

Report re Japanese Property Claims Commission

In accordance with the instructions received, I proceeded to Vancouver and arranged to accompany Mr. Justice Bird across Canada hearing the Japanese claimants. I arrived in Vancouver on January 29th.

On my arrival I contacted and had discussions with the Commissioner, Mr. Justice Bird, Government Counsel, Mr. Hunter, and your director, Mr. Shears. Subsequently I proceeded to Kamloops and attended one week of sittings there, accompanied by Mr. Shears, and I then returned to Vancouver and Mr. Shears proceeded with the Commission to Vernon. The purpose of my return to Vancouver was to put into effect certain plans that had developed as a result of my discussions and my seeing the Commission in action. Subsequently, with the return of Mr. Shears to Vancouver, I proceeded to Grand Forks and Nelson and attended the sessions of the Commission at those points.

It was only at the end of the Nelson sittings last week that Mr. Justice Bird was finally able to arrive at a definite programme for the balance of the sittings which he will hold across Canada before the first of July and for the sittings which the sub-commissioners will hold in the interior of British Columbia. As a result of studying the work of the Commission for the past two months, I made certain suggestions to Mr. Justice Bird, Mr. Hunter and Mr. Shears, some of which have been adopted and are referred to below.

Mr. Shears is proceeding to Lethbridge on Saturday night and will be attending the opening of the Commission there on Monday, March 22nd. He will also proceed east with the Commission. The covering letter to this report explains why I am not accompanying the Commission as planned and I request further instructions.

For the purpose of convenience, I have divided this report into four parts:-

1. The Commission.

- (a) Mr. Justice Bird is indeed a happy choice as Commissioner. There is no doubt that his manner of conducting the hearings and insisting that all information contained in Government files be supplied to the claimants, and the wide latitude given in the presentation of evidence has convinced both the claimants and their counsel that the Commissioner is anxious to assist them in every way possible in presenting their claims.
- (b) Counsel for the claimants, with particular reference to Mr. McMaster, have been exceedingly co-operative and fair in the presentation of

evidence, and are not so antagonistic to the Custodian's administration as one might reasonably have expected.

(c) Government Counsel, Mr. Hunter, is faced with a difficult task. He is at a great disadvantage in having undertaken approximately 1400 defences, and having to indicate at the present hearings what the line of defence will be, before he has had any real opportunity to become thoroughly familiar with the Custodian's policy and administrative practice. During the last few weeks it appears that he has obtained a fairly good grasp of the situation and is now in a better position to indicate the defence and cross-examine the witnesses. In my opinion he is doing excellent work, and the Government's defence is in capable hands.

(d) Mr. Shears has been rendering yeoman service to Mr. Hunter, and at the same time has been faced with the difficult problem of organizing the very small staff in the Custodian's Vancouver office to prepare the claim files on time so that the Commissioner's ambitious programme for his own sittings and for the sub-commissions in British Columbia can be carried out. To one who has some little knowledge of the complexities of the problem of administering the evacuees' property and the difficulty of appreciating the reasons behind the policy which was adopted, and getting these ideas across both to the Commissioner and to Government counsel, I have nothing but praise and admiration for the work done by Mr. Shears.

2. Custodian's Vancouver Office.

When the Commission was established, the Custodian's staff was definitely caught at a disadvantage due to no fault of Mr. Shears. Mr. Shears in accordance with instructions from Ottawa, had consistently reduced staff, and there are only ten executives out of a staff of twenty-five. These executives were busy putting the files in administrative order, which it will be appreciated, is entirely different than extracting information from them for the purpose of answering claims.

Mr. Shears re-organized the office on the basis that the executives, taking the claim form filed by the Japanese evacuee, would extract from the master files such information as might support or refute the claim, placing this information on a special file called the "claim file". It was originally intended that these files would be for the use of Government counsel, but it was found that the methods of evacuation and the speed had

prevented the evacuees from keeping any real record of the property they left in the protected area, or what had happened to such property. This information was considered by the Commissioner to be essential for the proper presentation of claims, and Mr. Shears was instructed to make the Custodian's claim file available to counsel for the claimants.

Mr. Shears was also faced with the problem of preparing sufficient claim files to keep the Commissioner and all of the sub-commissioners sitting simultaneously. Because of the size of the master or administration files, it has been found that an executive reviewing the files can average for the office about one a day, and in fact, experience has shown that the average is approximately 35 files a week. It will of course be appreciated that the current administrative work is continuing simultaneously. Once the Commission had obtained some experience, it was found that as high as nine cases a day and an average of about six, could be dealt with. It followed that while the office had had an opportunity of preparing a small backlog of files during the weeks of organisation of the Commission, it would be impossible to supply the main Commission and all the sub-commissions if they sat simultaneously. Mr. Shears and I considered this situation and after several conferences with Mr. Justice Bird, convinced him that the best the Custodian's organization could do was to keep his Commission supplied with files as he proceeded across Canada, and the sub-commissioners in the interior of British Columbia, provided such sub-commissioners sit consecutively. We also advised the Commissioner that there was no possibility of the present staff of the Custodian's office supplying material before the 1st of September for any sub-commissioners east of British Columbia. Mr. Justice Bird appreciated the situation and it has now been agreed that the sub-commissioners east of British Columbia will not commence sittings before fall and the British Columbia sub-commissions will commence on April 21st at Vernon and sit consecutively.

In the case of British Columbia sittings it is now necessary for someone to brief four local counsel as well as to supply these counsel with complete copies of the Orders-in-Council and regulations relating to the administration of evacuee properties. Government counsel, owing to the pressure of work with the main Commission has not been able to brief these counsel, and has requested that a Custodian's representative should attend the opening sessions of each sub-commission. Mr. Shears,

having in mind that the supplying of claim files to the Commissioner, should take precedence, is reluctant to disrupt the organization of the Vancouver office to do this, but he will make every effort to see that sub-commission counsel are briefed.

With respect to the claims filed by corporations which are to be heard in Vancouver, commencing possibly in September when the defence is also to be presented, no work is being done in the preparation of claim files at this time.

With respect to the sales made to the Director of the Veterans' Land Act, there is considerable work to be done before Government counsel will be in any position to defend the agreement made.

With respect to the briefing of local counsel, preparation of the defence in the case of the corporations and the sales of the Veterans' Land Act, it has been suggested that I should undertake this work, and my letter attached to this report indicates my views in this matter. It also indicates the importance of these claims which total approximately 50% of the value of all claims filed.

3. Mr. Justice Bird's Commission in Operation.

The first three weeks of hearings indicated the necessity of stream-lining the procedure of taking evidence if the Commission was to complete its work in any reasonable time. As a result of conferences in Vancouver in January and early February before the Commission returned to Kamloops, certain steps in this direction were taken, and the work of the Commission is certainly proceeding with greater rapidity than in the past.

The claimants' counsel have a field man who takes the Custodian's claim file and interviews the claimants before the hearing. After the claimants have seen the information that the Custodian has on file, amendments are usually made to his claim. The amended claim is submitted to Government counsel the night before the claim is being heard and at that time the Custodian's claim file is delivered to him. This is the first time that Government counsel sees the claim file. It will be appreciated that Government counsel must spend almost every evening reviewing the files and the amended claims in order that he will be in a position to cross-examine

the claimant and the witnesses the following day. There is no doubt that in the majority of cases the claimants have not complied with the advertisement calling for claims. There is also no doubt that because of the fact that the evacuees themselves kept practically no record, their claims have been prepared from memory and it is only after examining the Custodian's claim file that they are in a position to definitely state what they are claiming for. While it is obvious that the Custodian's staff are doing a lot of work that would be unnecessary if proper claims were filed in the first instance, it is also true that the claims are being considerably reduced as a result of information obtained by the claimants' counsel from the Custodian's files. It has become apparent that many amendments would not have been made if the Custodian's claim files had not indicated that the Custodian had evidence establishing that the claim was not entirely bona fide. I found this situation rather disturbing as it indicated that many of the claims might stand if the Custodian himself had no evidence that, for example, the claimant himself had disposed of a large portion of his chattels prior to evacuation. I decided to make a test, and instructed the executives preparing the claim files to remove everything from the claim file where there appeared to be a deliberate attempt to claim for chattels that had been disposed of by the claimant. Realizing that this would be withholding information from counsel for the claimant, and that he might consider that this was not proper in view of the Commissioner's instructions, I discussed the situation with the Commissioner and he agreed that if Government counsel could make an example of one claimant at each centre where the cases are heard, it would have a salutary effect on other claimants and would put counsel for the claimants on guard to see that the claimants do not file fictitious claims. You will be interested to know that in a specific case heard while I was with the Commission at Nelson, a claimant and his wife both testified that they had not disposed of their chattels prior to their evacuation. There was no indication on the Custodian's claim file that they had done so, and the claim was not amended in this respect prior to the hearing. In the course of cross-examination, Government counsel was able to produce a letter signed by the purchaser to the effect that \$1,000.00 had been paid to the Japanese claimants for certain assets, including chattels. Even after being faced with this letter, the claimant still denied the sale, and the Commissioner impressed upon him and upon his counsel the seriousness of

claiming for articles that had been disposed of by the claimant. The result of these tactics were ^{immediately} ~~xxxxxxxxxx~~, apparent, for at the following day's hearings and at subsequent hearings, we found that certain claims that had been amended at the time the claimant was interviewed by his counsel's representative, were further amended at the time of the hearing, so that we are now having further amendments. I think that the Commissioner was quite right in stating that these tactics by Government counsel were justified and will have a salutary effect as the Commission proceeds across Canada.

As a rule, when a claimant appears before the Commissioner, the claimant's counsel immediately files an amended statement of claim and some cross-examination takes place. Upon arrival in Vancouver, I found on reading transcripts of the evidence taken at the previous hearings, that there was no indication of the line that the Government's defence would take and on interviewing the Commissioner and the claimants' counsel as to the attitude they would take at the fall session when the Government defence is put in, I was advised that Government counsel would not be permitted to introduce a defence that he had not indicated at the time of the hearing, because it is only during the present hearing that the claimant has any opportunity of rebuttal. For example, if the Custodian's claim file indicated that the claimant had placed his chattels in the hands of his agent and therefore, under the terms of reference the agent would be responsible for their administration and not the Custodian, the claimants' counsel argued that Government counsel must point out that the defence would be the claim was outside the terms of reference, and if Government counsel did not point this out, then even though agency was indicated in the claim file, the claimant would be entitled to assume that the Government would not defend on this basis. As a result of these discussions, Government counsel now opens his cross-examination by stating, in very general terms, what the Government's defence will be, thus giving the claimant an opportunity to reply during re-examination.

4. Preparation of the Defence.

As indicated above, Government counsel is at the time of the hearing of claims, outlining in very general terms what the Government's defence will be. The transcripts of evidence are now pouring into the Custodian's office, and unless the preparation of the defence is to get out of hand entirely, it is essential that these transcripts be studied and the amendments to the claims be considered so that the final claim is known, and the defence can be prepared.

During the hearing of the claims the Custodian's claim file is being decimated by documents, letters and memoranda being extracted from it by both the Government and the claimant's counsel, and being filed as exhibits. I discussed this situation with the Commissioner and have convinced him that in view of the fact that there is no certainty that his recommendations will finally dispose of these claims, the Custodian's master files must be complete, and also in order that Government counsel can prepare the defence. The Commissioner has agreed that the Custodian is entitled to recover the original documents, letters and memoranda and it has been arranged that the exhibits are copied in the Custodian's office, and copies of same are handed to the Commission's secretariat. You will appreciate that it is impossible to follow the transcript of the evidence if the exhibits are not available.

Everyone is greatly disturbed at the magnitude of the problem of presenting 1400 defences. After considering the situation, I have come to the conclusion that it may be possible to divide the claims into categories, and thus considerably reduce presentation of the defence.

I have had several conferences, relating to this problem, with the Commissioner and he feels that one of two courses may be adopted. The first, that he hear 1400 individual defences, which in my estimation will mean that he will not be in a position to make any recommendations until at least the fall of 1949. The second, that if sufficient statistical information can be extracted from the files and the transcript of evidence, he may be in a position to make general recommendations relating to the various categories of claims.

For example, in the case of the fishing vessels relationship between the sale price, the appraised value and the claim may show that the Custodian's appraisals were 10%, 20% or 50% low and if he is satisfied that the Custodian's appraiser was a qualified appraiser, the Commissioner may make a recommendation as to a percentage to be paid across the board to all claimants for fishing vessels. This theory may also be applicable to chattels, real estate etc.

The Commissioner feels that he will have to hear the individual defences in the case of the corporations and that he will require considerable evidence to be given with respect to the qualifications and valuations made by the Soldier Settlement Board, upon which sale to the Director of the Veterans' Land Act was based.

If the Commissioner, after examining the statistical information which I propose the Custodian staff extract from the records, feels that he can make recommendations, it will greatly simplify the presentation of the defence. On the other hand, if counsel for the claimants and the Government counsel feel that individual defences must be presented, then the statistical information will be invaluable in preparing the defence.

Mr. Shears and I have been working on this problem for the past week and have now evolved certain forms*which he will show to the Commissioner this week, on which this statistical information can be entered. At the time that the information is extracted from the records, it is anticipated that there will be 800 transcripts on hand by the first of July, the staff doing this work can also prepare memoranda stating the line of defence the Government counsel indicated in each case, and the names of the witnesses that will have to be called to support such defence.

In view of the statements made above as to the tremendous volume of work now being handled by the existing staff of the Custodian's office, it is obvious that additional help will have to be obtained. Government counsel has stated on several occasions that he is convinced that the Custodian staff must be increased if the work of the Commission is to continue without any long adjournment for the preparation of the defence. After discussing the question of defence with the Commissioner, and with his support, I have proposed to Mr. Shears and he has accepted my suggestion, that the following arrangements be made, subject of course, to your approval.

As of March 22nd, Mr. Shears is hiring two men, and even if you do not approve of the proposal outlined below concerning the law students, these two men will be necessary to insure Mr. Shears' ambitious programme to keep up with the work of the Commissions and the preparation of the defence.

Mr. Shears and I have had an informal interview with Dean Curtis of the University of British Columbia Law School and I have suggested to the Dean that a number of law students either may not be articled during the summer months or might be available from firms who have articled more students than they actually require, and that the Law Society might permit the Custodian to employ at least five students from 1st of May

until the 15th of September. I have pointed out that they would be doing semi legal work in reviewing evidence and in a preliminary way preparing briefs for the defence. I have also pointed out that while the Custodian would be prepared to pay the students a reasonable remuneration, he would not like to pay salaries that might create ill will with the legal profession generally. I have advised Dean Curtis that I have not obtained your approval to carry out this scheme, but I have requested that he ascertain whether or not the Law Society would be prepared to co-operate.

It would be very helpful if I could have your views as to whether or not the Custodian is prepared to accept these proposals, which, I may add, are supported by Mr. Shears.

I feel that the protection of the Custodian's interests, as recognized at the present time, are being taken care of, and that Mr. Shears can ably deal with any problems that may arise as the Commission travels eastwards across Canada.

My covering letter explains my future position in these matters as I see it at this time.

G.W. McPherson
Executive Assistant.

GWM/GN