the Custodian is an officer of the Crown. Section 6 of the Trading with the Enemy Regulations provides that the Secretary of State "is hereby appointed to receive, hold, preserve and deal with such property, as may be paid to or vested in him in pursuance of these Regulations and he is hereafter referred to as 'The Custodian'." The terms "Custodian" and "Secretary of State" are used in the Regulations interchangeably. The position of the Custodian was considered by the Court of Appeal for Saskatchewan in the case of in re Shawaga Estate, 1943, 2 W.W.R., 188. In that case a person made a claim against the administrator of an estate alleging that certain property of the estate was given to her by a gift. The Custodian applied to the Court to be added as a defendant on the ground that the legal heirs of the deceased resided in Poland. The executor cited a rule of the King's Bench Rules of Procedure to the effect that administrators may sue and be sued as representing the property of the estate "without joining any of the persons beneficially interested in the trust or estate". The administrator contended that he already represented the heirs from Poland and, therefore, the Custodian should not be added as a defendant. The trial judge, however, granted the Order adding the Custodian as a party and this judgment was affirmed by the Court of Appeal. Mr. Justice Mackenzie in delivering the judgment of the Court referred to the Regulations and at page 193 said -

" From the foregoing provisions of the Act and regulations it seems to us clear that the Custodian has been appointed and the properties of the enemies of our country, defined as above, have been vested in him, not that he may exercise the powers conferred upon him as representative, or on behalf, of the enemy holders thereof, such as those in Poland in this case, but in order that he may deal with them for the 'welfare' or benefit of Canada in its prosecution of the war.

Since he is thus clothed with a special capacity of his own as an officer of the Crown, it follows that the Custodian cannot properly be classed as one of 'the persons beneficially interested in the estate' within the meaning of K.B. Rule 44 of whom only in our view the administrator may be validly deemed to be the representative. Hence it is our opinion that the Rule is without application to the Custodian and consequently that the administrator cannot represent him in these proceedings.

✓ As we see it the rights of the Custodian in the deceased's estate are by virtue of the nature of his high authority altogether paramount to the rights of the persons who may be interested therein in Poland (although they are founded thereon) because of the fact that he may ultimately be required to exercise

his powers over enemy property in such a way that those persons will forever be precluded from realizing any benefit therefrom. That must depend upon the terms of the peace to be concluded by the Government of Canada with the governments of those countries with which it is now at war. Such terms will probably be given effect to in the form of a treaty between them. In this respect the Custodian's interests are adverse to those of the persons in Poland."

This judgement was referred to with approval by Mr. Justice Urquhart in the Ontario case of The Bayer Co. v. Farben-Fabriken Vorm Friedr. Bayer & Co., 1944, 2 D.L.R. 116.

However, in an Exchequer Court case - Ritcher v. The King, 1943, 3 D.L.R., 540 - Mr. Justice Angers held that the Custodian is in possession of property, rights and interests of enemies as such and not as a representative or employee of the Crown. See his remarks on page 553. However, in that case Mr. Justice Angers was merely considering whether a Petition of Right could be brought against His Majesty in respect of property disposed of by the Custodian. Angers, J., said that if the suppliant had any right of action, it could not be brought by way of Petition of Right and must be by way of action against the Custodian with his consent as provided in the Regulations.

You considered the position of the Custodian at the time the present regulations were revised. I am passing to you herewith file J.R. 8205-43 and I would refer you to the last paragraph in your letter of August 6th, 1943, to the Under Secretary of State. You stated that under the regulations property is vested in the Secretary of State as such and the word "Custodian" is merely an alternative name by which he is referred to in the regulations.

It follows, therefore, that there is no relationship of landlord and tenant between the Custodian and the Crown. Furthermore, there can be no legal liability of this kind by one department or minister of the Government to another.

So far as the second question is concerned I suggest that this might be left to be dealt with when specific cases arise. Liability for damage to property could exist apart from negligence. The lessee may under the terms of the lease obligate himself to keep the premises in repair even though damage is caused by third parties. The Crown, of course, is liable on the contract and there may be cases where the Crown would be liable for damage of this kind where it leased property from a subject.

Draft letter attached.

E.A.D.

CANADA
DEPARTMENT OF THE SECRETARY OF STATE
OFFICE OF THE CUSTODIAN

ADDRESS ALL
COMMUNICATIONS
TO THE
CUSTODIAN'S OFFICE

PLEASE REFER
TO

FILE No.

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

June 23rd, 1945.



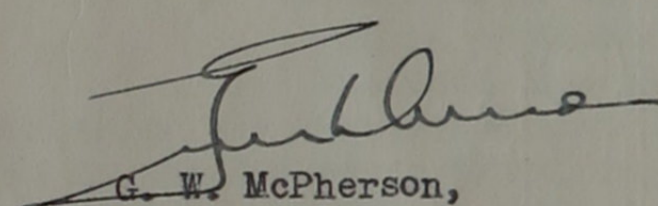
F. P. Varcoe, Esq.,
Deputy Minister,
Department of Justice,
Ottawa, Ontario.

Dear Sir:

J. R. 10,410-45
Re: Lease - Japanese Language Ass'n.,
Vancouver, B.C.

I have your letter of May 10th, and wish to
thank you for the opinion expressed.

Yours truly,


G. W. McPherson,
Executive Assistant.

GWMcP/MEM

File away

DEPARTMENT OF JUSTICE

MEMORANDUM

May 4, 1945.

VARCOE:

J.R. 10,410-45

You will remember that you asked me to review your opinion on this file last Saturday. I prepared and submitted to you a memorandum on Monday which was returned to me with the attached letter from Mr. McPherson which was also written on Monday.

I have nothing further to add to my memorandum of the 30th ultimo except to say, with reference to the second last paragraph of Mr. McPherson's letter, that I do not see how you can give consideration to the matter except with reference to the legal position. If any other consideration is to be given, it will have to be by the department concerned.

W.R.J.

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL
COMMUNICATIONS
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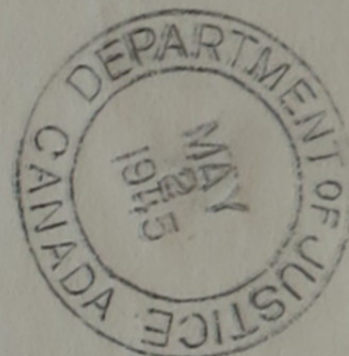
FILE NO.....

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

April 30, 1945.

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

I.R. 10410-45.



Dear Sir:

Re: Lease - Japanese Language Ass'n.,
Vancouver, B.C.

I wish to confirm the telephone conversation I had with you on Saturday morning last concerning the matter referred to in the attached copy of a letter received by the Custodian from the Department of National Defence. I am also enclosing a copy of my reply to the Department of National Defence and you will note that I have requested that no action be taken for the time being.

The Custodian is greatly concerned over the legal opinion quoted in the enclosed correspondence because if it is correct, the Custodian will have to review his position vis-a-vis all Government departments who wish to make leases or purchase property under his control. As I advised you over the telephone, in numerous discussions with members of your Department, and in particular with your Mr. Jackett, it has been contended that the Custodian is not an officer of the Crown and I was under the impression that in your defence of the Petitions of Right in the Exchequer Court, re the four Japanese cases attacking the Custodian's position to sell, it was argued that the Petitions of Right did not lie because the Custodian was not the Crown. In the case of Erich Ritcher and His Majesty the King, reported in the 1943 Exchequer Court reports, page 64, the Court held - "That the Custodian is in possession of the property, rights and interests of enemies as such and not as representative or employee of the Crown, and that the Petition of Right does not lie in the premises". This case was argued on behalf of the Custodian by Mr. Aime Geoffrion.

In any event, irrespective of the strict legal position of the Secretary of State acting as Custodian in matters of this kind, the Custodian feels that careful consideration should be given to his position as trustee for Japanese evacuees whose co-operation other Government departments are endeavouring by every means possible to obtain, and who, it is felt, will naturally feel they have not obtained justice if liability for damage to their hall by one Government department is denied by that department because another department was the lessor. You will appreciate that the Secretary of State as Custodian has no private funds from which evacuees in this case could be compensated.

During our telephone conversation you very kindly undertook to review the situation and it would be greatly appreciated if the Custodian could be advised of your decision in this matter before Thursday of this week since I will be leaving for Vancouver on that day and on my arrival there would like to be able to advise the Pemberton Realty Corporation that the damage claim will be settled.

Yours very truly,

G. W. McPherson

Executive Assistant

GWMcP/FC.

Your Reference -
H.Q. 54-27-76-9-334
(JAG/L-2)

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

April 30, 1945.

Deputy Minister,
Department of National Defence,
Ottawa, Ontario.

Dear Sir:

Re: Lease - Japanese Language Ass'n.,
Vancouver, B.C. - The Honourable the
Secretary of State of Canada, Lessor,
Dept. of National Defence, Lessee.

I have your letter of April 25th and would request that you allow this matter to stand for the present in view of the fact that I have been in touch with Mr. Varcoe, the Deputy Minister of Justice concerning the opinion given by his department, and quoted in your letter.

Your co-operation in this matter is greatly appreciated and I will write you again in due course.

Yours very truly,

GWMcP/FC.

G. W. McPherson,
Executive Assistant

In the meantime, this Department wrote to the Deputy Minister of Justice, G. W. McPherson, requested an opinion as to whether or not the Department of National Defence is legally liable for the damage claimed. The Department of Justice has now advised as follows: "Your question resolves itself into this, namely: is the Crown in right of Canada under any legal liability to the Lessor, namely: the Secretary of State of Canada? The Secretary of State of Canada is himself an officer of the Crown in right of Canada and the answer to your question must, therefore, be in the negative".

In view of the above opinion, it will be necessary for this Department to write to Emberton Realty Corporation, Ltd., who are acting as agents for the Canadian's office in Vancouver, and deny liability on the part of the Crown. Before doing so, however, this Department would be pleased to have your comments.

Quote No. H.Q.54-27-76-9-334
(JAG/L-2).

DEPARTMENT OF NATIONAL DEFENCE

Ottawa, Canada, April 25th, 1945.

Department of Secretary of State,
Office of the Custodian,
O T T A W A.Re: Lease - Japanese Language Ass'n,
Vancouver, B.C. - The Honourable the
Secretary of State of Canada, Lessor.
Dept. of National Defence, Lessee.

On November 1st, 1943, the Department of National Defence took over, under Lease, the property known as 1672 West 1st Avenue, in the City of Vancouver, formerly owned by the Kitsilano Japanese Language Association. The Lease was drawn with "The Honourable the Secretary of State of Canada acting in his capacity as Custodian under the Revised Regulations Respecting Trading with the Enemy (1943)", as Lessor, and the documents were signed by Mr. F.G. Shiers, "authorized Deputy of the Secretary of State and/or Custodian".

During the occupancy of this Department, the premises were damaged by unknown persons to the extent of \$1100.00. The Lease has now been terminated with effect March 31st, 1945.

In the meantime, this Department wrote to the Deputy Minister of Justice and requested an opinion as to whether or not the Department of National Defence was legally liable for the damage claimed. The Department of Justice has now advised as follows: "Your question resolves itself into this, namely: is the Crown in right of Canada under any legal liability to the Lessor, namely: the Secretary of State of Canada? The Secretary of State of Canada is himself an officer of the Crown in right of Canada and the answer to your question must, therefore, be in the negative".

In view of the above opinion, it will be necessary for this Department to write to Pemberton Realty Corporation, Ltd., who are acting as agents for the Custodian's office in Vancouver, and deny liability on the part of the Crown. Before doing so, however, this Department would be pleased to have your comments.

(Sgd) H. DES ROSIERS"

Deputy Minister.

QUOTE NO. H.Q.54-27-76-9-334(JAG/L-3).

DEPARTMENT OF NATIONAL DEFENCE
ARMY



OTTAWA, CANADA, April 3rd, 1945.

The Deputy Minister of Justice,
O T T A W A.

Re: Japanese Language School -
1672 West First Avenue, Vancouver,
B.C. - re: damage to premises.

March 10th, 1945.

Reference your J.R.10-410-45, dated

The property known as 1672 West First Avenue was owned by the Kitsilano Japanese Language Association, and all members of this Association are persons of the Japanese race. Under and by virtue of an Order of the Minister of Justice, dated February 26th, 1942, and passed pursuant to the provisions of the Defence of Canada Regulations (Consolidation) 1941, all persons of the Japanese race were required to leave the protected area of British Columbia.

The interests of the Japanese in the premises above referred to became vested in and subject to the control and management of the Secretary of State of Canada acting in his capacity as Custodian under P.C.1665, dated the 4th March, 1942, as amended by P.C.2483, dated 27th March, 1942, as amended by P.C.469, dated 19th January, 1943, and the applicable provisions of the Revised Regulations Respecting Trading With The Enemy (1943).

It is trusted that the above is the information which you require.

R. P. Brown
Deputy Minister(Army).

March 10th, 1945. ✓

FOR FILE:

J.R. 10-410-45

Relevant Orders in Council appear to
be:

P.C. 1665 of March 4th, 1942.

P.C. 2483 of March 27th, 1942.

P.C. 469 of January 19th, 1943, Consolidated
Regulations Respecting Trading with the
Enemy, 1944.

E.A.D.

EAD/CD

The Deputy Minister of Justice,
Ottawa, Ontario.

March 10th,

45.

Dear Sir:

J.R. 10-410-45

Re: Japanese Language School -
1672 West First Avenue, Vancouver,
B.C. - Re: Damage to Premises.
Your: H.Q. 54-27-76-9-334 (JAG/L-2)

Upon receipt of your letter of February 12th I wrote to the Deputy Custodian of Enemy Property in Ottawa requesting particulars concerning the taking over of this property by the Custodian.

The Custodian's Office informs me that the Vancouver Office operates as a separate organization and the files and information are all available there.

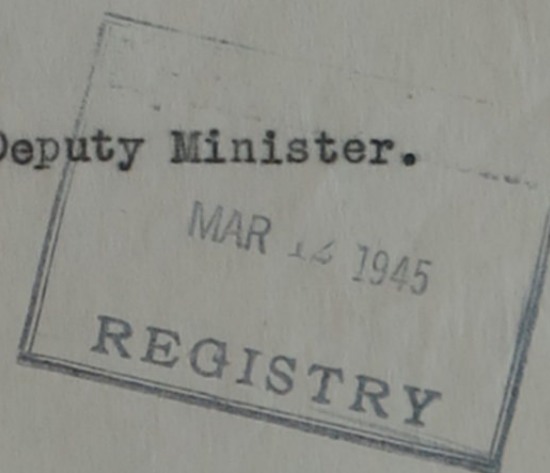
I should like to have full information as to how this property became vested in the Custodian. I presume this change in ownership took place by virtue of Regulation 12 of the B.C. Security Commission's Regulations, P.C. 1665 of March 4th, 1942, as amended by P.C. 2483 of March 27th, 1942.

I shall be glad if you will make arrangements to secure this information for me.

E. Miall

Asst. Deputy Minister.

The Deputy Minister (Army),
Dept. of National Defence,
OTTAWA.



CANADA
DEPARTMENT OF THE SECRETARY OF STATE

OFFICE OF THE CUSTODIAN

ADDRESS ALL
COMMUNICATIONS
TO THE
CUSTODIAN'S OFFICE

PLEASE REFER
TO

FILE NO.....



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

March 2nd, 1945.

The Deputy Minister of Justice,
Ottawa, Ontario.

Dear Sir:

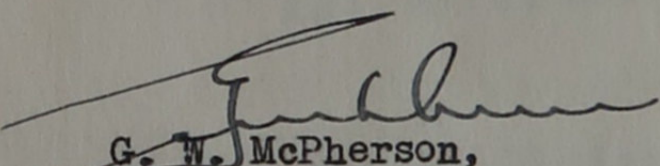
Re: Japanese Language School,
1672 First Avenue, Vancouver, B.C.
Your File J.R. 10-410-45.

Your letter of February 17th addressed to the Deputy Custodian, has been referred to me for reply upon my return to Ottawa.

Insofar as the property of Japanese evacuees is concerned, this property is vested in the Custodian not under Custodians Regulations but by special Orders in Council, the first of such Orders in Council being P.C. 1665, dated March 4th, 1942, subsequently amended by P.C. 2483 dated March 27th, 1942 and P.C. 469 dated January 19th, 1943.

While the Custodian's Vancouver office operates as a separate organization and the files and information are all available there relating to the Japanese evacuee property, I have no doubt that a certificate was registered under Regulation 23 of the Revised Regulations Respecting Trading with the Enemy, (1943).

Yours very truly,


G. W. McPherson,
Executive Assistant

GWMcP/MEM

Department of National Defence

The Deputy Minister of Defence
OTTAWA.

February 17,

45.

J.R. 10-410-45

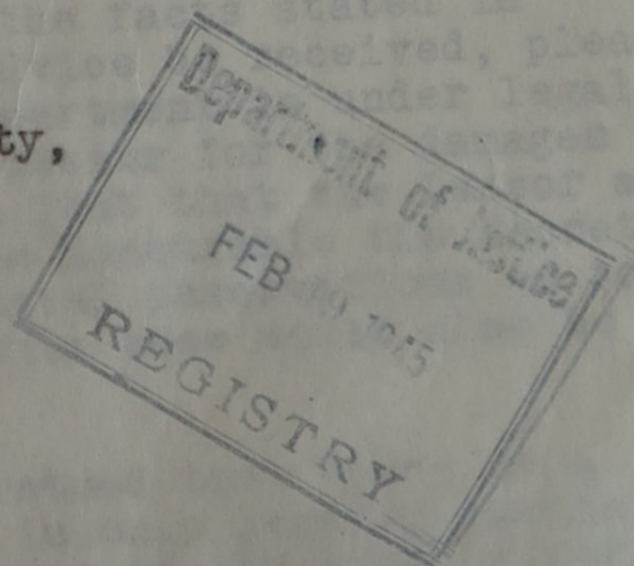
The Department of National Defence has made a reference to this department concerning damages to the Japanese Language School, 1672 First Avenue, Vancouver, B.C. It appears that this property was leased to the Department of National Defence by the Custodian by lease dated November 1, 1943.

I shall be glad if you will furnish me with particulars concerning the taking over of this property by the Custodian. I presume that this property was vested in the Custodian under section 21 of the revised regulations respecting trading with the enemy and possibly a certificate was issued and registered under section 23.

E. Mian

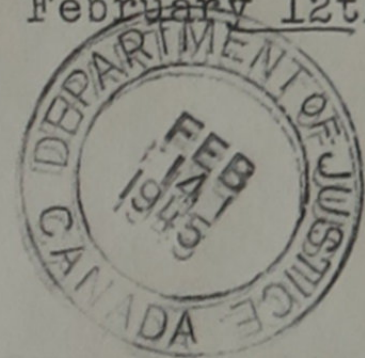
Asst. Deputy Minister.

E.H. Coleman, Esq.,
Deputy Custodian of Enemy Property,
Dept. of The Secretary of State,
Ottawa, Ontario.



Department of National Defence

Ottawa, Canada, February 12th, 1945.



The Deputy Minister of Justice,
 O T T A W A.

Re: Japanese Language School -
 1672 West First Avenue, Vancouver,
 B.C. - Re: Damage to Premises.

By Lease dated November 1st, 1943, this Department took over the above noted premises under lease from The Honourable The Secretary of State of Canada in his capacity as custodian under the Revised Regulations respecting Trading with the Enemy. The Property was owned by the Japanese School of Languages. Since the building was no longer required by the local military authorities, it was allowed to stand vacant, and as a result, vandals broke into the building and caused substantial damage thereto. The following documents are enclosed herewith:

1. Lease dated November 1st, 1943.
2. Letter from G.O.C. dated November 25th, 1944.
3. Memo of J.A.G. dated January 8th, 1945, requesting certain information.
4. Reply of G.O.C. dated January 24th, 1945, giving required answers.

In view of the facts stated in the enclosed material, may advice be received, please, as to whether or not this Department is under legal obligation to reimburse the Lessor for the damages in question. In view of the fact that the Lessor as described in the Lease is the Honourable the Secretary of State of Canada, your general observations as to the manner of dealing with this case would also be appreciated.

It is understood that there is a general rule that the Crown is only legally liable where there has been negligence on the part of servants or agents of the Crown and members of the armed forces. May advice be received, please, whether there is a rule of law that a tenant of a property is legally liable for damages to leased property caused by third parties, regardless of negligence of the tenant, and if so, whether such rule of law would apply against the Crown.

R. P. Brown
 Deputy Minister (Army).