

VIA AIR MAIL

CANADA

DEPARTMENT OF THE SECRETARY OF STATE

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Ottawa, August 21, 1947.

Dear Mr. Shears,-

I have received your letter of the 19th August.

I do not think that the terms of the Commission imply any reflection whatever on the administration of the Custodian's Office in Vancouver. When the Government was confronted with claims of persons of the Japanese race who had been evacuated, the Government, as a matter of policy, decided that, to clear up any misgivings which might prevail in the public mind, it would appoint a Commissioner to consider these claims. This was not a departmental matter as you know, because, if I am not mistaken, you yourself attended at least one meeting of the Committee of the Cabinet dealing with Japanese affairs. The Committee decided to restrict the reference to the Commission to the matters set out in the Commission. In other words, they did not think it desirable to empower the Commissioner to entertain claims for loss of earnings and other direct or indirect results of the evacuation policy.

In relation to the real property, I fancy the claims will largely be in respect to the properties covered by the Veterans Land deal. It will rest with the Commissioner, when he has heard the evidence, to decide whether or not, having regard to the conditions at the time the Custodian -- and I repeat the Custodian, not the Custodian's officers in Vancouver -- was justified in accepting the valuations of the Director under the Veterans Land Act and whether or not the Advisory Committee, in making its recommendation to the Custodian, exercised reasonable care in seeing that a fair price at the time the property was sold was realized. A finding by the Commissioner, for example, that a reasonable price was not realized in respect to one parcel would not, in my judgment, imply any negligence on those officers in Vancouver who carried out the Custodian's instructions. The

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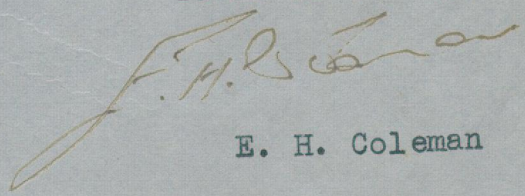
Custodian ---

Custodian, in turn, carried out instructions from the Government in giving the Veterans Land people a preference in selection.

We have always taken the position that every effort was made to realize the fairest possible price for the chattels and the like. If in some cases the Commissioner should find that the price realized was below the value, the Commissioner must make what finding he thinks proper in relation to it. I would be greatly surprised if in very many cases he felt that there had been a lack of reasonable care. The Custodian's Office was the only agency of government dealing with the property and the chattels, other than the special types such as fishing vessels and the goods sequestered by the Royal Canadian Mounted Police and other agencies and that, I fancy, is why the Government, in its wisdom, decided to restrict the inquiry to the Custodian's dealings. Most of us realized, I think, that this would not satisfy the persons of the Japanese race and their agents and friends but it was as far as the Government felt itself inclined to go.

While, for purposes of convenience and to prevent daily references here for cheques in connection with the expenses, we are prepared for the time being to make advances, I think it must be clearly understood that the expenses of the Commission are not a charge on the Custodian. The Government will have to make provision out of some appropriation for the expenses of the Commission. The utmost degree of expense the Custodian would bear would be possibly the expenses of our own Counsel and any of our officers who had to travel with the Commission to present the Custodian's case. The Secretary of State will be here on Monday and I will discuss this phase of the matter with him. As I have said, for the time being whatever expenses there may be may be paid from the Custodian's Office but in due course cheques will be issued out of Government funds to the individuals concerned and they will have to recoup your Office for any advance which you may make.

Yours sincerely,



E. H. Coleman

506 Royal Bank Building,
Vancouver, B.C.

19th August, 1947.

Dr. E.H. Coleman, K.C., C.M.G.,
Under Secretary of State,
West Block,
Ottawa, Ontario.

Dear Dr. Coleman,

It was Mr. Justice Bird's wish that I should speak to you while you were on the telephone today, as the viewpoint which I expressed was what he wished to put before you but did not consider he should do so himself, beyond the extent already indicated in his remarks to you.

As I stated, I feel sure that you know that I have always realized that the concern of this office is the carrying out of Government policy and not making or suggesting what that policy should be, and this has been our considerable effort during the past five years.

Had the Government come to a decision that no claims of any kind would be considered, as Director of this office, I would have had nothing to say, but in view of the fact that claims are to be entertained, I felt that it should be stated that we are not very happy in regard to the basis on which the investigation will be conducted, as it appears somewhat unfair to this office.

Any recommendation which the Judge may make which is favourable to the Japanese, would mean that his findings indicated there had been failure in administration on the part of the Custodian.

Due to the fact that Japanese will seek to establish that reasonable care was not exercised by the Custodian they will doubtless endeavour to bring to light what they may call lack of initial protection and failure on our part to take physical possession or give immediate protection to their chattels when they were required to leave, as well as theft and vandalism while in our care, and such matters could easily provide headline opportunities to discredit and reflect upon the Government's administration, even if it can be argued that reasonable care had been exercised.

Dr. E.H. Coleman, K.C., C.M.G.

19th August, 1947

I assume that Order-in-Council and the Terms of Reference were prepared by the Department of Justice, and the repetition of the words "reasonable care" seem to point to the desire to transfer responsibility from a matter of policy to a matter of administration, and I feel that this is evading the real issue in regard to whether a Japanese did or did not receive a fair market value for his real or personal property at the time of sale.

I venture to say that organizations and others who are acting on behalf of the rights of Japanese, while desiring a widening of the Terms of Reference would have become reconciled to terms which provided for payment of claims on the basis of any differences which could be established between the amount received and a fair market value if the question of reasonable care had not been included, the question of reasonable care on the part of the Custodian not being the concern of the Japanese who were evacuated as a part of Government policy, and whose property became vested in the Custodian on evacuation.

However, having stated this viewpoint, and having been advised that the wording of the Terms of Reference have been well considered, I assume that Mr. Justice Bird will now proceed to take steps to carry out the duties under his Commission on the basis outlined.

In answer to his enquiry, I advised the Judge that expenses in regard to the Advisory Committee were paid from this office, and I think he considers this desirable in the present case.

Mr. Justice Bird has suggested that hearings will be held at different centres for the purpose of taking the testimony of the Japanese and for cross examination by our Counsel and that subsequently he will hear the Custodian's testimony in Vancouver and secure any technical evidence he may require. If this can be arranged it would appear to be satisfactory as far as we are concerned.

The Judge appears to consider that a Counsel for the Custodian should be appointed without delay so that he will be in a position to become acquainted with our files. However, I do not see that much progress can be made until claims are actually received, and we know the number to be considered, and the location at which they will be heard.

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Dr. E.H. Coleman, K.C., C.M.G.

19th August, 1947

I think the Judge has an idea of starting sessions in Toronto in October. If claims are received up to the 30th September, and the number should be considerable, this would not give us much time for review. However, these are matters which will be dealt with as they develop.

Yours very truly,

F. G. Shears,
Director.

FGS/PMH