No. 192528

f Justice

RDS

MAY 17 1961

Title CLAIM OF KICHIJIRO HAGANE, - JAPANESE.
VANCOUVER, B.C.

SUBJECT: AGAINST CANADIAN GOVERNMENT ARISING FROM MALTREATMENT
RECEIVED IN CONNECTION WITH THE REMOVAL OF JAPANESE FROM CANADIAN WESTCOAST
DURING WORLD WAR 11.

From EXTERNAL AFFAIRS MR. SAMUELS

Agent

Cross Reference 144826, 144827
174349, 190335, 152189-1, Vols 1+2

Department of Justice | Ministère de la Justice

FORM "A"/*FORMULAIRE "A"*

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A) Department / *Ministère*: Justice

B) File No. / *Nº du dossier*: 192528

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Documents susceptibles d'utilisation ultérieure – lettres, notes ou jugements contenant des opinions études ou recherches pouvant servir dans d'autres cas.

À CONSERVER DANS CE DOSSIER

III JUSTICE OPINION LIBRARY PLEASE INDEX THE FOLLOWING MATERIAL:
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A) Letter dated: / *Date de la lettre:* _____

B) Memorandum dated: / *Date de la note:* 29 May 61 – 30 May 61

C) Judgment dated: / *Date du jugement:* _____

D) Other material dated: / *Date des autres documents:* File of historic value

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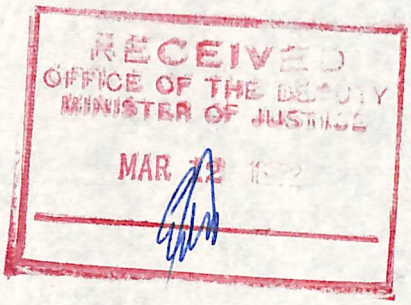
192528



March 6, 1962.

MEMORANDUM FOR THE MINISTER OF JUSTICE:

A short time ago you handed me your correspondence with Mr. Hanbidge concerning claims for damages by persons interned during the last War.

In your reply you said that you had heard nothing about any claims and you said that you were making enquiries. Attached is a memorandum from Mr. Munro in which he points out that we have no record of any claims by the persons Mr. Hanbidge was writing about.

Claims by former internees have been put forward from time to time. Attached is our file dealing with these matters. We have taken the position that these people have no valid legal claim against the Crown.

E.A.D.

n. 14/1/75

CROM:ash

March 5, 1962.

MEMORANDUM TO THE DEPUTY MINISTER:

192528

Neither the files room records nor the litigation lists reveal that Kiefer has made a claim against the Government.

There have of course been a number of claims by persons of German origin living in the West who were interned during the last War. The most recent claims were made last year by Messrs. Minchau, Gambal, and Rabe of Edmonton and for your information I attach the file on which those claims were considered, being file 192528, and I draw your attention to Mr. Affleck's memorandum of May 30, 1961 and your memorandum to the Minister of June 2, 1961.

C. R. O. M.

EAD:AS

February 27, 1962.

MEMORANDUM FOR MR. MUNRO:

192528.

Please note the attached correspondence.

I should be grateful if you would have a check made to see whether any such claims have been made against the Government.

E.A.D.

JDA:bw

Ottawa 4, May 31, 1961.

192528

Dear Sir:

I have received your letter of May 10, 1961 and the enclosures you forwarded with reference to Mr. Hagane's claim.

Your material does not disclose that Mr. Hagane's claim is for loss or damages to property such as those entertained by the former Japanese Claims Commission with respect to persons of the Japanese race evacuated from certain areas in British Columbia in 1942. Rather, it appears to be a claim for alleged mistreatment and the copies of the RCMP correspondence in your enclosures also indicate that Mr. Hagane was interned for approximately four years.

Your material does not, in my opinion, disclose any valid legal claim against the Crown and I am not aware of any claims procedure or of any funds voted by Parliament under which Mr. Hagane's claim could have been dealt with on an ex gratia basis. I am not aware of any way in which this Department could be of assistance to you unless Mr. Hagane commences legal proceedings against the Crown.

Yours truly,

Deputy Attorney General.

The Under-Secretary of State
for External Affairs,
Department of External Affairs,
Ottawa.

EAD:AS

June 2, 1961.

MEMORANDUM FOR THE MINISTER OF JUSTICE:

191708
192528

Three individuals in Edmonton, Alberta, who style themselves as "Claims Committee, Ex-Internees" have written to you allegedly on behalf of a group of individuals of German origin in the Province of Alberta who were interned during the last War under the War Measures Act.

They state that the internment caused hardship to them and to their families, they complain about the conditions of the camps, they suggest that proper care was not taken of their property, state that the former Government promised to compensate them after their release, and they also refer to the Bill of Rights. They conclude by asking you to arrange for just compensation.

Claims by former internees have been made before. At one time approximately thirty Petitions of Right were launched, but were later abandoned, presumably because the claimants realized that they had no legal claim. One claim was proceeded with in the Exchequer Court but it was dismissed. We have taken the position, and I should think that there is no doubt about its correctness, that there is no legal liability in respect of internment.

As to whether claims on compassionate grounds should be considered, the position taken by the Department has been that internment was a security measure taken during a period of national emergency and was one of absolute necessity; Parliament has not seen fit to provide funds out of which to pay compensation and, consequently, no compensation can be paid.

In 1957, Mr. Jackett brought to your attention a claim of this kind and he suggested that we continue to take the position as indicated above, to which you agreed.

I attach hereto a draft letter for your signature. The letter we received was signed by three persons, each with a different address, but the address given on the first page of the letter under the heading "Claims Committee, Ex-Internees" is the address of one of the subscribers to the Petition. I suggest, therefore, that one letter addressed to all three persons at the one address should be sufficient.

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E.A.D.

JDA:bw

Copy for file 192528. Draft letter re Hagane claim attached (Original memo. on file 191708.

May 30, 1961.

MEMORANDUM TO THE DEPUTY MINISTER:

191708
192528

Re: Claims by various persons interned during World War II under the Defence of Canada Regulations.

These two files relate to three different claims or requests - two on file 191708 and one on file 192528.

In view of the manner in which these claims have reached the Department, it is not advisable to deal with all three in exactly the same way. The normal course would be to deal with each individually and to write a separate memorandum about each one. Nevertheless, in this case, it seemed to me to be advisable to send you one covering memorandum and to place copies on each of the two files.

A common characteristic of all three claims is that they are all by persons who were interned during World War II under the Defence of Canada Regulations and all request compensation for the treatment and losses they say they sustained as a result of such internment.

You referred each of these three matters to Mr. Maxwell initially and asked that a survey of our files be made to ascertain the manner of dealing with this type of claim and the general history of government policy in this respect. Mr. Maxwell transferred them to me and I have asked Miss Ritchie to check on the background of matters of this kind.

In other words, we felt that you wished to have a general background picture before giving specific replies etc. Miss Ritchie has done quite a lot of research on the various kinds of "war" claims and she has written three memoranda, draft letters etc. about the three under review.

Since, however, the background is really the same in all cases, the above results in some repetition and I thought it would be clearer to present one composite memorandum with, of course, suitable variations as to the method of dealing with each claim.

General Background of "War" Claims

In order to give you a complete picture, I should mention, in passing, the War Claims Commission. That Commission, as you know, was set up to compensate Canadians who suffered maltreatment, property losses etc. as the result of war activities in other countries. It dealt, for example, with maltreatment claims by Canadians who were interned by the Japanese in Malaya under extremely

... 2

difficult conditions, losses of property due to bombing raids, government seizures, etc. in Europe and other matters of that kind.

The payments made on the recommendation of the commissioners were ex gratia payments and the monies used were, largely, taken from the funds realised by the Custodian of Enemy Property from the disposal of assets vested in him and formerly belonging to Germans or Japanese aliens.

For present purposes, the important point is that the War Claims Commission dealt only with claims for "war" losses suffered by Canadians in Europe and Asia and did not, in any way, include losses or damages claimed by persons who were interned in Canada under Canadian laws during World War II.

Another type of compensation machinery was set up in 1947 and was known as the Japanese Claims Commission. You will recall that, in 1942, persons of the Japanese race were evacuated from certain areas in British Columbia and were required to relocate in other parts of Canada. The evacuation was sudden and, in many instances, the evacuees did not have any opportunity to arrange for the safe-keeping or transfer of their property.

That property, whether real or personal, was placed under the management of the Custodian of Enemy Property. Many of the evacuees later claimed that the property or its value was never returned to them and the Japanese Claims Commission was set up to deal with these claims.

Again, for present purposes, the important point is that the above compensation machinery dealt only with property losses claimed by persons of the Japanese race forcibly evacuated from British Columbia. It did not, for that matter, deal with any claims of Japanese who were interned and, of course, it did not deal with persons of other races who were interned.

A third type of compensation could arise where the property of enemy aliens vested in the Custodian of Enemy Property and, pursuant to his power under section 39 of the Trading With the Enemy Regulations, the Custodian later released it back to the former owners.

The above, strictly speaking, was not really compensation at all but a divesting of property back to the original owner. That could, of course, happen where the original owner had also been interned. It was not, however, designed especially to compensate persons who had been interned. At the most, it could result in the restoration of seized property in the case of some internees but it did not serve as a compensation technique respecting internment losses or claims generally.

The fact is that there has never been any compensation technique to cover claims or alleged losses on the part of

persons interned in Canada during World War II, whether or not those persons claim that there was no real need for their internment. There has never been anything to cover compensation for alleged maltreatment, loss of liberty, loss of property, loss of business or any other kind of claim or loss related to internment as such.

Internment was carried out under the Defence of Canada Regulations made pursuant to the War Measures Act. Regulation 21 stated:-

> "21(1) The Minister of Justice, if satisfied that, with a view to preventing any person from acting in any manner prejudicial to the public safety or the safety of the State, it is necessary so to do, may, notwithstanding anything in these Regulations, make an order:-
>
> . . . . .
>
> (c) directing that he be detained in such place and under such conditions as the Minister of Justice may from time to time determine;
>
> and any person shall, while detained by virtue of an order made under this paragraph, be deemed to be in legal custody."

No provision was made for compensation for losses alleged to have been suffered by interned persons.

The only related law was the Trading with the Enemy Regulations under which interned persons were defined as "enemies" and their property vested in the Custodian of Enemy Property. As I have already observed, the Custodian had power to relinquish such property back to the former owner.

The most useful previous file dealing with claims for compensation for internment is file 179162 respecting the claim of Mr. Alfred Luchinger. Mr. Jackett, in his memorandum of July 30, 1957 to Mr. Fulton, described the general policy involved and the absence of provisions for compensation.

He stated that some thirty Petitions of Right had been launched by such persons, mostly by Arcand and his followers, but only one of them had proceeded to trial. That one case was Magda v. The Queen 1953 Ex. C.R. 22. Magda was a Roumanian who was interned from 1942 to June 27, 1945 under section 21 of the Defence of Canada Regulations. There were also other periods of detention under the Immigration Act. Magda sued the Crown from unlawful imprisonment.

Thorson, P. did not have to find whether or not the internment constituted unlawful imprisonment. His decision was based solely on the proposition that the only cause of action then available against the Crown

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was based on negligence under section 19(c) of the Exchequer Court Act, i.e. that an action for unlawful imprisonment did not lie against the Crown.

Since that time, of course, the Crown Liability Act, c. 30 of 1952-53, has been enacted extending the Crown's liability to other torts besides negligence. That Act could not, however, apply to internment or claims for unlawful imprisonment arising before the Crown Liability Act became law, quite apart from any question of the legality of the internment.

The net result is that there is no legal claim for compensation for internment during World War II unless some kind of negligence is alleged and there has never been any fund or machinery for granting ex gratia compensation to such persons.

Returning to Mr. Jackett's memorandum of July 30, 1957 on file 179162, he pointed out that the policy had been to regard internment as a necessary security measure during a time of national emergency. He also suggested, with respect to the claim then under review, that a reference to possible compensation on compassionate grounds could be avoided. The reply in that file was limited to a statement that the internment had been carried out under the Defence of Canada Regulations and to factual statements concerning the handling of the internees property.

At the same time, however, Mr. Jackett asked Mr. Fulton for instructions as to the nature of a reply if the claimant did follow up with a claim for compensation on compassionate claim grounds. He asked whether a reply, if needed, could be along the lines of an earlier reply used by Mr. Varcoe. The main portions of that form of reply were as follows:-

> " Internment was a security measure taken during a period of national emergency and was one of absolute necessity. In many cases the internment order was based on suspicion only and when further investigation established that the suspicion was unfounded the internee was promptly released, as was your case.
>
> Parliament has not seen fit to provide funds out of which to pay compensation in such cases as yours and consequently payment to you for loss of wages cannot be effected."

Mr. Fulton wrote "Concur" on Mr. Jackett's memorandum of July 30, 1957 on file 179162. As stated above, Mr. Jackett was raising two matters in that memorandum - (i) proposing a particular reply in which the question of compassionate compensation could be avoided in the case then under review and (ii) requesting instructions as to the type of reply where a compassionate compensation claim had to be dealt with

as such. Presumably, the Minister concurred in both, the latter meaning that there would not be a change in policy to make arrangements now for some kind of compensation machinery in these cases.

With the above general background, I think I can now deal with each of the three claims now under review.

File 191708 - complaint of Messrs. Minchau, Gambal & Rabe of Edmonton, Alberta.

On February 11, 1961, Messrs. Minchau, Gambal & Rabe of Edmonton, Alberta, who described themselves as "Claims Committee Ex-Internees", wrote to the Minister about the internment of persons of German origin in Alberta during World War II.

They state, generally, that such internment caused hardship to the interned persons and to their families through absence of income, sacrifice of properties etc. There is also a somewhat vague allegation that the Custodian of Enemy Property did not take proper steps to look after the property formerly owned by the internees and vested in the Custodian at the time of their internment. They also complain that the conditions of the internment camps were harsh and primitive.

The letter further states that promises made by the Mackenzie King Government to compensate internees after their release were not kept and that nothing has ever been done by subsequent Governments.

There is also a reference to the recent Canadian Bill of Rights but that seems to be generally for the purpose of showing that similar provisions should be made with respect to events thatoccurred during World War II about internment.

The purpose of the letter is, I think, expressed in the following sentence:- "We beg you now, dear Mr. Fulton, before all men who stand for human rights and human freedom to use your good offices to arrange for our just compensation without any costs of procedure to us".

Presumably, the "just compensation" would relate to some payment for the internment per se, to losses of income or property and to any other kind of loss or damage that might be argued to be related to the internment.

This letter, then, is a request that the Minister now persuade his colleagues to allocate monies or funds and to set up some kind of claims machinery to make ex gratia compensation payments to ex-internees. There is no suggestion that these persons will attempt to bring legal actions for compensation.

The letter was sent to you by Mr. Macaulay for a draft reply for the Minister's signature. You sent it to Mr. Maxwell with the request that our past files dealing with any legal actions, letters of request for

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compensation and, generally, government policy in this field be examined before a reply is prepared. Mr. Maxwell later referred the matter to me.

I have already noted that I asked Miss Ritchie to look into our files on war claims. She has prepared a memorandum to you, a memorandum to the Minister and a draft reply for the Minister's signature in this particular case. I think I have, under the above background notes, covered the material she collected.

This letter is, perhaps, the most difficult of the three to answer since it requests that steps be taken now to arrange for compensation. I think, as Miss Ritchie has suggested, that a reference should be made to the fact that the wartime measures were thought to be absolutely necessary from the standpoint of national security and also that funds for compensation have never been allocated. I doubt, however, whether the question of present policy can be avoided, i.e. some kind of statement that no steps will now be taken to set up compensation funds and machinery.

Subject to your discussion with the Minister on that point, I have attached a revised draft letter for your consideration and the Minister's signature.

File 191708 - request by Victor Grunow of Prince Albert, Saskatchewan.

This matter reached the Department in a different way. On April 25, 1961, Mr. Grunow wrote to the Prime Minister. He began his letter by stating that he believes that Japanese in Canada received compensation for losses suffered during the last world war but that non-Japanese have never been paid any compensation "for being put behind Canadian barb wire on false charges".

He, too, refers to the Canadian Bill of Rights and says that some kind of legislation should be enacted to compensate ex-internees. He also requests an "investigation" and punishment for those who were responsible for the internment policy.

Miss M. R. Pound, Personal Secretary to the Prime Minister, sent a copy of this letter to Mr. Macaulay asking for any suggestinns he might have before a reply is sent by the Prime Minister's Office to Mr. Grunow. Mr. Macaulay referred the matter to you for "comment".

You also assigned this to Mr. Maxwell for research into past files on claims by internees and he transferred it to me. Again, as above noted, Miss Ritchie considered our past files, especially, in this case, those relating to the Japanese Claims Commission. She has prepared a memorandum to you, a memorandum to Mr. Macaulay and a proposed draft letter to be sent by Miss Pound to Mr. Grunow.

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In place of all these documents, I have attempted to cover the background of the different kinds of "war" claims. Perhaps, you would like to send a copy of this memorandum to Mr. Macaulay and I have attached an extra copy for that purpose.

My own view would be that Mr. Macaulay might reply to Miss Pound along the following lines:-

> " Following your letter of May 1, 1961 to me in which you enclosed a copy of the letter of April 25th from Mr. Grunow to the Prime Minister, the files of this Department concerning various kinds of war claims have been examined.
>
> Mr. Grunow may have an incorrect impression if his reference to compensation to persons of the Japanese race is intended to relate to claims by persons who were interned during the last war. Compensation paid to persons of that race by the Japanese Claims Commission set up in 1947 did not relate to internment but, rather, were confined to losses incurred due to the mass evacuation of persons of the Japanese race from certain areas in British Columbia in 1942.
>
> Internment, irrespective of the racial origin of the internee, was regarded as a necessary security measure taken during a period of national emergency. I might add that, Parliament has never, at any time, provided funds to pay compensation to internees."

File 192528 - Kichijiro Hagane of Vancouver

This matter also reached us by a different route. On May 10, 1961, Mr. Kingstone of External Affairs sent you copies of documents relating to complaints by the above-named.

Mr. Hagane has, apparently, written to the Canadian Ambassador in Tokyo and others and his correspondence has been passed on to the RCMP and to the Department of External Affairs. Imay say that it covers several years.

The gist of Mr. Hagane's complaint is that he should not have been interned and was ill-treated during and immediately after his internment. He wants to be compensated for the alleged mistreatment and, presumably, for the internment per se.

You assigned this reference initially to Mr. Maxwell and he has transferred it to me. Again, Miss Ritchie has looked into our past files on internees' claims.

Mr. Hagane now threatens to tell his story to the newspapers. In referring the matter to you,

Mr. Kingstone of External Affairs states:- "It is more a matter of concern to your Department than to this Department and it could be appreciated if you would take over the responsibility for the handling of this claim".

I should add that the correspondence sent over by External Affairs includes letters written in 1958 by the RCMP to the effect that they have no record of any mistreatment of Mr. Hagane either during his internment or following his release.

Miss Ritchie states in her memorandum to you that she also checked with the Custodian of Enemy Property and there is no problem about any possible mismanagement of Mr. Hagane's former property. He did not have any property at the time of his internment.

Miss Ritchie has, quite correctly, suggested that this complainant does not have any legal claim and, of course, that there are no funds or machinery to pay ex gratia compensation to him.

She has suggested that a reply be sent to Mr. Hagane as well at to External Affairs.

I must say that I doubt whether a letter to Mr. Hagane would achieve any useful purpose. It is quite possible that there may be future correspondence from him which External Affairs will pass over to us but I do not think that a letter from us at this point would achieve anything. This man will not be satisfied until someone tells him that arrangements will be made to compensate him and I do not think any letter explaining the reasons for internment would prevent him, if he so wishes, from discussing his claim with the newspapers.

I think that, in this case, it is only necessary to write to External Affairs acknowledging their letter and stating that if Mr. Hagane brings any proceedings this Department will deal with them. Draft letter along these lines attached to file 192528 for your consideration and signature.

J. D. A.

JDA:bw

May 30, 1961.

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Re: Claims by various persons interned during World War II under the Defence of Canada Regulations.

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> (c) directing that he be detained in such place and under such conditions as the Minister of Justice may from time to time determine;
>
> and any person shall, while detained by virtue of an order made under this paragraph, be deemed to be in legal custody."

No provision was made for compensation for losses alleged to have been suffered by interned persons.

The only related law was the Trading with the Enemy Regulations under which interned persons were defined as "enemies" and their property vested in the Custodian of Enemy Property. As I have already observed, the Custodian had power to relinquish such property back to the former owner.

The most useful previous file dealing with claims for compensation for internment is file 179162 respecting the claim of Mr. Alfred Luchinger. Mr. Jackett, in his memorandum of July 30, 1957 to Mr. Fulton, described the general policy involved and the absence of provisions for compensation.

He stated that some thirty Petitions of Right had been launched by such persons, mostly by Arcand and his followers, but only one of them had proceeded to trial. That one case was Magda v. The Queen 1953 Ex. C.R. 22. Magda was a Roumanian who was interned from 1942 to June 27, 1945 under section 21 of the Defence of Canada Regulations. There were also other periods of detention under the Immigration Act. Magda sued the Crown from unlawful imprisonment.

Thorson, P. did not have to find whether or not the internment constituted unlawful imprisonment. His decision was based solely on the proposition that the only cause of action then available against the Crown

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was based on negligence under section 19(c) of the Exchequer Court Act, i.e. that an action for unlawful imprisonment did not lie against the Crown.

Since that time, of course, the Crown Liability Act, c. 30 of 1952-53, has been enacted extending the Crown's liability to other torts besides negligence. That Act could not, however, apply to internment or claims for unlawful imprisonment arising before the Crown Liability Act became law, quite apart from any question of the legality of the internment.

The net result is that there is no legal claim for compensation for internment during World War II unless some kind of negligence is alleged and there has never been any fund or machinery for granting ex gratia compensation to such persons.

Returning to Mr. Jackett's memorandum of July 30, 1957 on file 179162, he pointed out that the policy had been to regard internment as a necessary security measure during a time of national emergency. He also suggested, with respect to the claim then under review, that a reference to possible compensation on compassionate grounds could be avoided. The reply in that file was limited to a statement that the internment had been carried out under the Defence of Canada Regulations and to factual statements concerning the handling of the internees property.

At the same time, however, Mr. Jackett asked Mr. Fulton for instructions as to the nature of a reply if the claimant did follow up with a claim for compensation on compassionate claim grounds. He asked whether a reply, if needed, could be along the lines of an earlier reply used by Mr. Varcoe. The main portions of that form of reply were as follows:-

> " Internment was a security measure taken during a period of national emergency and was one of absolute necessity. In many cases the internment order was based on suspicion only and when further investigation established that the suspicion was unfounded the internee was promptly released, as was your case.
>
> Parliament has not seen fit to provide funds out of which to pay compensation in such cases as yours and consequently payment to you for loss of wages cannot be effected."

Mr. Fulton wrote "Concur" on Mr. Jackett's memorandum of July 30, 1957 on file 179162. As stated above, Mr. Jackett was raising two matters in that memorandum - (i) proposing a particular reply in which the question of compassionate compensation could be avoided in the case then under review and (ii) requesting instructions as to the type of reply where a compassionate compensation claim had to be dealt with

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as such. Presumably, the Minister concurred in both, the latter meaning that there would not be a change in policy to make arrangements now for some kind of compensation machinery in these cases.

With the above general background, I think I can now deal with each of the three claims now under review.

File 191708 - complaint of Messrs. Minchau, Gambal & Rabe of Edmonton, Alberta.

On February 11, 1961, Messrs. Minchau, Gambal & Rabe of Edmonton, Alberta, who described themselves as "Claims Committee Ex-Internees", wrote to the Minister about the internment of persons of German origin in Alberta during World War II.

They state, generally, that such internment caused hardship to the interned persons and to their families through absence of income, sacrifice of properties etc. There is also a somewhat vague allegation that the Custodian of Enemy Property did not take proper steps to look after the property formerly owned by the internees and vested in the Custodian at the time of their internment. They also complain that the conditions of the internment camps were harsh and primitive.

The letter further states that promises made by the Mackenzie King Government to compensate internees after their release were not kept and that nothing has ever been done by subsequent Governments.

There is also a reference to the recent Canadian Bill of Rights but that seems to be generally for the purpose of showing that similar provisions should be made with respect to events that occurred during World War II about internment.

The purpose of the letter is, I think, expressed in the following sentence:- "We beg you now, dear Mr. Fulton, before all men who stand for human rights and human freedom to use your good offices to arrange for our just compensation without any costs of procedure to us".

Presumably, the "just compensation" would relate to some payment for the internment per se, to losses of income or property and to any other kind of loss or damage that might be argued to be related to the internment.

This letter, then, is a request that the Minister now persuade his colleagues to allocate monies or funds and to set up some kind of claims machinery to make ex gratia compensation payments to ex-internees. There is no suggestion that these persons will attempt to bring legal actions for compensation.

The letter was sent to you by Mr. Macaulay for a draft reply for the Minister's signature. You sent it to Mr. Maxwell with the request that our past files dealing with any legal actions, letters of request for

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compensation and, generally, government policy in this field be examined before a reply is prepared. Mr. Maxwell later referred the matter to me.

I have already noted that I asked Miss Ritchie to look into our files on war claims. She has prepared a memorandum to you, a memorandum to the Minister and a draft reply for the Minister's signature in this particular case. I think I have, under the above background notes, covered the material she collected.

This letter is, perhaps, the most difficult of the three to answer since it requests that steps be taken now to arrange for compensation. I think, as Miss Ritchie has suggested, that a reference should be made to the fact that the wartime measures were thought to be absolutely necessary from the standpoint of national security and also that funds for compensation have never been allocated. I doubt, however, whether the question of present policy can be avoided, i.e. some kind of statement that no steps will now be taken to set up compensation funds and machinery.

Subject to your discussion with the Minister on that point, I have attached a revised draft letter for your consideration and the Minister's signature.

File 191708 - request by Victor Grunow of Prince Albert, Saskatchewan.

This matter reached the Department in a different way. On April 25, 1961, Mr. Grunow wrote to the Prime Minister. He began his letter by stating that he believes that Japanese in Canada received compensation for losses suffered during the last world war but that non-Japanese have never been paid any compensation "for being put behind Canadian barb wire on false charges".

He, too, refers to the Canadian Bill of Rights and says that some kind of legislation should be enacted to compensate ex-internees. He also requests an "investigation" and punishment for those who were responsible for the internment policy.

Miss M. R. Pound, Personal Secretary to the Prime Minister, sent a copy of this letter to Mr. Macaulay asking for any suggestions he might have before a reply is sent by the Prime Minister's Office to Mr. Grunow. Mr. Macaulay referred the matter to you for "comment".

You also assigned this to Mr. Maxwell for research into past files on claims by internees and he transferred it to me. Again, as above noted, Miss Ritchie considered our past files, especially, in this case, those relating to the Japanese Claims Commission. She has prepared a memorandum to you, a memorandum to Mr. Macaulay and a proposed draft letter to be sent by Miss Pound to Mr. Grunow.

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In place of all these documents, I have attempted to cover the background of the different kinds of "war" claims. Perhaps, you would like to send a copy of this memorandum to Mr. Macaulay and I have attached an extra copy for that purpose.

My own view would be that Mr. Macaulay might reply to Miss Pound along the following lines:-

> " Following your letter of May 1, 1961 to me in which you enclosed a copy of the letter of April 25th from Mr. Grunow to the Prime Minister, the files of this Department concerning various kinds of war claims have been examined.
>
> Mr. Grunow may have an incorrect impression if his reference to compensation to persons of the Japanese race is intended to relate to claims by persons who were interned during the last war. Compensation paid to persons of that race by the Japanese Claims Commission set up in 1947 did not relate to internment but, rather, were confined to losses incurred due to the mass evacuation of persons of the Japanese race from certain areas in British Columbia in 1942.
>
> Internment, irrespective of the racial origin of the internee, was regarded as a necessary security measure taken during a period of national emergency. I might add that, Parliament has never, at any time, provided funds to pay compensation to internees."

File 192528 - Kichijiro Hagane of Vancouver

This matter also reached us by a different route. On May 10, 1961, Mr. Kingstone of External Affairs sent you copies of documents relating to complaints by the above-named.

Mr. Hagane has, apparently, written to the Canadian Ambassador in Tokyo and others and his correspondence has been passed on to the RCMP and to the Department of External Affairs. Imay say that it covers several years.

The gist of Mr. Hagane's complaint is that he should not have been interned and was ill-treated during and immediately after his internment. He wants to be compensated for the alleged mistreatment and, presumably, for the internment per se.

You assigned this reference initially to Mr. Maxwell and he has transferred it to me. Again, Miss Ritchie has looked into our past files on internees' claims.

Mr. Hagane now threatens to tell his story to the newspapers. In referring the matter to you,

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Mr. Kingstone of External Affairs states:- "It is more a matter of concern to your Department than to this Department and it could be appreciated if you would take over the responsibility for the handling of this claim".

I should add that the correspondence sent over by External Affairs includes letters written in 1958 by the RCMP to the effect that they have no record of any mistreatment of Mr. Hagane either during his internment or following his release.

Miss Ritchie states in her memorandum to you that she also checked with the Custodian of Enemy Property and there is no problem about any possible mismanagement of Mr. Hagane's former property. He did not have any property at the time of his internment.

Miss Ritchie has, quite correctly, suggested that this complainant does not have any legal claim and, of course, that there are no funds or machinery to pay ex gratia compensation to him.

She has suggested that a reply be sent to Mr. Hagane as well at to External Affairs.

I must say that I doubt whether a letter to Mr. Hagane would achieve any useful purpose. It is quite possible that there may be future correspondence from him which External Affairs will pass over to us but I do not think that a letter from us at this point would achieve anything. This man will not be satisfied until someone tells him that arrangements will be made to compensate him and I do not think any letter explaining the reasons for internment would prevent him, if he so wishes, from discussing his claim with the newspapers.

I think that, in this case, it is only necessary to write to External Affairs acknowledging their letter and stating that if Mr. Hagane brings any proceedings this Department will deal with them. Draft letter along these lines attached to file 192528 for your consideration and signature.

J. D. A.

MER/mc

Ottawa, May 29, 1961.

MEMORANDUM FOR THE DEPUTY MINISTER:

192528
Re: Claim of Kichijiro Hagane against Canadian Government arising from maltreatment received in connection with removal of Japanese from Canadian westcoast during World War II.

By letter of May 10, 1961, External Affairs forwarded copies of certain correspondence among Mr. Kichijiro Hagane (a naturalized Canadian of Japanese origin who lives in Vancouver, B.C.), the Canadian Ambassador in Tokyo, the Department of External Affairs in Ottawa, and the R.C.M.P. The letter from External Affairs states:

> " As this matter involves a claim by a Canadian citizen resident in Canada against the Canadian Government for an alleged injury suffered in Canada at the hands of Canadian government officials, I trust you will agree with me that it is more a matter of concern to your Department than to this Department, and it could be appreciated if you would take over the responsibilities for the handling of this claim. We stand ready of course to help you in any way we can.
>
> It will be noted that Mr. Hagane has indicated in his most recent letter, dated February 16, 1961, that he proposes to raise this matter in the press if he does not receive satisfaction. Apparently he has not done so yet and you may wish to reply to his latest letter in an effort to forestall such a step on his part until such time as you have had an opportunity to examine this claim fully."

By a Note of May 18, Mr. Maxwell suggested that the matter should be dealt with by the opinion section. The matter has now been referred to me.

The essence of the matter is stated in an undated letter from Mr. Hagane to the Canadian Ambassador at the Canadian Embassy in Tokyo (evidently written originally in Japanese) in which Mr. Hagane stated:

> " This is to ask for your instructions. It happened in the countryside of Moose Jaw, Saskatchewan ten years ago or about a month before the then Prime Minister King resigned that, after our freedom had been restricted over more than six years, we were thrown out into the fields without a penny. We did not know where to turn and passed three days and nights in the open. Then, through the good

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offices of Mr. Thatcher of the C.C.F., we could dispose of ourselves. Although Mr. Ross Thatcher told us to wait because the Government, as he believed, would do something to settle the matter in the future, nothing has since been done up to the present time after ten years have passed. It would be alright if the present Government is inclined to leave the matter as it has been. In that case, I for one will simply disclose to the intelligent people of the world the fact that we were thrown out into the fields. Then, I am afraid, that it would be a disgrace which Canada could not remove from herself for ever. I firmly believe that the Ambassador, whom I trust, will give me direction."

The matter was referred by the Embassy at Tokyo to External Affairs in Ottawa. External Affairs took up the matter with the Commissioner of the R.C.M.P. and a letter dated December 19, 1958 from the R.C.M.P. to External Affairs states:

"2. Our records show that Kichijiro HAGANE was born in Japan on January 28, 1892 and came to Canada in 1907. He was issued with Certificate of Naturalization at Edmonton, Alberta on December 13, 1915. On April 21, 1942 HAGANE was detained at Vancouver, B.C. for refusing to leave that city which was in a restricted area under the War Measures Act. After being detained he was placed in the custody of the Immigration Detention Shed, Vancouver, B.C. under Military Guard. HAGANE was interned in Canada from April 28, 1942 until July 3, 1946. Upon his release on July 3, 1946 he proceeded to the Japanese Special Housing Project, Moose Jaw, Saskatchewan.

3. We have no record on file as to any mistreatment HAGANE received during internment and after his release, therefore, we are not in a position to state what action if any should be taken."

External Affairs then wrote to Mr. Hagane suggesting that he write direct to the Commissioner of the R.C.M.P. about the matter. The most recent letter from Mr. Hagane, again to the Canadian Ambassador at Tokyo and again referred from there to External Affairs, states:

" I wish to thank you for the interest you showed (in my case) in your letter of November 21, 1958. As you brought the matter to the attention of the Canadian Department of the Secretary of State, I received a letter from that Department directing me to take the matter up with the Committee (sic) of the Royal Canadian Mounted Police.

I thereupon visited the RCMP and showed them the letter(s) but I was told that my case should be settled with the Department of the Secretary of State and, therefore, I should approach that Department again. Realizing that the RCMP and the Department were each concerned only with pinning responsibility on the other, I concluded that it was hopeless to expect a solution from either source. In the circumstances, I have abandoned the thought of reopening negotiations with the Canadian Government and decided to appeal for justice by making the whole case public in the form of an open letter to the press.

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to the press.

In the event the case is brought into the open, I expect it will have a demoralizing effect on the officials of the Department of External Affairs (sic) (Department of the Secretary of State). So long as the Department of External Affairs (sic) is part of the Canadian Government, I do not think that it would want to see the facts exposed.

However, before resorting to this action, I feel I owe it to you, in view of your good offices in the past, to let you know first."

The translation of the open Letter details the application of the internment policy so far as Japanese were concerned, and so far as Mr. Hagane in particular was affected. It then goes on to describe the manner of release from the camps and states:

" In August 1948 we received a writ (sic) issued in the name of the Attorney General of Saskatchewan to the effect that if we had any grievances we should sue (the Government) within a period of 1 year. Two weeks later we were turned adrift on the plains 5 miles outside the city of Moose Jaw. We were obliged to sleep under open skies for 3 nights. What is more, we were penniless. I know nothing about Canadian laws, but I should think that in any country persons whose freedom have been restricted as criminals should, for humanitarian reasons, be entitled to take action in court. We demanded that privilege but it was denied. We were told to sue, but whom should we sue? Further, no one can complain if he were turned adrift at his own wish, but otherwise it only stands to reason that he at least be taken back to from where he originally came.

There are a good number of Canadian Government officials who believe that they have no peer in the world. I held this view since before the war, but I am deeply distressed that after the war the Canadian Government subjected Japanese to discrimination no other white nation would ever practice. The extent of how far Japanese were looked down on as an inferior race can be illustrated by the fact that the Government of Canada--considered one of the wealthiest countries in the world--paid each displaced Japanese adult the paltry sum of only 11 dollars a month for food. Even beggars lived better."

In accordance with Mr. Affleck's suggestion that I enquire from the Secretary of State Department (Custodian) whether they have any relevant records, I have taken up the matter with Mr. Robitaille and am informed that in April last, External Affairs forwarded to the Custodian's Office a copy of the relevant material relating to this complaint by Mr. Hagane. The Custodian's Office replied that the detention or internment was not the responsibility of the Custodian's Office and that Mr. Hagane had made no complaint about any property administration questions

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(and in fact had stated, on admission to the internment camp, that he had no property). Accordingly, so far as the Custodian's Office is concerned, it is not a matter for them.

I have sent to you on file 191708, a memorandum dated May 26, 1961 summarizing the position with respect to complaints based upon internment. Since the R.C.M.P. have no information with respect to the maltreatment alleged by Mr. Hagane, and since in any event the actions complained about occurred before the 1952-53 enactment of the Crown Liability Act, I am unable to see any legal basis upon which Mr. Hagane could establish a claim against the Crown as a result of his treatment. The question therefore appears to be one of policy.

If you and the Minister are satisfied with the policy statements contained in the draft letter of May 26, 1961 on file 191708 to Messrs. Minchau, Gambal and Rabe, which was based upon a letter the Minister evidently approved on file 179162, I assume that the same position on policy would be taken by the Minister so far as replying in the present case.

On this assumption, I am attaching herewith a draft letter to Mr. Hagane, together with a draft reply to External Affairs.

M. E. R.

MER/mc

CANADA

DEPARTMENT OF JUSTICE

Ottawa 4, May 29, 1961.

192528
Re: Kichijiro Hagane

Dear Mr. Hagane:

The Under-Secretary of State for External Affairs has referred to me for reply, a copy of your letter of February 16, 1961 addressed to the Canadian Ambassador in Tokyo. The Department of External Affairs has also transmitted copies of prior correspondence between the Department of External Affairs and yourself. The contents of your letter and the other documents have received careful consideration.

I regret to advise, however, that there is no way in which this Department can be of any assistance to you. Possibly it might be of assistance if I explain to you that internment was a security measure taken during a period of national emergency and was one of absolute necessity. In many cases the internment order was based on suspicion only and when further investigation established that the suspicion was unfounded the internee was promptly released.

Since Parliament has not seen fit to provide funds out of which to pay compensation, I am sure you will appreciate the fact that there is nothing this Department can do.

Yours truly,

Deputy Minister of Justice.

Kichijiro Hagane, Esq.,
Room 9, 733 Powell Street,
Vancouver, B. C.

MER/mc

CANADA

DEPARTMENT OF JUSTICE

Ottawa 4, May 29, 1961.

192528

Re: Claim of Kichijiro Hagane against Canadian Government arising from maltreatment received in connection with removal of Japanese from Canadian west coast during World War II.

Dear Sir:

I acknowledge your letter of May 10, 1961 and enclosures, drawing my attention to the correspondence you have had with respect to an "Open Letter" which Mr. Kichijiro Hagane evidently proposes to release to the press.

In accordance with the request contained in your letter, I am replying direct to Mr. Hagane. For your information, I attach herewith a copy of my reply.

Yours truly,

Encls.

Deputy Minister.

The Under-Secretary of State
for External Affairs,
Department of External Affairs,
Ottawa, Ontario.

DSM:LAL

May 18, 1961

NOTE TO MR. AFFLECK

192528
Re: Kichijiro Hagane

I have looked at these papers and I have come to the conclusion that this matter should be dealt with by the opinion section. It seems to me that we should probably treat the letters written to External Affairs as having been written to us.

Apparently, there are no facts that can be had from the Government's standpoint concerning the occurrences complained of here. I draw this inference from the report of the R.C.M. Police.

May 19/61
Mr. Samuels

Perhaps, Miss Ritchie could enquire from the Secretary of State Dept (Custodian of Enemy Property) whether they have any relevant records.

D. S. M.

Rec'd May 23/61

It is difficult to know what Mr. Hagane expects or intends to do. I gather he was not one of the claimants under the Japanese Claims Commission or the Secretary of State Dept would have a file about him. Presumably, he wishes compensation for some kind of alleged mistreatment - the R.C.M.P. deny any on their part. I do not think there is anything we can do about this matter but would appreciate your comments re Dde

Mr. Maxwell

RE: 192528

For assignment please.

M.E. Thwaites.

17-5-61

DEPARTMENT OF EXTERNAL AFFAIRS
CANADA

REPLY TO BE ADDRESSED TO:
THE UNDER-SECRETARY OF STATE
FOR EXTERNAL AFFAIRS
OTTAWA

Ottawa, May 10, 1961

Maxwell

Deputy Minister,
Department of Justice,
Ottawa.

192528

Re: Mr. Kichijiro Hagane

I wish to bring to your attention the case of Mr. Kichijiro Hagane, a naturalized Canadian of Japanese origin who lives in Vancouver, B.C., which appears to be of principal concern to your Department.

In November, 1958, Mr. Hagane wrote from Vancouver to our Ambassador in Tokyo complaining of maltreatment he received in connection with the removal of Japanese from the Canadian west coast during World War II. In February of this year, Mr. Hagane wrote again to the Ambassador in Tokyo enclosing a letter which he said he proposes to release to the press.

We are attaching for your information copies of the following correspondence concerning this case:

Letter No. 1117 of November 21, 1958 from Embassy in Tokyo with two enclosures,

Letter of December 3, 1958 from this Department to R.C.M.P.

Confidential letter of December 19, 1958 from R.C.M.P. to this Department,

Letter of January 6, 1959 from this Department to Mr. Hagane,

Letter No. 125 of February 24, 1961 from Embassy in Tokyo with two enclosures.

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As this matter involves a claim by a Canadian citizen resident in Canada against the Canadian Government for an alleged injury suffered in Canada at the hands of Canadian government officials, I trust you will agree with me that it is more a matter of concern to your Department than to this Department, and it could be appreciated if you would take over the responsibilities for the handling of this claim. We stand ready of course to help you in any way we can.

It will be noted that Mr. Hagane has indicated in his most recent letter, dated February 16, 1961, that he proposes to raise this matter in the press if he does not receive satisfaction. Apparently he has not done so yet and you may wish to reply to his latest letter in an effort to forestall such a step on his part until such time as you have had an opportunity to examine this claim fully.

H. Cawdron Kingsmill

For

Under-Secretary of State
for External Affairs

EAD/LM

Ottawa, February 20, 1961.

MEMORANDUM FOR MR. MAXWELL: 191708

Attached is a letter to the Minister from persons interned during the last war claiming some compensation for the treatment accorded to them.

I know we have had Petitions of Right from former internees, and I wonder if we have a general file dealing with letters of this kind or whether there is any policy of the government that might be applicable to cases of this kind. Perhaps you could have someone in the Litigation Section look into this and let me know what the situation is.

E.A.D.

May 25/64

Mr. Maxwell spoke to me about this. Similar representations have been received and it would seem desirable to have past files reviewed. assigned to Miss Ritchie.

JDC

OFFICE OF
THE MINISTER OF JUSTICE

Date February 16th, 1961.

Forward to Deputy Minister,

Perusal and Return with Draft reply for my Minister's Signature XXX

Please see me *re* this

Attention

Information

Perusal and Return

Perusal and Return with File

Perusal and Return with Recommendation

Perusal and Return with Comments

Let me have material asked for herein

Approval or Revision before Mailing

Please Fill in Blanks and Return

Special Instructions:

J. A. Macaulay,
Executive Assistant.

Claims Committee
Ex- Internees
11334-1o2 St.
Edmonton, Alta.

Edmonton, February 11, 1961.

The Honorable Mr. D. Fulton,
Minister of Justice,
Ottawa, Ont.

Dear Mr. Fulton:

We, the undersigned, are writing to you on behalf of a group of individuals of German origin in the Province of Alberta who had been interned during the last war for periods of up to five years or less under the strength of the War Measures Act.

We sincerely submit to you the facts about our story as they led to the losses in properties and health of our families and ourselves and trust that your just judgement will eventually lead to settlement of each individual case:

At the beginning or during the war we were arrested by the R.C.M.P. on the spot to be imprisoned in their barracks in company with criminals of all descriptions before we were turned over to the military authorities for internment in Camp Kananaskis.

Our families were left entirely to their fate without regard to their financial standing or the fact that the country had just gone through the most severe economical depression in its history. In most cases they were forced immediately to give up their households and farms in order to adjust themselves to the new conditions which had been pressed onto them so suddenly. So the hard earned belongings went for almost a song of the auctioneers or they were bought with the small means of their understanding neighbors. In other cases the custodian helped in a shrewd way to squander the cash money for properties of the now so called enemy-aliens who, like their countrymen before them, had worked so outstandingly hard for the general development of this country. In some cases properties of those broken families just disappeared. Allow us, Sir, also to mention the emotional strain under which, especially our wives, had to cope with the situation of those exciting days.

After arrival at Camp Kananaskis we found that the huts we were offered were totally unfit as human dwellings. Yet we were told that we had to work for 2o¢ a day, that we were not allowed newspapers or radios or have visits from our wives and children. We were locked up in our huts at 9 resp. 1o o'clock at night. To use the extremely primitive outdoor toilets we had to pound at the door and holler for a guard as an escort, in fact, during the night the camp resounded from door pounding and hollering. This was especially hard in winter on older men and on fellows in their sixtieth and even over seventy years of age.

What had we done to deserve such severe punishment? To our knowledge there was not a single act of sabotage or any other hostile activities against our country attempted by anyone of our men. We were arrested without any accusations and released the same way for the sole purpose, as it seems to us, to in-

intimidate the population of German origin in this country in such a way that they no longer would constitute a danger to the country. We have this knowledge from a citation of the head of Western Command, General Griesbach, as it was published in Western newspapers at the beginning of war.

Our War Prime Minister MacKenzie King, realizing that injustices during the war would be unavoidable, in his speech to the Nation over the national radio network at the beginning of war, pledged himself to have all innocently interned people compensated for the losses they would suffer through their internment. This pledge was ignored and it was also ignored by the following government of Mr. St. Laurent, as far as German-Canadians are concerned.

We are aware, Sir, that those injustices brought about by the last war are still hanging like a cloud over the entire German-Canadian minority of the country. It should be remembered that German-Canadians who held their Canadian citizenship papers since as far back as 1913 had been forced to have their fingerprints taken and report to the Police every month during the war. Those oldtimers and pioneers are still telling their children and the new arrivals from Germany about this humiliation, complaining that since no word of apology had been offered them. From time to time they are asking us ex-internees whether we had received already compensation for the losses we had suffered during the war. The same question comes us also and almost too frequently from our Canadian friends with the final remark: "Why are you not doing anything about it. The laws dealing with citizenship and lately the Bill of Rights have been passed in our legislature."

Well, Mr. Fulton, we are grateful to our present government for the wisdom it has shown in regard to attaining more national unity in the country through justice. We are aware that you and your department under the guidance of our Prime Minister have earned the present popularity of millions of Canadians who know enough to appreciate this service to the country. We beg you now, dear Mr, Fulton, before all men who stand for human rights and human freedom to use your good offices to arrange for our just compensation without any costs of procedure to us. We hope that our request will receive a favorable reaction from you and your department.

Yours truely

A. Minchau 9924-81 Ave

Adolf Gaubal 11334-102 St.

John H. Rake 8221-79 Sto.

191708-
192528

Copy of Bird Commission Report - received from Mr. Robitaille, Custodian's Office May 29/46 MSR

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

I have the honour to report upon the investigation into claims of persons of the Japanese race made by me pursuant to the terms of Order in Council P.C. 1810 of July 18th, 1947, as subsequently amended.

The investigation was opened at Vancouver, British Columbia, on December 3rd 1947, and was carried on thereafter until March 3rd 1950, when evidence and argument on the last of the claims was heard. 1434 claims were filed, all of which have been examined during this period.

Appended to this report is a memorandum marked as Appendix I, in which is recorded the names of all claimants, particulars of each claim, the disposition made of each of them, and the amount which I consider would fairly and reasonably compensate each claimant whose claim in my opinion is well founded.

Reasons for the conclusions reached by me in respect of all claims classified in the seven categories later mentioned are expressed in this report. Any claim or branch of a claim which, after the hearing of argument from Counsel for the claimant and the Government, I considered could not equitably be disposed of on the basis applied to claims included in a category classification, hereafter referred to as a "special case", has been considered independently and reasons have been given for the conclusions reached, all of which are appended hereto as Appendix II.

I therefore recommend payment to the several claimants of the sum set opposite the name of each claimant in Appendix I.

Terms of Reference

The purpose and scope of the Inquiry is set forth in the terms of the Commission directed by Order-in-Council P.C. 1810 of July 18th 1947, as amended by Orders-in-Council P.C. 3737 of September 17th 1947, and P.C. 242 of January 22nd 1948, and as amended is as follows:

> 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;

7. 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;

1. That the Honourable Mr. Justice Henry Irvine Bird be appointed a Commissioner, pursuant to the "Inquiries Act", Chapter 99 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, and of corporations of which the majority of the shares were formerly owned by such persons, namely:

(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. 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.

3. That the Commissioner shall give public notice in such manner as he deems advisable of the time for 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.

Advertisement for claims.

Prospective claimants were given notice of the Inquiry by publication on various dates between September 26th and October 3rd 1947 of an advertisement in twelve of the leading daily newspapers published and circulated in the several Provinces wherein persons of the Japanese race then resided. This advertisement was also published at the same time in three successive issues of a weekly newspaper known as "The New Canadian" which is printed in both the English and Japanese languages, and was then widely circulated among persons of the Japanese race throughout Canada.

Prospective claimants were thereby required to file their claims, in a form indicated by the terms of the advertisement, with the office of the Director of the Custodian, Royal Bank Building, Vancouver, B.C., on or before November 30th, 1947. Subsequently, in consequence of representations made to me on behalf of various prospective claimants, the time limit was extended to December 31st, 1947, in the case of persons then resident in British Columbia, and to January 15th 1948 in the case of persons then resident elsewhere in Canada.

Leave has since been granted to file claims subsequent to the date so fixed, whenever the applicant has reasonably explained the failure to file within the time limit.

1434 persons filed claims, the majority of which were multiple claims made in respect of various types of real and personal property such as,-

Real property used for residential, farm or business purposes;
Household effects;
Agricultural tools and equipment;
Stocks in trade and trade fixtures;
Fishing vessels, gear and nets;
Motor cars and trucks;

all of which were sold or otherwise disposed of by the Custodian pursuant to the liquidation policy laid down

by Order in Council P.C. 1665 of March 4th 1942, as later amended. In the result, the investigation of each claim involved consideration of several parcels of real and personal property.

A tabulation of all sales made by the Custodian, and of the claims filed for hearing before the Commission, prepared by the Director of the Custodian's office, discloses that 7,086 parcels of real and personal property were sold by the Custodian, for the aggregate sum of $2,591,456.00.

Claims were filed for hearing at the Inquiry in relation to 2420 such sales, wherein aggregate losses in excess of $7,000,000.00 are alleged to have been sustained. Amendments to the claim forms filed subsequently, made at the request of various claimants, resulted in a substantial reduction of the total sum claimed.

102 claims were subsequently withdrawn by the claimant or his representative, or were rejected by order of the Commissioner, as not authorized under the terms of reference.

Grouping of property into 7 categories.

The claims may conveniently be dealt with in this report under the following categories:

1. Real property situate in the Greater Vancouver area.
2. Real property situate in urban and rural areas of British Columbia, other than those included in classifications numbered 1 and 3.
3. Farm and other properties sold to the Director, Veterans' Land Act.
4. Motor cars and trucks.
5. Fishing nets and fishing gear.
6. Fishing vessels and boat gear.
7. Miscellaneous personal property other than that included in categories numbered 4, 5 and 6.

Sessions of the Commission.

The opening Session of the Commission was held at Vancouver, B.C., on December 3rd, 1947, when Counsel for various claimants, Counsel for the Co-Operative Committee of Japanese Canadians, Counsel for the Southern Alberta Central Committee of Japanese Canadians, and Counsel for the Government appeared.

An Official Reporter attended this and all subsequent Sessions of the Commission, and transcript of the proceedings has been made available, at Government expense, to Counsel for the claimants, as well as the Government. The record of these proceedings extends to 25,046 pages of transcript, in addition to 8996 exhibits filed on the hearing of the various claims. These records have been despatched to the Clerk of the Privy Council.

Various questions were raised by Counsel during the early Sessions of the Commission, relative to interpretation of the terms of reference. After hearing argument from all Counsel concerned, I made the following rulings:

1. The fair market value of personal property is to be determined as at the time of the sale, loss, destruction or theft thereof.
2. The fair market value of real property is to be determined as at the date of consummation of the sale thereof.
3. Claims in respect of personal property, arising from loss, destruction or theft occurring at any time subsequent to the vesting of such property in the Custodian pursuant to Order in Council P.C. 1665 of March 4th 1942, are held to fall within the terms of reference, notwithstanding that physical possession of such property had not been taken by the Custodian prior to the

loss, destruction or theft thereof.

4. That any diminution in market value caused by deterioration in property occurring between the date of vesting thereof in the Custodian, pursuant to Order in Council P.C. 1665, and the date of sale or the loss, destruction or theft, shall not be taken into account, but the fair market value of such property as at the date of sale, or loss, destruction or theft shall govern.

5. Claims relating to losses in respect of the sale of fishing vessels sold or disposed of by authority of the Japanese Fishing Vessels Disposal Committee prior to the month of August 1942 do not fall within the terms of reference, since such sales were not made by or under the authority of the Custodian.

6. Claims arising from loss alleged to have been sustained through failure of the Custodian to collect accounts receivable payable to a claimant do not fall within the terms of reference.

7. No claim shall be entertained in respect of the alleged value of good-will of a business or business premises, unless it be established that the Custodian sold the business or business premises as a going concern.

8. That the term "fair market Value" found in the terms of reference is there used in the sense that the same term has been interpreted in authoritative decisions of the Courts in Canada and England in expropriation

cases; that for present purposes the same meaning will be assigned to the term; and the tests applied in such cases for determination of "fair market value" will be applied to property, the subject of claims now under consideration.

My reasons for the conclusions expressed paragraph 8, which were pronounced soon after the opening of the Inquiry, to all Counsel who had presented argument on the subject, are appended as Appendix III.

In claims which have been heard since the delivery of the judgment of the Supreme Court of Canada in Diggon-Hibben v. Regem (1949) S.C.R. 712, Counsel has urged that the principles there laid down should be applied in the determination of fair market value of property sold by the Custodian.

Since in my opinion the principles extracted from earlier judgments upon which my conclusions in Appendix III were founded are approved and adopted in the Diggon-Hibben case, I adhere to the opinions expressed in Appendix III.

The circumstances surrounding the sale of properties by the Custodian do not, in my opinion, justify the addition of an allowance of 10 per cent. of the sum estimated to be the fair market value of the property sold.

Sessions of Inquiry

Since the claimants were widely distributed at various points across Canada at the time when the Inquiry opened, it was necessary to hold Sessions of the Commission for the purpose of taking the evidence of claimants at numerous centres across the country which could conveniently be reached by them.

Reception of testimony by claimants.

The Commissioner personally presided at Sessions of the Commission held at Lytton, Kamloops, Vernon, Grand Forks and Nelson, British Columbia; Lethbridge, Alberta; Moose Jaw, Saskatchewan; Winnipeg, Manitoba; Fort William and Toronto, Ontario; and Montreal, Quebec; and was engaged thereon continuously from early in the month of January 1948 until the end of June 1948, during which time the evidence of 472 claimants was heard.

Claims by corporations, the shares of which were held by persons of the Japanese race, and Government defence thereto, were heard at Sessions presided over by the Commissioner, held at Vancouver during the months of October and November, 1948.

Sessions of the Commission for the purpose of hearing further evidence of claimants and evidence adduced by Counsel for the Government, for the purpose of showing the procedure adopted by the Custodian's office in carrying out the administration and sale of evacuee property, were held at Vancouver, B.C., continuously from September 20th 1948 until the month of February 1949, and thereafter intermittently until March 8th, 1950.

Sessions held by Sub-Commissioners.

In order to avoid the long delay which must have ensued if the Commissioner personally presided at all Sessions held for the receiption of claimants' evidence, the Minister of Justice, on recommendation by the Commissioner, appointed eight County and District Court

Judges to act as Sub-Commissioners at the places later enumerated. Consequently, the evidence of all remaining claimants has been presented before Sub-Commissioners at Sessions held successively in Kamloops, Vernon, Grand Forks, Nelson and New Denver, Lethbridge, Winnipeg and Toronto. The transcript of all Sub-Commission hearings, duly verified by the Sub-Commissioner presiding, has since been filed with the Secretary of the Commission at Vancouver, and has been considered by the Commissioner.

Custodian's records made available to claimants.

Pursuant to my direction, the Director of the Custodian's office at Vancouver, prior to the date fixed for the hearing of each claim, has permitted Counsel for claimants to examine the records and files of his office, the contents of which relate to the administration and sale by the Custodian of real and personal property of any claimant. Claimants have thus been given all material available to the Custodian to assist them in the presentation of their claims.

Testimony of Government witnesses.

The testimony introduced by the Government in general defence to all claims by individuals included:

1. A complete outline by the Director of the Custodian at Vancouver of the procedure adopted by his organization in the administration of real and personal property of all persons evacuated from the protected area of British Columbia, i.e., the coastal areas, from the time when such property was vested in the Custodian, pursuant to Order in Council P.C.1665 of March 4th 1942, until such property was sold or otherwise disposed of under the powers conferred by Order in Council P.C. 469 of January 19th, 1943.

2. The evidence of various persons formerly employed by the Custodian in the management, appraisal or sale of real and personal property of evacuated persons, which witnesses severally have described the methods adopted in the performance of the duties assigned to each of them.

Custodian organization.

It is perhaps appropriate at this stage of my Report to comment in general terms upon the Custodian's performance of the very great responsibilities imposed upon the organization developed by him in respect to the administration, and later the sale, of all real and personal property, including lands, residences, businesses and business premises, stocks of merchandise, household goods, motor cars, trucks, fishing vessels, nets and gear, farm equipment and other chattel property left in the protected areas by some 22,000 evacuated persons, which property when vested in the Custodian was distributed throughout the coastal areas of the Province of British Columbia.

It is to be recalled that by Order in Council P.C. 1665 of March 4th 1942 all property within the protected areas of British Columbia, of persons of the Japanese race, was vested in the Custodian, from the date of the owners' evacuation. The evacuation of these persons began early in March 1942 and was carried on progressively until October 1942. The organization of the Director of the Custodian at Vancouver B.C. - non-existent at December 7th 1941 - was undertaken soon after, and by April 1942 had been expanded and developed to a point where it was reasonably capable of administering the property of persons of the Japanese race evacuated from their former homes.

Custodian's administration of evacuee property.

However, the evidence adduced before me establishes that in the first six months operation, the recently organized office of the Director was so swamped by the numerous responsibilities constantly thrown upon it that it was found impossible efficiently and promptly to perform the work entailed. In many instances it was found impracticable for the Director's organization to take physical possession of the property so vested in the Custodian within a reasonable period following the evacuation of the owners. In the result, regrettable losses were occasioned to the persons evacuated, in relation particularly to their chattel property. These losses arose through pilferage of chattels left in unoccupied premises, as well as from warehouses taken over by the Director, to which property had been moved for greater protection, - this notwithstanding that the Director appears to have adopted all presently available means for protection of such property.

On March 10th 1942, the Custodian enlisted the assistance of a group of Authorized Trustees in Bankruptcy and of licensed Real Estate Agents, to administer evacuee property, comprising virtually all such trustees and agents carrying on business in the protected areas of British Columbia.

Investigations were immediately undertaken by the Custodian, with the assistance of the persons so appointed, and reports subsequently were made by these persons to the office of the Director. Thereafter, real property holdings were severally allocated to a specific agent for administration, businesses were wound up by the various trustees, and stocks of goods and merchandise were disposed of by them or on their advice. Chattel property, when not considered to be safely stored in

the former home of the evacuee, was removed to sundry warehouses for protection.

It is worthy of comment that in the period of the Custodian's administration rentals were recovered from real property in an aggregate sum of about $600,000.00, which was duly credited to the accounts of the evacuee owners and ultimately distributed to them.

It has been established before me that, within a matter of months following the vesting of evacuee property in the Custodian, an organization had been set up by the Director which thereafter gave adequate protection to the interests of the Japanese owners, save in respect of the pilfered personal property, to which reference has been made before. The losses so sustained will be dealt with under the heading of "Miscellaneous Personal Property".

Subsequently a policy of liquidation of the property of these evacuated persons was laid down by Order-in-Council P.C. 469 of January 19th, 1943. This policy was put into operation soon after, and on March 8th 1943 two Advisory Committees were set up by the Custodian to advise the Director upon the disposition or effective use of real and personal property of evacuated persons of the Japanese race then vested in the Custodian.

Advisory Committees

The first of these Committees was appointed for the Greater Vancouver area, the personnel of which comprised The Honourable Mr. Justice Sidney Smith, Justice of Appeal, British Columbia, as Chairman; Charles Jones, Equire, (then Alderman of the City of Vancouver and later Mayor); and K. Kimura, Esquire.

The other Advisory Committee, known as the Rural Property Committee, had jurisdiction over all vested property situate outside the Greater Vancouver area, including Prince Rupert and the vicinity, Victoria and elsewhere on Vancouver Island, as well as the Fraser Valley. This Committee was composed of His Honour the

late Judge David Whiteside, deceased, as Chairman; D.E.McKenzie, Esquire, New Westminster; Hal Menzies, Esquire, Haney B.C., and J.J.McLellan, Esquire. Mr.McLellan resigned soon after his appointment and was replaced by William Mott, Esquire, Mayor of New Westminster.

The personnel of these Advisory Committees was such as to provide complete assurance that the administration and liquidation of the property of evacuated persons under their auspices would be performed with competence and just consideration for the interests of the owners.

I am satisfied on the evidence adduced before me that the very onerous task imposed upon the Director of the Custodian's office at Vancouver, under the guidance and with the assistance of the Advisory Committees, was competently performed, with due regard to the interest of the owners of such property, notwithstanding that the task had to be performed in an atmosphere of public hysteria induced by war. The fact that I have found that in certain respects fair market value was not realized on sales made by the Custodian in no sense reflects upon the work of the Custodian's organization. On the contrary, the evidence brought out on this Inquiry strongly supports the conclusion that this organization, in spite of the magnitude of the responsibilities imposed upon it, has substantially succeeded in administering and subsequently selling property of evacuated persons with due regard to the owners' interest.

These Committees advised the Director in respect to all matters arising in connection with the administration and sale of real and personal property under their jurisdiction, including the disposal of all

property vested in the Custodian under the Orders in Council before mentioned, the methods to be adopted in appraisal of such property, the offering of the same for sale, the prices which should be realized, and the terms of contracts for sale, as well as the leasing of lands the immediate sale of which was considered inadvisable by the Committees.

Commissioner's conference with Counsel on proposals to curtail Inquiry

In November 1948, when evidence had been introduced by all claimants who had filed personal claims, as well as by the Government, designed to explain in general terms the methods adopted by the Custodian's office for the liquidation of property vested in him, I held conferences with Counsel for all parties concerned, for the purpose of examining the possibility of disposing of some, if not all, of the claims on the basis of recommendations founded upon the evidence adduced up to that time.

It had then become obvious that if each claim and the defence thereto was to be investigated individually, the Inquiry, which had continued for a period of fifteen months, was likely to be prolonged for an indefinite time.

A mutually acceptable solution was found in the following proposals:

1. That each Counsel for the claimants and for the Government should select for consideration by the Commissioner a designated number of claims included in each of the categories enumerated on page 4 of this Report, which were regarded by Counsel as representative of all claims in that category.

2. That argument should then be presented as to those claims, founded on the evidence adduced to date.

3. That in the course of such argument, proposals should be made by each Counsel for a final disposition of the claims included in each category.

4. That the Commissioner should consider the proposals so made and indicate to Counsel his recommendations covering each classification.

5. That such over-all recommendations, if mutually acceptable to Counsel, should then be applied by Counsel to individual claims included in each category, each Counsel being free to exclude from such over-all recommendations claims considered by him to have unusual characteristics and therefore could not equitably be disposed of on the over-all basis.

6. That subsequently these special cases so selected should be tried individually before the Commissioner.

7. That if any recommendations so made by the Commissioner were not found mutually satisfactory, then all claims included in that category should be tried individually.

Counsel considered, and the Commissioner was of the same opinion, that substantial justice could thus be done to all parties concerned, and so avoid the presentation of much additional testimony relating to individual claims without thereby furnishing for the Commissioner's consideration information likely to be more reliable than had been introduced on the Inquiry. It was recognized that the hearing of each claim separately must entail continuation of the Inquiry for a further lengthy period. Therefore, with consent of Counsel, I directed that argument should be presented, based upon the evidence adduced to date and the proposals and counter-proposals made by Counsel for disposition on an over-all basis of claims falling within the several categories. It was agreed that my conclusions on claims falling within any category should be taken as tentative only pending mutual acceptance.

My tentative conclusions announced after argument were subsequently accepted by Counsel, who meantime had consulted their respective principals on the subject.

It is worthy of comment that Counsel substantially agreed on the proposals to be made, to the end that in two categories they agreed upon the percentage for over-all recommendation, both of which were approved by me as equitable in terms of the evidence. In one category the proposal approved by Counsel was considered by me to be excessive, and the percentage agreed upon was therefore reduced. The difference between Counsel on other categories did not exceed 30% of selling prices.

The procedure so adopted was thereafter applied to all personal claims in the following manner, that is to say: Counsel for each claimant and for the Government jointly examined the evidence and other material which had been introduced in respect of each claim. Having mutually agreed that a claim or branch of a claim should be classified under one of the enumerated categories, they applied the percentage adopted by me to all property the subject of claims falling within that category. Matters in dispute between Counsel were disposed of by reference to me. All proposals for monetary recommendation of other than nominal sums were examined and passed upon by me.

The over-all recommendations in respect of property included in each category discussed below are founded upon the conclusions reached by me in relation to each category, as well as the application of the procedure adopted for investigation of claims classified under that category.

Claims reserved by Counsel for special consideration were subsequently heard by me, and disposed of on the basis of the evidence adduced in respect of each claim. Reasons for the recommendation made in each of

the special cases are appended to this Report in Appendix II.

I proceed to outline,-

(1) the methods which are shown to have been adopted by the Custodian for orderly liquidation of the various types of property so vested in him;

(2) the reasons which I have assigned for the over-all recommendations made in respect of each category:

LIQUIDATION OF REAL PROPERTY

Procedure adopted for sales of real property.

The evidence discloses that the following procedure was adopted by the Custodian in respect to the sale of all real property vested in him which is included in classifications later referred to as Greater Vancouver Real Property, and, Real Property other than Greater Vancouver; this procedure having first been approved by the Advisory Committee concerned:

Catalogues were prepared in which were listed each parcel of real property, with a brief description sufficient for identification.

The several catalogues were then distributed to all licensed real estate agents who carried on business in the vicinity in which the property was situate, comprising some 275 agents.

Qualified appraisers, approved by the respective Advisory Committees, were selected by the Director from well qualified persons of long experience who had carried on business for many years in the areas for which each was appointed.

Appraisal of real property.

Each parcel of real property was inspected and appraised by one or more of the Appraisers so appointed.

The Urban Advisory Committee (i.e. Greater Vancouver) on many occasions declined to approve the appraised price of one Appraiser, and called for one or

more additional appraisals. In respect of some properties, this Advisory Committee fixed a minimum price at a figure in excess of the appraisal. Some members of this Advisory Committee made numerous personal inspections of various parcels.

On the other hand, the Rural Property Committee (i.e., other than Greater Vancouver) invariably adopted the Appraiser's valuation as the minimum price for acceptance, the difference in procedure between the two Committees being accounted for by the fact that the Rural Committee dealt with properties distributed from one end of the Province to the other, and consequently in numerous instances Committee members had no special knowledge of property values.

Advertising.

Display advertisements were inserted in the leading newspapers published in the several areas in which properties then offered for sale were situate. These advertisements, samples of which were exhibited on the Inquiry, were published on one day only in each of the selected newspapers. Prospective purchasers were thereby invited to submit a written tender for any parcel within a minimum period of 30 days from the date of first publication of the advertisement. Each advertisement contained a reference to a specific catalogue, and prospective purchasers were thereby informed that catalogues were available at the office of the Director or in the office of any real estate agent operating in the area.

Sales by tender

Tenders were opened in the presence of the Advisory Committee concerned, or its Secretary, and of a representative of the Director's office. The Advisory Committee concerned passed upon every tender. No tender was accepted unless the sum tendered was equal to or

exceeded the price fixed by the Appraisal. If no tender of sufficient amount was received in respect of any parcel, each person tendering was specifically informed that the price offered by him was insufficient, and was either invited to increase the offer made or was informed of the minimum sum acceptable (i.e., the appraised price). In numerous instances persons, whose tenders had been rejected, subsequently made a sufficient tender, which then was accepted. In some instances, when no sufficient tender was received the Advisory Committee concerned instructed the Director to have further appraisals made, which procedure on occasions resulted in a re-appraisal at a lesser price. Such re-appraised parcels were then re-advertised and the same procedure adopted as is outlined above.

Protection against flooding of market.

Public offerings of real property were distributed over a period of approximately two years, only a limited number of parcels in a given area being offered for sale on the occasion of the publication of each advertisement.

Cash Sales prescribed.

The Urban Advisory Committee adopted a policy of fully paid cash sales. This policy was likewise adopted by the Rural Advisory Committee in most instances, although this latter Committee approved some sales on terms, so long as substantial cash payments were made.

Lack of public interest in real property offered for sale.

I conclude from the evidence adduced that, at least in the early stages of the operation of the sales policy, there was not great public interest in the parcels so offered.

Peculiar significance is to be attached, in my judgment, to the following information furnished by the Director of the Custodian's office at Vancouver B.C., i.e.,

Greater Vancouver Real Property sales.

Between July 19th 1943 and October 4th 1943 471 parcels of real property in the Greater Vancouver area were offered for sale by the Custodian. 5 years elapsed before all of these properties could be sold at appraised prices.

In 1943 acceptable tenders were received for only 173 parcels, or 36.7 per cent.

In 1944 acceptable tenders were received for only 210 parcels, or 44.6 per cent.

Of the remaining parcels, 52 were disposed of in 1945, 34 in 1946, and 2 in 1947.

Sales of Real Property situate in rural areas.

378 rural properties (category 2) were offered for sale in the period May 1944 to June 1944, for which in 1944 acceptable tenders were received for 232 parcels, or 61.4 per cent., in 1945 acceptable tenders were received for 92 parcels or 24.3 per cent., in 1946 acceptable tenders were received for 52 parcels or 13.8 per cent. and the remaining 2 parcels were disposed of in 1947.

The figures quoted above must be considered in light of the fact established on the evidence before me that the period 1943 to 1946 was a period in which there was an abnormal demand for developed real property at substantially increasing prices.

In my opinion, the lack of public interest indicated was not attributable to the method adopted in offering real property for sale, nor to insufficiency of the sales effort. I believe that in the circumstances it would have been impracticable to adopt any method other than sale by tender. The advertising, in my opinion, was adequate, more particularly since the advertisements made reference to the catalogues and the catalogues showed

opposite each parcel the name of the real estate agent responsible for it. Rather does it appear from the evidence that real property of the class generally held by owners of Japanese origin was not in great demand during the year 1943. Had it not been for the very great influx of new population to centres in British Columbia in 1944, brought on by war conditions, and the consequent substantially increased demand for developed real property of every description, I think it is problematical whether sales at the appraised prices could have been made of the parcels on which no tenders were received in response to the offerings made in the first year.

Deduction of commissions from selling prices.

The evidence discloses that the Director paid commissions of 5 per cent. on the sale price of substantially all of the real property sold in the Greater Vancouver area, and a like commission on approximately 50 per cent. of the parcels included in category 2. In addition to such commissions, an expense of $12.50 per parcel was incurred by the Custodian on all the foregoing sales. Such commissions and other expenses were subsequently charged to the account of the Japanese owner. On 23 parcels included in categories 1 and 2, greater expense was incurred in consequence of the necessity to revalue and readvertise such parcels.

All other expense incurred by the Director in connection with the sale of the foregoing property was absorbed by the Custodian's office.

Commissioner's conclusions on claims relating to real property in Greater Vancouver area.

I am of opinion that the sales procedure adopted by the Director was sound and businesslike, and was calculated to realize the fair market value of the lands and buildings sold, That this procedure was scrupulously followed in respect to every parcel sold is clearly established.

I have had before me certain of the Appraisers employed by the Custodian, and have knowledge of most if not all others engaged on this work. I have examined a very large number of the Appraisal Reports which provided the foundation for sale prices finally approved by the Advisory Committee. The qualifications, experience and integrity of the Appraisers employed by the Custodian, in my opinion, are beyond question.

Upon a careful review of the evidence, and with due regard to the submissions made by Counsel, an analysis of which I think is unnecessary, I have reached the conclusion that every reasonable effort was made by the Director to effect sales of all real property in the Greater Vancouver area at the best prices obtainable, and that the prices realized were substantially equivalent to the market value of such parcels at the date of sale. However, as noted above, certain expenses incurred on these sales were charged to the respective owners. In the result, therefore, the owner has received, in my opinion, less than the fair market value to the extent of the deductions so made.

Early in the proceedings of this Commission I expressed the opinion that real estate agents' commissions, auctioneers' and appraisers' fees, caretaking charges and other expenditures necessarily incurred in the custody and sale of Japanese property were outside the terms of reference of this Inquiry. Since that time, and after many months of hearing evidence, I have concluded that my previous opinion was premature and has not been supported by the evidence since introduced. On further consideration of the recital found in Order in Council P.C.3737 of September 17th 1947, which I have numbered at the

opening of this Report as Recital 7, I am of opinion that it was the intention of the Privy Council, following out the recommendation of the Joint Public Accounts Committee, that evacuated persons should receive the fair market value of their property sold by the Custodian. Therefore, notwithstanding my conclusion that fair market value of Vancouver property was realized on the sale thereof by the Custodian, I consider that fair market value was not received by the owners of such property in consequence of the deductions before mentioned.

Recommendations in respect to lands situate in Greater Vancouver area

I therefore recommend payment to claimants, in respect of claims included in category No.1, of a sum of money equal to the aggregate deductions made by the Custodian.

The sums recommended for payment to each claimant, as set out in Appendix I to this Report, have therefore been calculated upon the basis of the recommendations made in respect of property included in each category.

Real property situate in Rural Areas.

Dealing now with Group 2 above, being real property situate in rural areas other than those included in numbers 1 and 3: The parcels included in this group, as before noted, were widely distributed throughout the Province of British Columbia. Consequently, the Director of the Custodian's office in many instances was unable to obtain the assistance of appraisers with such outstanding qualifications as those who were retained to act in the urban area of Greater Vancouver, nor does it appear that the appraisers employed had the intimate knowledge of the properties appraised which was enjoyed by those retained in the urban area. Moreover, the Rural Advisory Committee, drawn largely

from residents of the Fraser Valley, could not bring to their deliberations the same intimate knowledge of properties dealt with by them as was possible in the case of the Urban Committee. I have directed attention earlier to the fact that the Rural Advisory Committee found it necessary to adopt in all circumstances the price fixed by the appraisers. Furthermore, the market for real properties passed upon by the Rural Advisory Committee was a much more limited market than that available in the Greater Vancouver area.

The evidence satisfies me that all reasonable efforts were made by the Director of the Custodian's office, as well as the Rural Advisory Committee, to realize the fair market value on the sale of these properties. However, it is my conclusion that the circumstances before outlined did not permit of that realization to the same degree as in the case of properties in the Greater Vancouver area.

A reflection of this conclusion is found in the proposals made by Counsel. Here Government Counsel proposes an over-all award of 15 per cent. of the sale price, whereas Counsel for the claimants would accept 20 per cent. There has been excluded from these proposals certain properties having special characteristics which have been considered and dealt with in the schedule of recommendations independently of other properties in this group.

Taking into account the factors set out above, it is my conclusion that justice will be done to the owners of properties in this group by a recommendation of 10 per cent. of the selling price in the case of all properties, to which there should be added the amount of the commission charged by the Custodian to the account of any owners of properties in respect of the sales on which commissions were paid.

Claims arising out of sale of Fraser Valley lands by the Custodian to the Director, Veterans Land Act.

507 claims for a total sum of $1,838,162.00, in respect of the sale by the Custodian to the Director Veterans Land Act of 572 parcels of real property situate in the Fraser Valley, were presented to the Commission. These claimants constitute 89.51 per cent. of the former owners entitled to file claims under the terms of reference in respect of lands included in this category.

The Veterans Land Act transaction, unlike the sale of other real and personal property of persons of the Japanese race, was a bulk sale of 741 parcels of farm and residential land, concluded after lengthy negotiations carried on between representatives of the D.V.L.A. and the Rural Advisory Committee during May and June 1943.

The sales policy adopted by the Custodian for the sale of urban and other rural real property, which has been outlined earlier in this Report, was not applied to the sale of the real property dealt with in this phase of the Report. The several offers made by the D.V.L.A. in the course of these negotiations, including the offer finally accepted, were founded upon separate appraisals made of each parcel by one of nine Soldier Settlement Board valuators during the period of six months following May 1st 1942.

These appraisers were men of long experience in the service of the Soldiers Settlement Board, each of whom had special qualifications for such work.

Appraisals of 17 parcels made by Rural Advisory Committee.

None of the appraisal reports prepared by these valuators were made available to the Advisory Committee until the closing stages of the negotiations with the Advisory Committee, when the D.V.L.A. produced S.S.B. Reports on 17 parcels for comparison with

valuations recently made of the same parcels by three members of the Advisory Committee. These parcels had been selected by the Committee as providing a fair cross section of all properties included in the proposed sale. The Committee's aggregate valuation on these parcels was then shewn to exceed the valuations of the Soldiers Settlement Board valuators by 53 per cent. i.e., Committee aggregate valuation $43,100.00, Soldiers Settlement Board valuation $28,232.00.

Apparently, as a result of this unfavorable comparison, the Committee rejected the current offer of $825,000.00 for 769 parcels, the initial D.V.L.A. offer of $750,000.00 meantime having been increased to the larger figure. Subsequently, the Director, Veterans Land Act, by letter to the Custodian of May 29th, 1943, increased his offer to $850,000.00 and declared his position as follows:

(Exhibit 31) "Advice from Mr. Barnett at Vancouver indicates that your Vancouver Committee considers these particular lands are worth approximately one and one-quarter million dollars, and I may advise you frankly that the D.V.L.A. is not interested in these lands at that figure.

.....

This ($850,000.00) is the final offer I am prepared to make for these particular properties in bulk."

Rural Advisory Committee recommends acceptance of D.V.L.A. offer of $850,000.

On June 14th, 1943, the Advisory Committee unanimously recommended acceptance by the Custodian of the offer of $850,000.00.

Difficulties relating to title caused the withdrawal by the Custodian of certain parcels, and 741 parcels ultimately were conveyed for a total consideration of $792,265.22.

This recommendation of the Committee is said by the Chairman in his letter to the Custodian to have been

influenced by the following factors, namely,-

(Exhibit 32)

"(b) That the purpose for which such lands are required is for the rehabilitation of returned soldiers.

"(c) That the offer is not for selected individual parcels, but for a block of 769 parcels which includes a large proportion of uncultivated land and a considerable amount of bush land.

"(d) That while the appraisals of 17 farms made by this Committee were in excess of the appraisals of the Soldiers Settlement Board of Canada, it was realized that present valuations are enhanced due to war conditions and do not represent ordinary land values as in normal times.

"(e) That the present offer is for cash and can therefore be reasonably expected to be less than the appraised value, in view of the interest which may accrue by investment of the purchase funds.

"(f) That the Custodian will be relieved of the cost of administration, taxes, fire insurance, depreciation."

Before the transaction was finally concluded, alterations in the terms of sale were made, first,- by advancing the effective date of the transaction by approximately six months, i.e., from June 14th, 1943, to January 1st, 1944, with adjustments (rentals, taxes etc.) as of the latter date; secondly,- by crediting to the D.V.L.A. 2 per cent. of the agreed price as a consideration for cash settlement. These changes effected a reduction in the aggregate sum payable to Japanese owners of approximately $41,000.00.

I conclude from the foregoing, as well as from the evidence adduced upon the Inquiry (particularly that of Hal Menzies, the sole surviving member of the Rural Advisory Committee), that the price so recommended was thought by the Committee to be and apparently in fact was the maximum sum obtainable on a sale to the D.V.L.A. The reasons for that recommendation, as expressed in the above quotation from Exhibit 32, do not support

a conclusion that the Committee believed the price was equivalent to the current fair market value of the lands. On the contrary, paragraph (d) of the recommendation would seem to indicate the opinion that the price recommended was in fact less than the fair market value. The other factors enumerated in paragraphs (b), (c) and (f) I conclude were considered by the Committee to provide justification for acceptance of the offer.

In the course of this Inquiry a mass of evidence has been adduced, directed to determining what was the fair market value of the lands now under consideration. This evidence may conveniently be dealt with under the following headings:

1. The Soldiers Settlement Appraisal Reports.
2. The spot appraisals made by members of the Rural Advisory Committee.
3. The sale by the Custodian of 43 parcels appraised by the Soldiers Settlement Board Appraisers, but subsequently withdrawn from the V.L.A. deal and later sold under the Custodian's general sales policy.
4. The sales made by Japanese owners of 11 parcels, subsequent to Soldiers Settlement Board appraisal thereof and prior to the making of the V.L.A. deal.
5. Appraisals made in 1948 by Fred M. Clement, Dean of Agriculture, University of British Columbia, showing the agricultural value of D.V.L.A. lands in 1943.
6. Statistical analyses, verified and approved as mathematically accurate by Dr. Drummond,

Department of Economics, University of British Columbia, whereby a comparison is made between prices of Japanese owned parcels paid by D.V.L.A. and the assessed values for the same properties fixed by Municipal Assessors, contrasted with prices paid on private sales of comparable lands in the same municipalities made in the year 1943, likewise compared with the assessed values thereof; the selling prices on such private sales having been taken from the records of the appropriate Provincial Land Registry Offices.

S.S.B.Appraisal Reports

1. The Soldier Settlement Board Appraisal Reports on each parcel, the subject of a claim, were put in evidence by Government Counsel at the time when each claimant was heard. Subsequently, each of the nine Soldier Settlement Board valuators, as well as other Soldier Settlement Board officials engaged in 1942 on appraisal of these lands, was examined upon the reports so made and the methods of valuation adopted. I have reached the following conclusions in regard to these appraisals:

(a) That the appraisals were conscientiously made and reflect the honest opinion of each appraiser.

(b) That the valuations are most conservative,- a factor which may be explained by the fact that each of these appraisers had been engaged on Soldier Settlement Board appraisals prior to and through the depression period, and was therefore influenced by that experience. The following statements made by one of the appraisers are quoted as explanatory of this conclusion:

"Q: In your appraisals throughout-I am referring particularly to these appraisals of the Japanese lands - were your appraisals conservative or generous?

A: Conservative means cautious. My appraisals were cautious.

Q: And why would you make your appraisals cautious rather than liberal?

A: We had come through a period of depression in which land values seemed to be slipping, and we were in a period of great uncertainty and I was therefore cautious."

(c) That the valuations reflect agricultural value only. No consideration appears to have been given to any other potential use to which the property was adapted.

(d) That consideration was seldom given to prevailing market prices of comparable lands in the immediate vicinity.

(e) That no allowance was made in such valuations for fruit trees, berry plants, etc., or other growing crops.

(f) That the value of dwellings and other farm buildings situate on the land was discounted to a level which the appraiser considered that the veteran operator could afford to use or maintain from income derived from the farm.

(g) That the appraisers considered these properties primarily from the point of view of the ultimate use of the lands for veterans' settlement, but the testimony does not support the conclusion that the appraisers were consciously influenced by the latter feature in determining value.

(h) That for the reasons outlined in subparagraphs (b) to (g) inclusive the Soldiers Settlement Board valuations do not reflect the fair market value of such lands at the date when the appraisals were made.

Since all appraisals were made at least six months and many of them more than twelve months prior to the date of the D.V.L.A. transaction, during which period the market value of such lands is shewn to have increased by at least 10 per cent., the D.V.L.A. price paid for these lands was likewise much below the fair market value.

Spot appraisals made by members of the Rural Advisory Committee

2. These appraisals were made in May 1943 by Messrs. D.E. McKenzie, Hal Menzies and Yasutaro Yamaga, currently members of the Rural Advisory Committee, each of whom had considerable experience either in connection with the sale or operation of comparable holdings in the Fraser Valley. Separate appraisals of every property were made by each member of the Committee, their several appraisals were subsequently reconciled at a conference of the whole committee, and a Committee valuation adopted. Each property was considered by the Committee to represent an average farm of the various types owned by Japanese in five different municipalities. Two such valuations in Mission Municipality are shewn to be 2 and 21 per cent. respectively below the Soldiers Settlement Board appraisal price, and other properties from 10 to 193 per cent. above the Soldiers Settlement Board price. In my judgment, this comparison is inconclusive, since the properties represent less than 2.3 per cent. of all parcels sold to the D.V.L.A. Nevertheless, I consider that the comparison is not without significance.

Sale by the Custodian of 43 parcels appraised by the Soldier Settlement Board Appraisers, but subsequently withdrawn from the V.L.A. deal and later sold under the Custodian's general sales policy.

3. Two of these parcels were sold by the Custodian in 1942 and 1943 at 60 and 33 per cent. respectively in excess of the V.L.A. price. 15 parcels were sold by the Custodian in 1944 at 101.5 per cent. in excess of the V.L.A. price. There is evidence that Land Registry Office records on private sales made in 1944 of Fraser Valley lands reflect a rise in price over June 1943 of from 12 to 20 per cent. I conclude, therefore, that it is reasonable to assume a maximum increase in prices during this period of 20 per cent., and on that basis the Custodian's aggregate selling price of the 15 parcels in 1944 will show approximately 80 per cent. in excess of the aggregate Soldier Settlement Board appraisals on the same properties.

The sample so taken is likewise inconclusive in that only 17 parcels are involved but, as in the case of the sample considered under heading 2, some significance must be attached to the difference.

The remaining 26 parcels were sold by the Custodian during 1945 and 1946, a period of rapidly rising prices for these lands. Such sales show an even greater excess over Soldier Settlement Board appraisals, but in my judgment are significant only in that the prices realized show that a market was available in these years for such lands at very substantially higher prices than Soldier Settlement Board valuations, notwithstanding that the properties meantime had been vacant or in the occupation of tenants.

4. These were private sales made in May, June and July 1942 by the respective owners for an aggregate of $17,250.00, the V.L.A. final offer therefor being $10,846.00 or approximately 60 per cent. less than the price realized on private sales.

The sales made by Japanese owners of 11 parcels, subsequent to appraisal thereof and prior to the making of the V.L.A. deal

A tabulation of the sale of 69 parcels withdrawn from the V.L.A. deal, after appraisal of such lands by Soldier Settlement Board appraisers, was filed as Exhibit 37 on the Inquiry. Included therein are the sales referred to in Numbers 3 and 4 above, as well as 10 sales made by the Official Administrator in 1942, 1945 and 1946, as well as 2 private sales made in 1946 and 1947. The aggregate of all sales shewn in Exhibit 37 is 102 per cent. in excess of V.L.A. prices.

5. Dr. Clement, called as a witness on behalf of the claimants, testified in relation to a survey made by himself and associates in 1948 of 351 parcels of the land previously appraised by Soldier Settlement valuators in 1942. These lands included parcels situate in each of the municipalities wherein lands were acquired by D.V.L.A. from the Custodian. Since the number of parcels covered by the survey represents more than 47 per cent. of the 741 parcels included in the V.L.A. transaction, I consider it to constitute a representative sample of the whole.

Appraisals made in 1948 by Fred M. Clement, Dean of Agriculture, University of British Columbia, showing the agricultural value of D.V.L.A. lands in 1943.

Dean Clement's conclusions, based in part upon physical examination of the lands made in 1948, in part upon production figures for a substantial number of the same parcels derived from records of co-operative organizations through which the Japanese owners had marketed produce from the same lands, and

in part from an economic study made in 1947 by the Department of Agricultural Economics, University of British Columbia, relating to the small fruit industry in the Fraser Valley, were expressed in these terms: Exhibit 96, page 6:

> "We consider from the survey outlined above that the sampling which we have taken represents a fair sampling of the small fruit and mixed farm units formerly the property of Japanese persons, and appraised by the Soldier Settlement Board in 1942. We conclude on the basis thereof that the agricultural value of these properties at the time of appraisal by the Soldier Settlement Board lies between 182 per cent. and 184 per cent of the value placed thereon.
>
> "With reference to Table 6, in which are listed the direct appraisals (properties on which we were unable to locate production figures) the agricultural value of these parcels exceeds the Soldier Settlement Board valuation by 79.6 per cent which is within approximately 3½ per cent of the valuations obtained by the application of statistics and direct examination."

It is to be observed that the conclusions drawn by this witness - a man who is eminent in the field of agricultural economics in Canada - are limited to agricultural value of the lands under review. The witness in the course of his testimony expressed the opinion that market values of the same lands in 1943 exceeded the agricultural values placed by him thereon.

Statistical analyses verified and approved as mathematically accurate by Dr. Drummond, Department of Economics, University of British Columbia, whereby a comparison is made between prices of Japanese owned parcels paid by D.V.L.A. and the assessed values for the same properties fixed by Municipal Assessors, contrasted

6. Both Government Counsel and Counsel for the claimants caused studies to be made of Land Registry office records showing private sales made in the year 1943 of parcels of land of comparable type to the former holdings of persons of the Japanese race included in the V.L.A. transaction. These studies were subsequently filed as exhibits on the Inquiry. I have extracted from them the following information as indicative of the results shewn by such investigations:

with prices paid on private sales of comparable lands in the same municipalities made in the year 1943, likewise compared with the assessed values thereof; the selling prices on such private sales having been taken from the records of the appropriate Provincial Land Registry Offices.

Maple Ridge Municipality:

167 parcels were sold to D.V.L.A. in June 1943, at a ratio of 36.39 per cent below the assessed value thereof.

82 private sales of comparable parcels were made between March 1st and September 30th, 1943, at an aggregate price of 49.2 per cent. above the assessed value thereof.

Surrey Municipality:

68 parcels were sold to D.V.L.A. in June 1943 at a ratio of 28.2 per cent below the assessed value thereof.

276 private sales of comparable parcels were made between March 1st and September 30th, 1943, at an aggregate price of 41.72 per cent above the assessed value thereof.

Mission Village:

15 parcels of land situate within or close to the boundaries of the Village of Mission were included in the V.L.A. transaction, having likewise been appraised by Soldier Settlement Board appraisers. Since each of these parcels was situate in or close to a settled community of not less than 5,000 population, wherein off-farm employment was available to the occupants, and since there was erected on 14 of such parcels a habitable dwelling, I am satisfied that each of these parcels had a potential value as a residential site in addition to its agricultural value.

A similar study to those before mentioned, comparing V.L.A. and private sales with corresponding assessed values, shows the aggregate of

these V.L.A. sales to be 51.46 per cent below assessed values, whereas the average of 40 private sales of what are assumed to be comparable parcels, made in 1943, are shewn to be 54.9 per cent above assessed values.

Assuming that assessed values throughout the before mentioned Municipalities are consistent, D.V.L.A. prices in 1943 must be increased by the percentages shewn below to attain parity with prevailing market prices of comparable property in each Municipality:

Maple Ridge	- 136.01 per cent
Delta	- 116.96 per cent
Richmond	- 73.43 per cent
Surrey	- 113.37 per cent
Mission	- 86.37 per cent
Mission Village	- 212. per cent.

I am not satisfied that the comparison so made justify a conclusion that the selling prices on private sales in the period under review so greatly exceeded V.L.A. prices in the same municipalities, as above indicated, since in my judgment the evidence does not warrant an assumption that assessments throughout a municipality are consistent. However, I consider that great significance must be attached to the fact that V.L.A. prices invariably fall below assessments, whereas prices on private sales invariably exceed assessments. Moreover, although assessments throughout a municipality may not be consistent, it is I think not unreasonable to assume that the degree of consistency is relatively the same in relation to lands formerly owned by persons of the Japanese race and sold to the D.V.L.A. as lands the subject of the private sales.

The factors enumerated in the foregoing examination of Soldier Settlement Board appraisals bring me to the conclusion that these valuations generally were substantially lower than the fair market value of the lands at June 1943, being the effective date of the purchase by D.V.L.A.

Since these valuations provided the foundation for the price originally agreed to be paid by D.V.L.A. which was later reduced by $41,000.00 as noted above, through the change made in the effective date of the transaction, as well as by the imposition by the D.V.L.A. of conveyancing charges in the sum of $11,115.00 - i.e. $15,00 per parcel - I have no hesitation in finding that the claimants did not realize the fair market value of their lands.

Determination of fair market value represents a more difficult problem. The lapse of 5 years between the dates of the V.L.A. sale and of this Inquiry, as well as the very large number of properties involved, has made it practically impossible for Counsel on either side to produce evidence of the value of specific properties, the subject of claims. Consequently, it has been found necessary to approach the problem on an over-all basis, that is to say:

1. By comparison of Soldier Settlement Board and Rural Advisory Committee appraisals on 17 parcels.

2. By comparison of D.V.L.A. offers on 54 parcels later sold by the Custodian or by Japanese owners.

3. By comparison of Soldiers Settlement Board appraisals of 301 parcels with Dean Clement's appraisals of the same properties.

4. By comparison of D.V.L.A. prices paid for parcels in each municipality with private sales made in the same year of what are assumed to be comparable parcels - no doubt a somewhat broad assumption.

5. By taking cognizance of the fact that the D.V.L.A. deductions of $52,115.00 before noted serve to increase by that amount the difference between the aggregate market value of the lands sold and the aggregate price received by the claimants.

None of the comparisons so made, in my opinion, provides by any means a conclusive test for determining fair market value, but nevertheless those comparisons, considered with the factor mentioned in paragraph 5 above, provides reasonable support for the conclusion that the aggregate of D.V.L.A. prices must be increased by 80 per cent thereof to attain fair market value.

Consequently I recommend payment of 80 per cent of the D.V.L.A. price paid to the Custodian, which sum has been apportioned in Appendix I hereto between claimants whose property was situate in each municipality in the proportion shewn in respect of each municipality by Exhibit 117.

FISHING VESSELS AND GEAR

201 vessels were sold or otherwise disposed of by the Custodian. Claims for the total sum of $160,432.00 were presented on the Inquiry by former Japanese owners of 109 vessels surrendered to Government authorities after December 7th 1941. Included in these claims are 75 vessels sold by the Custodian, 27 vessels sold under authority of the Japanese Fishing Vessels Disposal Committee, and 7 vessels and scows, none of which either came into the possession of the Custodian or were sold by him.

By Order in Council P.C. 9761 of December 16th 1941, all vessels and equipment, the property of persons of the Japanese race, were directed to be surrendered to the Royal Canadian Navy. Approximately 1150 such vessels were subsequently assembled in the Fraser River near New Westminster B.C. and at Prince Rupert B.C.

Sales through Disposal Committee.

By Order in Council P.C. 288 of January 13th 1942, the Japanese Fishing Vessels Disposal Committee (hereinafter referred to as J.F.V.D.C.) under the chairmanship of Mr. Justice Sidney Smith, was created, with power to promote the early employment of these vessels in the fishing industry of British Columbia. Upon the appointment of J.F.V.D.C., all of the surrendered vessels were examined and appraised by O.W. Phillipson, Mechanical Superintendent of Anglo-British Columbia Packing Company Limited, a man of wide experience in the British Columbia fishing industry, who had extensive knowledge of vessels employed in the industry, the cost of construction, and present day value thereof. The J.F.V.D.C. program of sales promotion resulted in disposal of more than 80 per cent.

of all surrendered vessels within the period of seven months ending July 31st 1942, at prices 10 to 15 per cent. in excess of appraisal figures, leaving only 181 vessels which had not proved saleable during that period at the prices set by the Committee. The sales so made for the most part were approved by the respective owners, by whom the Bills of Sale were executed.

Sales by Custodian.

These 181 vessels, together with 20 others later discovered at various points on the coast of British Columbia, were vested in the Custodian, with power of sale, under the terms of Order-in-Council P.C. 6427 of July 20th 1942.

I conclude from the evidence which has been adduced before me that the great majority of these vessels were of a poorer grade than those disposed of by the J.F.V.D.C., and that many of them were obsolete or obsolescent. The evidence of Japanese claimants relative to the vessels sold by the Custodian shows that more than 80 per cent. of the hulls were over 10 years old, of which 45 per cent. were 15 years or older, and 30 per cent. were over 20 years old. 60 per cent. of the engines were 10 years old, and 26 per cent. of the engines over 20 years old. Phillipson's evidence is to the effect that fishing vessels of the class under consideration have little value after 15 years.

These vessels, upon vesting in the Custodian, were removed to Vancouver Harbour to facilitate inspection by prospective purchasers and for greater protection against the elements. All had then been exposed to the weather for upwards of 8 months, during which period it was found possible to perform

only such maintenance work as was considered sufficient to keep the boats afloat. In the result, deterioration in condition and consequent depreciation in market value occurred.

Soon after August 1st 1942 each vessel was re-appraised by John Gould, a competent marine surveyor engaged as such for many years on the coast of British Columbia. These appraisals were made on the basis of the condition of the vessel at the time of appraisal.

Rejection of Claims.

I have rejected as unauthorized under the terms of reference claims presented in respect of 27 vessels before mentioned which, on the evidence before me, were shewn to have been sold and delivered by the J.F.V.D.C., although the Custodian had completed title to some of them. I have also rejected claims in respect of 7 vessels and scows before mentioned which were declared, and which did not come into the possession of the Custodian at any time.
Consequently, the recommendations now made relate only to 75 vessels sold by the Custodian for the sum of $38,504.15, for which claims were presented in an amount of $85,572.00. These vessels were advertised for sale in advertisements carried in newspapers circulated throughout British Columbia, whereby particulars of the vessels offered were furnished and interested persons informed of the locations where the vessels were available for inspection.
A representative of the Custodian was constantly available to display vessels to prospective purchasers.

Except for the sale of 51 vessels sold by the Custodian to Nelson Bros. Limited, to which reference

is later made, all vessels were sold at a price in excess of or equal to the price fixed by the Gould appraisal.

Charges made by Custodian to owners.

Expenses incurred by the Custodian in respect of these vessels, for watchmen's services, wharfage, appraisers' fees and insurance, were calculated to amount to 13.5 per cent. of the aggregate selling price of all vessels sold by him. Consequently the Custodian charged the expense thus incurred to the several owners, and deducted from the proceeds of sale payable to each owner 13.5 per cent. of the price at which his vessel was sold.

Nelson Bros. transaction.

Prior to the vesting of these vessels in the Custodian, the J.F.V.D.C. had made an agreement with Nelson Bros. Ltd., a canning and fish packing firm, whereby possession was given to that firm of 51 of the vessels later vested in the Custodian, with a right to purchase the whole or any part of that number at priced fixed by the J.F.V.D.C., the purpose of the deal being to provide for the immediate employment of the vessels in the fishing industry. Prior to the expiration of the term of that agreement, and subsequent to the vesting in the Custodian, Nelson Bros. Ltd. exercised the option on 25 of these vessels. Title thereto was made by the Custodian. The proceeds of sale, less the deduction of 13.5 per cent. above mentioned, were then credited to the accounts of the several owners.

Subsequently, the Custodian agreed to sell the remaining 26 vessels en bloc to Nelson Bros. Ltd. at a price of 10 per cent. below the aggregate appraisal value of the said vessels, in order to avoid the protection and selling expense included in the 13.5 per cent deduction before mentioned. Nevertheless, the latter deduction was applied in respect of these

vessels.

Payment of damage compensation

By the terms of Orders in Council P.C. 5523 of June 29th 1942 and P.C. 6885 of August 4th 1942, compensation was authorized to be paid in respect of equipment losses and damge done to vessels while in the custody of the Navy. Adjustments were subsequently made to provide for payment of such compensation to each owner. Due to an error on the part of a member of the Custodian's staff, credit in the total sum of $1080.62 for such compensation was given to the purchasers of certain vessels which should have been credited to the owners. Distribution of this sum between the several owners has been made in Appendix I appended to this Report.

Conclusions

In my judgment, all reasonable means were adopted by the Custodian to obtain fair market value for the vessels sold by him, and I consider that such sales were made at the fair market value of each vessel at the date of sale.

This conclusion, however, does not take into account the several factors previously discussed, nor the fact that these vessels had suffered abnormal depreciation in value between the date of surrender to the Navy and the date of sale, such depreciation being largely attributable to exposure of the vessels to the elements while kept at moorings in the Fraser River and also to the difficulties experienced in providing sufficient man power to permit the taking of adequate care of the vessels during that period. Each of these factors, in my opinion, contributed to reduce the proceeds of sale ultimately paid to the claimant to a figure less than the fair market value of the vessel at the date of its delivery to the Royal Canadian Navy. Consequently, while I recognize that such depreciation is not open to consideration under the terms of

reference, which relate to fair market value at the date of sale by the Custodian, nevertheless I consider that in justice to the owners the loss so sustained should not be borne by them.

In my judgment, adequate compensation would be made for the loss thus sustained by allowance of 10 per cent. of the sale price of each vessel sold to Nelson Bros. Ltd., and 15 per cent. of the sale price of 24 vessels sold to individual purchasers, since the former group were retained in the custody of the Navy for less than 6 months, whereas the latter group were subject to exposure for 10 months or longer.

I consider that the deduction made by the Custodian of 13.5 per cent. of the sale price of all vessels, for expenses of administration, should be compensated by payment of a like sum to the several claimants, to the end that each of them will thus receive the fair market value of his vessel.
I further recommend additional compensation of 10 per cent. on the sale price of 26 vessels, to off-set the deduction of the same percentage made in the circumstances noted above.

Recommendations for payment to owners of fishing vessels.

I therefore recommend payment as follows:

1. To the owners of 24 vessels a sum equivalent to 15 per cent. of the selling price of the vessel in respect of which claim is made.

2. To the owners of 75 vessels sold by the Custodian 13.5 per cent. of the selling price of their vessels, to compensate for administration and selling charges made by the Custodian to each owner.

3. To the owners of 21 vessels sold to Nelson Bros. Ltd., 10 per cent. of the selling price thereof

to compensate for deduction of the same percentage made by the Custodian.

4. To the owners of several vessels mentioned on P. 44 hereof the sum set opposite the owner's name, which sums amount in the aggregate to $1080.62.

NETS AND FISHING GEAR

Claims were presented before the Commission by 173 claimants, for losses alleged to have been sustained, in the aggregate sum of $148,958.91, in respect to fishing nets and gear.

The testimony of numerous officials and other employees of the Custodian's office, all of whom had been engaged in the administration of fishing equipment and subsequently in the liquidation of such property, discloses that problems of exceptional difficulty arose in this connection, attributable inter alia to the following factors:

1. Difficulty in identifaation of nets from the descriptions furnished by owners, due to the fact that large numbers of nets of similar type - the property of numerous owners - were stored in many cannery net houses situate at various points in British Columbia.

2. The failure of many evacuated persons adequately to tag such equipment.

3. The intermixture of nets - the property of numerous owners - in many of the cannery net houses.

4. The interchange and removal of identification tags from nets and gear by unauthorized persons when the nets were stored in net houses used by the Custodian after the same had been vested in the Custodian.

5. Unavoidable delay by the Custodian's organization in obtaining physical possession of such equipment.

6. The necessity for the Custodian to remove from many cannery net houses equipment of Japanese fishermen in response to requests of the cannery operators.

6. The scarcity of adequate storage accomodation available to the Custodian.

8. The fact that many evacuees left nets and gear in their former homes, where the same were subject to rapid deterioration.

9. The perishable nature of such equipment.

In the result, great difficulty was experienced in determining with any certainty the ownership of nets and gear. It appears that extensive damge to nets occurred due to the fact that the Custodian could not provide adequate storage facilities. The Director of the Custodian's office frankly acknowledged the probability of incorrect identification of much of this property, and conceded that extensive damage had been caused to certain of the equipment, due in part to improper preparation for storage by many owners, as well as in a considerable degree to the difficulties experienced by the Custodian's organization in handling and storage.

Because of the perishable nature of such equipment, cannery operators were invited by the Custodian in May 1942 to submit tenders for the purchase of nets held in their custody. Tenders when received were submitted to the Japanese owners, and many sales were thus negotiated with consent of the owner, resulting in recovery of approximately $48,000.00. However, in many instances no reply was received to the Custodian's letters, through no apparent fault of the owner or the Custodian. Consequently appraisals of these nets

were obtained by the Custodian and tenders equal to or in excess of such valuations were subsequently accepted by him without the consent of the owners.

All nets and gear sold by the Custodian without the owners' consent were first appraised by C.P. Leckie, a distributor of commercial fishing supplies, or in some instances by net experts presently in the employ of cannery operators, such appaaisals having been made in the period May to October 1942. At the same time a net inventory was taken, on which was listed 3700 nets.

Mr. Leckie, in his evidence on the Inquiry, has said that he made his net valuations by reference to a depreciation table based on the selling price in 1942 of a new net of the same type, depreciation being calculated on the appraiser's estimate, made from examination of the equipment as of the period during which the net was estimated to have been in use.

Various witnesses called by claimants as well as by the Government agree substantially that the value of a used net largely depends upon the care given it, and that market value is not readily determined in the absence of knowledge of the history in use of the net. No history being available due to the absence of the owners, the valuations so made were necessarily somewhat unreliable.

I conclude from consideration of the evidence of Mr. Leckie, as well as that of other net experts, that the method of valuation adopted provided as reliable a test for determining value as could be applied in the circumstances, but nevertheless must be taken as furnishing no more than a rough estimate of value.

In view of the uncertainty of the appraisals, and the fact that selling prices were determined to a

Recommendations for payment to owners of nets and fishing gear.

substantial degree upon such valuations, I am not satisfied that fair market value was realized on the sales made by the Custodian, and consider that 25 per cent. of the selling price should be added to achieve fair market value. I therefore recommend accordingly.

Property considered under this head, and claims made in relation thereto, as in the case of other personal property, has been divided into several groups for the purpose of this report, i.e.-

1. Property sold by claimant.
2. Property left by claimant with an agent appointed by him.
3. Property shipped to owner.
4. Property abandoned as valueless.
5. Property of which the Custodian had no record at any time until the claim was filed.
6. Property recorded by the Custodian but now missing.
7. Property declared but not found by the Custdian.

Claims for property included in Groups numbered 1 to 5 have been rejected, for the reasons assigned for rejection of miscellaneous personal property similarly classified. Care has been taken to include in groups 1 to 5 only such property as is clearly established on the evidence to fall within one or other of these groups.

Groups 6 and 7. - The property included in these groups have been so included for the same reasons assigned in respect of identical groups of miscellaneous personal property.

For the purpose of determining the value to be placed on these missing articles, I have assumed in respect of claims made by claimants for property sold by the Custodian, as well as for property which is missing, that the claims in respect of each classification were consistent with the value established

by evidence adduced. Therefore I have related the selling price of goods actually sold to the claim made in respect thereof, and have determined the ratio between the two; then applied the same ratio to the claim made for missing goods; and thus have assumed that the Custodian would have realized on the sale of the missing goods the same percentage of claim as the price of goods sold. Since I have concluded that such prices were 25 per cent. below fair market value, I have then added 25 per cent. of the assumed selling price to that price, and have recommended payment for such missing goods in the aggregate sum so calculated.

I believe that rough justice is attained by the adoption of this method, and do not apprehend that any more accurate approach can be made to the problem, in view of the absence of any satisfactory evidence. I am not prepared to accept the claimant's value of such missing goods, since it appears that his claim for goods actually sold, in my opinion, was excessive to the extent of approximately 25 per cent. If any claimant preferred a claim for missing goods only, the recommendation in respect thereof has been based upon the over-all ratio between claims for all goods sold and all claims for like property, with the addition of 25 per cent. to average selling price, to achieve fair market value.

MOTOR VEHICLES

Persons of the Japanese race were required to surrender to the Royal Canadian Mounted Police all motor vehicles in their possession on or before March 9th 1942, pursuant to the provisions of Order in Council, P.C. 1486 of February 24th 1942. These vehicles, upon surrender, were assembled and stored in the open at Vancouver and Victoria, British Columbia, under the protection of the R.C.M.P.

The evidence discloses that the Custodian sold 428 vehicles, including trucks and motor cars, of which 352 vehicles were sold in 1942, 60 in 1943, and the balance prior to 1947.

Claims have been presented on this Inquiry in respect to 154 of these vehicles, i.e. 36 per cent. of the number sold, for a total sum of $109,660.62.

It is to be observed that the vehicles, for which claims have been made, included models of every year from 1926 to 1942, of which 25 per cent. only were less than 5 years old.

Preparatory to offering these vehicles for sale, the Custodian's office at Vancouver called upon the assistance of motor car dealers presently engaged in that business in Vancouver and Victoria, upon whose advice valuators were selected and a policy of sale by tender adopted.

The valuators selected were responsible and well-qualified persons presently engaged as dealers in new and used motor vehicles. The fact that the majority of the appraisals were made while the cars

were parked in the open and without facilities for adequate tests leads to the conclusion that the valuations were based upon somewhat superficial examinations of the vehicles. Consequently, I place less confidence in the validity of these valuations as indicative of market value than I do upon the comparative prices realized by dealers upon the sale of similar cars in 1942, as shewn in Exhibit 108, to which reference is made later.

71 of the more modern and better conditioned vehicles were subsequently sold by the Custodian to various Dominion and Provincial Government Departments, at the prices fixed thereon by the appraisal.

In July 1942 the remaining vehicles were advertised for sale by public tender in 11 daily and weekly newspapers published in various parts of the Province and circulating throughout British Columbia.

All earlier sales were made at appraisal or greater prices. Subsequently, when it appeared that sales could not readily be made at appraised prices, by the methods adopted by the Custodian, the Custodian, on advice of motor car dealers, adopted a policy of acceptance of offers 15 to 20 per cent. less than appraisal. Ultimately the cars remaining unsold were sold by auction.

In the final result, sales by tender are shewn to have realized 54.45 per cent, of the aggregate claims, and sales at auction 62.77 per cent. of the aggregate claims.

The evidence discloses that during 1942, when the majority of the vehicles were sold by the Custodian, Used Car Dealers in the City of Vancouver alone had available for sale 2000 used motor vehicles. Gasoline rationing was then in operation, and maximum price regulations had been put in effect, although at this time the demand for used cars was extremely light and the majority of dealers' sales were made at figures appreciably below ceiling prices. Dealers engaged at the time in the used car business testified that 1942 was a period of little demand and low prices in the used car market in British Columbia.

Subsequent to July 1942, all unsold cars were removed to lots operated by used car dealers, and there offered for sale.

In the absence of satisfactory evidence upon which to base a conclusion whether the Custodian had realized fair market value on these sales, Counsel for the Government and claimants, for the purpose of comparison with Custodian sales prices, have collaborated on the preparation of a study of (a) used car sales made by dealers in the period under review, as well as (b) values of various makes and models shown in a publication in the trade known as the "Red Book".

It is, I think, reasonable to assume that the prices shown in this study, filed as Exhibit 108, relate to cars which had been reconditioned or to some extent prepared for sale; further, that sales of cars made by dealers are usually accompanied by some form of guarantee of efficient operation covering a limited period. On the other hand, vehicles sold by the Custodian were sold "as is", without reconditioning and without any form of guarantee.

A comparison of dealer and Red Book prices of 60 cars, of the types, years and models sold by the Custodian, discloses that the very great majority of Custodian sales were made at prices less than dealer and Red Book prices. On only 7 of the 60 sales is the Custodian price greater. On 53 sales the Custodian price falls from 5 to 75 per cent. below dealer and Red Book prices. On average, the Custodian price is 30 to 35 per cent. lower.

Neither the information found in Exhibit 108, nor other evidence of market value of the cars sold by the Custodian provides satisfactory evidential foundation upon which to base conclusions as to fair market value. Yet it is necessary to attempt to apply this evidence, since I am satisfied that none other is now available.

Upon consideration of all the evidence, and taking into account the fact that vehicles sold by the Custodian were sold "as is", I have reached the conclusion - not without some misgiving - that the fair market value in 1942 exceeded the prices realized by the Custodian by 25 per cent. thereof.

Recommendation for payment to owners of motor vehicles.

I therefore recommend payment to the several claimants who have made claims in respect of motor cars sold by the Custodian of a sum equivalent to 25 per cent. of the price at which the vehicle, the subject of claim, was sold by the Custodian.

PERSONAL PROPERTY EXCLUSIVE OF VEHICLES, FISHING BOATS and OTHER VESSELS, NETS AND GEAR.

Considered under this head are claims for the aggregate sum of $975,501.87, relative to a great variety of personal property, including chattel property sold by the Custodian, in respect of which claims are made for the sum of $521,162.02, as well as personal property valued by the claimants at $454,339.85, claims for which will be examined below in greater detail.

The following procedure was adopted by the Custodian's office for protection and subsequently for the liquidation of personal property left in the protected areas by persons evacuated therefrom.

Prior to evacuation each evacuee was required to sign and deliver to the Custodian a "J.P." form, containing particulars of his property left in a protected area, and its location.

In March 1942 and for many months thereafter a force of inspectors employed by the Custodian was engaged in checking the information furnished in the J.P. forms, examining and listing the chattel property found, and in many instances removing such property to storage centres provided by the Custodian to ensure more adequate protection. The expense entailed was borne by the Custodian.

Liquidation authorized by the terms of Order-in-Council P.C.469 of January 19th 1943 was begun in respect of chattel property in June 1943, and was continued during the ensuing three years.

The Custodian, after consultation with the two Advisory Committees previously mentioned, adopted a

policy of sale by public auction of all chattel property, with the exception of articles which, in the opinion of the Custodian or the auctioneer employed by him, could more advantageously be sold by tender.

One or more experienced auctioneers carrying on business in numerous centres within the protected areas of British Columbia, selected on the advice of an Advisory Committee were then appointed to conduct auction sales at those centres.

Sales by Tender.

Articles selected for sale by tender were first appraised by qualified persons and subsequently offered for sale by advertisement in local newspapers. In each instance the highest tender was accepted, subject to the tender being equal to or in excess of the appraised price.

Sales to tenants of goods on premises held under lease.

In some instances, to avoid the expense of removal to auction rooms, goods stored in premises then under lease were sold to the tenant at prices equal to or in excess of an appraisal made by the auctioneer in charge.

Some 260 auction sales were held at 20 different centres over a period of approximately 3 years.

Auction Sales.

Successive sales in any one centre were held at intervals of time to avoid glutting the market. All such sales, in my opinion, were adequately advertised in the local press, the several advertisements being prepared by the auctioneer concerned.

I conclude from the evidence of various persons, including many of the auctioneers employed who testified regarding the conduct of the auction sales, that the sales invariably were well attended, the bidding was spirited, and in the main fair prices were realized. Since so great a quantity of goods was thus disposed of (more than $90,000.00 was realized on auction sales and

more than $94,000.00 on sales by tender) at sales which took place four years or more prior to the hearings at which this testimony was heard, the evidence in regard to such sales was necessarily of a general character. Consequently I am unable on the material before me to reach any firm conclusion as to whether or not fair market value was thus realized. However, I am entirely satisfied that every reasonable and businesslike effort was made by the organization set up by the Custodian to dispose of these goods in the best interest of the owners. The evidence discloses that the cost of sales by auction, including handling expense, advertising and auctioneers' fees, was deducted by the Custodian from the proceeds of sale payable to each claimant, resulting in a charge calculated at an average of 23.2 per cent, of the sale price. A like deduction was made on sales by tender covering appraisal and advertising cost, amounting in all to 12 per cent, of the sale price.

I consider that fair market value was realized on sales made by private treaty to tenants, and that apart from the deduction before noted fair market value was realized on sales by tender, since in each of the latter instances the appraised value was realized on such sales, but since the evidence leaves me in doubt as to whether fair market value was realized on sales by auction I propose to resolve the doubt in favor of the claimant, and to add as compensation therefor 6.8 per cent. of the sale price realized.

In the result, although fair market value was realized, in my opinion, on sales by tender, the same was not received by the claimants, due to the deduction

mentioned. The same situation applies in consequence of the deduction made from the proceeds of sale by auction.

Recommendation for payment to owners of personal property.

Consequently, I recommend payment to claimants, in respect of goods sold by auction, of 30 per cent. of the sale price; to claimants in respect of goods sold by tender 12 per cent. of the sale price.

Turning now to the claims for personal property valued by claimants at $454,339.85, which are included in the second category before mentioned. These claims fall into 14 separate classifications and may conveniently be considered under the following heads:

Custodian's classification of personal property the subject of claims.

1. Chattel property declared, but not found.
2. Chattel property recorded and now missing.
3. Chattel property included in real property sales.
4. Chattel property abandoned by Custodian.
5. Chattel property of which the Custodian had no record at any time.
6. Chattel property sold by a claimant.
7. Chattel property left with claimant's agent.
8. Chattel property shipped to claimant.
9. Chattel property now in storage.
10. Good-will.
11. Business.
12. Insurance premiums.
13. Accounts receivable.
14. Buildings located on lands of another.

Group 1 and group 2 comprise chattels declared to the Custodian by the owner either at the time of or soon after his evacuation. Those in group 1 could not be found by the Custodian's inspectors; those in group 2 were found by an inspector and recorded, but were found to have disappeared before sale.

I am satisfied on the evidence that the property included in each of these groups was left in a protected area by the respective claimants, and that the same vested in the Custodian as of the date of the evacuation of each claimant, by virtue of Order-in-Council P.C.1665 of March 4th 1942. The evidence of extensive pilferage of chattel property of evacuated persons, to which reference is made earlier in this Report, in my judgment justifies the conclusion that the property included in these two groups was stolen after the same had vested in the Custodian.

Consequently I consider that compensation should be made to claimants in respect of missing goods included in Groups 1 and 2.

The evidence of various claimants as to value of chattel property in respect of which claims are made under these heads, in my opinion, must be discounted substantially. It is obvious from such evidence that the valuations are based upon original cost with comparatively little discount made for depreciation, regardless of the period of use. Moreover, it appears that sales by the Custodian of such property of these claimants as was sold realized on the average somewhat less than 40 per cent. of the valuations placed thereon by the claimants. I therefore conclude that the claimant's valuations on missing goods likewise substantially exceeded the fair market value of the goods at the date of evacuation.

In the absence of any satisfactory evidence of fair market value of the missing goods, I consider, assuming reasonable consistency in the valuations made by the claimant of all his goods, that the sum which the Custodian would have realized on sale of the missing goods may best be estimated by relating to the sum claimed

for a claimant's missing goods the ratio of the selling price of his goods which were sold by the Custodian to the sum claimed by that claimant in respect thereof, i.e., assuming that the Custodian sold a claimant's goods at $40.00, for which he had claimed $100.00 (a realization of 40 per cent. of the sum claimed) I think it is not unreasonable to assume that the same claimant's missing goods would have sold for approximately 40 per cent, of the sum claimed for those goods. This approach to the problem, while unsatisfactory, nevertheless is in my opinion the only practical approach which can be made on the evidence before me.

Recommendation for payment to owners of missing goods in Groups 1 and 2.

I propose, therfore, to apply to the determination of fair market value of missing goods in Groups 1 and 2 the same formula as was applied to goods sold by the Custodian, and therefore recommend payment in respect of all claims for such goods of the estimated selling price thereof calculated on the basis outlined in the preceding paragraph, plus 6.8% of such selling price, so as to realize what I conceive to have been the fair market value of such goods.

Group 3: Goods included under this head consist of articles which were considered at the time of sale to be fixtures and therefore were delivered with the real property whereon the same were installed, although no additional consideration was paid for such articles. The claims now recommended for payment of compensation include such articles as clearly appear to be chattels, or in respect of which there is doubt whether the article in law had become part of the freehold.
I would apply the principle adopted for Groups 1 and 2 to the determination of fair market value of goods in

this group, and recommend payment accordingly.

Referring to Groups 1, 2 and 3, - there are some cases where claims are made for property included in these three groups and no other goods of those claimants were sold by the Custodian. In such cases only I consider that the over-all ratio of selling price to claim will more nearly do justice to the situation, and therefore recommend payment of the over-all percentage on all such claims.

Claim for goods abandoned by Custodian rejected

Group 4: In this group are included goods abandoned as valueless by one or more of the persons employed by the Custodian to superintend the collection and sale of evacuee property. I am satisfied on the evidence that adequate care was taken by the persons responsible for the decision so made. I have therefore rejected claims for goods in this group.

Claims for goods not declared by claimant rejected.

Group 5: Claims included under this head amount in the aggregate to a sum in excess of $70,000.00. Notice of the existence of such property was first given to the Custodian by these claimants at the time when the claim was filed in December 1947, or later. No reference to such property had theretofore been made to the Custodian by any such claimant, either in his J.P. form or any correspondence exchanged subsequent to evacuation. In many instances a claimant has said in evidence that he had forgotten to declare the goods. In others a claimant has acknowledged at the time of presentation of the claim that he had deliberately withheld information in respect of such property, and again that the property had been hidden by him to prevent discovery by the Custodian or anyone else.

In the circumstances I consider that no responsibility can be attached to the Custodian in respect of such goods. I have therefore rejected all such claims.

Groups 6 and 7: Chattels comprised in this group are not open to claim under the terms of reference. There has been included in Group 7 only such property as has been clearly proven to have been left with an agent appointed by the claimant, with the intention that the claimant should rely on that agent to provide safe custody for the goods.

Claims for goods left with agent rejected.

Claims under these heads have therefore been rejected.

Group 8: There have been included under this head only such property as has been proven to have been shipped to and received by the claimant. Where it appeared on the evidence that goods had been shipped by the B.C.Security Commission or the Custodian, but had not been received by the claimant, such goods have been dealt with as lost or stolen, and therefore subject to claim.

Goods shipped to claimants by Custodian.

I have rejected all claims included in this group.

Group 9: This group comprises claims in respect of articles for which there was no market in an Occidental community, since the articles comprise Buddhist and other religious figures, shrines, and articles of a similar type. These articles have been held in storage by the Custodian available for delivery to the owners who, when known to the Custodian, have been so advised by him.

Claims made in respect of such articles have been rejected, as not open to consideration under the terms of reference.

Groups 10 and 11: These groups comprise 13 claims for an aggregate sum of $31,816.00 and made in respect of loss of good-will alleged to attach to business operations carried on by these claimants up to the date

Claims for loss of good-will.

of the claimant's evacuation; also 10 claims for the aggregate sum of $118,235.00 for losses alleged to have been sustained upon the sale of business operations, likewise carried on by such claimants.

Such claims have been rejected as not open to consideration under the terms of reference, except where it was shown that the business involved in the claim had been sold by the Custodian as a going concern. In such cases consideration has been given to such claims as factors in determining the value of the business.

Other rejected claims.

Group 12: Claim No.1030 includes inter alia a claim for the value of a garage and contents destroyed by fire subsequent to the claimant's evacuation. Recovery for this loss was made by the Custodian from the insurance company of a lesser amount than the value placed on the building and contents by the claimant. He claims for the difference. The claim was adjusted and paid by a responsible insurance company. I find no validity in the claim, and have therefore rejected it.

Claim No.143 is founded upon alleged neglect of the Custodian to pay life insurance premiums to maintain in effect two policies of insurance on the life of a Japanese woman who died in Japan subsequent to the date of the claimant's evacuation. The claimant alleges that she was a beneficiary for value under these policies of insurance, and that she has suffered loss by the failure of the Custodian to meet premiums which fell due on these policies subsequent to the date of her evacuation, the Custodian having been put in funds to provide for payment of the premiums. I have rejected the claim as not open to consideration under the terms

of reference.

Group 13: This group comprises 4 claims for the aggregate sum of $3620.00 in respect of accounts receivable alleged to be due to the claimants by various debtors at the time of the claimants' evacuation, which accounts were not recovered, allegedly due to the failure of the Custodian to enforce payment.

Such claims have been rejected as not open to consideration under the terms of reference. However, it is, I think, desirable to point out that the Custodian made reasonable efforts to recover for the account of evacuated persons accounts payable to them of which the Custodian had notice. In consequence of the action so taken by the Custodian, a substantial sum of money was recovered, and credited to the accounts of persons entitled. The evidence adduced in support of the claims included in this group does not support a conclusion that any of these claimants suffered loss due to neglect on the part of the Custodian to take necessary steps to enforce payment.

Group 14: 18 claims for a total sum of $14,895.0 were made in respect of buildings which, upon investigation by the Custodian, were found to be located on lands to which the claimant had no title.

In cases where any such building or structure was found to be movable, the same, if saleable, was moved under direction of the Custodian, and sold. In other instances attempts were made by the Custodian to obtain some payment from the owner of the land, which in some instances met with success, and money so recovered was credited to the claimant.

All claims made under this head have been rejected, although, as previously stated, some realization was

made for the account of the claimant in certain instances.

Since Appendix I was completed, I have had occasion further to investigate claims made by persons in respect of real properties at Hakoda Bay. My conclusions in respect to those properties are attached hereto. The additional recommendations made in respect thereto have been incorporated in Appendix 1.

I wish to record my appreciation of the valuable assistance furnished me throughout the lengthy course of this investigation by Messrs. John W. Hunter, D. T. Braidwood, James A. Macdonald and Jack C. Campbell, in the capacity of Counsel for the Crown, and R.J.McMaster, A.G.Virtue, K.C., and F.A.Brewin, Counsel for the majority of the claimants, upon each of whom has fallen some part of the heavy burden of sifting the mass of material in the Custodian's files and the presentation of the very great volume of evidence from which these conclusions are drawn and upon which my recommendations are founded.

I am deepy grateful to F.G.Shears, Esquire, Director of the Custodian's office at Vancouver B.C., and the members of the Director's staff, whose services have been made available continuously from the beginning of the Inquiry to myself and to Counsel for the claimants, as well as the Crown.

Finally, I wish to acknowledge the great service Mr.Watson and Miss V.J.White have rendered in the capacity of Secretaries to the Commissioner, and the many courtesies which each of them has extended in smoothing the way for everyone connected with the Inquiry during the past two and a half years.

(Sgd.) H.I, Bird

April 6th,1950. Commissioner

Explanatory Note

Throughout the Main Report Appendix I and Appendix II are frequently mentioned.

Appendix I is a 32 page irregular shaped (13" by 18") tabulation in limp cover of the names of claimants, location of real property (urban, rural, etc.,), kinds of personal property (motor vehicles, boats and gear, nets and gear and other miscellaneous chattels) together with amounts under each head, recommended for payment.

Appendix II is a bound volume consisting of 299 foolscap pages between stiff covers.

The Commissioner found, in the early stages of the work, that many of the claims could be more conviently dealt with if placed in categories. Counsel for the claimants and the Crown agreed and proceeded to do so. In this Appendix the Commissioner has given his reasons for judgment, based on decisions of the courts, in those "special cases" which did not fall within any of the 7 categories.

DE RTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Embassy, Tokyo, Japan.

Reference:

Subject: Letter from Mr. Kichijiro HAGANE

Security: UNCLASSIFIED

No: 1117

Date: November 21, 1958

Enclosures: 2 (in duplicate)

Air or Surface Mail: Air

Post File No: 4-6-1

Ottawa File No. 17-AH-1-40 | 27 | 45

References

for Eastern Passport Office

Mr. Day Mr. Gilmour for comments and return pls. Done Nov. 28/58

Internal Circulation

C

Distribution to Posts

We are attaching for whatever action you consider necessary a copy of an Embassy translation of an undated letter received here on November 20 from a Mr. Kichijiro HAGANE of Vancouver, B. C., in which Mr. Hagane complains about treatment he allegedly received in Canada some years ago. We are also attaching a copy of our reply.

2. This is the first time we have ever heard of Kichijiro HAGANE but we do have on file correspondence concerning a passport application by a Miss Sumiko HAGANE, whose father Kichijiro HAGANE might be the same person. Miss Hagane's passport No. 3-91621 was issued on March 7, 1949 and was renewed on July 21, 1954.

R. Duder

The Embassy.

Letter sent to RCMP for action file

3-DEC 1958

To: NOV 24 1958 To:

(Translation)

Dear Mr. Ambassador:-

This is to ask for your instructions. It happened in the countryside of Moose Jaw, Saskatchewan ten years ago or about a month before the then Prime Minister King resigned that, after our freedom had been restricted over more than six years, we were thrown out into the fields without a penny. We did not know where to turn and passed three days and nights in the open. Then, through the good offices of Mr. Thatcher of the C.C.F., we could dispose of ourselves. Although Mr. Ross Thatcher told us to wait because the Government, as he believed, would do something to settle the matter in the future, nothing has since been done up to the present time after ten years have passed. It would be alright if the present Government is inclined to leave the matter as it has been. In that case, I for one will simply disclose to the intelligent people of the world the fact that we were thrown out into the fields. Then, I am afraid, that it would be a disgrace which Canada could not remove from herself for ever. I firmly believe that the Ambassador, whom I trust, will give me direction.

Kichijiro HAGANE
Room 9,
733 Powell Street,
Vancouver, Canada

To The Canadian Ambassador,
Canadian Embassy,
Tokyo.

Tokyo, November 21, 1958.

Dear Mr. Hagane:

I wish to acknowledge your undated letter, which was received here on November 20, in which you refer to certain events experienced by you in Canada some years ago. As this matter does not appear to be a concern of this Embassy, I have referred your letter to the Department of External Affairs, Ottawa for whatever action considered necessary.

Sincerely yours,

Vice-Consul.

Kichijiro Hagane, Esq.,
Room 9,
733 Powell Street,
Vancouver, B. C.
C A N A D A

c.c. Ottawa

Consular/R.D.Stapledon/jct
File: 17-AH-1-40
cc: Far Eastern Div.
D.L. (2) Div.
Passport Office

Ottawa, December 3, 1958.

The Commissioner,
Royal Canadian Mounted Police,
Ottawa, Ontario.

...

I attach, for any action you may wish to take, a copy of letter No. 1117 of November 21, 1958 from our Embassy in Tokyo, together with a copy of a letter from Mr. Kichijiro Hagane, 733 Powell Street, Vancouver, British Columbia, concerning his alleged mistreatment in Canada some years ago.

J.A. Horwood.

Under-Secretary of State
for External Affairs.

ALL CORRESPONDENCE TO BE ADDRESSED
THE COMMISSIONER,
R.C.M. POLICE,
OTTAWA

FILE NO. C Defence + International Affairs

HEADQUARTERS

17-A-H-1-40
27 45

OTTAWA,
CANADA
December 19, 1958.

CONFIDENTIAL

C
DEC 30

ATTENTION: Mr. G.H. Southam

This has reference to correspondence of December 3, 1958 with attachments from your Office.

2. Our records show that Kichijiro HAGANE was born in Japan on January 28, 1892 and came to Canada in 1907. He was issued with Certificate of Naturalization at Edmonton, Alberta on December 13, 1915. On April 21, 1942 HAGANE was detained at Vancouver, B.C. for refusing to leave that city which was in a restricted area under the War Measures Act. After being detained he was placed in the custody of the Immigration Detention Shed, Vancouver, B.C. under Military Guard. HAGANE was interned in Canada from April 28, 1942 until July 3, 1946. Upon his release on July 3, 1946 he proceeded to the Japanese Special Housing Project, Moose Jaw, Saskatchewan.

File and 2/1/59.

24 DEC 1958

3. We have no record on file as to any mistreatment HAGANE received during internment and after his release, therefore, we are not in a position to state what action if any should be taken.

C

for Director of Security & Intelligence.

The Under-Secretary of State
for External Affairs,
OTTAWA, Ontario.

1/59

/cm

Consular/RDStapledon/jct
file: 17-AH-1-40
cc: R.C.M.P.
file: 42 D 269-4-J 565
cc: Can. Emb. Tokyo
File: 4-6-1

Our file: 17-AH-1-40

Ottawa, January 6, 1959.

Dear Mr. Hagane,

A copy of your undated letter, received by our Embassy in Tokyo on November 20, 1958, concerning your alleged mistreatment in Canada some years ago, has been referred to me for reply.

I suggest that you write direct to the Commissioner, Royal Canadian Mounted Police, Ottawa, about this matter, quoting file No.[Defence - International Affairs]

Yourssincerely,

E.H. Gilmour

Under-Secretary of State
for External Affairs

Kichijiro Hagane, Esq.,
Room 9,
733 Powell Street,
Vancouver, B.C.

DEPARTMENT OF EXTERNAL AFFAIRS, CANADA.

NUMBERED LETTER

TO: THE UNDER-SECRETARY OF STATE FOR EXTERNAL AFFAIRS, OTTAWA, CANADA.

FROM: The Canadian Embassy,
Tokyo, Japan.

Reference: Our Letter No. 1117 of November 21, 1958

Subject: Mr. Kichijiro HAGANE

Security: Unclassified

No: 125

Date: February 24, 1961

Enclosures: 2

Air or Surface Mail: Air

Post File No: A-6-1

TO: MAR 1 Rec'd REGISTRY

Ottawa File No.
17-AU-1-40C
27 | 45

References

FD 7

file

We are attaching for your information and necessary action our translation of two self-explanatory letters just received from Mr. Kichijiro HAGANE of Vancouver, B.C. Acknowledgement has been made from here to the letter addressed to the Ambassador.

2. You will see that Mr. Hagane is still bitter about discrimination and ill-treatment he claims to have received in Canada as a consequence of the last World War. You will further note that Mr. Hagane has informed us that he intends to turn to the press in his appeal for justice.

Bruce Keith
The Embassy.

To: Miss Reid
MAR 2 1961
To:

Internal Circulation

Refer with enclosures to:
R.C.M.P. file 42-D-269-4-J.656
~~Far Eastern Div.~~
Miss Kirkwood.
A.H. Miller
A. Reid

Distribution to Posts

Wt. 182A (Rev. 2/52)

"A"

FULL TRANSLATION

His Excellency The Ambassador of Canada

February 16, 1961.

Sir:

I wish to thank you for the interest you showed (in my case) in your letter of November 21, 1958. As you brought the matter to the attention of the Canadian Department of the Secretary of State, I received a letter from that Department directing me to take the matter up with the Committee(sic) of the Royal Canadian Mounted Police.

I thereupon visited the RCMP and showed them the letter (s) but I was told that my case should be settled with the Department of the Secretary of State and, therefore, I should approach that Department again. Realizing that the RCMP and the Department were each concerned only with pinning responsibility on the other, I concluded that it was hopeless to expect a solution from either source. In the circumstances, I have abandoned the thought of reopening negotiations with the Canadian Government and decided to appeal for justice by making the whole case public in the form of an open letter to the press.

In the event the case is brought into the open, I expect it will have a demoralizing effect on the officials of the Department of External Affairs (sic) (Department of the Secretary of State). So long as the Department of External Affairs (sic) is part of the Canadian Government, I do not think that it would want to see the facts exposed.

However, before resorting to this action, I feel I owe it to you, in view of your good offices in the past, to let you know first.

Yours respectfully,

KICHIJIRO HAGANE,
Room 9, 733, Powell St.,
Vancouver, B.C., Canada.

"B"

FULL TRANSLATION

Open Letter

February 1961

Inasmuch as the Canadian Government has failed to produce a solution, I wish to place the facts of the case before the bar of public opinion so that the merits thereof can be decided.

On the morning of December 8, 1941, the newspaper extras and quivering voice of the radio announcer brought us the news of Pearl Harbour and the outbreak of hostilities. Saddened at the thought that our fatherland Japan was now an enemy, we exercised extreme caution in our every word and deed in dealing with the situation.

In 1942 all Japanese-Canadians and Japanese nationals were ordered relocated to an area more than 100 miles from the Pacific coast without any sort of guarantee whatsoever. Having four dependents to support, I was hurled into a dilemma, hardly knowing what to do. At around 8 o'clock on the night of April 21 the Royal Canadian Mounted Police appeared and asked me why I had not followed the order to leave. My answer was not enough to convince them. I was told to submit to their custody and together with my son (s), was taken away to the Angler (phonetic spelling) internment camp.

At the camp there was a shooting incident. Four bullets struck the building I occupied but luckily no one was injured. As a result four leaders of the internees were courtmartialed and sentenced to heavy imprisonment for 1 month. This goes to show how ghastly life at an internment camp can be if trouble occurs.

In 1946 we were order transferred from Angler internment camp to (a different camp at) Moose Jaw, Saskatchewan.

In 1947 we were notified that an official of the Canadian Government wanted to come to see us. Incidentally, it might be mentioned that two days before we received this message, all internees above the age of 60 were told to go to New Denver and wait there until the question of the disposition of the internees was settled. They consented to go only because they were given to understand that the Government was sure to work out a solution in due course. As it was, this never materialized and to this day a settlement is still pending.

..2

On the day set for the meeting, I was the first to be interviewed. When he saw I was alone, the Government official insisted that 3 of us be present. Two others were brought in. The camp superviser, Mr. Dawson, introduced him to us, explaining that he was an official of the Canadian Government. Declaring that his name was Mr. Mackinnon and that he exercised authority in matters pertaining to Japanese, he told us that we were to stay at the camp until it was to be closed 2 weeks later and that those of us who wanted to work would be allowed to join 100-and 50-man workgangs on the Canadian National Railways. He then added that he had nothing more to say to us.

To this I replied: "I refuse outright to work on the railroad. You say the camp is to be closed in 2 weeks' time, but we don't care if the camp is closed today. We did not come here of our own free will, nor did we ever ask you to help us obtain food, clothing or shelter. You must have been charged by someone (people) to come here to speak to us. We demand to know what you propose to report to that (those) individual(s)." His answer was that we were free to go whenever we wanted (implying that we had not been forced to come here against our will).

I then asked him if "relocation" to Canadians meant "freedom of choice". Yet, nevertheless, he persistently contended that we were not forced to go against our will. When the interpreter spoke up and remarked that what I said was true, Mr. Mackinnon's face turned red.

I next explained our demands to Mr. Mackinnon and asked him to justify why we had been shut off from free society for so long and to plainly state the charges against us, if any. Obviously embarrassed in view of the aforementioned inconsistency of his earlier remarks and his face turning ashen, he said that while he could appreciate our demands, he was not in a position to answer that query. I told him that that may be so but that he could always turn to his superiors in the Canadian Government and demanded that a reply be made as soon as possible. Thereupon he ordered us out of the office, saying that he had to see the others. So we left with a parting remark that we expected him to reply later. (However, no word was ever received from him.) It was rumoured that he had turned in his resignation.

In August 1948 we received a writ (sic) issued in the name of the Attorney General of Saskatchewan to the effect that if we had any grievances we should sue (the Government) within a period of 1 year. Two weeks later we were turned adrift on the plains 5 miles outside the city of Moose Jaw.

..3

We were obliged to sleep under open skies for 3 nights. What is more, we were penniless. I know nothing about Canadian laws, but I should think that in any country persons whose freedom have been restricted as criminals should, for humanitarian reasons, be entitled to take action in court. We demanded that privilege but it was denied. We were told to sue, but whom should we sue? Further, no one can complain if he were turned adrift at his own wish, but otherwise it only stands to reason that he at least be taken back to from where he originally came.

There are a good number of Canadian Government officials who believe that they have no peer in the world. I held this view since before the war, but I am deeply distressed that after the war the Canadian Government subjected Japanese to discrimination no other white nation would ever practice. The extent of how far Japanese were looked down on as an inferior race can be illustrated by the fact that the Government of Canada--considered one of the wealthiest countries in the world--paid each displaced Japanese adult the paltry sum of only 11 dollars a month for food. Even beggars lived better.

INDEX TITLE

Defence of Canada Regs.

CARD HEADING

"

SUBJECT MATTER

(Same as hereunder)

N. Ewart

INDEX TITLE

CARD HEADING

No 19/6/62

SUBJECT MATTER

INDEX TITLE

Crown Liability Act

CARD HEADING

Torts

SUBJECT MATTER

Liability of Crown for internment during World War II and loss of property arising out of it. 1961(6)

N. Ellitt

DEPARTMENT OF JUSTICE

MEMORANDUM

192528

Mrs. Costello:

I think this should be indexed - something like liability of Crown for internment during World War II & loss of property arising out of it would be O.K.

F.S.

20/6/61.