

The Bird Commission, Japanese Canadians, and the Challenge of Reparations
in the Wake of State Violence

by

Kaitlin Findlay

BA (Honours), McGill University, 2014

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SUPERVISORY COMMITTEE

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Supervisory Committee

Dr. Jordan Stanger-Ross, Department of History
Supervisor

Dr. Penny Bryden, Department of History
Departmental Member

ABSTRACT

The Royal Commission on Japanese Claims (1947-1951), known as the “Bird Commission,” investigated and offered compensation to Japanese Canadians for their losses of property during the 1940s. It is largely remembered for what it was not: that is, it was not a just resolution to the devastating material losses of the 1940s. Community histories bitterly describe the Commission as destined to failure, with narrow terms of reference that only addressed a fraction of what was taken. Similarly, other historians have portrayed the Commission as a defensive mechanism, intended by the government to limit financial compensation and to avoid the admission of greater injustice.

Yet scholars have never fully investigated the internal workings of the Commission. Despite its failings, Japanese Canadians used the Bird Commission in their struggle to hold the state accountable. Hundreds of Japanese Canadians presented claims. Their testimonies are preserved in thousands of pages of archival documents. The Bird Commission was a troubling, flawed, but nonetheless important historical process. This thesis examines government documents, claimants’ case files, and oral histories to nuance previous accounts of the Bird Commission. I draw from ‘productive’ understandings of Royal Commissions to argue that the Liberal government, cognizant of how such mechanisms could influence public opinion, designed the Bird Commission to provide closure to the internment-era and to mark the start of the postwar period. Their particular definition of loss was integral to this project. As Japanese Canadians sought to expand this definition to address their losses, the proceedings became a record of contest over the meaning of property loss and the legacy of the dispossession. Navigating a web of constraints, Japanese Canadians participated in a broader debate over the meaning justice in a society that sought to distance itself from a legacy of racialized discrimination.

This contest, captured in the Commission proceedings, provides a pathway into the complex history of the postwar years as Canadians grappled with the racism of Second World War, including Canada’s own race-based policies, and looked towards new approaches to pluralism.

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INTRODUCTION



Photograph submitted as evidence in Shintaro Yamada's claim to the Bird Commission. Library and Archives Canada, RG33 69, vol. 6, case file: "99 – Yamada, Shintaro (Mrs.) (Kamloops)."

This project began as a research position when I was tasked with digitizing the over 1,400 case files of the Bird Commission collection.¹ It was my first time reading court records: I was captivated by their detailed evidence, fascinated by the courtroom dynamics, and mesmerized by the glimpses of Japanese Canadians' lives that permeated the proceedings. In one case file, Shintaro Yamada claimed that the Vancouver Office of the Custodian sold his bulb farm for a third of its worth. Shintaro's wife Kikuye testified in his place; her English was stronger and it was she who had arranged a tenant on their property

¹ The Bird Commission (1947–50) investigated Japanese Canadians' claims for property loss resulting from the sale of their property by the Office of the Custodian at less than fair market value. Sometimes referred to as the Royal Commission on Japanese Claims, it was officially titled the Royal Commission to Investigate Complaints of Canadian Citizens of Japanese Origin who Resided in British Columbia in 1941, That Their Real and Personal Property had been Disposed of by the Custodian of Enemy Property at Prices Less than the Fair Market Value.

when the Canadian state ordered their forced uprooting and internment in 1942.² Kikuye testified to the value of their farm, describing how they first cleared the land, when they last fertilized the soil, and the types of bulbs they produced—daffodils. They submitted equipment inventories, land title deeds, and their original registration documents with the RCMP. In their claim forms, their legal aid recorded the Yamadas' account of their property and dispossession in tight script, for their lawyer to recount in their hearing. The Yamadas also submitted photographs of their property, but, since they had never considered selling their farm before 1942, the only photographs they had were, in truth, of their children. These photographs stopped me in my tracks. The Yamadas had not just lost the monetary worth of their farm, their equipment, and their bulbs in the forced sale of their property. They lost the life they built around it, the future for their children. *Anyone looking at the photograph would see that*, I thought. Instead, the government counsel described the photograph as “a picture showing some of the bulbs in bloom.”³ The case file held two stories: one of the knowledge produced from the query of the Bird Commission, of details of market value and procedure, and a second, less coherent story that seemed to be inseparable from the first that persisted (whether by choice or by accident) within each claim. This thesis reflects my attempts to understand the contesting stories within the case files, and their meanings for Japanese Canadians and the Canadian state in the immediate postwar era.

² At the time, Shintaro was already interned in a road camp with other men of Japanese descent.

³ Hearing transcript, 10 May 1948, Library and Archives Canada, RG33 69 (Bird Commission fonds), vol. 6, case file: “99 – Yamada, Shintaro (Mrs.) (Kamloops),” 12.

Otherwise unfamiliar with the Bird Commission, I drew from a diverse scholarship to approach the case files. Initially, I took inspiration from a previous interest in the professionalization of social work and, particularly, the work of Karen W. Tice on the history of case records.⁴ Tice's Foucauldian analysis inspired me to ask what stories the case files told, while recognizing that they likely revealed more of the Canadian state (its priorities and interests) than of the claimants themselves. But the Bird Commission case files differ from Tice's in two important ways. First, the Bird Commission case files are dialogical. Claimants and their lawyers prepared them, using what evidence they had, to make their claims legible to the Bird Commission. In doing so, they crafted their strongest case (expanding, at times, beyond the Commission's intended scope). Tina Loo's observations on individuals' appropriation and exploitation of structures of domination was invaluable in conceptualizing this position.⁵ Likewise, Jordan Stanger-Ross and Nicholas Blomley's study of how Japanese Canadians articulated the value of their property and the harms of the policies that dispossessed them has been foundational to my understanding of Japanese Canadians' claims.⁶ Second, the Bird Commission case files include the transcripts from each claimant's hearing. The scholarship of Walter Johnson and Hannah Rosen on court proceedings in the late antebellum and early reconstruction-era South

⁴ Karen Whitney Tice, *Tales of Wayward Girls and Immoral Women: Case Records and the Professionalization of Social Work* (Urbana: University of Illinois Press, 1998).

⁵ Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951," *Canadian Historical Review* 2, no. 73 (1992): 125–65.

⁶ Jordan Stanger-Ross, Nicholas Blomley, and the Landscapes of Injustice Research Collective (hereafter LOI Collective), "'My Land Is Worth a Million Dollars': How Japanese Canadians Contested Their Dispossession in the 1940s," *Law and History Review* 35, no. 3 (August 2017): 711–51.

modelled how to understand individual testimony and court proceedings within broader historical processes.⁷ Informed by this scholarship on case records, testimony, and the state, I began to delineate the multiple and competing interests within each case file and their place within a broader contest over the meaning of loss, dispossession, and justice in the postwar years.

Understanding the Bird Commission required a fuller portrait of the individuals who participated in its unfolding. This thesis centres on two claimants, Masue and Rinkichi Tagashira.⁸ It traces the Tagashiras from their first years in Canada, through the turmoil and disruptions of their forced uprooting, internment, and dispossession, to their Bird Commission hearings in the late 1940s. In this respect, this thesis builds on a rich scholarship that is attentive to individuals in relation to the state violence of the 1940s.⁹

⁷ Walter Johnson, “Inconsistency, Contradiction, and Complete Confusion: The Everyday Life of the Law of Slavery,” *Law & Social Inquiry* 22, no. 2 (April 1997): 405–33; Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009).

⁸ Across the historical record, there is discrepancy in the spelling of Masue Tagashira’s name. For this thesis, I have followed the spelling used in media interviews in her later life and her collection at the Nikkei National Museum.

⁹ Jordan Stanger-Ross, “Telling a Difficult Past: Kishizo Kimura’s Memoir of Entanglement in Racist Policy,” *BC Studies: The British Columbian Quarterly*, no. 181 (April 9, 2014): 39–62; Stanger-Ross, Blomley, and the LOI Collective, “‘My Land Is Worth a Million Dollars’”; Jordan Stanger-Ross and Pamela Sugiman, eds., *Witness to Loss: Race, Culpability, and Memory in the Dispossession of Japanese Canadians* (Montreal and Kingston: McGill-Queen’s University Press, 2017); Peter Neary, “Zenosuke Inouye’s Land: A Canadian Veterans Affairs Dilemma,” *Canadian Historical Review* 85, no. 3 (September 2004): 423–50; Michiko Midge Ayukawa, “Bearing the Unbearable: The Memoir of a Japanese Pioneer Woman” (Master’s thesis, University of Victoria, 1990); Ariel Merriam and the LOI Collective, “‘Our Appreciation for All Your Goodness and Kindness’: Power, Rhetoric, and Property Relations in the Dispossession of Japanese Canadians” Landscapes of Injustice Working Paper Series, University of Victoria, 2016. www.landscapesofinjustice.com; Eiji Okawa and the LOI Collective, article series in *The Bulletin Geppō*, 2016 – 2017. There is also a considerable scholarship that addresses the legacy of these years: Pamela Sugiman, “Memories of Internment: Narrating Japanese Canadian Women’s Life Stories,” *The Canadian Journal of Sociology* 29, no. 3 (September 20, 2004): 359–88; Pamela Sugiman, “‘A Million Hearts From Here’: Japanese Canadian Mothers and Daughters and the

The historical record left by Masue and Rinkichi Tagashira—in state records but also oral history interviews—made it possible to glimpse the life they had built prior to its distortion through the frame of the Bird Commission. Further, in the complexity of their claims and their sheer personal tenacity, the Tagashiras strained the Commission past its normal operations and brought the architecture of the Bird Commission into sharp relief. The story of the Tagashiras thus allows us to see the Bird Commission more clearly and exemplifies the ongoing contest throughout its hearings.

At the same time, a study of the Bird Commission required understanding the broader political processes that shaped its purview. In this regard, I join an established scholarship on the political history of the wartime treatment of Japanese Canadians.¹⁰ While past scholars rightly identify the failures of the Commission, I revisit the development of its terms to interrogate what Cabinet intended in its design. I situate these conversations in relation to the complex history of the postwar years as Canadians grappled with the racism of the Second World War, including Canada's own race-based policies, and looked towards new approaches to pluralism.¹¹ In this respect, this thesis contributes

Lessons of War,” *Journal of American Ethnic History* 26, no. 50–68 (Summer 2007); Mona Oikawa, *Cartographies of Violence: Japanese Canadian Women, Memory, and the Subjects of the Internment*, Studies in Gender and History (Toronto: University of Toronto Press, 2012).

¹⁰ Ken Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart, 1976); Ann Gomer Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: J. Lorimer, 1981); Patricia Roy, *The Triumph of Citizenship: The Japanese and Chinese in Canada, 1941-67* (Vancouver: UBC Press, 2007); Patricia Roy, *The Oriental Question: Consolidating a White Man's Province, 1914-41* (Vancouver: UBC Press, 2003); Roy Miki, *Redress: Inside the Japanese Canadian Call for Justice* (Vancouver: Raincoast Books, 2004); Forrest Emmanuel La Violette, *The Canadian Japanese and World War II: A Sociological and Psychological Account* (Toronto: University of Toronto Press, 1948).

¹¹ For closer examination of the debates over the meanings of Canadian citizenship, identity, and values in the immediate postwar, see: Patricia Roy, “Lessons in Citizenship, 1945-1949: The

to Laura Madokoro's claim that liberalization in postwar Canada was "far from certain" (though Madokoro writes in relation to immigration policy, this study of the Bird Commission shows that change in attitudes and policies toward domestic racialized groups was also equivocal).¹² My thesis aims to contribute a fuller account of the Bird Commission by suggesting that government officials crafted the Bird Commission to produce a narrative of the dispossession that defined justice as a matter of procedural accountability. Rather than recognize Japanese Canadians' claims, the Bird Commission submerged them in order to build a portrait of a just government and move past uncomfortable wartime policies.

Thus, this study of the Bird Commission aims to extend accounts of Japanese Canadians' relations with the state into the late 1940s. As the government built a narrative of the dispossession through the lens of procedural accountability, Japanese Canadians called on the state to be accountable to them as citizens and property owners. A study of the Bird Commission offers fertile ground for exploring Japanese Canadians' resistance to a belligerent state and the complexities of reparations in the wake of injustice.¹³

Delayed Return of the Japanese to Canada's Pacific Coast," *The Pacific Northwest Quarterly* 93, no. 2 (2002): 69–80; Roy, *The Triumph of Citizenship*; Ivana Caccia, *Managing the Canadian Mosaic in Wartime: Shaping Citizenship Policy, 1939-1945* (Montreal and Kingston: McGill-Queen's University Press, 2010); Franca Iacovetta, *Gatekeepers: Reshaping Immigrant Lives in Cold War Canada* (Toronto: Between the Lines, 2006); Heidi Bohaker and Franca Iacovetta, "Making Aboriginal People 'Immigrants Too': A Comparison of Citizenship Programs for Newcomers and Indigenous Peoples in Postwar Canada, 1940s–1960s," *Canadian Historical Review* 90, no. 3 (2009): 427–62.

¹² Laura Madokoro, "'Slotting' Chinese Families and Refugees, 1947–1967," *Canadian Historical Review* 93, no. 1 (March 2012): 25–56.

¹³ In this regard, this study continues from Eric Adams and Jordan Stanger-Ross's portrayal of Japanese Canadians' resistance to the forced seizure and sale of their property, beginning when the policies were first announced in 1942. Eric M. Adams, Jordan Stanger-Ross, and the LOI Collective, "Promises of Law: The Unlawful Dispossession of Japanese Canadians," *Osgoode Hall Law Journal* 54, no. 3 (Spring 2017): 687–740.

In the late 1940s, the legacy of the wartime policies remained undetermined. By 1946, the public's understanding of the treatment of Japanese Canadians was increasingly critical and contentious. Activists vocally opposed the deportation of some 4,000 Japanese Canadians in that year, garnering the sympathy of liberal media, church groups, politicians, and a wide array of individual citizens, who wrote to federal representatives in protest. Policies which, as Stephanie Bangarth has portrayed, were met with relative silence in 1942 were increasingly criticized as discriminatory, inhumane, and akin to European fascism.¹⁴ By summer 1946, Anne Sunahara explains, "the overwhelming public reaction opposing deportation and the dispersal of Japanese Canadians across Canada had made such a policy not only politically unnecessary, but politically unwise."¹⁵ When Cabinet finally repealed the deportation orders in early 1947 (eliminating the prospect of exiling additional Japanese Canadians), and promised to investigate instances of property loss, officials already considered the project of forcibly dispersing Japanese Canadians from British Columbia a *fait accompli*. But property loss remained an open question. Wary of a politically damaging campaign for property compensation, government officials sought to get ahead of popular movements by promising to address the issue of property loss and to demonstrate their accountability. A government that investigates its own errors, the logic went, was surely just. However, producing this narrative, I will argue, required the continual exertion of

¹⁴ Stephanie D. Bangarth, *Voices Raised in Protest: Defending Citizens of Japanese Ancestry in North America, 1942-49* (Vancouver: UBC Press, 2008), 101. See also: Roy, *The Triumph of Citizenship*, 188, 202–32; Sunahara, *The Politics of Racism*, 122–23; Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2005), 140; Adachi, *The Enemy That Never Was*, 311.

¹⁵ Sunahara, *The Politics of Racism*, 136. They started in Toronto and, by the time of King's January 24 announcement, were circulating the survey nationally.

force over Japanese Canadians who testified to a broader injustice than the government was willing to recognize.

The violence of the compensation process reveals itself in Bird Commission hearings. Though Ken Adachi rightly observes that Japanese Canadians fundamentally compromised in accepting the Commission's limited terms of reference, I show that the contest over the narrative of the dispossession and Japanese Canadians' resistance to the state's position on their losses continued into the early 1950s.¹⁶ This contest and resistance may have been previously overlooked because Japanese-Canadian claimants did, ultimately, participate within the constrained terms of the Bird Commission. However, I take instruction from Loo's warning not to mistake people's "obedience or willingness to participate in the legal process ... as an indication of their belief in the rule of law and the legitimacy of the larger system of authority of which it is a part." Instead, she writes, "people obey and use the law because it is in their interest to do so."¹⁷ When government officials only conceded to recognize a portion of their claims in the Bird Commission, Japanese Canadians nevertheless seized the opportunity to pursue fair compensation and pushed the state to recognize their hardships fully. The shortcomings of the Commission do not warrant overlooking the significance of Japanese Canadians' testimony or their calls upon the state to provide justice in a meaningful way.

Yet, resistance to the ongoing state violence also brought entanglement in the broader structures of power. As Japanese Canadians and their allies made their claims for property loss legible to the Commission, they became implicated in the state's project of

¹⁶ Adachi, *The Enemy That Never Was*, 333.

¹⁷ Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951," 129, 164.

moving on from the discriminatory policies of the Second World War. As scholars are increasingly attentive to Japanese Canadians' engagement with the state in the initial years of dispossession, the Bird Commission hearings offer an extended view of this imbalanced relationship.¹⁸

This thesis argues that as Japanese Canadians submitted claims and testified to their losses under federal policy, they held the state accountable for breaching their rights as property owners and citizens, and derailing their lives with no just cause. In doing so, they held the state to a higher vision of justice than it offered. In multiple venues, Japanese Canadians articulated the broader ramifications of their violation. Rather than recognize these claims, however, government officials narrowly defined the state's responsibility as a matter of procedural accountability. This study of the Bird Commission reveals that Canada's move towards a pluralist society was a matter of moving past unjust policies, rather than addressing the hardships they wrought. In the late 1940s, the appearance of a just government was a separate matter from meaningful redress.

The chapters that follow proceed chronologically, with some concurrent events. The first chapter of this thesis reconstructs the historical timeline of the dispossession through the lives of Masue and Rinkichi Tagashira. I situate the couple within a longer history of Japanese immigration to Canada, of individual relations to the state and discrimination in an unequal society. Simultaneously, I convey how they were embedded in networks of support, business, and community in Vancouver prior to their forced

¹⁸ Stanger-Ross, Blomley, and the LOI Collective, "My Land Is Worth a Million Dollars"; Adams, Stanger-Ross, and the LOI Collective, "Promises of Law"; Merriam and the LOI Collective, "Our Appreciation for All Your Goodness and Kindness": Power, Rhetoric, and Property Relations in the Dispossession of Japanese Canadians."

uprooting. I follow the Tagashiras' attempts to navigate and resist the discriminatory policies until 1948, when they first testified at the Bird Commission. The second chapter temporarily leaves the Tagashiras to attend to the broader political processes of the Bird Commission. This chapter introduces the two contesting narratives that persisted throughout the Commission proceedings: first, accountability as claimed by government officials and, second, justice as called for by Japanese Canadians and their allies. This chapter is particularly attentive to the mediating role of Japanese Canadians' lawyers and their efforts to navigate the imperfect Commission in their clients' favour. The final chapter returns to the Tagashiras in their Bird Commission hearings. It demonstrates that even the government's partial claim to accountability threatened to fall apart under the routine work of legal argumentation and testimony. A close study of the Tagashiras' Bird Commission claims demonstrates that Canada's path to a more just postwar era involved a further extension of arbitrary force to resist Japanese Canadians claims for redress.

As a case study of the Tagashiras, this thesis analyzes the Bird Commission while also conveying the specific harms caused by the forced sale of Japanese Canadians' property. It highlights the divergence between the experience of the dispossession and the state's conception of loss and harm. Taken together, these two kinds of stories, both told through the Bird Commission hearings, offer new lessons about Canada's tumultuous path as it grappled with the racism of the 1940s and looked towards new approaches to pluralism in the immediate postwar years.

CHAPTER 1: THE STORY OF A COUPLE

Cordova Street, in October 1942, must have felt odd. For over thirty years, it had been at the hub of Japanese-Canadian life in Vancouver. A block south of the businesses, stores, and hotels lining Powell Street, Cordova was more residential, where people moved once they had saved enough money to buy property.¹ Walking east from Oppenheimer Park, the home-field of the beloved Asahi's, one would pass the homes of T. Tamaki (653 E. Cordova), S. Nishiyama (655), R. Otsuji (657), and M. Akazawa (665) before coming to two houses joined by a stucco facade, on the corner of Heatley Street.² The building, 671–679 Cordova, was owned by Rinkichi Tagashira. He purchased the property in 1931 for \$2,750 and, immediately after, spent another \$1,500 on renovations. “It was an industrial location and impossible to build a new house,” he would recall, “so[,] as the location was very good, I put in these expensive improvements.” In went a fourteen-foot basement, new hot-water pipes, and the facade.³



*671-679 East Cordova, before and after the construction of the facade.
RG33-69, vol. 9, case file: “165 - Tagashira, Rinkichi (Vernon).”*

¹Audrey Kobayashi, *Memories of Our Past: A Brief History and Walking Tour of Powell Street* (Vancouver: NRC Publishing, 1992), 21.

²*The British Columbia and Yukon Directory* (Vancouver: Sun Directories Limited, 1941), 1237, http://bccd.vpl.ca/index.php/browse/title/1941/British_Columbia_and_Yukon_Directory.

³Hearing transcript, Library and Archives Canada (hereafter LAC), RG33 69 (Bird Commission fonds), vol. 9, file: “165 – Tagashira, Rinkichi (Vernon),” 15.

In October 1942, however, the homes were either empty or rented and their owners interned at least 100 miles away. Rinkichi Tagashira himself was interned in Revelstoke. Only Masue Tagashira (then Masue Jinnouchi) and her children remained at Cordova Street, with special permission from the British Columbia Security Commission (BCSC). She was training Frank Mah and his employees to operate the Tagashira Trading Company, Rinkichi's tobacco and candy wholesale business.⁴ Mah would manage the business in their absence. It was the final hand-over after two months of negotiations between Frank Mah, Rinkichi Tagashira, and Harold D. Campbell, the agent who acted on behalf of the Office of the Custodian of Enemy Property. The Tagashiras were reluctant to transfer their business and belongings into the government's care. Instead, they boxed up their belongings, locked them in the attic and put the business under third-party management. When Masue Tagashira and her children left Cordova Street on October 29, they were three of the last Japanese Canadians in the "protected area." The total uprooting of Japanese Canadians was completed, the Department of Labour would declare, on October 31.⁵

As they were not yet married, the BCSC treated Rinkichi and Masue Tagashira as separate households and assigned them to different internment centres. With Rinkichi in Revelstoke, Masue and her children travelled by train to the Slocan Valley. There, with nearly a thousand other Japanese Canadians, they slept under cloth tents. Theirs collapsed

⁴ The wholesale business operated out of offices in the basement of 671–679 Cordova while the family lived upstairs. Nancy Knickerbocker and Stephen Bosch, *First Generation: Stories* (Vancouver: Asia Pacific Initiative, 1990).

⁵ Department of Labour Report on The Administration of Japanese Affairs in Canada 1942 – 1944, LAC, RG18 (Royal Canadian Mounted Police fonds), vol. 3567, file C-135-36-3: "Repatriation of Japanese in Canada. 1945-1954."

the first night, unable to bear the weight of an early snow. Quickly, Masue Tagashira applied for and received permission to transfer to Revelstoke, under the pretense of being Rinkichi's personal aid. They lived in a house beyond the train tracks and, as internment dragged on, created something that resembled a normal life.⁶

Yet internment was temporary life: the Tagashiras did not know when they would return or what they would return to. In the meantime, the Office of the Custodian was their only link to the management of their home and business. From the first vesting of their property in the Office of the Custodian in 1942, they were in constant communication with federal officials. The Tagashiras refused to give up their lives in Vancouver. To the great frustration of the agents of the Office of the Custodian, Rinkichi Tagashira made detailed and effective arrangements that preserved his ownership rights. He repeatedly protested the forced sale of their possessions and, once they were sold, demanded just compensation. When Cabinet called a royal commission in 1947 to investigate claims for sales made by the Office of the Custodian at less than fair market value, Masue and Rinkichi Tagashira submitted claims and held the state accountable for its failure to protect.

This chapter tells a story of Masue and Rinkichi Tagashira, of their lives in Vancouver and how they negotiated the brutally racist policies as they unfolded. It is a story of how state intervention played out on the ground and lays a groundwork for understanding the Tagashiras' claims at the Bird Commission. Prior to the uprooting, Rinkichi Tagashira had lived in Vancouver for 35 years and Masue Tagashira for 11. It was their home, their place of business, and where they built their future. Tracing their lives in Vancouver in the 1930 and '40s makes vivid networks of social support, business,

⁶ Knickerbocker and Bosch, *First Generation.*; Conversation with Donald Jinnouchi, July 2016.

and community. Their story of negotiation, resistance, and perseverance also provides a pathway to understanding the rationalizations that shaped their dispossession, specifically those of low-level bureaucrats based on interpretations of the market. The forced dispossession of the Tagashiras left hundreds of pages documenting negotiations, agreements, and exchanges with federal officials and their lawyers. The material reveals complicated arguments and individual interpretations of law. Often drawing on government records, this chapter nonetheless attempts to counter their limits, which define individuals through conceptions of property ownership or citizenship status. Property was never the defining feature of the Tagashiras' lives, nor was the dispossession. By providing a biographical portrait of the couple, this chapter seeks to situate the losses that the Tagashiras suffered in the context of their lives.

“... in the interests of the owner ...”

As I reconstruct a (admittedly uneven) dual biography of the couple, I am attentive to their articulations of interests. In 1944, when Japanese Canadians' properties, livelihoods, and heirlooms were being sold by the Custodian of Enemy Property at bargain rates, the Tagashira Trading Co. was running a profit. Rinkichi Tagashira's agreement with Mah was successful; the business was protected from the state and Tagashira retained ownership. The agreement, however, would expire before the federal government lifted the restrictions on Japanese Canadians' property ownership. While Rinkichi tried to extend the contract, the Office of the Custodian advised him to sell. "[M]y manager and I are making money not losing," Rinkichi replied. "Therefore I don't believe the Custodian will liquidate

my interest in this business for my interest protection.”⁷ He was referring to the federal government’s paternalistic promise to protect the property vested in the Custodian “in the interests of the owner.”⁸ How could it be in my interest, Rinkichi asked, to sell my successful business? I take this disagreement over interests as inspiration in this chapter. Throughout the dispossession, low-level bureaucrats, third party agents, and the Tagashiras’ own lawyers would articulate a version of the Tagashiras’ interests. Relentlessly, Tagashira would reiterate his position. Rinkichi and Masue Tagashira faced a deeply unequal society in the prewar years, which was then compounded by essentially unlimited executive power of the wartime state. They navigated, in the best ways they could, to protect their home, investments, and family.

This notion of interests relies on Foucault’s portrayal of power. Foucault argues that power is not something possessed by one group or class to which others are subjected. Instead, power is imminent and decentred. It is something that “circulates.” The manifold relations of power “permeate, characterize, and constitute the social body.”⁹ Tina Loo expands on Foucault’s analogy of power as a net to elucidate its operation. From one perspective, she writes, a net is a meshed instrument in which we may become caught. In this case, power is entrapping and constraining. From another perspective, however, power “is a collection of holes tied together with string.” Here, the power’s repressive aspect is

⁷ Letter to Frank G. Shears from Rinkichi Tagashira, 25 January 1944, RG117 (Office of the Custodian of Enemy Property fonds), vol. 2583, file: “Rinkichi Tagashira (part 3.1).”

⁸ Eric M. Adams, Jordan Stanger-Ross, and the Landscapes of Injustice Research Collective (hereafter LOI Collective), “Promises of Law: The Unlawful Dispossession of Japanese Canadians,” *Osgoode Hall Law Journal* 54, no. 3 (Spring 2017): 699-700.

⁹ Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 93.

less absolute and there is opportunity for movement. “Though movement is channeled,” Loo explains, “there is room to maneuver strategically, to resist.

Resistance - the exploitation of the holes - stretches and strains the net, so that over time the fabric of power changes. At the same time, however, resistance also transforms the resisters. Finding the holes and manipulating and getting through them necessitates entangling oneself somewhat in power's net, adapting oneself to its shape and to its way of seeing and acting. While this may in fact reinforce the apparatus of domination and contribute to its reproduction in the short term, change and perhaps radical change is inherent in the exercise of power.¹⁰

As the Tagashiras pursued their interests, they manipulated and moved through this web of power. In the context of a discriminatory state, their pursuit became resistance, their self-preservation incongruent with Canadian law—but, as Loo reminds us, this resistance could also reinforce the apparatus of domination. Protests that accused the Canadian state of violating the foundations of Canadian law nonetheless re-inscribed the foundations of the settler colonial state. While the Tagashiras went to extraordinary measures to resist the state seizure of their property, they also used the Office of the Custodian to collect on debts from other Japanese Canadians. The notion of interests recognizes that Japanese Canadians held complex, shifting, and contradictory positions in systems of domination and seeks to avoid the limited dichotomies, as Mona Oikawa warns, of resistance/compliance, speaking/silence, and, as Henry Yu adds, “ethnic victimization/triumph.”¹¹ In doing so, I

¹⁰ Tina Loo, “Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951,” *Canadian Historical Review* 2, no. 73 (1992): 165.

¹¹ Mona Oikawa has importantly pointed to the limitations of representations of resistance that rely on Western, Liberal notions of the speaking, enlightened (masculine) subject. Mona Oikawa, *Cartographies of Violence: Japanese Canadian Women, Memory, and the Subjects of the Internment*, Studies in Gender and History (Toronto: University of Toronto Press, 2012). Writing in relation to Chinese Canadian history, Yu describes the “norm in many “ethnic” histories is to structure stories using both narrative strategies with one enhancing the other. Without the obstacles

seek to contribute to the growing mosaic of accounts of how Japanese Canadians manoeuvred through these tumultuous years.¹²

Masue Tagashira

Masue Tagashira was in her teens when she first dreamed of travelling to Canada. She was the fifth child of ten, born in 1906 to a farming family in a village in Shiga Prefecture, Japan. She was an adventurous youth. In the 1980s, she recounted the years in playful anecdotes. “I’m a tomboy to begin with,” she laughed, recalling the looks of shock and disapproval that met her as she rode through the village on a bike.¹³ Masue had hoped to pursue higher education but her family intervened. The elders were reluctant for girls to continue beyond the minimum education requirements, thinking that, in Masue’s words, “women could get too much educated gonna get high hat.”¹⁴ “That’s old timers,” she

of racism, the triumph of overcoming would not seem as heroic; without the hope of overcoming, the evils of racism would become dehumanizing and banal.” Henry Yu, “Cultivating Connections: The Making of Chinese Prairie Canada by Alison R. Marshall (Review),” *The Canadian Historical Review* 96, no. 4 (2015): 617–18.

¹² Recent scholarship includes: Jordan Stanger-Ross, Nicholas Blomley, and the LOI Collective, “‘My Land Is Worth a Million Dollars’: How Japanese Canadians Contested Their Dispossession in the 1940s,” *Law and History Review* 35, no. 3 (August 2017): 711–51; Jordan Stanger-Ross, “Telling a Difficult Past: Kishizo Kimura’s Memoir of Entanglement in Racist Policy,” *BC Studies: The British Columbian Quarterly*, no. 181 (April 9, 2014): 39–62; Jordan Stanger-Ross and Pamela Sugiman, eds., *Witness to Loss: Race, Culpability, and Memory in the Dispossession of Japanese Canadians* (Montreal and Kingston: McGill-Queen’s University Press, 2017); Michiko Midge Ayukawa, “Bearing the Unbearable: The Memoir of a Japanese Pioneer Woman” (Master’s thesis, University of Victoria, 1990); Ariel Merriam and the LOI Collective, “‘Our Appreciation for All Your Goodness and Kindness’: Power, Rhetoric, and Property Relations in the Dispossession of Japanese Canadians” Landscapes of Injustice Working Paper Series, University of Victoria, 2016, www.landscapesofinjustice.com; Eiji Okawa and the LOI Collective, article series in *The Bulletin Geppō*, 2016 – 2017.

¹³ Knickerbocker and Bosch, *First Generation*, 46.

¹⁴ Masue Tagashira, interviewed by Joanne Wood and Eric Sokugawa, 16 August 1983, tape 1994.80.13 (part 1), Japanese Canadian Oral History Collection, Simon Fraser University Digital Collections, Vancouver, B.C. <http://digital.lib.sfu.ca/johc-295/interview-masue-yagashira>.

laughed (herself 77 at the time).¹⁵ Emigration was an opportunity to move beyond the traditional roles of the village; for Masue, Canada was synonymous with adventure.

Despite Masue's emphasis on adventure, economic and social factors likely also shaped her decision to immigrate to Canada. For young women, marriage was a serious concern. Spinsterhood was socially unacceptable within Japanese culture and immigration presented an opportunity for marriage that would have otherwise been unavailable for some.¹⁶ The restriction of immigrant labourers from Japan to 400 in 1908, following the 1907 Vancouver riots, decreased male immigration significantly. That year, however, also marked an increase of female immigrants to Canada. "Japanese men in B.C.," writes historian Midge Ayukawa, "the majority of whom had reached marriageable age and had been unable to achieve their goal of returning to Japan with sufficient capital to purchase some land or to begin a small business, sought wives."¹⁷ This could easily be coupled with Japanese women's own drive for adventure or to escape the traditional expectations of their hometowns, as with Masue Tagashira.

Under the 1908 Gentlemen's Agreement, only married women could immigrate to Canada from Japan. So, Masue needed to find a husband. By the 1920s, over 6,000 Japanese women had immigrated to Canada under the "picture bride" system. It was a practical adaption of Japanese marriage customs under restrictive immigration policy.¹⁸

¹⁵ Ibid.

¹⁶ Michiko Midge Ayukawa, "Good Wives and Wise Mothers: Japanese Picture Brides in Early Twentieth-Century British Columbia," *BC Studies: The British Columbian Quarterly*, no. 105/106 (Spring/Summer 1995): 109.

¹⁷ Ibid., 107

¹⁸ Ibid.

Photographs were exchanged and, if the groom was unable to return to Japan, the marriage was conducted by proxy. Many women met their future husbands only when they arrived in Vancouver.¹⁹ Masue, however, knew her first husband from her hometown. When Shigeo Jinnouchi returned from Canada to their hometown for his mother's funeral in 1926, she saw an opportunity. Having worked in Canada for three years in his brother's household, Shigeo wanted to establish his own family.²⁰ Shigeo's sister, who knew of Masue's desire to travel, introduced the pair. They married in Japan and travelled in 1927 to Canada.

There, they entered British Columbia's resource-based economy, working in a shingle camp at the base of Stave Lake where Shigeo had previously been employed. Masue cooked for the workers and worked, splitting wood, alongside Shigeo. "I worked very hard with my husband," Masue recalled, "But we didn't mind the work at all. We had such great hopes and didn't feel sadness at all. We were never lonely."²¹ Masue remembered these years, living in a shack and working hard labour, with a wistful happiness, saying that "everything is lots of fun when you are young."²² For many young families in Masue's position, building a life in Canada centred on raising a family. Masue laughed, describing how their first child, a son, would play on a stump while they worked

¹⁹ At that time, immigration restrictions prevented single Japanese women from travelling to Canada. Ken Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart, 1976), 180.

²⁰ Knickerbocker and Bosch, *First Generation*, 47.

²¹ *Ibid.*, 45.

²² *Ibid.*

in the field. Together, the young couple intended to “work hard and do something about it in the future.”²³ They worked to offer the opportunity of education to their children.²⁴

A tragic accident in 1931 redirected Masue’s life. When he was splitting shingles one day, a sliver of wood flew off the blade into Shigeo’s eye. By the time they travelled from Stave Lake to Vancouver—a journey of three days—infection had spread from the wound and Shigeo’s eye had to be surgically removed.²⁵ For access to the necessary medical care, the family moved to Heatley Street, Vancouver. The economic impact of removing the family’s main breadwinner was compounded when Shigeo’s brother, then working in Hawaii, refused to repay a loan that the couple had made to him. Unable to work, Shigeo fell into a deep depression. Masue recalled how he acutely felt the failure to support his family. “He had worked so hard and never had a good life,” she explained. “He thought it would be too much struggle for me to raise the children alone.”²⁶ He was moved to the provincial mental health facility in Essondale, where he eventually took his life.

Masue described these as the darkest years of her life. Shigeo’s suicide left Masue to support her family on her own within a society “which assumed that all women were or should be financially supported by men.”²⁷ “You know, the hungry thirties?” She explained. “I couldn’t speak a word of English so I didn’t know what to do.” Return to

²³ Masue Tagashira, interview.

²⁴ Ayukawa emphasizes how *issei* (first-generation Japanese Canadian) women lived by the gender ideology of the Meiji-era, despite the context of their new homes. As young women, they were trained to be *ryosai kenobe* (good wives, wise mothers) and adapted to fulfill these roles in their chosen countries. Through her village culture and formal education, Masue was likely raised to live by these same roles, taught to be “modest, courageous, frugal, literate, hardworking, and productive.” Ayukawa, “Good Wives and Wise Mothers,” 109.

²⁵ Knickerbocker and Bosch, *First Generation*, 48.

²⁶ *Ibid.*

²⁷ Ayukawa, “Good Wives and Wise Mothers,” 114.

Japan was rarely an option for widowed women, as their impoverished families back home could seldom offer support.²⁸ “Why I want to go back to Japan? I didn’t want to stay there,” she explained. “And especially I got two kids, no money, who wants... How was I going to support my kids over there?”²⁹ Despite her mother’s encouragement for her to return to Japan, Masue was determined to remain in Canada.

Without family networks in Vancouver to draw on, Masue turned to welfare agencies in the city. These were primarily composed of churches and ethnic organizations. Already in the Powell Street neighbourhood, Masue went to the Japanese Methodist Church. In doing so, she was connecting to a broader network of resources across the province.³⁰ She also joined thousands of people in Vancouver who relied on support from the United Church in the worst years of the Depression.³¹ The church had long taken responsibility for social charity, but the influx of ‘itinerants’ placed unprecedented pressure on Vancouver’s Relief Department, “consuming resources at a rate that threatened the municipality with bankruptcy.”³² The municipality took little responsibility for supporting

²⁸ Ibid.

²⁹ Masue Tagashira, interview.

³⁰ Masue Tagashira grew up Buddhist and encountered Christian churches shortly before Shigeo’s accident. In Stave Lake, their neighbours would invite the workers over each week, and, in the small kitchen, the minister would speak and his wife would sing. She admired the woman’s voice and explained that these invitations were the reason that they began attending church, Ibid. Adachi explains that, for some, affiliation with a Christian church symbolized joining Canadian society. Ibid.; Adachi, *The Enemy That Never Was*, 112; Tadashi Mitsui, “The Ministry of the United Church of Canada Amongst Japanese Canadians in British Columbia, 1892-1949” (M.S.Th. thesis, Union College of British Columbia, 1964), 193.

³¹ By April 1933, 98,000 people in B.C. had registered for relief. Todd McCallum, *Hobohemia and the Crucifixion Machine: Rival Images of a New World in 1930s Vancouver*, Fabriks: Studies in the Working Class (Edmonton: Athabasca University Press, 2014), 73, 76.

³² Ibid., 8.

its residents and the United Church became “the vanguard of charity work in Vancouver.”³³ In Vancouver, this solidified the public image of First United as Vancouver’s primary welfare provider, distributing the federal funding for social relief.³⁴ The United Church, however, had long served immigrant communities across British Columbia.³⁵ Aid for widowed women, like Masue Tagashira, fell within an older purview of responsibility.

At the Powell Street mission, Reverend Higashi arranged a marriage for Masue to provide her security.³⁶ Ayukawa explains that remarriage was a common solution to the precarity of Japanese widows’ situation in Canada.³⁷ It also followed a traditional Japanese family structure: in the Meiji era, the marriage contract developed as “an important means of securing the future of the household and protecting its social and economic interests.”³⁸

³³ Ibid., 86.

³⁴ In contrast, in Montreal, the responsibility for social relief shifted to the municipality when the demands of the economic crisis overwhelmed the traditional channels of relief. Ibid., 94, 110.

³⁵ Before the expansion of the welfare state, churches (but also immigrant aid societies and other associations) were critical in these kinds of roles. In British Columbia, social reform took on a particular character in relation to immigrant welfare. There was a dynamism to the conservative religious movements in the province, rendering them extremely effective in “attracting those people who claimed no religious affiliation.” Christian churches provided much needed services to Japanese Canadians, including English-language classes, employment aid, and community centres. By September 1931, three Japanese United Churches of the lower mainland, New Westminster-Fraser Valley, Steveston and Vancouver had organized the Japanese United Church Service Department. Nancy Christie and Michael Gauvreau, *Christian Churches and Their Peoples, 1840-1965: A Social History of Religion in Canada*, Themes in Canadian History 9 (Toronto: University of Toronto Press, 2010), 158; Nancy Christie and Michael Gauvreau, *Full-Orbed Christianity: The Protestant Churches and Social Welfare in Canada 1900-1940* (Montréal: McGill-Queen’s University Press, 2014), 142.

³⁶ She married Hajime Higo in 1934. Carey French, “Still Hurting,” *The Globe and Mail*, July 11, 1987; Knickerbocker and Bosch, *First Generation*, 49.

³⁷ Ayukawa, “Good Wives and Wise Mothers,” 113.

³⁸ Audrey Kobayashi, “Chapter Three: For the Sake of the Children: Japanese/Canadian Workers/Mothers,” in *Women, Work and Place* (Montreal and Kingston: McGill-Queen’s Press, 1994), 49. “Even for those who chose not to return to Japan, the ideal definition of the household and the structure of the family changed little until the second generation,” Kobayashi explains. Ibid., 66.

This intersected with a strong belief in the family unit, *ei*, as the centre of social support.³⁹ Masue's new marriage, however, lasted less than a year.⁴⁰ Unlike her first husband, whom Masue remembered as a loving collaborator and companion, Masue's second husband forced her to work with no remuneration or personal authority over her accounts.⁴¹ They never formally divorced but the partnership soon ended.

The Reverend's next solution was more sustainable. He found Masue a domestic placement working for a "wonderful Christian couple" in Point Grey, the McConkeys. Rev. Higashi likely contacted the McConkeys through church networks. In a profile of the United Church and the Japanese-Canadian ministry in this period, Tadashi Mitsui explains that the ministry would find domestic positions through a network of friends "among the white population."⁴² Masue Tagashira described the position as an opportunity to improve her English; with that would come better opportunities. But Masue Tagashira's years with the McConkeys were more than just a job. Decades later, she remained grateful for their generosity and friendship. Indeed, when asked about what she found difficult about the internment, she focused on her forced separation from the McConkeys. "I wanted to come to see the lady which I had been working for—working housework," she recalled. "I knew she was getting old and I dreamed a beautiful dream about her, so I knew something wrong.

^z Mitsui, "The Ministry of the United Church of Canada Amongst Japanese Canadians in British Columbia, 1892-1949," 194; Adachi, *The Enemy That Never Was*, 110.

⁴⁰ Certificate of Marriage, Higeo Hajime to Masuye Jinnouchi, 15 March 1934, British Columbia Archives (hereafter BCA), GR-20 62, vol. 415, microfilm reel B13120. <http://search-collections.royalbcmuseum.bc.ca/Genealogy>.

⁴¹ Knickerbocker and Bosch, *First Generation*, 48.

⁴² Mitsui, "The Ministry of the United Church of Canada Amongst Japanese Canadians in British Columbia, 1892-1949," 193.

So I wanted to come and see her. But they never gave me permission.”⁴³ “They were like my parents,” she later recalled.⁴⁴ Masue’s family in Vancouver included the couple in Point Grey.

Yet this arrangement was far from perfect: to Masue Tagashira’s distress, the McConkeys could only accommodate her daughter and she was forced to send away her son.⁴⁵ Through connections at the Powell Street Mission, he was sent to the Victoria Oriental Home and School on Vancouver Island. Masue Tagashira remembered visiting her son on the Island as frequently as possible.⁴⁶ If seeking assistance outside the community was often considered a social disgrace for many Japanese Canadians, Ayukawa reminds us that the Oriental Home was a rare refuge for women with few other options.⁴⁷ Life in Canada, with limited resources, meant taking advantages of the networks of support available. Facing employment and gender discrimination, Masue was left in a precarious position when Shigeo took his life. Returning to Japan to her farming hometown was not an option and so she reached out to networks of support in Canada. These connections reached through the Japanese-Canadian ministries to the larger networks of the United Church. Through them, she found an imperfect home.

Rinkichi Tagashira

Masue’s partnership with a new man, Rinkichi Tagashira brought an end to this period of insecurity. After nearly four years of working at the McConkeys’ she took a

⁴³ Masue Tagashira, interview.

⁴⁴ Knickerbocker and Bosch, *First Generation*, 49.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ “Those few women,” Ayukawa explains, “who refused to put up with domestic violence, and those widows who could not manage to support their children had few options.” Ayukawa, “Good Wives and Wise Mothers,” 114.

position to work at the Tagashira Trading Co. Ltd. warehouse. By then, Masue had learned enough English to conduct business with customers. Rinkichi and Masue Tagashira met around 1934, when Masue's first husband was hospitalized in Essondale. Rinkichi, visiting family of his own, gave her rides from Vancouver to the institution. An automobile would bring them together five years later. After a crash in 1939 left him injured, Rinkichi Tagashira hired Masue to help in his apartment and store while he recovered. "I was looking after him when he was injured, and I was always looking after his business, at his household," she explained.⁴⁸ For Masue, the job meant long sought-after security. They soon became a family unit. Masue's son would recall the excitement of driving across town to deliver goods with Rinkichi and hiding under the dashboard at the crack of lightning.⁴⁹ Those were happy years, unexpectedly derailed by the forced uprooting.

Described in one profile as "hard driving and even harder to please in the manner of traditional Japanese husbands," Rinkichi Tagashira was born in 1887 in Hiroshima Prefecture.⁵⁰ He was a generation older than Masue, and grew up within a rapidly changing Japan. The impact of the modernization efforts of the Meiji era, combined with agricultural misfortune, "shattered people's livelihoods and drove them to seek work elsewhere."⁵¹ It was a moment of unprecedented migration for Japanese men from the region. By 1891, the amount of money remitted from workers abroad was equivalent to 54.3% of the annual

⁴⁸ Masue Tagashira, interview.

⁴⁹ Conversation with Donald Jinnouchi, July 2016.

⁵⁰ French, "Still Hurting."

⁵¹ Michiko Midge Ayukawa, *Hiroshima Immigrants in Canada, 1891-1941* (Vancouver: UBC Press, 2008), 8. See also: Audrey Kobayashi, "Emigration from Kaideima, Japan 1885-1950: An Analysis of Community and Landscape Change" (PhD diss., University of California, Los Angeles, 1983).

budget of Hiroshima's government.⁵² By 1900, money from overseas had financed property, households, and debt repayment for years.⁵³ He was one of many young men who looked overseas for opportunity.⁵⁴

Travelling on the Tosa Maru, Rinkichi Tagashira landed in Seattle in 1908. He shared his voyage with over a hundred Japanese nationals who declared themselves labourers. American immigration officials, however, reported that—upon further inspection—all but one had falsified their occupations to satisfy the immigration restrictions.⁵⁵ The Japanese passengers knew how to navigate the stringent immigration restrictions. In these records, Rinkichi Tagashira is listed as a “fisherman.” His subsequent appearance in border-crossing records as a “sales clerk” (1916) and “merchant” (1917), however, suggests that he was either from a merchant-class background, a particularly enterprising man, or both.⁵⁶ In any case, by the 1940s, Rinkichi Tagashira had built an extensive estate centred on his profitable business bearing his name, the Tagashira Trading Co. Ltd.

⁵² Ayukawa, *Hiroshima Immigrants in Canada, 1891-1941*, 11.

⁵³ *Ibid.*, 10.

⁵⁴ It is possible that Rinkichi followed family abroad, as a Tagashira husband and wife from Hiroshima arrived in Seattle two years prior. Passenger list, 25 May 1906, The National Archives at Washington (hereafter NAW), RG85 (Records of the Immigration and Naturalization Service), Ancestry.ca, “U.S., Border Crossings from Canada to U.S., 1895-1956. [database online].”

⁵⁵ Andrea Geiger, *Subverting Exclusion: Transpacific Encounters with Race, Caste, and Borders, 1885-1928*, The Lamar Series in Western History (New Haven: Yale University Press, 2011), 36.

⁵⁶ Passenger list, May 1915, NAW, RG85, microfilm publication: M1464, roll: 283, Ancestry.ca, “U.S., Border Crossings from Canada to U.S., 1895-1956. [database online],” accessed: 15 May 2016; Passenger List, 24 August 1915, NAW, RG85, microfilm publication: M1464, roll: 288 Ancestry.ca, “U.S., Border Crossings from Canada to U.S., 1895-1956. [database online],” accessed: 15 May 2016; Passenger list, Nov 1916, NAW, RG85, microfilm publication: M1464, role: 325, Ancestry.ca, “U.S., Border Crossings from Canada to U.S., 1895-1956. [database online],” accessed: 15 May 2016.

Much of Rinkichi Tagashira's business success came from holding a coveted appointment with the Imperial Tobacco Company in Montreal. As historian Jarrett Rudy explains, Imperial Tobacco had maintained a monopoly over the market since the early 20th century through a system of tightly regulated agreements with retailers.⁵⁷ Were a retailer to deviate from the company's set resale price on not only their products, but on others' products as well, Imperial would cut them from the company's distribution list. A report from 1935 described how jobbers' associations would uphold this process by "bringing the names of offenders to the notice of the company."⁵⁸ In the 1940s, Imperial Tobacco achieved further control of the market by creating a hierarchy of contracts determined by the amount of profit a retailer could retain on their sales.⁵⁹ With these measures, Imperial Tobacco tightly controlled the market and shut out competition. To be on the company's "list" was an extremely advantageous position for Rinkichi Tagashira.

From this business, Rinkichi Tagashira expanded to real estate. He did so in the midst of economic and race-based hostility that escalated in the 1930s.⁶⁰ As Adachi writes, property ownership counteracted the "very marginal and precarious position" Japanese Canadians held within the hostile prewar society. "Since anti-Japanese legislation had driven the Japanese out of several occupations and restricted them in others, property ownership had provided the economic and emotional security around which they had

⁵⁷ Robert Jarrett Rudy, *The Freedom to Smoke: Tobacco Consumption and Identity* (Montreal and Kingston: McGill-Queen's University Press, 2005), 124–25.

⁵⁸ Henry Herbert Stevens et al., *Report of the Royal Commission on Price Spreads* (Ottawa: J.O. Patenaude, printer to the King, 1937), 53, <https://catalog.hathitrust.org/Record/001737525>.

⁵⁹ Rudy, *The Freedom to Smoke*, 143.

⁶⁰ See: Patricia Roy, *The Oriental Question: Consolidating a White Man's Province, 1914-41* (Vancouver: UBC Press, 2003), chaps. 4, 6.

organized their tightly-knit family and community life,” he writes. “Property, no matter how humble, had been a symbol of success in the immigrant community.”⁶¹ On Alexander Street, two blocks north of Cordova, Rinkichi owned an apartment building. On Vancouver Island near Parksville, he had properties that he planned to develop into an auto park. He purchased empty lots around Vancouver as investments. The Tagashira Trading Co. had secured Rinkichi Tagashira the capital to grow roots into Vancouver. These investments were a source of security for the future.⁶²

Despite their focus on financial value, the reports of the Office of the Custodian hint at a second function of the business at 671–679: its role in the Powell Street community. Living in their apartment in the same building, Masue led *ikebana* (traditional flower arrangement) classes for the women in the neighbourhood.⁶³ The success of the wholesale company allowed Rinkichi to assume the role of creditor and, for the

⁶¹ Adachi, *The Enemy That Never Was*, 319. Further, Kobayashi demonstrates how land was a goal that had motivated the migration of first-generation emigrants from Japan. Kobayashi, “Emigration from Kaideima, Japan 1885-1950.”

⁶² It is important to note that the purchase of property secured the Tagashiras’ position in Canadian society through the framework of the settler colonial state. The racial hierarchies that underlay this state formation meant, however, that participation in (and perpetuation of) the settler colonial project did not ensure equal protection. As Ishiguro et al. write, “while Japanese Canadians acted and benefited in some respects as settlers, they were also racialized as other – imagined as always or possibly alien, and therefore with precarious and conditional settler belonging and access to property.” Laura Ishiguro, Nicole Yakashiro, and Will Archibald, “Settler Colonialism and Japanese Canadian History,” *Landscapes of Injustice Report*, Victoria: University of Victoria, September 2017, 6.

⁶³ Conversation with Donald Jinnouchi, July 2016. When the Office of the Custodian of Enemy Property seized Japanese Canadians’ property, they became responsible for “five cardboard cartons containing assorted flower arrangement equipment” in addition to a series of other cultural objects, translated into terms an Anglo-Canadian would understand. Inventory lists, LAC, RG33 69, vol. 9, file: “165 – Tagashira, Rinkichi (Vernon).”

economically marginalized community, provide a form of financial security.⁶⁴ When the forced removal of Japanese Canadians was announced in 1942, Rinkichi Tagashira opened his warehouse to other Japanese Canadians to store their belongings: the warehouse attic held parcels labelled Nishimura, Yotsukado, Watanabe, Isgai, Misoguchi, Hasegawa, Sato, Kutsukake, and Hagiwara.⁶⁵

The value of the Tagashira Trading Co. was social as well as economic; it was a site of investment, security, and community. The wholesale tobacco company was the scaffolding for a “meshwork of social relations” that underpinned the economic and social position Rinkichi and Masue Tagashira had arduously secured and “gave them their space in the complex Canadian social terrain at the time.”⁶⁶

The Office of the Custodian of Enemy Property

Working to protect their interests in the internment era, the Tagashiras had to negotiate with a particular office of the federal government, the Custodian of Enemy Property. On March 4, 1942, Order in Council 1665 established the apparatus of the internment and dispossession of Japanese Canadians. It empowered the British Columbia Security Commission (BCSC), headquartered in Vancouver, “to plan, supervise and direct the evacuation from the protected areas of British Columbia of all persons of the Japanese

⁶⁴ A summary collected in 1942 reported that Rinkichi Tagashira had loaned money to over 80 Japanese Canadians. Report, 18 December 1942, LAC, RG117, vol. 2583, file: “Rinkichi Tagashira (Part 2.2)”

⁶⁵ General evidence, LAC, RG33 69, vol. 9, file: “165 – Tagashira, Rinkichi (Vernon).”

⁶⁶ Eiji Okawa draws from Stanger-Ross and Blomely for a perceptive study of a neighbouring business owned by the Morishita and Ebisuzaki family. Eiji Okawa and the LOI Collective, “Of Store and the Community,” *The Bulletin Geppō*, Nov. 2016; Stanger-Ross, Blomley, and the LOI Collective, “My Land Is Worth a Million Dollars.”

race.”⁶⁷ “As a protective measure only,” Order 1665 declared, the property belonging to “persons of the Japanese race” would be vested in the Office of the Custodian of Enemy Property, acting under the authority of the Secretary of State.⁶⁸ When Japanese Canadians greeted the policy with skepticism, mistrust, and confusion, Cabinet strengthened its promise to protect their property in Order in Council 2483, passed March 27. The amended clause made clear that the property

belonging to any person of the Japanese race shall, *for the purpose of protecting the interests of the owner and all interested persons*, be vested in the Custodian, and the Custodian shall have full power to administer such property *for the benefit of all such interested persons*, and shall release such property *upon being satisfied that the interests aforesaid will not be prejudiced thereby*.⁶⁹

The amended order stressed the temporary and protective nature of the vesting, a message echoed in paid advertisements in the English-language Japanese-Canadian newspaper, *The New Canadian*.⁷⁰ In plain language, the chairman of the BCSC, Austin Taylor, assured Japanese Canadians that the Office of the Custodian “served the interests of Japanese-Canadian property-owners.”⁷¹ The promise to protect established the Office of the Custodian as a trustee for Japanese Canadians’ property, a responsibility to which Japanese Canadians held the Office accountable.⁷²

Rinkichi Tagashira was amongst those who mistrusted the Canadian state from the outset. Amidst the turmoil of the uprooting, Rinkichi Tagashira negotiated his own

⁶⁷ PC 1942-1665, LAC, RG2-A-1-a (Privy Council Office fonds, Orders in Council series), vol. 1750, file 2516G: “4 March 1942.”

⁶⁸ *Ibid.*

⁶⁹ PC 1942-2483, LAC, RG2-A-1-a, vol. 1752, file 2531G: “27 March 1942.” [My italics.]

⁷⁰ Adams, Stanger-Ross, and the LOI Collective, “Promises of Law,” 696–98.

⁷¹ *Ibid.*, 700.

⁷² *Ibid.*, 716.

arrangements for his business, chattels, and properties. In comparison, most businesses were transferred under direct management of the Office of the Custodian. Instead, Rinkichi Tagashira took a hard line with the Custodian's agents; he would co-operate with the federal orders, but on his own terms. The Custodian's case file on Rinkichi Tagashira documents these negotiations, the eventual forced sale of his properties, and his attempts to recover whatever he could from the government. The case file captures his frustration with the Custodian's agents, his hired legal aid, and more broadly, the Orders in Council. As it became clear that he could not live out the internment era with his livelihood intact, Rinkichi Tagashira fought tooth and nail to protect what he could.

In reaction to the federal seizure of Japanese-Canadian-owned property, Rinkichi Tagashira hired legal representation. Over the next decade Rinkichi Tagashira and Masue worked with several legal firms and lawyers to defend their interests against the Canadian government. This decision (and their financial capacity) to pursue legal interests shaped the Tagashiras' wartime years in critical ways. In the summer of 1942, Rinkichi Tagashira hired Vancouver lawyer J. Arthur MacLennan to orchestrate an owner-manager agreement for the Tagashira Trading Company. MacLennan designed the agreement to allow Rinkichi Tagashira to retain ownership of the business while still complying with the Orders in Council of 1942. The owner-manager agreement was central to protecting Rinkichi Tagashira's lifetime's investment for the duration of the internment.

It took several iterations of the agreement to get it right. The agreement was first made with Frank Mah in October 1942. When Mah was unable to pay a \$5,000 bond to Rinkichi Tagashira, however, the Custodian's office intervened and seized the business. It was then James Y. Lim, a merchant on Pender Street and prominent member of

Vancouver's Chinese-Canadian community, who entered into an agreement with Tagashira to run the business.⁷³ The agreement was designed to last for two years, with the option of renewing. MacLennan and Tagashira changed the business name from Tagashira Trading Co. to Heatley Trading Co. to hide its Japanese-Canadian ownership and transferred the premises from owner to manager for the formal sum of one dollar. Lim agreed to manage, operate, and carry on the business as though it were his own and "to use his best efforts to promote and increase the returns from the business." For this, Lim received \$350 a month in addition to 70% of the net profits, while Rinkichi Tagashira claimed the remaining 30%. Lim purchased the existing stock-in-trade for \$2,951.61 and was to pay rent and finance the operation independently. Rinkichi Tagashira required a rigorous auditing process, to be conducted by Harold D. Campbell, the third-party agent responsible for managing the business. He also stipulated that Japanese Canadians, were they permitted to return to and work in the City of Vancouver, would take priority when Lim hired further employees.⁷⁴

The agreement left Lim and Tagashira several options once the initial two years expired. When the time came, in December 1944, Lim could extend the contract by three-month periods if Rinkichi Tagashira had not returned to Vancouver. Were the internment Orders in Council to expire within the two years, Rinkichi Tagashira was entitled to terminate the agreement and repossess the business. Yet, if the internment policy still confined Rinkichi Tagashira to the interior after 1944, Lim could terminate the agreement

⁷³ Joanne Mei-Chu Poon, "Miss Queen of Cathay and the Chinese Community of Vancouver, 1953-54" in *Asian Cultural and Historical Perspectives*, ed. Steven Tötösy de Zepetnek and Jennifer W. Jay (Edmonton: Research Institute for Comparative Literature and Cross-Cultural Studies, University of Alberta, 1997), 126.

⁷⁴ Contract, December 1942, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

“at any time after the expiry of three months written notice.” Finally, if Rinkichi Tagashira were to sell, Lim would have the right to first bid on the business. The Custodian wielded the power to terminate the agreement if either Lim or Rinkichi Tagashira breached any of these conditions.⁷⁵ Rinkichi Tagashira was pleased with their arrangements, writing at the time that he was “effecting a very satisfactory arrangement” for the wholesale business “for the duration of the war.”⁷⁶ In the chaos of an uprooted life, Rinkichi Tagashira and Masue could at least be confident that his business was in good hands.

The arrangement proved successful. Even when the forced dispossession began in earnest on January 19, 1943, with Order in Council 469, Rinkichi Tagashira’s ownership was protected. That June, Campbell reported that Rinkichi Tagashira was “not only able to have his business continued but actually developed” under the agreement and that he was “in the position of an absentee owner drawing profits from a very well run business.”⁷⁷ Despite an adjustment period under the new management, Rinkichi Tagashira’s share of the net profits amounted to \$1,278.05 by June 1943.⁷⁸ Though the Tagashiras’ other properties—real estate, automobiles, and personal possessions—were forcibly sold, the owner-manager agreement protected the business.

⁷⁵ *Ibid.*

⁷⁶ Letter to R.P. Alexander from Rinkichi Tagashira, 28 September 1942, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon).”

⁷⁷ Letter to Vancouver Office of the Custodian of Enemy Property (hereafter the Custodian) from Harold D. Campbell, 3 May 1943, quoted in letter from Frank G. Shears to Glenn W. McPherson, 4 November 1943, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon).”

⁷⁸ Letter to James Y. Lim from Campbell, 8 September 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

This did not mean, however, Rinkichi Tagashira did not notice the shift in federal policy on January 19, 1943. He immediately responded to Order 469 on legal terms.⁷⁹ Within two days, Tagashira's friend and lawyer, George McCrossan, wrote on his behalf to contest the government's legal authority to interfere in the property of Canadian citizens. McCrossan wrote that his client would hold the government accountable for any "loss, damage, and expense to which [he] has been put." Powerfully, McCrossan asserted that Tagashira

[Did] not recognize the legal right of the Government or your Department to thus discriminate against him, as a Canadian citizen and to disrupt his personal and business affairs. He has had no alternative, under the conditions obtaining, other than to submit, under protest, to being closed up in business and forcibly removed from his place of business and residence, but he does not intend to absorb the loss, damage or expense, or any part thereof, incident thereto, or involved therein.⁸⁰

They sent a second letter within a fortnight. "We submit the Orders-in-Council and regulations to which you refer are not founded in competent legal authority under any authorized Statute of Canada," McCrossan wrote. "Such payment and all future payments," he concluded, "are considered as being made under protest."⁸¹ Together, McCrossan and Tagashira asserted that the orders were an abrogation of his rights as a citizen and property

⁷⁹ In holding the government accountable to its own terms, Rinkichi Tagashira joined hundreds of other property owners who paid close attention to the government's legal control over their property beginning in 1942. For a portrayal of Japanese Canadians' broader reaction to Order 469, see: Adams, Stanger-Ross, and the LOI Collective, "Promises of Law."

⁸⁰ Letter to Howard Green from George McCrossan, 21 January 1943, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 3.1)."

⁸¹ Letter to George D. Milsom from McCrossan, 3 February 1943, LAC, RG117, vol. 2538 Tagashira, Rinkichi Tagashira (part 3.1); As Stanger-Ross and Blomley write, in affirming Canadian citizenship, such protests "articulated the contractual implications of democratic governance, and pushed back against the widespread tendency in the 1940s for policy makers and the wider public to misconstrue them as foreigners." Stanger-Ross, Blomley, and the LOI Collective, "My Land Is Worth a Million Dollars," 741.

owner. They made clear that his forced uprooting and sale of property was against his will. With little opportunity to intervene in the state's implementation of policy, Tagashira called upon the state to respect his rights as a citizen and property owner.

Disregarding his assertions, the Office of the Custodian pressured Tagashira to sell. When he orchestrated the owner-manager agreement, Tagashira anticipated that in 1944 he would either negotiate its extension, his re-acquisition of the business, or the sale of Heatley Trading Co. In late 1942, however, the staff in the Office of the Custodian urged him to reconsider. Campbell, the trustee for Rinkichi Tagashira's property, worked extensively with the Custodian's office, and supported their push for a sale. Soon after the owner-manager agreement was set, Campbell received troubling correspondence from the B.C. Tobacco & Candy Jobbers' Association (a group of wholesalers with long-standing animus towards Rinkichi Tagashira) and the Imperial Tobacco Company (his majority supplier). In the face of their hostility, Campbell doubted that the Heatley Co. could survive. Thus began a complex battle over the future of the company.

The B.C. Tobacco and Candy Jobbers' Association levied a campaign against the store in 1943. The Association was outraged that that the business remained under Japanese-Canadian ownership and denounced the agreement with Lim on the basis of race. The Jobbers believed that they were entitled to purchase Rinkichi Tagashira's business. Campbell warned Tagashira that the Association had run a thorough investigation of the business in attempt to "discredit, harm and if possible terminate the operation of the Heatley Trading Co."⁸² In October, the Jobbers' Association wrote to the Secretary of State

⁸² Letter to Tagashira from Campbell, 1 May 1943, quoted in Shears to McPherson, 4 November 1943, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)."

that its members “somewhat loathe” the establishment of a “new Chinese Jobber as they already had two Chinese Jobbers in Vancouver.” The Association asked that the business be offered for sale on the open market so that “white operators might have had an opportunity to bid on the business.”⁸³ The racism of this campaign ran deeper and wider than wartime anxiety. Their protests echoed anti-Asian rallying cries common to Vancouver throughout the 1930s that claimed the expansion of Japanese- and Chinese-Canadian-owned business was evidence of a “yellow peril” that threatened to undermine Canada as a “white man’s country.”⁸⁴

This mounting hostility reinforced the Office of the Custodian's pessimism about the prospects of the business. The Jobbers’ campaign against the Heatley Trading Co. was damaging sales. Campbell expressed exasperation at Tagashira’s refusal to sell. He worried that Tagashira did not understand the mounting “animus” from the Jobbers and his own efforts to “fight off the recurring attacks made on the Heatley Trading Co.” and protect Tagashira’s rights to the business.⁸⁵ To Campbell, the Jobbers’ Association’s fervent racism meant that Rinkichi Tagashira’s business could no longer succeed in Vancouver. He urged Tagashira to sell and preserve his existing interests; from here on in, he argued, the value of the business would only depreciate.

⁸³ Letter to Norman A. McLarty from A. Badenoch, 22 October 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

⁸⁴ Roy, *The Oriental Question*, 208–11; Adachi, *The Enemy That Never Was*, 151–52.

⁸⁵ Report to the Custodian by Campbell, 3 November 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2)”; Letter to the Custodian from C. Sinclair, 2 November 1942, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

The risk of losing the coveted distribution licence from Imperial Tobacco compounded this concern. Imperial Tobacco threatened to terminate their contract with the store as soon as they heard of the government's seizure of Japanese-Canadian-owned property. The company believed that a Japanese-Canadian-owned business could not succeed in a market without Japanese-Canadian customers.⁸⁶ Their sole purpose in conducting business with Rinkichi Tagashira was centred on his (supposed) position in the 'Japanese market' and, with him interned and the sale of the business looming, they saw little economic advantage in the future. "Some years ago we appointed Rinkichi Tagashira, a native of Japan, as a wholesale distributor of our products in Vancouver, B.C.," the Imperial Tobacco agent wrote,

One of the reasons which prompted us to appoint Tagashira was that he did an extensive business with the Japanese retailers. Now, however, few, if any, of these retailers remain in business and we are wondering whether there is now any justification for this man continuing to be a wholesale tobacco distributor.⁸⁷

Their marketing strategy was to appoint retailers who would grant them access to racialized markets. With Japanese Canadians exiled from the coast, they saw little advantage in the appointment and wished to end the agreement.⁸⁸ Imperial Tobacco only agreed to supply

⁸⁶ Report to the Custodian by Campbell, 9 November 1942, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

⁸⁷ Letter to the Custodian from Sinclair, 2 November 1942, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

⁸⁸ The Wartime Price Board regulations prevented Imperial Tobacco from terminating the contract. At the Office of the Custodian's request, Imperial Tobacco conceded to extend the appointment. They asked to be notified if the arrangement were to change or were the Custodian's interest in the business to cease. Letter to the Custodian from Sinclair, 20 November 1942, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)"; Letter to Shears from Campbell, 22 December 1942, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

the Heatley Trading Co., Campbell warned in a report to Shears, “as the result of requests from the Office of the Custodian to do so and their wish to co-operate with any Department of the Federal Government.”⁸⁹ In this case, Campbell convinced Imperial Tobacco to continue distributing to the business, while simultaneously pressuring its owner to sell.

That a Chinese Canadian now operated the store did little to assuage the concerns at Imperial Tobacco. In its perspective, the transfer of management marred their Vancouver distribution scheme. Upon learning that Lim was operating the business a year later, in October 1944, they contacted the Office of the Custodian again: “As in our opinion we have sufficient Chinese wholesalers in Vancouver,” they wrote, “we are not disposed to continue selling to Lim.”⁹⁰ Even though Lim was running a profit, Imperial Tobacco sought to withdraw the appointment. In the company’s calculations, an additional Chinese-Canadian distributor would decrease the value of their appointment amongst the racialized niche market.

As tensions flared around the Heatley Trading Co., Lim feared that he would lose his investment in the business. He expressed his concern to MacLennan, Tagashira’s lawyer, and offered to purchase Tagashira’s remaining interest in the business for \$5,000.⁹¹ “While this offer is more than his equity is worth,” Lim wrote to MacLennan, “it is essential under the circumstances which have developed, and of which you are aware, if any

⁸⁹ Letter to Shears from Campbell, 22 December 1942, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

⁹⁰ Letter to the Custodian from Imperial Tobacco, 28 October 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

⁹¹ Letter to Alexander from Campbell, 16 September 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

business is to be permanently maintained, that Mr. Tagashira's interest must be liquidated.” He appealed to MacLennan’s understanding of the pressures he faced, explaining, “This offer is very much to your client’s advantage, and, as you realize, I am taking a definite gamble to protect my interests.”⁹² Gauging the climate, MacLennan also agreed that an early sale was the best option to protect Rinkichi Tagashira’s interests.

Rinkichi Tagashira was outraged. He refused to sell his business for a “dumping price.”⁹³ He concluded that MacLennan had betrayed him. After all, he hadn’t hired the lawyer to sell the business but to protect it. On October 12, 1943, he wrote to the Custodian that MacLennan was “working for Mr. Lim from head to toe trying to buy out my business the cheapest way for Lim.”⁹⁴ Tagashira rejected their reasoning and argued that they were undervaluing his business. He also repudiated the Jobbers, pointing out that the Wartime Price Board regulations prohibited their intervention in his business.⁹⁵ He suspected that the Jobbers’ Association had notified Imperial Tobacco of the arrangement with Lim. He was familiar with the Jobbers’ tactics, saying that they had behaved “like underground gangsters ever since I started doing business.” He had designed the owner-manager agreement to protect himself against this type of interference. “If my manager of Custodian

⁹² Letter to J. Arthur MacLennan from Lim, 10 November 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

⁹³ Letter to George Peters from Tagashira, 19 July 1944, H ritage Project, Canadiana.org, Office of the Custodian of Enemy Property, Vancouver Office: Office Files, microfilm Reel C9476, image 1438.

⁹⁴ Letter to the Custodian from Tagashira, 12 October 1943, quoted in letter from Shears to McPherson, 4 November 1943, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon).”

⁹⁵ The Department of Labour established the Wartime Prices and Trade Board to prevent the inflation and social unrest Canada saw under the market conditions created by the First World War. See: Christopher Robb Waddell, “The Wartime Prices and Trade Board: Price Control in Canada in World War II” (York University, 1982), National Library of Canada.

[does] not take necessary steps to prevent it,” Rinkichi Tagashira wrote, “... they must take whole responsibility for damages.”⁹⁶ His requests for permission to travel to Vancouver to negotiate the sales were repeatedly denied, Tagashira suspected collusion between Lim and MacLennan. Relations among MacLennan, Tagashira, and the Custodian’s agents reached a breaking point. The lawyer demanded an apology to his firm and the Office of the Custodian and withdrew his services from Tagashira.⁹⁷

To explain the falling-out to the Office of the Custodian, Campbell submitted a summary report on his management of the business. In explaining the clash between Tagashira and MacLennan, Campbell took the lawyer’s side, believing MacLennan had “done everything in his power to protect Mr. Tagashira’s interests in the past.” Campbell suggested that Tagashira misunderstood MacLennan and underestimated the intensified animosity towards the Japanese-Canadian ownership of the Heatley Trading Co. In short, Campbell explained, the Jobbers’ organization successfully blocked the business’s viability. Nevertheless, in Campbell’s view, the “most vital factor” affecting Tagashira’s business was the loss of a “Japanese” market. Japanese-Canadian-owned restaurants and confectionaries had transferred “in the main to Chinese with a certain proportion sold to white people.” The market for a Japanese-Canadian wholesaler, Campbell explained, was gone. “My personal opinion,” he concluded, “is that such a situation is hopeless. Mr. Tagashira’s previous clientele have sold their businesses and for Mr. Tagashira, as a

⁹⁶ Letter to Alexander from Tagashira, 9 October 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

⁹⁷ Letter to Tagashira from Messrs. Norris & MacLennan, 2 November 1943, quoted in letter to McPherson from Shears, 4 November 1943, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon).”

Japanese, to hope to retain the present clientele, which is almost entirely Chinese, appears to the writer as a forlorn one.” Campbell concluded that the advice from MacLennan and the Office of the Custodian to sell was in “Mr. Tagashira’s best interests.”⁹⁸

Campbell’s arguments are illuminating in several respects. First, Campbell formulated the business owner’s interest in terms of the social and racial dynamics of the market. His argument disregarded other types of value the business held for the Tagashira family: thirty years of investment and sacrifice, a hub in the community, security for the future. Further, Campbell’s arguments for the company’s devaluation were based on a fundamental vision of Vancouver’s market as racially segmented. In this case, he followed Imperial Tobacco’s perception of the market: to whom would Tagashira sell, he asked, if the “Japanese market” disappeared? This rationale became entwined with the racist hostility from local Jobbers’ Association and marketing calculations of Imperial Tobacco. Finally, Campbell perceived that racial hostility would lead to the devaluation of Rinkichi Tagashira’s property.⁹⁹ Campbell’s arguments provide a pathway to understanding how low-level government officials and third-party agents interpreted and implemented the Orders in Council on the ground. In particular, the arguments reveal how, perhaps even in good-will to “protect”

⁹⁸ Report to the Custodian by Campbell, 3 November 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

⁹⁹ The Office of the Custodian’s records contain little to no evidence of hidden or underlying motives for Campbell’s view. Campbell’s rationalization for the sale of the Tagashira Trading Co. was not unique. When the Vancouver advisory committee toured the Powell Street neighbourhood in late 1942, Kishizo Kimura had noted the rampant vandalism and feared that it would be hopeless to protect Japanese-Canadian-owned property from ongoing raids. Gauging the atmosphere of widespread complicity and extremism, he projected that the damages would only multiply. Campbell joined Kimura, then, in believing that property liquidation was advisable in the racist climate. Stanger-Ross, “Telling a Difficult Past,” 55.

Japanese Canadians' interests, the forced sale of a Japanese Canadians' property could be justified.¹⁰⁰

More broadly, the contest and tensions that arose around the Heatley Trading Co. illuminate the racialization of markets in 1940s British Columbia. In relation to resource industries in early 20th-century British Columbia, Renisa Mawani portrays labour markets as racially segmented.¹⁰¹ The correspondence around Rinkichi Tagashira's business suggests that similar assumptions about race governed distribution markets. Wholesale structures for a product were organized in part on the basis of assumptions about the local racial dynamics of *retail*. In reality, the market was not necessarily as segregated as government officials and businessmen imagined in their visions of their distribution structures.¹⁰² Yet these visions informed the management of Rinkichi Tagashira's business in very real ways. This perception of "the market" reified conceptions of racial difference,

¹⁰⁰ Report to the Custodian by Campbell, 3 November 1943, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

¹⁰¹ For example, it was not only that Chinese labour was cheaper in some instances, but also that Chinese migrants were thought of as possessing characteristics that made them suited to certain forms of labour. As employers assumed a priori that certain racialized bodies could survive with less, and hence offered them lower wages, cheapness itself was partly a function of race. So, race was a commodity within a labour market, shaping its dynamics from the start. Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871-1921*, Law and Society (Vancouver: UBC Press, 2009), 43–45. For a related discussion, see Walter Johnson's analysis of race in the slave market: Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999).

¹⁰² Recent scholarship has challenged portrayals of exclusive ethnic "ghettos" in British Columbia. Examining Victoria's Chinatown at its zenith, in 1891, Dunae et al. demonstrate how the district was neither exclusively Chinese-Canadian-owned nor the sole site of Chinese-Canadian life in Victoria. In fact, nearly a quarter of people listed as Chinese Canadian in the census lived, conducted business, and made livings outside the parameters of Victoria's Chinatown. The discrepancy suggests that Japanese- and Chinese-Canadian business in Vancouver was intertwined with a multitude of markets and locales in Vancouver. Patrick Alexander Dunae, "Making the Inscrutable, Scrutable: Race and Space in Victoria's Chinatown, 1891," *BC Studies: The British Columbian Quarterly*, no. 169 (Spring 2011): 68.

which shaped the conditions of Rinkichi Tagashira's dispossession. It undergirded the case for Rinkichi Tagashira to sell and obscured a potential future wherein Rinkichi Tagashira could return to Vancouver following the internment. Where Rinkichi Tagashira still imagined a future rooted in his business, the Office of the Custodian assumed that his grounds for success were gone forever.

Rinkichi Tagashira was determined to defend his position. He asserted that the Custodian was meant to *protect* Japanese Canadians' interests and instructed the staff members on what this meant in his case. To sell would violate this promise. "I don't believe the Custodian will liquidate my interest in this business for my interest protection," he wrote in one letter.¹⁰³ As the expiry date of the owner-manager agreement loomed, Rinkichi Tagashira went beyond rejecting Campbell's arguments and made clear his justification: two years into the dispossession, the business was all he had. "It is of great importance to me that my business be continued for these reasons," he wrote. "First - I have spent many thousands of dollars to build the Heatley Trading Company as it is today; secondly, large sums are owing to parties; and third - it is my only source of income and livelihood."¹⁰⁴ As the property of Japanese Canadians was sold throughout British Columbia, Tagashira desperately tried to retain ownership of his business.

The falling-out between Tagashira and MacLennan led to a shift in the Office of the Custodian's approach to the Heatley Trading Co. The case went to the higher-ups at the

¹⁰³ Letter to Shears from Tagashira, 25 January 1944, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 3.1)."

¹⁰⁴ Letter to Shears from Tagashira, 11 September 1944, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

Office of the Custodian for review. Amidst the correspondence and accusation, they too were unsure who “the lawyers or [Campbell] are working for.”¹⁰⁵ Reviewing the case, Glen W. McPherson, Deputy Custodian of Enemy Property, was frustrated by Campbell’s management and negotiations with Tagashira. He instructed the Office not to “waste any more time” on the Heatley Trading Co.:

It seems to me that the Custodian has done far more than he is required to do as a trustee and the net results of all the negotiations seems to be that the White People are very critical of the Custodian's policy.¹⁰⁶

For McPherson, appeasing the Jobbers’ Association limited the promise to protect Japanese Canadians’ property. McPherson instructed Frank G. Shears, the manager of the Office, to withdraw his involvement and to simply let the owner-manager agreement expire. Whereas Campbell attempted to convince Tagashira to sell (ostensibly in his interests), McPherson preferred to let his interpretation of the law achieve what he saw as the inevitable end. Following McPherson’s instructions, Shears defaulted to bureaucratic process and wrote to Rinkichi Tagashira that his business would be advertised for sale in the “process of orderly liquidation.”¹⁰⁷ This closed the door to negotiation about Rinkichi Tagashira’s best interest; when the owner-manager agreement expired, the Heatley Trading Co. Ltd. would be subject to the policy of sale.

¹⁰⁵ Letter to Shears from McPherson, 9 November 1943, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

¹⁰⁶ Ibid.

¹⁰⁷ Letter to Tagashira from Shears, 12 November 1943, RG117 vol. 2538 Tagashira, Rinkichi (part 2.2); Letter to Tagashira from Shears, 15 January 1944, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2)”; Letter to McPherson from Shears, 18 January 1944, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

Tagashira had little recourse. His attempts to extend the owner-manager agreement to outlast Order in Council 469 came to no avail.¹⁰⁸ In the fall of 1944, Lim followed the procedures stipulated in the original agreement and notified Tagashira of his decision to terminate the arrangement. Tagashira was left to accept Lim's final offer of \$1,800—far less than the \$5,000 proffered a year earlier.¹⁰⁹ Defending the business cost Tagashira dearly.

Even as he was forced to accept the sale, Tagashira signaled that the fight was not yet over. In the subsequent months, he established record of his frustration and disagreement with the Custodian's actions. In doing so, he joined hundreds of other Japanese Canadians who wrote in surprise, anguish, and outrage at the forced sale of their belongings.¹¹⁰ Like many others, he held "state officials to their own principals and legal promises."¹¹¹ He pointed to the failure of the Office of the Custodian to follow the promise to protect the interests of Japanese Canadians. Regarding the management of his business, he asked: "Can you tell me what kind of protection I can get from you," he asked, "to settle this matter for my protection?"¹¹² In January 1945, he registered his experience with the BCSC, seeking intervention: "[W]ill you please check up the above case," he asked, "and protect my interests more carefully."¹¹³ Further, he made clear his intention to pursue

¹⁰⁸ Telegram to Tagashira from McCrossan, 22 October 1943, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

¹⁰⁹ Letter to Miss Carroll from Shears, 25 October 1944, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)."

¹¹⁰ Stanger-Ross, Blomley, and the LOI Collective, "My Land Is Worth a Million Dollars."

¹¹¹ Adams, Stanger-Ross, and the LOI Collective, "Promises of Law," 716.

¹¹² Letter to Peters from Tagashira, 19 July 1944, H ritage Project, Canadiana.org, Office of the Custodian of Enemy Property, Vancouver Office: Office Files, microfilm Reel C9476, image 1438.

¹¹³ Letter to Collins from Tagashira, 20 January 1945, LAC, RG117, vol. 2538, file: "Tagashira, Rinkichi (part 2.2)."

compensation. He wrote to the Supervisor of the BCSC, Jack Pickersgill, in February that the BCSC “should be fully responsible and therefore if damages done by evacuation the government should be responsible to straighten things out.”¹¹⁴ To the Custodian’s Office he wrote, “[W]hen the time comes I am expecting to be paid damages by the Government.”¹¹⁵ He explained that he wanted to work with the Canadian government, but could not work against his own interest. Tagashira insisted on holding the government to its promise to protect.

The records of the following years also contain hints of how the Tagashiras’ attempted to use the mechanisms of the Office of the Custodian to their advantage. Still interned in Revelstoke, they faced an uncertain postwar future and they tried to secure some financial security. It was an exhausting, frustrating, and rarely rewarding task. They requested funds to compensate the employees of the business (Masue and her children), formalizing the various relations and positions that structured their business in terms that the government could recognize.¹¹⁶ They pursued repayment for loans to Japanese Canadians, a convoluted and deeply frustrating process with little avail. In a particularly striking attempt, Rinkichi Tagashira hired a local solicitor to pursue repayment of the debts he claimed to owe Masue. While the office’s staff approved Rinkichi Tagashira’s request to purchase a Victory Bond

¹¹⁴ Letter to Jack Pickersgill from Tagashira, 27 February 1945, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

¹¹⁵ Letter to the Custodian from Tagashira, 23 April 1945, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 2.2).”

¹¹⁶ For a close discussion of the Office of the Custodian’s treatment of debts and a parallel instance where a family institutionalized the relations and positions that structured a business, see: Eiji Okawa and the LOI Collective, “Negotiating the Dispossession,” *The Bulletin Geppō*, Mar. 2017.

for \$20,000.00, the debt to Masue was not mentioned again.¹¹⁷ After seeing their security, investments, and home eviscerated over three short years, the Tagashiras tried to manipulate the government mechanisms to preserve their remaining wealth. It was around this time, when the Tagashiras were still interned in Revelstoke, that Cabinet announced a royal commission to look into Japanese Canadians' claims of property loss. It was finally their chance to hold the state accountable for breaking its promise to protect the Tagashiras' interests.

In 1983, Masue Tagashira recalled the tumultuous negotiations to protect their property and the betrayal of the forced sale. She recalled the initial success of the agreement with “the Chinese people” and the much-appreciated income. Still, she said, referring to the seizure of Japanese Canadians' accounts, the “Custodian held our money and they never gave anything—no interest, nothing.” Masue described the betrayal of the forced sale:

We packed everything in the attic [what we didn't] want to sell or broken.
So we packed in the attic because that's own [sic] house. They said that
Custodian's going to look after our property. So we believed that.

The Custodian eventually sold these boxes at an auction. “For 25 cents a box they sold,” She recalled, her voice rising. “All that time I nearly cried out because no matter [where

¹¹⁷ The Custodian's office questioned the validity of the claim. An administrator reported to Kenneth W. Wright, solicitor for the Vancouver Office of the Custodian, that the RCMP had checked and stated that “this woman [Masue] is Rinkichi Tagashira's common-law wife.” The administrator suggests a further skepticism in his subsequent clarification that she had not mentioned the debt in her declaration form. The author recommended postponing sending the money to Rinkichi Tagashira and suggested that they “write Mrs. Jinnouchi as to how and when the advances were made by her to Tagashira.” This was the last time the debt to Masue's late husband was mentioned. Letter to Shears from John A. O'Neill, 25 January 1944, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 3.1)”; Letter to Kenneth W. Wright from Milsom, 10 May 1945, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 3.2)”; Letter to Shears from Tagashira, 7 May 1947, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (part 3.1).”

you] search, you're never going to replace my money.”¹¹⁸ If Rinkichi Tagashira’s voice is preserved in the records of the Office of the Custodian, Masue’s testimony makes clear that the forced sale of property was felt across the family. The emotion of Masue Tagashira’s recollections, still vivid nearly 40 years later, suggests the anguish, pain, and violence of the dispossession. For Rinkichi Tagashira, the pain of the betrayal, after having fought so hard, was sharp. In another interview, Masue described her husband to Carey French of *The Globe and Mail*. French wrote:

Relentlessly “kuyashii” (frustrated), Mr. Tagashira brooded for hours over old documents of ownership spread like defective ammunition on the table. At such times his family dared not approach. “The poor man,” clucks the white-haired lady. “He was always looking for what he had lost.”¹¹⁹

Conclusions

By the time they submitted their claims to the Bird Commission in 1947, the Tagashiras had a decades-long relationship with the Canadian state. It began with navigating immigration restrictions; Masue’s need to find a husband and Rinkichi’s identification as a fisherman at the American border and his subsequent entry into Canada. Rinkichi Tagashira’s livelihood was shaped by the contours of employment restrictions, as were Masue’s years in the precarious resource industry. Shigeo Jinnouchi’s suicide at the provincial hospital was a rare encounter with the state’s support services for Masue: over the following five years, she navigated social support networks run primarily through Christian churches, the precarity of her position as a widow compounded by her position as a racialized, working-class single mother. These were years navigating an unequal society, of official and systemic discrimination in Canada. The arguments about separate

¹¹⁸ Masue Tagashira, interview.

¹¹⁹ French, “Still Hurting.”

“Japanese” and “Chinese” markets exemplify the racialized constructions that impacted the Tagashiras. Nevertheless, they were embedded in complex networks of support, economy, and community in Vancouver. Their home in Cordova was both an economic and social hub and was a secure investment for their family’s future. When the government declared the seizure of their property, the Tagashiras responded with the savvy of individuals who were familiar with navigating discriminatory restrictions in Canadian society.

As groundwork to understand the Bird Commission hearings, the story of the Tagashiras could be told through Rinkichi Tagashira’s voice completely. After all, he was the primary property and business owner in the family. Except for a single insurance policy, the Tagashiras’ extensive claims at the Bird Commission hearings were all in his name. Yet the story of the Tagashiras at the Bird Commission is not just the story of property ownership, it is the story of a life. In telling the story of a life, the implications of the forced uprooting, internment, dispossession, and dispersal become more meaningful. This chapter gives space to Masue Tagashira because she is part of that life, and it is her life too. Reflecting the gendered nature of property ownership, government records hold an imbalance in whose voices are heard on the matter of dispossession. Renters or working-class women, like Masue Tagashira, are difficult to locate in these records. It is only through her self-assertion, in the act of giving oral testimony, that we learn Masue’s life stories.¹²⁰ Though fundamentally constrained by the sources available, the large portion being state records, this chapter has attempted to simultaneously acknowledge the stories

¹²⁰ It is only because Masue Tagashira submitted a claim to the Bird Commission separately from Rinkichi, not being formally married to him, that her voice (if mediated) appears in the state records. See: Chapter 3.

of those who did not own property and recognize that neither property nor the dispossession defined Japanese Canadians' lives.

In conveying the lives of Japanese Canadians more completely, we inevitably imagine what it meant to lose it all. Loss was felt differently, even within a family. For both Masue and Rinkichi Tagashira, 361–369 Cordova was home. Yet their relation to the place differed. The state interventions of 1942 thrust Masue Tagashira into uncertainty but, unlike her hardships in the 1930s, she retained economic stability due to her partnership with Rinkichi. The extended income from the wholesale business afforded the entire family a degree of relative comfort. Without diminishing the fear, chaos, and threat of the uprooting and dispossession, it was likely a relief that Masue had her children close. For Rinkichi Tagashira, the same years marked the evisceration of thirty years of investment and the foundation of his future. Though he protested the forced sales in legal terms, one cannot help but imagine that the business was part of his identity and pride. These variations enrich historical understanding of Japanese Canadians, Vancouver, and the dispossession. Glimpsing the life stories of the Tagashiras helps us better comprehend the Bird Commission and its legacies.

An attentive historical account deepens our understanding of the Tagashiras and their forced dispossession. In early 1943 the Tagashiras' dispossession was far from certain. In their attempts to have Rinkichi Tagashira sell, the government agents and his legal aid articulated an imagined racial constitution of the city. Their rationale to sell relied on these assumptions. The rationalizations also demonstrate the discrepancy within the Office of the Custodian on how to interpret the federal Orders in Council. Glenn McPherson would not have allowed the same possibility for negotiation that Campbell did.

Campbell made arguments that, in his interpretation, followed the promise to protect Japanese Canadians' interests. Rinkichi Tagashira's protests of his forced dispossession added a third interpretation to the law of dispossession—an interpretation that would uphold the “promise to protect” his interests, but on his terms. Rinkichi Tagashira asserted that his voice was critical to understanding his interests.

The Tagashiras navigated in the best ways they could to protect their home, investments, and family. They chose when to negotiate with or protest the actions of state officials. Their determination to define and defend their own interests resisted discriminatory state policies. This resistance, however, was complex. As Tina Loo reminds us, just as there is opportunity to resist or pass through systems of power, “resistance also transforms resisters.” “Finding the holes and manipulating and getting through them,” she explains, “necessitates entangling oneself somewhat in power’s net, adapting oneself to its shape and to its way of seeing and acting.”¹²¹ In his protests against the forced sale and demands for state accountability, Rinkichi Tagashira invoked the protection offered by liberal principles of property ownership and the settler colonial state. He framed his protests in the language of law because it was an arena where he believed he would be fairly met. Tagashira believed, on the broad terms of property ownership and liberalism, that the state was legitimate. To the extent that he considered it, he was most likely a proponent of settler colonialism. After all, Rinkichi Tagashira was just a person, a businessman, seeking to protect his own interest in the face of a belligerent state and, to a large extent, society. In doing so, he nearly protected his business from forced sale. As he

¹²¹ Loo, “Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951,” 165.

held the state accountable to its promise to protect, he joined other Japanese Canadians, articulating what Canadian law *should* have been. A glimpse at the lives of Masue and Rinkichi Tagashira prior to the Bird Commission helps us to understand the breadth of their determination, resilience, and courage in the face of incredible adversity.

CHAPTER 2: CREATING THE BIRD COMMISSION

Compensation, in 1947, was on the minds of Japanese Canadians, civil liberties groups, and high-level policy makers. That January, Prime Minister William Lyon Mackenzie King promised to investigate Japanese Canadians' claims for property sold at less than fair market value and, where merited, provide compensation. "Govt. to Pay Indemnity for Property Losses," ran the banner headline of the Japanese-Canadian newspaper, *The New Canadian*.¹ It was a promise that offered hope to families like the Tagashiras. "Japanese Canadians across the country gave a sigh of relief when they read Mr. King's statement," one writer reflected, "but not all the concerns were dispelled from their minds."² For most Canadians, the postwar-era had begun: they could anticipate a security and prosperity that, government officials promised, would be distinctly Canadian.³ For Canadians of Japanese descent, however, the wartime era dragged on. They faced re-settlement across the country, still prohibited from returning to the west coast. The January 24 statement promised a path for the integration of Japanese Canadians into postwar prosperity. They might soon build new homes, finding new work, and reinvent their lives. Yet a federal inquiry also suggested a chance for Japanese Canadians to hold the state accountable for the devastation of the five years prior.

¹ "Govt. to Pay Indemnity for Property Losses," 1 February 1947, *The New Canadian*, 1.

² "Deportation Plans Dropped in Revised Japanese Policy," 1 February 1947, *The New Canadian*, 2.

³ For a discussion of Canadian identity and citizenship in postwar Canada, see: Heidi Bohaker and Franca Iacovetta, "Making Aboriginal People 'Immigrants Too': A Comparison of Citizenship Programs for Newcomers and Indigenous Peoples in Postwar Canada, 1940s–1960s," *Canadian Historical Review* 90, no. 3 (2009): 427–62.



*Commissioner Henry Irvine Bird. Thomas Fisher Rare Books Library,
F.G. Shears Collection, series 5, file 9: "General."*

King made good on his promise to address Japanese Canadians' claims for compensation. That promise became the Bird Commission, named for Justice Henry Irvine Bird at its helm.⁴ The Bird Commission ran for three years, concluding with the submission of a final report in April 1950. The Commission, however, was far from perfect. Of the approximately 15,000 Japanese-Canadian property owners who were dispossessed, just over 1,400 submitted claims. Within this minority, the total compensation awarded amounted to just over half of what they claimed.⁵ When Japanese Canadians and their allies called for further consideration, then-Prime Minister Louis St. Laurent declared the matter settled. Having appointed a royal commission to enquire into Japanese Canadian's claims "to ascertain what would be fair and just under all the circumstances," and having followed Justice Bird's recommendations "that a certain sum of money be paid to the claimants," St.

⁴ Officially: Royal Commission to Investigate Complaints of Canadian Citizens of Japanese Origin who Resided in British Columbia in 1941, That Their Real and Personal Property had been Disposed of by the Custodian of Enemy Property at Prices Less than the Fair Market Value.

⁵ Ann Gomer Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: J. Lorimer, 1981), 142.

Laurent stated that the government had “discharged our obligations both to the Japanese Canadians and to the general public.”⁶ The Commission thus closed the official conversation of compensation for the next thirty years.

This chapter examines the Bird Commission as an attempt at reparations in the wake of the forced uprooting, internment, and dispossession of Japanese Canadians in the 1940s. To do so, I attend to familiar and unfamiliar terrain. The familiar is the design of the Bird Commission terms of reference. Here, I complicate existing accounts by emphasizing that the critical period of policy development came in the months leading up to the Standing Committee on Public Accounts (SCPA) hearings, beginning in late January 1947. Many scholars earmark the evidence and testimony produced at the SCPA examination of the Office of the Custodian of Enemy Property, in May and June, as a watershed moment in the campaign for compensation.⁷ However, by May 1, 1947, the Cabinet Committee on Japanese Problems already had a prepared and approved Order in Council to announce a royal commission to investigate Japanese Canadians’ claims for property loss. The SCPA examination cemented popular support for an investigation into the wartime management of Japanese Canadians’ property. It also provided grounds for later amending the Commission’s initial terms of reference. But by the time of its first hearings, the fundamental shape of the Bird Commission was already established.

⁶ Roy Miki, *Redress: Inside the Japanese Canadian Call for Justice* (Vancouver: Raincoast Books, 2004), 130.

⁷ Patricia Roy, *The Triumph of Citizenship: The Japanese and Chinese in Canada, 1941-67* (Vancouver: UBC Press, 2007), 242; Ken Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart, 1976), 325; Sunahara, *The Politics of Racism*, 13. Miki briefly notes this earlier development. See: Miki, 112–14.

Revisiting the familiar terrain of the commission's development brings into view the priorities and considerations that shaped its purview.

This early policy development reveals that government officials conceived of the Commission as an effective tool to put accusations of discriminatory policy to rest. They recognized that the Commission's findings would inform the popular understanding of the dispossession and state accountability. The decision to address Japanese Canadians' calls for compensation was *responsive*—responding to the shift in public opinion and campaigns by Japanese Canadians and their allies—but it was also meant to be *instructive*. By 1946, the deportation of and continued restrictions on Canadian citizens produced dissonance for a government that trumpeted the values of democracy, freedom, and liberalism. Saddled with the legacy of uncomfortable policies from the wartime era, Cabinet used the issue of property compensation to define injustices against Japanese Canadians as matters of procedural error. By investigating the operations of the Office of the Custodian of Enemy Property, the Canadian state would prove its own accountability and teach Canadians how to understand Japanese Canadians' claims of property loss and the Canadian state.

The Bird Commission hearings themselves comprise unfamiliar terrain. This chapter attends to the underfunded, well-intentioned lawyers who tried to make an imperfect commission work in their clients' favour. Considerable scholarship exists on the Co-Operative Committee on Japanese Canadians as Canada's first civil rights group and their leadership in the campaign against the deportation of Japanese Canadians in 1945 and

1946.⁸ Regarding their role in the Bird Commission, however, the literature is sparse, comprising largely of critiques of their legal decisions and leadership.⁹ In addressing the hearings, this chapter analyzes Japanese Canadians' allies as mediators within the Bird Commission process. It demonstrates how Japanese Canadians' legal counsel, working in good faith, became entwined in the state's priorities as they tried to work the Commission in Japanese Canadians' favour.

Closer attention to the dynamics of the hearing process reveals the degree to which Japanese Canadians' articulations of loss and injustice, and claims for fair compensation, were actively excluded from the Bird Commission hearings. Understanding the constraints and dynamics within which Japanese Canadians' lawyers tried to attain justice for their clients, themselves becoming entangled in the state's priorities, allows us to more clearly understand Japanese Canadians' engagement with the state and the pursuit of fair compensation. This lays the groundwork for understanding more closely the contestations that occurred throughout the Bird Commission hearings, as demonstrated in the Tagashiras' hearings (the final chapter of this thesis.)

As this chapter traverses these two terrains, familiar and unfamiliar, it introduces a contest between two narratives. The first narrative is produced by the state, crafted by cabinet members, bureaucrats, policy makers, and the Prime Minister to distance the liberal

⁸ Stephanie D. Bangarth, *Voices Raised in Protest: Defending Citizens of Japanese Ancestry in North America, 1942-49* (Vancouver: UBC Press, 2008); Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: University of Toronto Press, 2005); Miki, *Redress*; Peter Takaji Nunoda, "A Community in Transition and Conflict: The Japanese Canadians, 1935-1951" (PhD diss., University of Manitoba, 1991), <http://mspace.lib.umanitoba.ca/xmlui/handle/1993/18366>.

⁹ Miki, *Redress*, chap. 5; Nunoda, "A Community in Transition and Conflict: the Japanese Canadians, 1935-1951," chap. 8.

government from the increasingly uncomfortable policies of the Second World War. In face of other proposals, officials designed a commission that would prove the state's accountability, rather than acknowledge the injustices claimed by Japanese Canadians. If successful, the Commission would counteract mounting criticisms of Canada's race-based policies and move the state into the postwar era. The second was articulated by Japanese Canadians and supported by their allies. Japanese Canadians sought to legitimate the state's authority by demanding that it recognize their rights as citizens and property owners. As they asserted their claims for property loss and fair compensation, they challenged the government to adhere to a higher standard of accountability, rather than a facade. They claimed loss and compensation in broader terms outside the hearings of the Bird Commission, but adapted these claims (with the help of their lawyers) to be legible under the purview of the Commission.

What emerges from this contest is a fuller portrayal of Japanese Canadians' relation to the state in the 1940s. It was one of unequal power, wherein the state determined the parameters of negotiation. Yet it is also one wherein individuals used their expertise to shape the state apparatus, the Bird Commission, in their favour. Before diving into the hearings, it is worth delineating the limits of possibility of the arena in which Japanese Canadians' presented their claims. In doing so, we come to understand the Bird Commission more clearly.

Commissions of Inquiry

A mainstay of the Canadian political process, royal commissions are temporary institutional sites designed to supplement regular government machinery. They are appointed by an Order in Council "with a precise mandate as an *ad hoc* response to some

previously legislated statute, usually an *Inquiries Act*.”¹⁰ With funding and staff devoted to a specific mandate, commissions solicit public input alongside expert advice. “They supplement the traditional machinery of government,” Justice Thomas Berger writes, “by bringing to bear resources of time, objectivity, expertise, and by offering a forum for the expression of public opinion.”¹¹ Scholars often delineate two categories of inquiries: those that deal with broad questions of public policy (such as medicare, free trade, or reproductive technologies) and those that look into specific allegations of wrongdoing or blameworthiness (arising out of claims of conflict of interest, aircraft going down, or mines falling in). Despite these fundamental characteristics, commissions of inquiry take on vastly different forms. Yet, across their forms, commissions are commonly met with skepticism, often perceived as a useful tool to postpone an awkward decision, stave off public pressure, provide support for a government decision already made, or to cool an explosive issue.¹²

The Bird Commission has been remembered with similar skepticism, and for good reason. It is remembered for what it was not: that is, it was not a just resolution to the devastating material losses of the 1940s. Scholars and community members alike remember it as a predestined failure, with narrow terms of reference that only addressed a

¹⁰ Allan Manson and David J Mullan, eds., *Commissions of Inquiry: Praise or Reappraise* (Toronto: Irwin Law, 2003), 3.

¹¹ Thomas R. Berger, “Canadian Commissions of Inquiry: An Insider’s Perspective” in *Commissions of Inquiry: Praise or Reappraise*, ed. Allan Manson and David J Mullan (Toronto: Irwin Law, 2003), 14.

¹² Gregory J. Inwood and Carolyn Johns, *Commissions of Inquiry and Policy Change: A Comparative Analysis*, Institute of Public Administration of Canada Series in Public Management and Governance (Toronto: University of Toronto Press, 2014), 10.

fraction of what was taken.¹³ Historians have characterized it as a defensive mechanism, intended by the government to limit financial compensation and to avoid the admission of greater injustice.¹⁴ Yet the Commission is a historical event that did unfold. That is, we cannot only look back upon a past in which a different commission—one with better terms of reference and a broader will to justice—did *not* occur. We also must contend with a past in which this Commission did occur. As such, it bears scrutiny for what it was, not just for what it was not. Indeed, in understanding what it was, we emerge with a clearer vision of what it was not.

The Bird Commission was called for a variety of reasons, including those that generate skepticism. Yet the Cabinet Committee on Japanese Questions also designed the Commission to shape a particular narrative of the forced uprooting, internment, dispossession, and dispersal. The final Commission report would become an authoritative document in the history telling of these events, similar to the public reports published throughout the internment years. Despite its profound shortcomings, it is useful to view the Bird Commission from the perspective articulated by Jane Jensen, who views commissions as capable of presenting “a new view of the world in paradigmatic form.”¹⁵ According to Jensen, royal commissions may be involved in “generating new representations of history,

¹³ Omatsu notes that the federal government “paid out \$1,222,829 in damages – or approximately ten cents on the dollar – to the 1,434 Japanese Canadians who had made claims.” Maryka Omatsu, *Bittersweet Passage: Redress and the Japanese Canadian Experience* (Between the Lines, 2010), 75, 118.

¹⁴ Adachi, *The Enemy That Never Was*, 321–34; Sunahara, *The Politics of Racism*, 137; Miki, *Redress*, 114.

¹⁵ Jane Jensen, “Commissioning Ideas: Representation and Royal Commissions” in *How Ottawa Spends, 1994-95: Making Change*, ed. Susan D. Phillips (Montreal and Kingston: McGill-Queen’s University Press, 1994), 49.

of the present community and of available futures.”¹⁶ “The decision to establish an inquiry of this kind,” Supreme Court Justice Gerald Le Dain likewise wrote in an influential essay on royal commissions, “is a decision not only to release an investigative technique but a form of social influence as well.”¹⁷ The Liberal Government designed the Bird Commission to promulgate a conception of justice in relation to the policy of dispossession: justice, in this case, was to be understood as a matter of procedural accountability. Attention to the framing of the Commission—in the design of the terms of reference, its final report, and its process—reveals an attempt by Dominion officials to teach Canadians how to understand the contentious policies implemented upon Japanese Canadians. The Commission was created to inscribe a narrative of fair and just government and thus to counter mounting criticism of state-perpetrated racial oppression.

The Liberal cabinet hoped the Commission would influence public opinion, provide closure to the internment-era, and mark the start of the postwar period. Their definition of loss was integral to this project. As Japanese Canadians sought to expand this definition to address their claims, the proceedings became a record of their contest over the meaning of property loss and the legacy of the dispossession. In submitting claims that intentionally and unintentionally pushed against the restricted terms of reference, Japanese Canadians and their solicitors participated in a broader contest over the narrative of the forced uprooting and dispossession in a society seeking to distance itself from a legacy of racialized policy. This contest, captured in the Commission proceedings, provides a

¹⁶ *Ibid.*, 48.

¹⁷ Gerald E. Le Dain, “The Role of the Public Inquiry in our Constitutional System” in *Law and Social Change*, ed. Jacob S. Ziegel and Harry William Arthurs, Annual Lecture Series (York: Osgoode Hall Law School, York University, 1973), 85.

pathway into the complex history of the postwar years as Canadians grappled with the racism of the Second World War, including Canada's own race-based policies, and looked towards new approaches to pluralism.

Proposal

On January 24, 1947, Cabinet issued a press release from the Prime Minister's Office meant to mark the end of Japanese-Canadian policy. It announced the repeal of critical deportation Orders in Council and promised compensation for any sales made by the Custodian of Enemy Property for less than fair market value. "The decision of the government respecting certain orders in council..." the statement read, "marks the substantial completion of a program contained in the statement I [Prime Minister King] made in the House of Commons on August 4, 1944." Regarding Japanese Canadians' property that was sold by the Custodian,

the government is of the opinion that the sales were made at a fair price. In all cases a complete appraisal was made before disposition. The total of the prices secured is greater in aggregate than the total appraisal value. To ensure, however, the fair treatment promised in 1944, the government is prepared in cases where it can be shown that a sale was made at less than a fair market value to remedy the injustice.¹⁸

The announcement appealed to public opinion; amongst Japanese Canadians it was met with "a sigh of relief" and cautious celebration.¹⁹ In the previous year, criticism at the

¹⁸ Press release, 24 January 1947, Library and Archives Canada (hereafter LAC), MG26 J4 (William Lyon Mackenzie King fonds), vol. 361, file 3851: "WWII Japanese Canadians (3)."

¹⁹ Adachi notes that this statement did not begin the process of redress, but rather "merely served to accelerate, channel and organize the agitation and resentments that had been mounting since 1942." Adachi, *The Enemy That Never Was*, 321. See, for example: "Govt. to Pay Indemnity for Property Losses", 1 February 1947, *The New Canadian*; "Deportation Plans Dropped in Revised Japanese Policy", 1 February 1947, *The New Canadian*; "Hope lifting of Jap Ban to End Race Restrictions," 24 January 1947, *The Toronto Daily Star*; "No More Japs Will be Deported, Ottawa

government's treatment of Japanese Canadians emerged in force. While their forced uprooting and dispossession had been met with relative silence in 1942, by 1946 Japanese Canadians had the support of various civil advocacy groups and prominent newspapers. The public increasingly recognized the deportation of Canadian citizens as a violation of human rights and protested. Though the deportation orders were congruous with the laws enacted in the years prior (and affirmed by the highest courts), the Liberal government had lost both explicit and tacit support for its actions.²⁰ With this announcement, Cabinet planned to distance the Liberal government from the increasingly uncomfortable internment policies and shape how they would be remembered. Amidst this, the "property issue" would be a strategic tool to bring closure to the internment era.

The January 24 statement was critical to building a narrative that would distance the government from the racism of the Second World War. It was the product of debates over the two months prior, when the Cabinet Committee on Japanese Problems met to

Says" 24 January 1948, *The Toronto Daily Star*; "Retreat Under Pressure," 28 January 1947, *The Globe and Mail*; Co-Operative Committee on Japanese Canadians News bulletin # 10, 10 February 1947, LAC, MG30 D200 (M. Grace Tucker fonds), vol. 1, file 5: "CCJC: News bulletins, 1946-48."

²⁰ Previous scholars agree that by early 1946, the Canadian public had turned against the extension of the deportation orders in council. Fuelled by public education campaigns of the Co-Operative Committee on Japanese Canadians, civil liberties groups, church leadership, unions, and student organizations rallied against the discriminatory policies. A shared explanation across these accounts is the importance of postwar awareness of Nazi atrocities and the emerging discourse of human rights and citizenship. Whatever it was, Sunahara writes: "It was sufficient that the anti-deportation campaign of January and February 1946 produced the strongest outburst of spontaneous public reaction in the long career of Prime Minister William Lyon Mackenzie King, an outburst King knew better than to ignore." Roy, *The Triumph of Citizenship*, 188, 202–32; Sunahara, *The Politics of Racism*, 122–23; Bangarth, *Voices Raised in Protest*, 101; Lambertson, *Repression and Resistance*, 140; Adachi, *The Enemy That Never Was*, 311.

review and strategize the future of “Japanese policy.”²¹ Though the Privy Council in London had declared the deportation orders legal on December 2, 1946, public criticism made clear that a continuation of the policies would be politically injurious. Something had to change. Working through a list of the Orders in Council affecting Japanese Canadians, the Cabinet Committee decided which policies to rescind and which to extend.²² In these discussions, the permanent dispersal of Japanese Canadians across Canada remained a fundamental aim of Cabinet. Thus, while the Cabinet Committee softened the deportation orders, they extended the restrictions on the movement of Japanese Canadians within the country (Japanese Canadians could not be permitted, from the perspective of lawmakers, to return to British Columbia or to otherwise concentrate in potentially problematic ways).

Amidst these debates, Cabinet’s strategy for dealing with the “the property issue” remained ambiguous.²³ In advance of their December policy discussions, Gordon Robertson of the Prime Minister’s Office circulated a memorandum outlining “problems relating to the general Japanese question” to supplement the proposed agenda that focused

²¹ Memorandum, 3 December 1946, LAC, MG31 E87 (Gordon Robertson fonds), vol. 1, file: “Japanese in Canada 2 of 6”; Minutes from the Cabinet Committee on Japanese Problems, 13 December 1946, LAC, RG2 B2 (Central Registry files of Privy Council Office), vol. 249, file: j-25-1: “Japanese in Canada. 1946.”; Minutes from the Cabinet Committee on Japanese Problems, 10 January 1947, LAC, RG2 B2, vol. 84, file j-25-1: “Japanese in Canada. 1947-49.” The Cabinet Committee on Japanese Problems consisted of representatives from the Department of Labour, Undersecretary of State, Department of Justice, Department of External Affairs, Veterans Affairs, the Privy Council Office and the Prime Minister’s Office.

²² Minutes, Cabinet Committee on Japanese Problems, 13 December 1946, LAC, RG2 B2, vol. 249, file j-25-1: “Japanese in Canada. 1946.”; Minutes, Cabinet Committee on Japanese Problems, 10 January 1947, LAC, RG2 B2, vol. 084, file j-25-1: “Japanese in Canada. 1947-49.”; Minutes, Cabinet Committee on Japanese Problems, 13 January 1947, LAC, RG2 B2 vol. 084, file j-25-1: “Japanese in Canada. 1947-49.”

²³ Memorandum for King by R. Gordon Robertson, 9 January 1947, LAC, MG31 E87, vol. 1, file: “Japanese in Canada (2 of 6).”

on the deportation policies. It was primarily concerned with the internal restrictions on Japanese Canadians (like land purchase and fishing licences) and the complications of citizenship, but the third point was the “restitution for property disposed of.” Robertson suggested that “it might be worth consideration whether some sort of coalition should be established to hear claims and try to dispose of the matter.”²⁴ He referred to the inquiries from the Co-Operative Committee on Japanese Canadians (CCJC), the Toronto-based civil liberties group that led the campaign against the deportations. The Cabinet Committee on Japanese Problems, however, dropped the suggestion. Instead, the Cabinet Committee debated how to complete the dispossession, with the liquidation of the 40 properties remaining in the Custodian of Enemy Property’s holding. As the Cabinet Committee prepared for King’s press release rescinding the deportation orders, property restitution remained “less urgent.”²⁵

Yet, for a brief time, the desire to “dispose” of the property issue prompted consideration of a direct and broad remedy to the material impacts of the forced uprooting, internment, dispossession, and dispersal. This possibility was expressed in the first draft of what became Prime Minister King’s press release of January 24, 1947. Reflecting deep concern about the public perception of the internment policies, this earlier draft, dated January 23, proposed a novel approach to alleviating public criticism: apology. Although it was the basis for King’s final press release, the draft bore critical differences that would have changed the legacy of the internment era for Japanese Canadians. The first draft began

²⁴ Memorandum for Arnold D.P. Heeney by R.G. Robertson, 6 December 1946, LAC, MG31 E87, vol. 1, file: “Japanese in Canada (2 of 6).”

²⁵ Memorandum, 3 December 1946, LAC, MG31 E87, vol. 1, file: “Japanese in Canada (2 of 6)”; Letter to Brown from R.G. Robertson, 9 January 1947, LAC, MG31 E87, vol. 1, file: “Japanese in Canada (2 of 6).”

by stating that the resettlement program was successful and explained the rationale for ending the deportation program. “To ensure fair treatment,” it went on, “the government has decided to authorize investigation of any claims that land, buildings, or other property ... had been sold at unduly low prices.” It stated that the “government would be prepared to authorize compensation” where “less than a fair market value had been secured for the Japanese owner.”²⁶ Strikingly, this version continued:

The Prime Minister states that he regretted the extent to which the exigencies of war, and the urgent necessities it has imposed in the domestic field had caused hardships and inconvenience for many persons of Japanese origin who had themselves been innocent.²⁷

Furthermore, in this version, the government was “determined to do all it could to remove any sense of racial discrimination in Canada and to ensure equitable treatment of all.” It concluded with a repetition of a similar press release from 1944, wherein King announced the Loyalty Commission to determine which Japanese Canadians to deport and denounced “the hateful doctrine of racialism which was the basis of Nazism everywhere.”²⁸ In this first draft, the writers situated the issue of property loss within a larger struggle against racism. To bring closure to the internment policies, Cabinet considered recognizing the “hardships and inconvenience” endured by those “innocent” Japanese Canadians. The proposal offered a route to build from King’s 1944 denunciation of “racialism.”

Statements of regret and denunciations of racism, however, together with a broader approach to remedy, would have been a very different story for Canadians to hear and for

²⁶ Press release (draft), 23 January 1947, LAC, MG31 E87, vol. 1, file: “Japanese in Canada (2 of 6).”

²⁷ *Ibid.*

²⁸ *Ibid.*

the government to tell. Different societies take different paths in memory of historical injustice, weaving very different narratives for their publics.²⁹ Yet the drafting shows the process of debating this narrative, in relation to Japanese Canadians, in the immediate postwar years. In contrast to the government's public rhetoric, there were people pushing for this very different framing. If limited, this first draft offered recognition of the hardships endured by innocent Japanese Canadians under the wartime policies. This first draft, likely penned by G. Robertson, may have reflected an avenue that he considered possible after the "lengthy conversation" held in cabinet on January 22, wherein the Cabinet Committee on Japanese Problems and the Prime Minister made the final decision to repeal the deportation policies.³⁰ Later, Robertson described the arguments to end the deportations as the "new liberalism" within cabinet.³¹ Had Robertson's approach won out, there might well have been a very different postwar culture of memory around these events.³² The experiences of Japanese Canadians and their families might have been, in some important ways, improved.³³ Instead, officials chose a different route.

²⁹ See, for instance: James Edward Young, *The Texture of Memory: Holocaust Memorials and Meaning* (New Haven: Yale University Press, 1993).

³⁰ The Cabinet Committee remained deeply divided over the repeal (some called for the continued deportation of Japanese Canadians, regardless of citizenship), but others expressed concerns over the appearance of "ill-Liberal treatment of different persons" and the appearance of "inhumane" policy now that the war was over. Diary entry by William Lyon Mackenzie King, 22 and 23 January 1947, "Diaries of William Lyon Mackenzie King," Library and Archives Canada, <http://www.bac-lac.gc.ca/eng/discover/politics-government/prime-ministers/william-lyon-mackenzie-king/Pages/diaries-william-lyon-mackenzie-king.aspx>.

³¹ Letter to Norman A. Robertson from R.G. Robertson, 29 January 1947, LAC, RG25 (Department of External Affairs fonds), vol. 2089, file ar 23-16: "Treatment of Japanese."

³² For a discussion of public memory of parallel policies in the American context, see: Caroline Chung Simpson, *An Absent Presence: Japanese Americans in Postwar American Culture, 1945-1960* (Durham: Duke University Press, 2001).

³³ Miki writes that, for many Japanese Canadians, "the fact that the government had never acknowledged the injustices meant that their innocence had never been publicly declared, which in

Ultimately, the Cabinet decided that a narrative of procedural accountability would best address Japanese Canadians' claims and steer the government away from the politically uncomfortable policies. Announcing that the repeal of the deportation orders marked the "substantial completion of the program," the final press release outlined the success of the dispersal policy. Though the Prime Minister changed proposal "substantially" in final editing, the promise for compensation remained intact.³⁴ The January 24 statement affirmed that Japanese Canadians' property was sold "at a fair price" through a complete appraisal process and that "the total prices secured is greater in aggregate than the total appraisal value."³⁵ The statement named the Custodian explicitly, narrowing the arena of state culpability. "[T]o ensure, however, the fair treatment promised in 1944," it continued, "the government is prepared in cases where it can be shown that a sale was made at less than a fair market value to remedy the injustice."³⁶ This was deliberately specific. By focusing on the Custodian's actions, emphasizing pre-existing procedures to ensure market sales, and narrowing attention to one aspect of the

effect also meant that they were still assumed guilty." The silence engendered "inward feelings of guilt that they had somehow brought the wrath of Canadians upon themselves." Likewise, Sunahara describes how, being told by the government that they were uprooted, dispossessed and dispersed "because they had failed to assimilate", the *Nisei* "blamed themselves for what had happened to them." This compounded the silences of the traumas of the internment era that, as delicately portrayed by oral historian Pamela Sugiman, continue to have lasting consequences on survivors and their families. *Re-Shaping Memory, Owning History: Through the Lens of Japanese Canadian Redress* (Burnaby: Japanese Canadian National Museum, 2002); Sunahara, *The Politics of Racism*, 149; Pamela Sugiman, "Memories of Internment: Narrating Japanese Canadian Women's Life Stories," *The Canadian Journal of Sociology* 29, no. 3 (September 20, 2004): 359–88.

³⁴ Memorandum for Heeney by R.G. Robertson, 23 January 1947, LAC, RG2 B2, vol. 84, file J-25-1: "Japanese in Canada. 1947-49 (2)."

³⁵ Press release, 24 January 1947, LAC, MG26 J4, vol. 361, file 3851: "WWII Japanese Canadians (3)."

³⁶ *Ibid.*

dispossession (i.e. were the prices in keeping with other concurrent sales), the Cabinet Committee framed any questions of justice in terms of procedural accountability. Rather than addressing its own imposition of “hardship” upon an “innocent” people, the statement placed the burden of proving loss on the shoulders of Japanese Canadians. This decision made the property issue one of procedural error rather than a matter of national regret entwined with domestic and international politics of race.

The repeal of the deportation orders and promise of property compensation offered a way to mark the “end of the road for Japanese policy.”³⁷ As Cabinet carefully dismantled the policies, they were careful to communicate continuity and intentionality to the public. Government publications reporting on the wartime policies that spring pointed to King’s statement as evidence of accountability.³⁸ But the final statement neatly sidestepped Japanese Canadians’ claims of injustice. Rather than a robust recognition of injustice, Cabinet would only apologize for its procedural errors. From this, Cabinet built an argument that small errors were to be expected in such major policy initiatives. Their willingness to investigate such errors, in this conception, only further affirmed the fairness

³⁷ Letter to N.A. Robertson from R.G. Robertson, 29 January 1947, LAC, RG25, vol. 2089, file ar 23-16: “Treatment of Japanese.”

³⁸ A public-facing report on the “re-establishment of Japanese in Canadian between 1944 and 1946,” published in early May, placed the proposed commission in relation to the other Japanese Canadian policies. The report announced the successful completion of the wartime policies, made on Japanese Canadians’ behalf, and directed its readers towards an improved future for all Canadians. Having experienced “little difficulty in assimilation,” it reported, the “great majority [of Japanese Canadians] realize that their future status in Canada is largely dependent upon themselves...as primarily Canadians rather than Japanese.” King’s January 24 statement was the last chapter of the booklet. “[T]he Department has endeavoured in all respects to promote the lasting welfare of the evacuated Japanese,” the report concluded, and cited the government’s indication to “deal fairly with those Japanese who have just claims with respect to the disposition of their pre-war property” as evidence of fair treatment. “Report on the Re-Establishment of Japanese in Canada, 1944-1946” by Humphrey Mitchell, January 1947, LAC, MG31 E87, vol.1, file: “Japanese in Canada (3 of 6) n.d., 1938, 1941-1948.”

of government action. It proved that injustice was a matter of *exceptions* to a generally just policy, obscuring the reality that the real injustice here was the policy as a whole, and the hardship inflicted by federal action on people who were innocent. Remarkably, the second story (one of profound injustice) was not just on the minds of Japanese Canadians, civil liberties groups, or even the press, but was also being articulated by high-level officials as a possible direction for the official narrative of these events. Instead of broader recognition, however, Cabinet chose a route that would address Japanese Canadians' claims for property loss and, in doing so, would prove its accountability.

Design

With the promise of compensation announced, a stream of inquiries flooded the Secretary of State and the Prime Minister's Office. How would property loss be considered? When would this inquiry take place? Internally, the Cabinet Committee on Japanese Problems advised caution, wary that the "property issue" could be politically damning.³⁹ The Prime Minister's Office turned to the office responsible for administering the policy to outline the claims that, were a commission established, Japanese Canadians would submit.⁴⁰ Unfamiliar with the details of the forced seizure and sale of Japanese

³⁹ Memoranda for King by R.G. Robertson, 11 January 1947, LAC, MG31 E87, vol. 1, file: "Japanese in Canada 2 of 6."

⁴⁰ Letter to Colin Gibson from King, 13 February 1947, LAC, RG117 (Office of the Custodian of Enemy Property fonds), vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission." Following the January 24 announcement, Japanese Canadians and their legal representatives wrote to the Office of the Custodian and to cabinet, inquiring as to the nature of the proposed mechanism. Examples include: Letter to Department of the Secretary of State (Office of the Custodian, Japanese Evacuation Section) from Alfred Best on behalf of Kenkichi Nagata, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission"; Letter to Kenneth W. Wright from Shears, 5 February 1947; Letter to King from Andrew Brewin, 30 January 1947; Letter to Director, Department of the Secretary of State, Office of the Custodian from George T. Tamaki, 3 February 1947; Letter to Frank G. Shears from J. Arthur MacLennan, 5 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

Canadians' property, the Committee trusted the Vancouver Office of the Custodian's account. The Vancouver Office was defensive: Frank G. Shears, the office manager, was reluctant to have his office take the fall for what he saw as an issue of policy. The bureaucrats were closely aware of Japanese Canadians' claims to property loss and used this in their favour. Informed by this familiarity, the Office of the Custodian recommended how the government could claim accountability and avoid political disaster.

Shears, who had managed the Vancouver Office since 1942, worried that an investigative body would overlook the unique challenges of their task and portray the Office of the Custodian in an unfavourable light. He advised not to have an inquiry or at least to postpone it until he could provide sufficient evidence on the Office's behalf. Despite his desire to postpone any investigation, Shears reluctantly ordered preliminary research into the claims made by two Japanese Canadians.⁴¹ The reappraisal confirmed that the properties had been significantly undervalued.⁴² Shears wrote to Wright that the government would have to "face the fact" that the appraisals of the Soldier Settlement Board were in most cases "below a value which might fairly have been placed upon these properties by other appraisers." He cautioned,

If this is the result of a review made by such a person... who at least is not unfavourable to our administration, it is quite evident that our Solicitor,

⁴¹ Letter to Wright from Shears, 15 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

⁴² He sent Mr. Menzies, a Fraser Valley real estate agent long associated with the Office, to test the claims made by Goro Suzuki, and Fusumatsu and Shigetsugu Tamaki. With hired legal representation, Suzuki and the Tamakis had charged the Office of the Custodian with the gross undervaluation of their properties and demanded investigation and compensation as early as 1946. His report, submitted to Wright in mid-February, confirmed Suzuki and the Tamakis' accounts: for one property, the original assessor had overlooked a building entirely and, for the other, the farmland was grossly undervalued.

acting on behalf of a Japanese, would be able to produce evidence in support of his contention that the property was sold at less than fair market value.⁴³

The administration of Japanese Canadians' property had been a chaotic, overwhelming task. Shears recognized that, under investigation, the operations of the Office of the Custodian could be politically disastrous.

Uncomfortable with the prospect of the potential inquiry, Shears and Wright tried to stack it in their favour. Shears and Kenneth W. Wright, the Office of the Custodian's legal advisor, recommended appointing Judge Whiteside to sit on a three-judge commission. Since Whiteside had chaired the Rural Advisory Committee, in charge of selling Japanese Canadians' property outside the Vancouver area, the bureaucrats believed that he could provide balance to how the operations of the Office of the Custodian appeared to an outside perspective.⁴⁴ In another attempt to protect the department, Shears recommended that all claims be first submitted to their Vancouver office rather than directly to the Commission. This, Shears explained, would allowed the Custodian of Enemy Property to provide sufficient contextual information on the sale and save the proposed commission valuable time.⁴⁵ If it came to an investigation, Shears hoped that the Office of the Custodian would be "in a position to present the overall picture."⁴⁶

⁴³ Letter to Wright from Shears, 15 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

⁴⁴ Letter to Mathieu from Wright, 13 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission"; Letter to Wright from Shears, 15 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

⁴⁵ Letter to Wright from Shears, 15 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission"; Letter to O'Meara from Shears, 15 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

⁴⁶ Letter to Wright from Shears, 27 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.2: "Japanese Property Claims Commission."

As Shears and Wright described Japanese Canadians' claims, they offered grounds on which the Office of the Custodian could be investigated without taking responsibility for extensive wrongdoing. Wright assured the Cabinet Committee that those who were responsible for the administration were "confident that as, if and when an inquiry is made, an account of good stewardship will be presented."⁴⁷ However, he warned, Japanese Canadians' claims extended "far beyond this." First, Japanese Canadians claimed "economical losses caused by the evacuation."⁴⁸ He advised to constrain the investigation to the terms laid out in the Prime Minister's announcement, otherwise claims would "far exceed those referred to in the statement."⁴⁹ Second, Japanese Canadians claimed damages in connection with chattels (or personal property). Wright explained that "there was a considerable amount of chattels left in the Protected Area which...the Custodian was not able to protect due to the speed with which evacuation proceeded."⁵⁰ To avoid culpability for these losses, he recommended that the government take the position that the "Custodian had exercised all reasonable care" for the property that the office "actually disposed of" and "not be accountable" for the chattels that had not passed through the Office's management. The alternative, Wright explained, was for the Office of the Custodian to concede responsibility for any property left by Japanese Canadians in the protected area,

⁴⁷ Memorandum for Secretary of State by Wright, 3 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

⁴⁸ As of 1942, Japanese Canadians "were required to surrender their businesses and positions... and generally speaking," he wrote, "their chances of earning a livelihood were cut off." Memorandum for Gibson by Wright, 17 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: "Japanese Property Claims Commission."

⁴⁹ Ibid.

⁵⁰ Ibid.

and that claimants were entitled to receive “fair value for it.” If Cabinet evaded claims for economic losses and narrowed the claims for chattels, Wright projected that the “period of time during which any commission might ... sit would be greatly reduced.”⁵¹

The claims of economic losses were easy enough to avoid: King had already eliminated this issue by tying accountability to the Office of the Custodian. The issue of chattels however, was more delicate. According to the Orders in Council that vested Japanese Canadians’ property in the care of the Office of the Custodian, the Office was accountable for *any* property left in the protected area.⁵² The chattels to which Wright alluded, which the Office had failed to protect, was likely property that was stolen, vandalized, or damaged in the owners’ absence. Wright’s suggestion to limit the inquiry, through the clause of “reasonable care,” offered an avenue to narrow Japanese Canadians’ claims and the purview of state culpability. Wright’s suggestions focused the proposed inquiry on terrain where the Office of the Custodian’s accountability could be proved.

Likewise, Shears delineated exactly which claims fell within the responsibility of the Office of the Custodian. He knew that Japanese Canadians’ calls for justice included claims for damages that resulted from the forced uprooting. These included sales made in haste, vandalism, theft, lost crops, and lost wages. (They also included, he knew, articulations of lost futures, investments, and communities.) In a letter demonstrating

⁵¹ Ibid.

⁵² PC 1942-1665, LAC, RG2-A-1-a (Privy Council Office fonds, Orders in Council series), vol. 1750, file 2516G: “4 March 1942.” For an account of the Office of the Custodian as a trustee, see: Eric M. Adams, Jordan Stanger-Ross, and the Landscapes of Injustice Research Collective (hereafter LOI Collective), “Promises of Law: The Unlawful Dispossession of Japanese Canadians,” *Osgoode Hall Law Journal* 54, no. 3 (Spring 2017): 687–740.

Japanese Canadians' protests of forced sale of their property, Shears emphasized the breadth of Japanese Canadians' articulations of loss and calls for compensation.⁵³ Echoing Wright, he recommended limiting the Commission to the claims for property that the Custodian had been "charged to manage and then sell." He recommended limiting the terms to the "tangible and specific."⁵⁴ Born out of his familiarity with the damages Japanese Canadians claimed, Shears' recommendation was pragmatic and offered a route to a contained commission. For Shears, who felt that culpability was a matter of policy and not administration, narrowing the terms was also a way to preserve the reputation of his office.

Wright and Shears also emphasized that Japanese Canadians would overstate their losses. As he outlined the categories of Japanese Canadians' claims—real estate, equipment, and greenhouses, for instance—Shears portrayed a gap between the "Japanese idea of worth" and "Japanese idea of value" and the market value of property.⁵⁵ Wright

⁵³ In one letter he presented a summary of letters from Japanese Canadians protesting the forced sale of their property. Shears explained to Wright that, though the Office had received over 200 of "such letters," "it must not be thought... that the above figures indicate that other Japanese are satisfied." Shears then described the conditions under which the properties were sold, offering context. The protests expressed outrage, betrayal, shock, and disbelief. Comparing his selections to the complete collection he drew from, Stanger-Ross and Blomely suggest that Shears selected letters that conveyed the "anger simmering in almost all of the protests." Jordan Stanger-Ross, Nicholas Blomely, and the LOI Collective, "'My Land Is Worth a Million Dollars': How Japanese Canadians Contested Their Dispossession in the 1940s," *Law and History Review* 35, no. 3 (August 2017): 719.

⁵⁴ Letter to Wright from Shears (2), 27 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.2: "Japanese Property Claims Commission."

⁵⁵ Under the subheading "Real Estate", Shears elucidated: "It is possible of course that the Japanese idea of value might not coincide with the market value, but in my opinion a property established market value should be the only basis for a claim in this Commission." Regarding equipment, he explained: "Certain types of equipment in use by the Japanese were definitely old fashioned and while capable of producing revenue in the hands of Japanese, do not have value equivalent to the Japanese idea of its worth." Likewise, for greenhouses, according to Shears, "quite a discrepancy

warned that Japanese Canadians had “exaggerated ideas as to the value of their holdings, and unfortunately many members of the legal profession are all willing to support their demands.”⁵⁶ The Office of the Custodian thus simultaneously reported that Japanese Canadians’ claims were extensive and, at least partially, unfounded. Having conveyed the specter of an unmanageable commission, the bureaucrats advised Cabinet on how to restrict the purview of the inquiry.

Informed by Japanese Canadians’ claims, the Office of the Custodian advised the design of a commission that would investigate its own activities. Wright and Shears’ reports became the foundational documents for the creation of the Order in Council announcing the Commission, Order 1810. The Cabinet Committee on Japanese Problems (renamed in April the Cabinet Committee on Japanese Questions)⁵⁷ did not follow their recommendations completely, but they preserved two key elements of their perspectives. First, the characterization of Japanese Canadians’ claims as “grossly exaggerated” informed the initial meetings of policy development, likely encouraging fears of unpredictable claims and an unruly, expensive commission.⁵⁸ Second, Wright’s standard

exist[ed] between the Japanese valuation and the amount at which some of the property was sold.” Ibid.

⁵⁶ Letter to O’Meara from Wright, 15 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: “Japanese Property Claims Commission.”

⁵⁷ The Cabinet Committee on Japanese Claims was created March 10, and then promptly amalgamated with the Committee on Japanese Problems on April 17 into the Cabinet Committee on Japanese Questions.

⁵⁸ The Undersecretary of State, Ephraim H. Coleman, and the Secretary of State, Colin W.G. Gibson, transformed the briefs into reports and draft recommendations to the Cabinet Committee on Japanese Problems for a potential inquiry. “It is very probable that thousands of claims will be filed,” the version sent to the Cabinet Committee read, “but very improbable that the vast majority could be substantiated in the court of law.” The draft continued: “The Japanese have inflated ideas as to the value of their assets and there is no doubt in my mind their claims will be grossly exaggerated.” Memorandum for Cabinet, 28 February 1947, [edited 3 March 1947], LAC, RG36

of “reasonable care” became a recurring tool to limit the purview of inquiry. Familiar with their protests of dispossession and claims to compensation, the Office of the Custodian characterized Japanese Canadians’ articulations of loss as potentially problematic for the government. They advised, instead, terms on which the government could prove accountability to sidestep calling into question the conditions of the forced uprooting and seizure of property.

Internally, the Cabinet Committee agreed on March 24 to call a royal commission to investigate Japanese Canadians’ claims.⁵⁹ At the following meeting, they worked with a comprehensive list of potential claims, designed by the Department of Justice, to define the specific purview of the Commission.⁶⁰ Using this list, the Cabinet Committee eliminated categories of claims where fair compensation would be too hard to determine, where Cabinet saw no culpability, or where (as in the case of claims for economic damages) they judged compensation too costly. The proposed commission would not consider the claims for vessels sold by the Japanese Fishing Vessel Disposal Committee (JFVDC), but would accept claims for the 200 vessels that were transferred to the Custodian once the JFVDC had been disbanded. It would not consider losses under the control of agents

27 (Department of Labour fonds, Japanese Division series), vol. 35, file 2203: “Special Cabinet Committee on Claims by Japanese Evacuees – 1947.” In the official document, the Committee reworked Shears’ portrayal of over-exaggerated claims and edited it to justify the limitation of the inquiry. Memorandum for Gibson by Wright, 27 March 1947, LAC, RG27 (Department of Labour fonds), vol. 641, file 23-2-2-5 part 2.

⁵⁹ The Committee comprised of Ian McKenzie, James L. Ilesley, Humphrey Mitchel, Arthur MacNamara, and Wright.

⁶⁰ Familiar with the dispossession policies from their development, Deputy Minister of Justice Frederick P. Varcoe designed this document. Minutes, Cabinet Committee on Japanese Problems, 24 March 1947, LAC, RG25, vol. 470, file 50076 40; Report, “JAP 5”, *undated*, LAC, MG31 E7, vol. 1, file: “Japanese in Canada 1 of 6.”

appointed by Japanese Canadians, only those under control of agents of the Custodian. Further, the Commission would not consider claims for compensation for loss of revenue for the duration of internment.⁶¹ The edits went on.⁶² Over a series of meetings, the Cabinet Committee carefully crafted the purview of the proposed commission to categories of claims that could be easily addressed and tied to the Office of the Custodian.

The proposed commission remained at a standstill for the next month as officials debated *how* to measure property loss. The second clause, importantly, would recognize failure of Custodial care. That is, losses arising out of property “lost, destroyed or stolen while in the possession or under the control of the Custodian.”⁶³ But, the Cabinet Committee was divided over the first clause of the proposed terms of reference.⁶⁴ The first version empowered the Commission to investigate claims

that the amount received ... for real and personal property was less than the market value thereof at the time of the evacuation of the owner.⁶⁵

The second version empowered the Commission to inquire into claims that,

⁶¹ Later, when Japanese Canadians and their allies called for the claims to be expanded, Gibson explained that compensation must be considered in the broader landscape of Canadian politics. Veterans, he explained, had also abandoned their businesses during the war when they went to fight for Canada. To compensate Japanese Canadians in an analogous circumstance, he argued, would be perceived as privileged treatment. He said that, in this light, their claims were not realistic. Letter to Henry I. Bird from Gibson, 11 July 1947 LAC, RG117, vol. 2817, file 55908 part 8: “Japanese Property Claims Commission”; Letter to Bird from Gibson, 23 July 1947, LAC, RG117, vol. 2817, file 55908 part 8: “Japanese Property Claims Commission.”

⁶² Report, “JAP 5”, 27 March 1947, LAC, MG31 E87, vol. 1, file: “Japanese in Canada 1 of 6.” These edits were likely made at the Cabinet Committee on Japanese Questions meeting, 2 April 1947. Minutes, Cabinet Committee on Japanese Questions, LAC, RG2 B2, vol. 84, file J-25-1: “Japanese in Canada. 1947-49.”

⁶³ Minutes, Cabinet Committee on Japanese Questions, LAC, MG31 E87, vol. 1, file: “Japanese in Canada 1 of 6.”

⁶⁴ Letter to Minister of Justice from Varcoe, 22 April 1947, LAC, RG117, vol. 2817, file 55908 part 2.2: “Japanese Property Claims Commission.”

⁶⁵ *Ibid.*

by reason of the failure of the Custodian to exercise reasonable care in the management of disposition of the real and personal property vested in the Custodian...the amount received by him for such property was less than the market value thereof at the time of the forced uprooting of the owner.⁶⁶

By measuring loss according to the discrepancy in market value from the time of “evacuation,” the proposed terms followed the American precedent that many civil liberties groups called for. The qualification in the second version directly addressed claims for failure of custodial care but, as Wright had proposed, also limited claims to those that could be directly tied to the Office of the Custodian’s management. It was a careful response to Japanese Canadians’ calls for compensation. At the meeting on April 28, the Committee agreed to follow the second option.⁶⁷

By May 1947, the Cabinet Committee on Japanese Questions was prepared to address Japanese Canadians’ claims to property losses. Under their purview, loss was a matter of Custodial care. The terms allowed claims against the devaluation of property that occurred between the first uprooting in February 1942 and sales from 1943 onwards. But if the terms followed the American precedent to evaluate property loss arising from the forced uprooting, they used the unique element of Canadian policy—the Office of the Custodian—to narrow the arena of culpability. On the morning that the terms would be approved, the Prime Minister’s secretaries circulated a variation of the terms that measured loss according to value *at the time of sale*.⁶⁸ This proposal excluded losses arising from

⁶⁶ Ibid., [My italics].

⁶⁷ Memorandum for the Cabinet by R. Ranger, 28 April 1947, LAC, RG2 B2, vol. 66, file C-20-5: “Cabinet documents from between 1944-1949. [nos. 416–520, 1947].”

⁶⁸ Baldwin claimed that the two existing alternatives reflected the same basic concept and that neither captured the sentiment expressed in the Committee meetings. Letter to Mitchell from Baldwin, 30 April 1947, LAC, RG2 B2, vol. 84, file J-25-1: “Japanese in Canada. 1947-49 (2)”;

changes in markets between the forced uprooting and the time of sale. Despite the option to further narrow the terms, the Cabinet Committee approved the version with *reasonable care* and *at the time of evacuation*.⁶⁹ Cautious to present a consistent message in their policy, Cabinet sent the approved terms of reference to King to confirm that they were consistent “with the reference made in [his] public statement” in January, and approved the Order in Council.⁷⁰ This was the order that Cabinet, given Japanese Canadians’ claims for compensation, public criticism, and pragmatic concerns, deemed reasonable.

As the Office of the Custodian tried to evade an embarrassing inquiry, cabinet members and policy writers designed the Commission to uphold an appearance of state accountability. With the proposed Commission in order, it seemed as though Cabinet was moving past the wartime policies. Commenting in relation to ongoing debates in the House of Commons over the continued “discriminatory regulations” that May, Gordon Robertson made reference to the strategy behind the Commission:

If the Commission to handle compensation is reasonably successful, I think the government will have come out of an embarrassing and difficult problem as well as could have been expected.⁷¹

By mid-May, Cabinet was reasonably satisfied with their proposed commission and, believing that it would quell the mounting calls for justice, was prepared to pass it as law.

It would be a contained, manageable inquiry. The Order in Council was approved to

Memorandum for Heeney from R.G. Robertson, 29 April 1947, LAC, RG2 B2, vol. 84, file J-25-1: “Japanese in Canada. 1947-49 (2).”

⁶⁹ Cabinet conclusions, 1 May 1947, LAC, RG2 B2, vol. 84, file J-25-1: “Japanese in Canada. 1947-49. (2)”; Cabinet conclusions, 10 May 1947, LAC, RG2 B2, vol. 84, file J-25-1: “Japanese in Canada. 1947-49 (2).”

⁷⁰ Letter to King from Heeney, 1 May 1947, LAC, RG2 B2, vol. 84, file j-25-1: “Japanese in Canada. 1947-49. (2).”

⁷¹ Letter to N.A. Robertson from R.G. Robertson, 13 May 1947, LAC, MG31 E87, vol. 1, file: “Japanese in Canada (1 of 6).”

investigate claims for property loss *at the time of evacuation* as a result of the Custodian of Enemy Property not exercising *reasonable care* in the sale of their property. Justice, in these terms, would be a matter of procedural accountability. Before the Order in Council was formally passed, the Office of the Custodian, however, would have a final opportunity to narrow the terms.

Intervention

The debates over the proposed inquiry did not simply occur within Cabinet Committee meetings. As Cabinet designed the terms of reference, Japanese Canadians and their allied advocacy groups campaigned for an inquiry that would compensate their losses. This continued an organized campaign for compensation that began in 1942, when Japanese Canadians learned that their property was placed in the hands of the Office of the Custodian.⁷² By late 1946, the CCJC was making concerted efforts to gather evidence of Japanese Canadians' property loss and claim compensation.⁷³ The specificity of King's

⁷² Adams, Stanger-Ross, and the LOI Collective, "Promises of Law," 696–98; Adachi, *The Enemy That Never Was*, 324–25; Sunahara, *The Politics of Racism*, 136; Bangarth, *Voices Raised in Protest*, 145.

⁷³ The organized campaign for property compensation began in 1946. It built on the momentum garnered in the fight against the policy of deportation of Japanese Canadians that emerged in the year prior. Riding the wave of opposition, the CCJC prepared a campaign to demand compensation. They collaborated with the Japanese Canadian Committee for Democracy, who designed a survey to evaluate property losses in the Toronto area. Letter campaigns against the discriminatory policies had long included calls for fair compensation for economic harms. The evidence from the survey would prove their losses. When the Privy Council in London announced that the deportation Orders in Council were legal on December 2, 1946, the CCJC called on the government to rescind the orders, end restrictions, and announced that "fair compensation will be made for the grievous property losses that [Japanese Canadians] have sustained through no fault of their own." Co-Operative Committee on Japanese Canadians news bulletin, "A Call to Action", 14 September 1946, LAC, MG30 D200, vol. 1, file 5: "CCJC: News bulletins, 1946-48"; "Economic Loss Survey of British Columbia Evacuees", 30 November 1946, LAC, MG30 D200, vol. 1, file 10: "File 10 Memoranda: Japanese Canadian organizations 1946-1950 NJCCA, Slovan Valley Nisei Organization, JCCD"; Press release by the Co-Operative Committee on Japanese Canadians,

January 24 statement alerted them to the possibility of a limited inquiry. The statement tied any losses to the actions of the Office of the Custodian, a qualification that excluded substantial claims Japanese Canadians were submitting to government. Immediately, the CCJC called for clarification of “the type of machinery required to ensure that the promise of fair treatment is implemented.”⁷⁴ The CCJC offered their existing research into Japanese Canadians’ losses to inform the design of the proposed Commission.⁷⁵ When Andrew Brewin (the CCJC’s lead lawyer) met with Colin Gibson in early March, he argued that the Commission must follow the American precedent, at the very least, to attain some measure of justice.⁷⁶ “As I told you it is our very strong feeling,” he subsequently wrote, “that the Prime Minister’s promises for fair treatment of the Japanese Canadians in regard to property cannot be effectively carried out unless the American precedent is followed.”⁷⁷

Letters from Japanese Canadians, allied organizations, church groups and sympathetic

undated, LAC, MG30 D200, vol. 1, file 2: “CCJC: Agendas, 1947-1950.” Sunahara, *The Politics of Racism*, 136. For examples of claims submitted by property owners in the Slocan Valley in 1946: LAC, RG27, vol. 653, file 23-2-6-9 part 1: “Compensation for Japanese Evacuees.”

⁷⁴ Letter to King from Brewin, 30 January 1947, LAC, RG117, vol. 2817, file 55908 part 2.1: “Japanese Property Claims Commission”; Letter to Shears from Brewin, 17 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.2: “Japanese Property Claims Commission.”

⁷⁵ Letter to Shears from Brewin, 17 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.2: “Japanese Property Claims Commission.”

⁷⁶ Letter to Gibson from Brewin, 2 March 1947, LAC, MG28 V1 (Co-Operative Committee on Japanese Canadians fonds), vol. 2, file 4: “Canadian Civil Liberties Union, 1947”. That spring, Brewin forwarded Gibson the draft bill to create Evacuation Claims commission in the United States, saying that “there is every reason to believe it will become law in this session of Congress”. Letter to Gibson from Brewin, 24 March 1947, LAC, RG117, vol. 2817, file 55908 part 2-2: “Japanese Property Claims Commission.”

⁷⁷ Letter to Gibson from Brewin, 19 March 1948, LAC, RG117, vol. 2817, file 55908 part 2-2: “Japanese Property Claims Commission.”

individuals streamed into government offices throughout early 1947.⁷⁸ The January 24 statement heightened expectations of a commission and Japanese Canadians and their allies pressured Cabinet to make good on the promise.

The demands from the Co-operative Commonwealth Federation (CCF) in the House of Commons had the most direct influence on the terms. Beginning in January, the CCF applied pressure on Parliament for closer examination of the Liberal Government's wartime proceedings. The CCF called for the repeal of Bill 22, the Revised Regulations respecting Trading with the Enemy. This sparked questions about the accountability and transparency of the Custodian's office. The debates digressed into extensive criticism about the Government's treatment of Japanese Canadians during the war. The pressure for accountability came to a head in April.⁷⁹ The debates were fierce, emphasizing government accountability to Canadian citizens—regardless of race—and succeeded in bringing the Custodian's Office under the examination of the Standing Committee on Public Accounts (SCPA) that May.⁸⁰ Cabinet shelved the approved Order in Council, waiting to see the impact of the hearings.

The SCPA hearings offered the public a glimpse of the devastation the wartime policies wrought on Japanese Canadians. Throughout May and June, the Standing Committee examined the Office of the Custodian's conduct, with testimony from

⁷⁸ For examples, see: Letter to T. Tamaki from R.G. Robertson, 10 February 1947, LAC, RG117, vol. 2817, file 55908 part 2-1: "Japanese Property Claims Commission"; Letter from Canadian Legion of the British Empire Service League, 21 February 1947, LAC, RG117, vol. 2817, file 55908 part 2.2: "Japanese Property Claims Commission"; Roy, *The Triumph of Citizenship*, 242.

⁷⁹ Adachi, 324.

⁸⁰ February 18, April 14, April 18, and April 22-24, Thomas Fisher Rare Books Library (hereafter TFRBL), Frank G. Shears papers (hereafter Shears papers), box 14, file 2: "File 2: Canada. Parliament. House of Commons. House of Commons Debates. [v. 86-87], February, 1947-December, 1947."

representatives from the Office of the Custodian and the CCJC. The hearings concentrated on the Veteran's Land Act sales. The representatives from the CCJC—Andrew Brewin, Donalda MacMillan, and George Tanaka—presented shocking evidence of devaluation and sale at bargain rates. Particularly outrageous was the unapologetic testimony from Gordon Murchison, the Soldier Settlement Board administrator, of securing bargain basement rates for the valuable Fraser Valley farms. The many injustices revealed by this inquiry, as Patricia Roy writes, and a sympathetic press fuelled public sympathy for Japanese Canadians.⁸¹ Following the testimony, *The Globe and Mail* reported that the “Fraser Valley land grab” was not an “accident of ineptitude and hate” but was “the result of deliberate policy.”⁸² The hearings revealed a miscarriage of process that resulted in the undervaluation of Japanese Canadians' property and, on June 17, recommended a Commission to investigate the sales.⁸³

The SCPA hearings impacted the proposed royal commission in two ways. First, they fuelled public support for the property issue. To those unaware of Cabinet's existing plans to address the issue, it seemed like a watershed moment that ensured that Japanese Canadians' claims would be addressed. Second, the recommendation provided a last-minute opportunity for the Office of the Custodian to narrow the purview of culpability. Specifically, the SCPA recommended that a commission

inquire into and report upon the claim of any person of the Japanese race now resident in Canada for alleged loss which resulted from the amount

⁸¹ Roy, *The Triumph of Citizenship*, 243.

⁸² “Not as Ordered” *Globe and Mail*, 19 June 1947, LAC, MG28 V1, vol. 3, file 23: “Misc. Clippings 1945-53.”

⁸³ Sunahara, 137.

received by him being less than fair market value of his property *at the time of sale or loss*.⁸⁴

Though the SCPA hearings brought to public attention the scandal of the forced sales and shaped public expectation for an inquiry, the specific phrasing of the recommendation worked in the Office of the Custodian's favour. Cabinet had already approved an Order in Council that measured loss according to its market value *at the time of evacuation*. The Standing Committee's recommendation was more reserved, in one fundamental regard, than what Cabinet had approved. Officials from the Department of the Secretary of State jumped at the opportunity to narrow the terms and changed the proposed Order in Council.⁸⁵

Though the inquiry placed the Office of the Custodian under public scrutiny, it also offered the Department of the Secretary of State a further opportunity to adjust the Commission in its favour. Noting the last-minute amendment to the Order in Council,

⁸⁴ Standing Committee on Public Accounts: Fourth Report, 4 June 1947, LAC, RG117, vol. 2817, file 55908 part 3: "Japanese Property Claims Commission." [My italics.]

⁸⁵ Enclosing a copy of the report to Glenn McPherson, the original Director of the Vancouver Office of the Custodian of Enemy Property, Wright wrote that the "acquittal is pleasing to us all." On Saturday, June 26, Wright, Coleman, and Gibson signed off on a revised Order in Council, striking out "at the time of evacuation" and replaced it with "at the time of sale, disposition or loss." "You will note that the scope of the inquiry is confined to losses," he explained, "which resulted from the amount realized being less than the fair market value. I doubt if this will please the Japanese claimants." Submitting the recommended edits to the Department of Justice, Wright explained that following the wording in the Public Accounts Committee report would "possibly cause less suspicion or criticism than might arise if there is a difference in wording." Council approved the change later that week. Letter to Glen W. McPherson from Wright, 18 June 1947, LAC, RG117, vol. 2817, file 55908 part 3: "Japanese Property Claims Commission.;" Draft letter to Ilsley (unsigned, but likely from Wright), 23 June 1947, LAC, RG117, vol. 2817, file 55908 part 3: "Japanese Property Claims Commission." Letter to Coleman from Heeney, 27 June 27, LAC, RG117, vol. 2817, file 55908 part 3: "Japanese Property Claims Commission.;" Letter to E. A. Driedger from Wright, 30 July 1947, LAC, RG117, vol. 2817, file 55908 part 3: "Japanese Property Claims Commission."

Varcoe reflected on the specificity of the Commission: “The Custodian’s office ... would like to be able to say to the Commissioner that what they did was fair and reasonable (even if it was not, I suppose).”⁸⁶ Varcoe recognized the divergence between Japanese Canadians’ claims and the limited justice the proposed commission offered. He also understood that the Commission served a purpose beyond addressing Japanese Canadians’ claims: it would prove the government’s accountability.

In light of Japanese Canadians’ claims to property loss and compensation, the Order in Council announcing the Commission on July 18 (P.C. 1808) seemed “totally ineffectual.”⁸⁷ Unaware of Cabinet’s prepared Orders in Council, those who followed the SCPA hearings were perplexed when the terms of reference appeared to be narrower than the recommendation.⁸⁸ The CCJC argued that the stipulation to demonstrate a failure of reasonable care placed an “impossible burden” on claimants to prove their losses.⁸⁹ Japanese Canadians and their allies “laid siege to Ottawa” to expand the terms to fully match the recommendation made by the SCPA.⁹⁰ On September 17, they achieved a small success: Cabinet cut the contingency of “reasonable care” from the terms of reference in an amendment, Order in Council 3737. The activism eliminated a restrictive measure within the terms, but the fundamental limitations remained. Extensive categories of loss

⁸⁶ Memorandum from Varcoe, 18 July 1947, LAC, RG2 B2, vol. 249, file j-25-1: “Japanese in Canada. 1945-49.”

⁸⁷ Sunahara, *The Politics of Racism*, 137.

⁸⁸ Letter to Thelma Scrambler from Donald MacMillan, 4 August 1947, MG30 C160 (Grace Thompson collection), file: “Thompson, Grace 1.”

⁸⁹ Press release by the Co-Operative Committee on Japanese Canadians, 24 July 1947, MG30 C160, file: “Thompson, Grace 1.”

⁹⁰ Sunahara, 137. For a description of the CCJC’s correspondence with King and Ilsley that summer, see: Letter to Scrambler from MacMillan, 14 August 1947, LAC, MG30 C160, file: “Thompson, Grace 1.”

were intentionally excluded from the Commission: claims from the nearly 4,000 Japanese Canadians who had been deported, claims for losses arising out of the forced sale of fishing vessels in early 1942, and claims from corporations. Rather than judging market value according to the time of first uprooting, loss would be determined by the market value at the time of sale. Though the amendments relieved (some) of the burden of proof from claimants, the Commission retained its fundamental design.

As of October 1947, the Commission was set to run its course. Informed by Japanese Canadians' claims of property loss and compensation (as outlined by the Office of the Custodian) and the legal grounds for their claims (as outlined by the Department of Justice), the Cabinet Committee designed an inquiry on grounds for which it was willing to take responsibility. In doing so, policy makers re-defined the issue of Japanese Canadians' losses. Any claims were not a matter of unjust policy or discrimination, but simply procedural error. Rather than an admission of wrongdoing, the Commission was framed as an expected step of the government's (purportedly) successful wartime policies. The Commission would teach Canadians how to understand Japanese Canadians' claims of property loss and, in doing so, would prove the state's accountability.

However, the Commission was not a closed case. Despite the control the Cabinet Committee on Japanese Questions had over its design, the Royal Commission would run as an independent investigative body. In this capacity, the Commission could veer from the course set by Cabinet and address Japanese Canadians' claims more fully. It was an undetermined process that would require collaboration between Japanese Canadians, their legal counsel, and the Commission staff.

Procedure

Japanese Canadians had two months to submit their claims to the Bird Commission before the November 30, 1947 deadline. Notifications of the inquiry circulated in newspapers. To those Japanese Canadians whose claims fell within the purview of the Commission, the Canadian state offered the opportunity to testify to its wrongdoing. Though there was initially a considerable push to boycott the restrictive terms, Japanese Canadians agreed to go forward with the Commission. Those who submitted claims did so under protest, Adachi writes, with hope “that the Commission would uncover sufficient evidence so that the investigation would indeed be enlarged before its termination.”⁹¹ At the very least, that was the strategy of the CCJC, who would lead the legal representation of the Bird Commission claimants. Having campaigned for a different commission, the solicitors now faced co-operating with the government to pull off a successful commission for their clients. Representing a large number of claimants, the CCJC balanced the interests of individuals with those of the entire body of claimants, in addition to those whose claims were excluded from the Commission. They would use their expertise to shape the Commission in the claimants’ favour. As government officials planned to put the property issue to rest, Japanese Canadians hoped to open it up for closer investigation. Their lawyers became mediators within the commission structure, yet, in the process of representing claimants in good faith, they became implicated in a much larger process that silenced Japanese Canadians’ articulations of value, loss, and compensation.

⁹¹ Adachi, 326.

The National Japanese Canadian Citizens Association (NJCCA) and the CCJC formed a coalition to represent Japanese-Canadian claimants.⁹² Reflecting the reorganization of Japanese-Canadian community leadership after the forced uprooting, the NJCCA formed in August 1947 in preparation of the Bird Commission. The CCJC's leadership in the campaign against deportations carried over into the pursuit of property compensation.⁹³ Together, the NJCCA and CCJC set up the technical, legal, and financial machinery to represent Japanese-Canadian claimants. The CCJC represented most claimants, in addition to presenting expert surveys, analyses, and valuations. Neither organization acted alone: in campaigning for and executing the Bird Commission, the organizations drew upon the network of Japanese-Canadian and allied groups across the country that emerged during the campaign against deportations.

The CCJC assembled a team of legal representation for Japanese Canadians from this network.⁹⁴ Two lawyers would represent claimants in each province. The legal team reflected a range of connections to Japanese Canadians: the Ontario lawyers came to represent Japanese Canadians through civil rights advocacy, for instance, while those from British Columbia, like J. Arthur MacLennan and Robert McMaster, had direct experience

⁹² This included setting up a common fund into which claimants paid, if possible, one per cent of their total claim. This went towards legal costs and assured an adequate presentation of all claims. Sunahara, 138.

⁹³ Miki, *Redress*, 112–14; Bangarth, *Voices Raised in Protest*, 146.

⁹⁴ Roy Miki and Peter Nunoda ascribe (at least partial) culpability for the Commission's failings to the CCJC. Miki and Nunoda simultaneously critique the CCJC (and particularly Andrew Brewin) for domineering leadership and the *Nissei* (second-generation Japanese Canadian) leadership for their submission to the Committee's advice. Drawing from the meeting minutes and regular bulletins of the CCJC, Miki and Peter Nunoda emphasize the hierarchical leadership and paternalism of the organization in negotiations around compensation and commission process. Miki, *Redress*, 106; Nunoda, "A Community in Transition and Conflict."

representing clients in relation to the dispossession and the deportations. George Tamaki, working in Saskatchewan, was the only lawyer of Japanese descent. The CCJC formally represented just over 1,100 claimants. Gladstone Virtue, a solicitor from Southern Alberta with longstanding connections to Japanese Canadians in the region, represented two hundred clients and the remaining hundred claimants hired legal representation individually.⁹⁵ Though the NJCCA and CCJC prepared the legal arguments for the claimants, effectively representing Japanese-Canadian claimants entailed the co-operation from a team of solicitors across the country.

The Bird Commission officially began on December 3, 1947, when Commissioner Justice Henry I. Bird, the Dominion counsel, and Japanese Canadians' counsel met in Vancouver to establish the opening arguments. They then travelled to Kamloops, where the hearings opened on December 8. The first claim belonged to Ito Imada, an *issei* (first-generation) mother who had built a life in Canada over the course of thirty years.⁹⁶ She had lost her family's farm in the Fraser Valley, and with it, all her belongings. She claimed the value of her farm at \$7,935, more than double what the Soldier's Settlement Board paid

⁹⁵ Representing this group of claimants, Virtue attended many critical meetings with the CCJC and commission staff.

⁹⁶ Prior to being forcibly uprooted and interned in 1942, Imada ran a successful farm in Haney; the purchase of this farm property brought the stability and financial security that she had worked towards for years. Imada's personal story of hardship—her husband had died only a year prior—made hers a sympathetic case, likely convincing the Co-operative Committee solicitors to select it to test the waters of the Commission. Michiko Midge Ayukawa, "Bearing the Unbearable: The Memoir of a Japanese Pioneer Woman" Master's thesis, University of Victoria, 1990, 16.

for it in 1944.⁹⁷ In front of the intimidating audience, she testified that the government had sold her property for less than fair market value.⁹⁸

Her case should have been straightforward: the Director of the Soldier Settlement Board had publicly admitted underpricing the Fraser Valley properties earlier that year at the SCPA hearings. But Imada's hearing stalled and was postponed. Her nervousness compounded by her difficulty understanding the interpreter, Imada was unable to answer the line of questioning.⁹⁹ Despite her intimate familiarity with her home and property, she could not provide the details of property value for the inquiry. The claimants who followed in this first round of hearings proved similarly "unsatisfactory" to the Commissioner; they could not respond to the questions about market value, could not understand the translator, and spoke against the line of inquiry.¹⁰⁰ The press reported on "tangled," "confusing" claims and "applications confused and intricately based" that threatened to put the Commission behind schedule.¹⁰¹ "Jap Commission May Set Record" announced the *Vancouver News Herald*, predicting it would last three years.¹⁰² It was a disconcerting start to the Bird Commission.

⁹⁷ That is, \$3,004.46.

⁹⁸ Imagining Imada standing at the Bird Commission after the traumatic upheavals of internment and dispossession, Ayukawa writes that "it took a great deal of courage for Mrs. Imada with her deep-seated resentment and disillusionment to appear before such an intimidating audience." Ayukawa, "Bearing the Unbearable," 16, 26.

⁹⁹ Hearing transcript, 8 December 1947, LAC, RG33 69 (Bird Commission fonds), vol.1, case file 1: "Imada, Mrs. Ito (Kamloops)," 10–12.

¹⁰⁰ See: LAC, RG33-69 volumes 1 and 2.

¹⁰¹ "Confusing Jap Claims Delay Probe", 10 December 1947, *The Province*; "Japanese Claims Bring Tangled Problems Before Commission", 10 December 1947, *Victoria Daily Times*.

¹⁰² "Jap Commission May Set Record", 12 December 1947, *Vancouver News Herald*.

When the hearings opened, critical elements of the Commission were still open to change. Negotiations over the interpretations of the terms continued throughout the initial months of hearings. Well into February, for instance, Bird considered recommending to the Department of Justice that the terms of reference be changed to evaluate loss from the time of uprooting (rather than market value at the time of sale).¹⁰³ Throughout the proceedings, the CCJC tried to bring categories of claims into the purview of the Commission. They achieved early success with an amendment to accept corporate claims in January 1948.¹⁰⁴ The CCJC's attempts to expand the terms to admit claims for accounts receivable and goodwill, however, were less successful. Likewise, Bird remained undecided over the date to determine market value until February, but ultimately rejected the proposal. For the fishing vessels sold by the Japanese Fishing Vessel Disposal Committee, prior to vesting in the Office of the Custodian, the CCJC used an extended strategy. The claimants' counsel submitted claims in this category, knowing that they would be rejected in the hearing. With the submission, however, the counsel built a body of evidence to which they would later refer in appeals to the Minister of Justice.¹⁰⁵ In this

¹⁰³ "I was quite surprised at his attitude that he might be ready to hear evidence that the Custodian should be responsible for deterioration in some cases through lack of care, although this might not be strictly within the terms of reference," Brewin wrote to McMaster. Though this was rejected, McMaster later wrote that Bird heard evidence relating to exceptional cases. Letter to McMaster from Brewin, 26 January 1948, LAC, MG32 C26 (Francis Andrew Brewin fonds), vol. 1, file 1-18: "corr Jan 1948"; Telegram to Brewin from McMaster, 9 February 1948, LAC, MG32 C26, vol. 1, file 1-19: "corr Feb 1948."

¹⁰⁴ Order in Council PC 242-1948, TFRBL, Shears papers, box 5, File 1: "Bird, Henry Irvine, Report upon the investigation into claims of persons of the Japanese race pursuant to terms of order-in-council P.C. 1810. [copy 1], [1950]." Sunahara, *The Politics of Racism*, 139.

¹⁰⁵ Letter to Iisley from Brewin, 30 June 1948, MG32 C26, vol. 1, file 1-24: "Corr. June 1948"; Letter to St. Laurent from Brewin, 26 August 1948, MG32 C26, vol. 1, file 1-26: "Corr. Aug 1948"; Letter to Brewin from McMaster, 8 September 1948, MG32 C26, vol. 1, file 1-27: "Corr. Sept 1948."

case, the claimants' counsel used the Commission hearings to demonstrate the need to expand the terms.

The task of hearing and evaluating over 1,400 claims presented a different challenge. Japanese Canadians' counsel and the government staff alike feared that, were the hearings to continue at the rate they were going, they faced a multi-year inquiry. For Japanese Canadians, that meant an even longer delay before they received compensation. For the government, it threatened a costly (and potentially embarrassing) inquiry. In the hearings, Japanese Canadians and their lawyers built a body of evidence from which Commissioner Bird would judge their claims for compensation. Given the practical urgency of compensation, however, the commission staff agreed that the hearings would have to be streamlined. In this process, Japanese Canadians' lawyers became mediators between their clients and the Commission staff, challenged with adapting the Commission in the claimants' favour while appeasing the government officials' interests.

After the initial hearings, the CCJC lawyers reported on Bird's reaction to their arguments but also his preferences and interpretations in court. Bird seemed sympathetic to the claimants, but the solicitors cautioned the team to respect the purview of the Commission. "It appears that you did an excellent job in convincing the Commissioner that a generous view should be taken of all the claims submitted," one lawyer wrote to Andrew Brewin, "And that the utmost informality should prevail in hearing these claims." But he warned that the "questions of the propriety of the actions of the Custodian in his Office"

were not the subject “at hand” and that they must work under the terms as established.¹⁰⁶ Tamaki also warned Brewin that Bird would “not be interested in claimants who seek to take this opportunity to criticize the evacuation.”¹⁰⁷ The solicitors were cautious not to overstep the Commission's patience, hopeful about the judge hearing their claims but wary of the limited arena in which they worked.

Given the delay of the first hearings, the Commissioner and legal counsel agreed that they needed to constrain Japanese Canadians' testimony to the questions at hand: the market value of their property. This meant restricting narratives of ownership and investment, but also sometimes prompting claimants to consider their property in a new way. As most Japanese Canadians had not planned to sell their property when they were uprooted, few were conversant in the metrics of market value.¹⁰⁸ By adapting their presentations, Brewin hoped the Commissioner would discover that their

representations [were] more and more useful to him and that he will come to recognize that his task would have been absolutely hopeless if it had not been for the work of the Committee. This may well put him in a friendly mood in respect to the claims.¹⁰⁹

From the perspective of the CCJC, adapting the Commission procedure was a way to maintain open negotiating relations with the Commissioner. They hoped that by appearing

¹⁰⁶ Letter to Brewin from Schumatcher, 22 December 1947, LAC, MG32 C26, vol. 1, file 1-18: “Corr. Jan 1948.”

¹⁰⁷ Letter to Brewin from Tamaki, 30 December 1947, LAC, MG32 C26, vol. 1, file 1-18: “Corr. Jan 1948.”

¹⁰⁸ Notes on Joint Committee Meetings of the Following Stated Committees on the Matter of Evacuation Losses Claims, 4 February 1950, LAC, MG30 D200, vol. 1, file 10: “Memoranda: Japanese Canadian organizations 1946-1950 NJCCA, Slocan Valley Nisei Organization, JCCD.”

¹⁰⁹ He continued to remark on Bird's preferences as a judge: “I have also come to agree with you that he does not seem to be a judge who likes technical arguments and I think we should keep these to a minimum.” Letter to McMaster from Brewin, 26 January 1948, LAC, MG32 C26, vol. 1, file 1-18: “Corr. Jan 1948.”

helpful to the Commissioner, he would be more likely to consider expanding the purview of the Commission.

An early solution to the problem of lengthy hearings was to shift claimants' testimony to forms.¹¹⁰ After discussing strategy with representatives from Japanese Canadians' legal counsel, Brewin instructed the CCJC to create forms wherein claimants could provide information on their property. "At the original hearings in Kamloops," Brewin reported, "considerable experience was gained looking to the shortening of the proceedings. One suggestion that was made was that certain evidence could be put in writing and prepared, before oral evidence is taken."¹¹¹ The forms limited claimants' testimony, their opportunity to interject, and eliminated the complications of the forced uprooting in which many of their claims were tangled. The fields limited the submissions to the details of market value and the Custodian's management.¹¹² With this streamlining, the claimants' counsel hoped to present Japanese Canadian's claims more effectively for Bird.

As a further measure to streamline the hearings, McMaster proposed reading from the claimants' forms, which were completed in advance.¹¹³ This circumvented the

¹¹⁰ Another was the creation of sub-Commissions to hear hearings. These, heard by two sub-commissioners, amounted to approximately 390 hearings. See: Bird Commission Finding Aid, LAC, RG33 69.

¹¹¹ Brewin circulated copies of this report to all CCJC lawyers. Letter to Ritchie & Huckvale from Brewin, 13 January 1948, MG32 C26, vol. 1, file 1-18: "Corr. Jan 1948."

¹¹² Memorandum for Mr. Tanaka, *undated*, MG30 E266 (Saul Mark Cherniack fonds), vol. 1, file 1-2, "Correspondence October- December, 1947."

¹¹³ The legal aids sat with the claimants, often in a hotel room, to record what they knew of their property's value and dispossession. Throughout the Commission proceedings, the lawyers circulated notes on how best to prepare the files. For instance, after representing a round of hearings in Alberta, Virtue recommended using photographs whenever possible, so long as they worked in the claimants' favour. Another example of these strategies are the case files prepared by the legal

challenges of language and complicated testimony (Bird was reluctant to hire Japanese-Canadian translators, instead using translators who were trained only in classical Japanese). The “Additional Comments, if any” section in the forms, where claimants and their legal aids recorded historical accounts of the claimants’ property ownership and dispossession, were particularly useful in this regard. The claimants’ counsel hoped to create a format in which all claims would be heard and the pressure of time, from multiple directions, appeased. If it was an efficient strategy to gather evidence, the forms further marginalized Japanese Canadians’ testimony from the hearings.

By the second month of hearings, the adjustments seemed to be working. McMaster remarked that “Mr. Justice Bird was good enough to comment at the hearing that he very much appreciated the statement as a time saving device.” “He also indicated privately,” McMaster continued, “that he could appreciate the continued use of the forms not only in the Province but in the other Provinces.”¹¹⁴ As the Commission travelled across the country, the forms became an expected feature of the hearings. When the Commission arrived in Toronto that spring, Bird chastised Brewin for not completing the forms like the lawyers in British Columbia and Manitoba. “However,” Brewin recounted, “although the complaint was made that we were less efficient in Toronto than in any other part of Canada,

aid who supported the claimants’ counsel in British Columbia and Manitoba, Robert Leckie. His repeated phrasing suggests the approach that he judged the most effective in claiming property loss. In the “Additional comments, if any” section, Leckie often began statements with phrasing that the appraiser was “errant,” “wrong,” or that he “failed to describe the buildings on the property.” Letter to Fred Nichikawa from Cherniack, 1 April 1948, LAC, MG30 E266, vol. 1, file 1-4: “Correspondence April 1948”; For examples of how Leckie prepared claims, see: LAC, RG33 69 case files 6, 195, 99, 78, 86, 83, 119, 1053, 1056.

¹¹⁴ Letter to Brewin from McMaster, 27 January 1948, LAC, MG32 C26, vol. 1, file 1-18: “Corr. Jan 1948.”

on the whole we were able to get through the month fairly satisfactorily, certainly without any serious eruptions.”¹¹⁵ Though the claimants’ counsel and government staff felt the pressure of time, the CCJC had to both represent their clients effectively and ensure the Commission ran smoothly. They were, at times, contradictory tasks.

The forms offered subtle opportunities to include Japanese Canadians’ narratives of the property value in their hearing evidence and case files. In the “Additional Comments, if any” section, claimants and their counsel took some liberty in expressing the complex value of their property and the chaotic conditions of their dispossession. When McMaster read Japanese Canadians’ evidence in the hearings, he affirmed their narratives and ensured their place on record. In Fujino Yamamoto’s hearing, for instance, McMaster read directly from her entry, which the legal aid wrote in first person:

Property was owned by late husband. I don't know anything about market value ... Although we were getting old for operating the farm, we did not want to sell but had the idea that some day we might subdivide for residential holding so we could keep our home ... We always cared for the house and property well and in later years had the assistance of our young grandsons and a nephew who lived with us and kept the farm up.¹¹⁶

In addition to a narrative of investment and sacrifice, McMaster entered into the Commission record that Yamamoto’s property was sold without her consent. In Hideaki Hirowatari’s hearing, McMaster explained that the farmer disclosed that he had “no special

¹¹⁵ Letter to Brewin from McMaster, 1 June 1948, LAC, MG32 C26, vol. 1, file 1-24: “Corr. June 1948.”

¹¹⁶ Hearing transcript, LAC, RG33 69, vol. 10, file: “181 Yamamoto, Mrs. Fujino (Vernon),” 3. Yamamoto’s case file contained several photos of her family’s home. One photo is an outlier, wherein the building is barely visible behind a group of thirty people. With elders sitting in front, it is a formal portrait of a family, dressed in formal wear. Rather than market value, the photo connotes establishment, prosperity, and community. Paired with her narrative of loss read by McMaster, Yamamoto’s case file composed a claim for loss that extended beyond market value.

knowledge of the value but states that it maintained their family, which was rather a large one.”¹¹⁷ Likewise, Ino Sasaki’s standardized claim form testified to value beyond the market:

[Sasaki’s property] supported a prosperous greenhouse and nursery business from which the claimant and her husband and four children made a reasonably good living. It represents an investment of time and labour over a period of ten years.¹¹⁸

Having little to do with market value, these stories made claims for value that evoked loss beyond the restricted terms of reference. The stories of investment, sacrifice, family, and future aspirations conveyed loss beyond market value. The solicitors recognized the breadth of their claimants’ losses and included their narratives of value, loss, and dispossession to craft compelling cases for compensation. The standardized forms and evidence offered a narrow window to submit narratives that extended beyond the terms of reference as evidence.

Yet these were only small glimpses into the extent and significance of the dispossession for Japanese Canadians. Overwhelmingly, the concessions to streamline the hearing process further marginalized Japanese Canadians’ articulations of loss and claims to compensation. (In many hearings, claimants’ testimony is nearly absent, appearing simply as “yes” and “no” answers by the translator.) The letters of protests that the Office of the Custodian of Enemy Property collected throughout the dispossession illuminate how Japanese Canadians articulated the specific and complex harms of property loss that defied reduction to market value.¹¹⁹ More specifically, the claim forms circulated by the Japanese

¹¹⁷ Appraisal form, LAC, RG33 69, vol. 4, case file: “69 – Hirowatari Hideaki (Kamloops).”

¹¹⁸ Appraisal form, LAC, RG33 69, vol. 53, case file: “1058 - Sasaki, Mrs. Ino (Toronto).”

¹¹⁹ Stanger-Ross, Blomley, and the LOI Collective, “My Land Is Worth a Million Dollars.”

Canadian Committee for Democracy (JCCD) in 1946 show what Japanese-Canadian organizers considered a reasonable arena for debate. Though the JCCD adopted the metrics of property valuation, the form included categories that the terms intentionally excluded, including “assessed value at time of evacuation,” goodwill, and loss of revenue. Importantly, the form also included the field, “Was this property sold with your consent?”¹²⁰ The simple question addressed the breach of their rights as property owners, demanding recognition for the “violation of foundational norms of civic and social relations in a society of property ownership.”¹²¹ Were claimants granted the opportunity to testify to their dispossession, a very different narrative would have emerged. Instead, the hearing process marginalized Japanese Canadians’ articulations of loss and calls for meaningful compensation by centering on procedural accountability.

Familiar with rumours that Japanese Canadians over-valuated their property and over-claimed their losses, the CCJC was cautious to craft claims in a way that seemed “reasonable” to Bird and the sub-commissioners. Over the course of the hearings, the solicitors rejected claims with sparse evidence and carefully edited others down (often in the hearings themselves) to a reasonable valuation.¹²² Saul Cherniack, the lead legal

¹²⁰ Economic Loss Survey of British Columbia Evacuees, LAC, MG31 F8 (Minuro Takada fonds), vol. 1, file: “Economic Loss Survey 1947.” Stanger-Ross and Blomley convey how the forced sale of Japanese Canadians’ property breached the foundational political relations that constitute property ownership. The inclusion of consent in the form addressed the fundamental “contract with the state that was violated by the dispossession.” The authors emphasize the language of consent: “Rather than an absolutist conception of property as a zone from which the state is excluded, by right, consent here implies a structured and predictable relationship between state and owner, ideally governed by norms of mutuality, equality, respect, and dignity.” Stanger-Ross, Blomley, and the LOI Collective, 739–40.

¹²¹ Stanger-Ross, Blomley, and the LOI Collective, 748.

¹²² In correspondence with Japanese Canadians about their claims, Brewin, McMaster, and Cherniack’s records contain evidence of this process. The hearing transcripts also show the process

counsel in Manitoba, later described this element of strategy, saying that even as the CCJC recognized that Japanese Canadians' loss extended beyond the metrics of market value, the solicitors "very diligently tried to bring people down to a realistic [claim]." ¹²³ The rationale, Cherniack explained, was three-part:

... firstly, that the decisions should not be such that "these people are being unreasonable in their claims." ... Secondly, to build expectations. To be fair, no lawyer would let a client have expectations that were way beyond his means. But I think, mainly, we didn't want to turn Bird against this whole thing by hearing claim after claim that was exaggerated. So, we made a real effort to be realistic, most of our people agreed. ¹²⁴

Cherniack's rationale had merit: in a report to Commissioner Bird in spring 1948, a sub-commissioner laid out his judgment of whether each claimant was "truthful," "reliable" or "demanding excessive sums." ¹²⁵ Anticipating this unofficial metric, the CCJC edited Japanese Canadians' claims to be legible and legitimate to the state. In the already limited Commission, the CCJC further narrowed Japanese Canadians' claims.

As the counsel for the claimants strategized to maintain open lines of negotiation with Commissioner Bird, they were attentive to the influence of the defence on his decisions. In February, McMaster noted what he saw as a particularly troubling

of amendments. Of 72 claims sampled (six of which were abandoned), the claimants' counsel amended 36 claims when they came before Commissioner Bird. See: Nikkei National Museum, Campbell, Brazier, Fisher and McMaster Barristers and Solicitors fonds, series: "Japanese Claims: List of Claims Heard at Centres"; LAC, MG30 E266, vol. 1, file 1-3: "Correspondence January – March, 1948", file 1-4: "Correspondence April 1948."

¹²³ Saul Cherniack, interviewed by unknown, 1976, tape 2010.23.3.4.29 (part 1), Japanese Canadian Oral History Collection, Simon Fraser University Digital Collections, Vancouver, B.C. <http://digital.lib.sfu.ca/johc-413/interview-saul-cheriak>.

¹²⁴ Ibid.

¹²⁵ "Japanese Property Claims Commission, Lethbridge Sub-Commission. Notes of Sub-Commissioner, His Honour Judge R.M. Edmanson.", October 1948, LAC, RG117, vol. 2818, file: 55908 part 7: "Japanese Property Claims Commission."

intervention from Glenn McPherson, the former Director of the Custodian's Office. "To my sorrow," McMaster wrote, he found that he could not

talk frankly to him off the record – it ends up in the judge's ears; he's a good rationalizer; he's a loyal defender of the Department; he's interested in the political aspects of this deal not in justice; and a few other things. As far as he is concerned he looks on this as a game of poker.¹²⁶

McMaster's encounter with McPherson shook his trust in the Commission process. If there was a sense of collaboration and goodwill with the Commissioner, McPherson's politicking suggested that there were concealed factors influencing the proceedings. "From now on my cards will stay close to my chest," he concluded.¹²⁷ McPherson's appearance was a reminder that the pursuit to gain Bird's favour was not exclusive.

While the claimants' counsel adjusted the hearings, the government advocated eliminating the hearings altogether. McPherson, in fact, was doing considerable talking "off the record," but it was to the upper levels of government. He proposed his own solution to the problem of a prolonged commission.¹²⁸ Despite the Commission "proceeding with greater rapidity than in the past," government consul was "greatly disturbed at the

¹²⁶ Letter to Brewin from McMaster, 14 February 1948, LAC, MG32 C26, vol. 1, file 1-19: "corr Feb 1948."

¹²⁷ Ibid.

¹²⁸ McPherson posited himself as an interlocutor and mediator who could aid Commissioner Bird and report to the Departments of Justice and of the Secretary of State. Letter to Coleman from McPherson, 4 February 1948, UBC Rare Books and Special Collections (hereafter UBC RBSC), Glenn W. McPherson fonds (hereafter McPherson fonds), box: 2, file 2-7: "Correspondence, memorandum, newspaper clippings, 1939-1948, 1985"; Letter to McPherson from Coleman, 13 February 1948, UBC RBSC, McPherson fonds, box: 2, file 2-7: "Correspondence, memorandum, newspaper clippings, 1939-1948, 1985"; "Report re Japanese Property Claims Commission," Glen McPherson, *undated*, UBC RBSC, McPherson fonds, box: 2, file 2-7: "Correspondence, memorandum, newspaper clippings, 1939-1948, 1985." For a fuller portrait of Glenn McPherson and his role as the Executive Director of the Office of the Custodian, see: Jordan Stanger-Ross, Will Archibald, and the LOI Collective, "The Unfaithful Custodian: Glenn McPherson and the WWII Dispossession of Japanese Canadians," *Journal of American Ethnic History* 37, no. 4 (forthcoming summer 2018).

magnitude of the problem of presenting 1400 defenses.” In February, he met with Bird to address the problem, and they determined two potential solutions. The first was to hear 1,400 individual defences, a task that would likely last into late 1949. The second was to make general recommendations relating to the various categories of claims, drawing from statistical information “extracted from the files and the transcripts of evidence.” He proposed that the Commissioner “make a recommendation as to a percentage to be paid across the board” to a category of claim. Bird would propose a similar solution later that year. For the government officials, shortening the Commission would hasten putting the issue to rest.

Initially, the CCJC guarded against significant refinements proposed in the name of efficiency. In March 1948, CCJC lawyer J. Arthur MacLennan reflected on an exchange that had “shaken [his] faith” that “Bird intended to make a fair and impartial survey and recommendation.” In discussion of the Commission’s workload and the difficulty of further streamlining claims, Bird proposed to dispense with hearings altogether. MacLennan recounted that Bird said that “he had been through about the first fifty claims and he had come to the conclusion that in about one-half of them at least there was really no claim at all against the Custodian.”¹²⁹ MacLennan was astonished “such a procedure should even be considered” and that the Commissioner could arrive at this conclusion, “without any rebuttal evidence that there was no claim in any case before him.” MacLennan

¹²⁹ Instead of continuing the hearings, Bird proposed that he give the Crown Counsel a list of cases where he had discerned “no claim” and have Crown Counsel “argue the question of a non-suit at the present stage.” Letter to Brewin from MacLennan, 16 March 1948, LAC, MG32 C26, vol. 1, file 1-20: “corr Mar 1948.”

rejected Bird's proposal, reminding him that the evidence from valuers had yet to be submitted. Bird dropped the proposal, but it was another incident that warned the claimants' counsel that hearings were under threat.¹³⁰

The claimants' counsel defended the hearings, in their value for the claimants and in producing evidence. To Brewin, the proposal was "very disturbing." It indicated, he wrote to MacLennan, "a lack of understanding of what is involved in a public inquiry, in which it is the duty to procure all the facts." Nonetheless, he advised staying the course. The best approach, he said, was to "change [Bird's] opinion through the evidence as to valuations ... and the analysis of individual claims when all the evidence is in."¹³¹ Aware that the government's priorities likely pulled the Commission away from the claimants' favour, the legal counsel pushed against the proposals to shorten the hearings. The hearings were integral to building a case for the claimants.¹³²

¹³⁰ Adachi also noted that, as early as February, the "CCJC lawyers had been worrying that the entire issue would be determined on the basis of expediency." Adachi described the federal government officials' concern to "whitewash" the Office of the Custodian. Adachi, *The Enemy That Never Was*, 406N53.

¹³¹ Letter to MacLennan from Brewin, 18 March 1948, LAC, MG32 C26, vol. 1, file 1-20: "corr Mar 1948."

¹³² Though Bird advocated eliminating the hearings, he also recognized their importance to a broader process of reconciliation that extended beyond material compensation. The purview of the Commission did not change that the hearings were Japanese Canadians' opportunity to testify to the state. In the spring, Bird grew concerned that the claimants were growing distrustful of the Commission, their testimony having been "streamlined" from the process. Though he knew McMaster reassured the claimants that the streamlining was for the sake of early compensation, Bird asked one sub-commissioner to put in some "local knowledge" to convey to the "claimant the idea that the Commissioner knew what he was talking about." The hearings lent an appearance of legitimacy to the Commission that Bird was cautious to protect. Bird wrote that, "from a point of public relations between the Japs and the white people in Canada, as well as the Government, that it is desirable that the Jap be sent away from the sessions of the Commission with the impression that he has had his day in court and consideration will be given to his claim." But this did not discount the logistical (and financial challenge) of attending to each hearing. Letter to Colgan from Bird, 2 May 1948, LAC, RG117, vol. 2818, file 55908 part 6: "Japanese Property Claims Commission."

Over the summer of 1948, the CCJC and NJCCA continued to reject Bird's proposals to shorten the Commission.¹³³ In June, Bird proposed that the Veteran's Land Act sales could be settled for a common percentage. The CCJC declined. McMaster, for one, could not "frankly see how it is possible to make such overall arrangement." In his view, the discrepancy between claims was too large to achieve fair compensation, but he did recognize the practicality of the proposal.¹³⁴ Bird suggested the strategy a second time in August, this time outlining a full schedule of categories that they would assess. It was the NJCCA's turn to block the proposal. It reiterated the importance of having each claim heard.¹³⁵ The claimants' counsel and the NJCCA insisted on the importance of the hearings. The hearings were the arena in which was built a body of evidence against the government's claim of accountability and a record of the dispossession; they were an avenue for future compensation.

By the end of September, however, the CCJC and NJCCA conceded to assessing the claims according to category of property. Their approach was costly and the CCJC was already running out of funds from the initial amount they charged their clients.¹³⁶ Reluctant

¹³³ Letter to McMaster from Brewin, 1 June 1948, LAC, MG32 C26, vol. 1, file 1-24: "Corr. June 1948"; Letter to McMaster from Brewin, 2 September 1948, LAC, MG32 C26, vol. 1, file 1-27: "Corr. Sept 1948"; Letter to Brewin from McMaster, 13 September 1948, LAC, MG32 C26, vol. 1, file 1-27: "Corr. Sept 1948."

¹³⁴ McMaster wrote to Brewin: "I do not see how with hundreds of clients, it would be possible to recommend or secure approval of 100% or even 90% of the claimants to such a recommended settlement." Letter to Brewin from McMaster, 1 June 1948, MG32 C26, vol. 1, file 1-24: "Corr. June 1948."

¹³⁵ Sunahara, *The Politics of Racism*, 140–41.

¹³⁶ McMaster expressed reluctance to ask claimants for further funds. Letter to Brewin from McMaster, 9 August 1948, LAC, MG32 C26, file 1-26: "Corr. Aug 1948." Independently, Hunter and Bird approached the CCJC lawyers with the suggestion to shorten the hearings and they began to consider opening negotiations. Hunter approached Brewin with the proposal in early September. Bird made a similar suggestion to McMaster around the same time. Letter to McMaster from

to ask the claimants for further fees and lacking confidence that they could continue the amount of work required to present the claims, the CCJC eventually agreed to this approach in September 1948. As Hunter had speculated that spring, the government had outlasted the claimants' resources.¹³⁷

The Commission continued over the next two years. Over the next six months, the claimants' counsel, government counsel, and Commissioner Bird negotiated how to sample the claimants' case files to determine property loss.¹³⁸ The final decision to award compensation through categories of claim had some advantages. In addition to saving time, the agreement bolstered weak claims that otherwise may have been dismissed for lack of evidence. The agreement also favoured categories of claims where the argument for compensation was strong, but left other categories (e.g. the properties in the Greater Vancouver area) wanting.¹³⁹ The Commission awarded claims for real estate in the Greater Vancouver area 5% of the sale price; for real estate in the rural area (excepting those sold under the Veteran Land's Act), 10%; and for sales under the Veteran Land's Act, 80% of the original sale price. Claims for motor vehicles were awarded 25% of their original sale price and those boats sold by the Office of the Custodian, 23.5% of their original sale price.

Brewin, 2 September 1948, LAC, MG32 C26, vol. 1, file 1-27: "Corr. Sept 1948"; Letter to Brewin from McMaster, 13 September 1948, LAC, MG32 C26, vol. 1, file 1-27: "Corr. Sept 1948."

¹³⁷ Report for Varcoe by John W.G. Hunter, 7 May 1948, LAC, RG117, vol. 2818, file 55908 part 6: "Japanese Property Claims Commission."

¹³⁸ Despite the decision to treat the claims categorically, the Commission eventually did hear the testimony of all the Bird Commission claimants. Following the agreement to determine loss and award claims according to categories of property, the hearings were further restricted to testifying to the custodian's management of Japanese Canadian's property. If the Bird Commission was Japanese Canadians' opportunity to testify directly to the state, it was under severely restricted circumstances.

¹³⁹ Sunahara, *The Politics of Racism*, 142.

When the report was filed in cabinet on June 14, 1950, the claimants received only 56% of the amount they had claimed, already under a dramatically restricted purview.¹⁴⁰ The settlement spurred protests from Japanese Canadians, particularly the Toronto Claimants' Committee (with membership of 245), who protested the recommendations, and dissent over the CCJC's representation.¹⁴¹

In their efforts to secure timely compensation for Japanese Canadians, the claimants' counsel became entwined in the state's broader project of sidelining accounts of the broad injustices of the wartime years. As they rendered Japanese Canadians' claims legible to the Bird Commission, the CCJC lawyers reinforced the state's definition of property loss and became implicit in producing a body of evidence that supported the government's claim to accountability. But they did so in good will and, within the context of the Bird Commission, were able to achieve some success for their clients. They had expanded the terms of reference from their initial form in July 1947 and succeeded in achieving some compensation for the claimants. Tasked with mediating the multiple pressures within the Commission, however, the CCJC reinforced the overarching silencing that the Bird Commission imparted. Ultimately, claimants and their counsel were faced with a purview designed to put the "property issue" to rest. As Japanese Canadians' lawyers

¹⁴⁰ The report published in April 1950 announced the distribution of \$1,222,829 in awards. Sunahara explains that a further \$150,000 in special awards was later paid on Bird's recommendation: \$57,000 to the Cooperative Committee for expenses exclusive of legal fees, and \$93,000 in claims outside the terms of reference. *Ibid.*

¹⁴¹ Many claimants were unhappy with the settlement. Adachi describes the final signing of the release forms in 1951 as an "acrimonious, often vituperative confrontation" with the CCJC. The Toronto Claimants' Committee, a group of approximately 256 property owners, laid blame for the paltry compensation at the hands of the CCJC, for their advice to accept the terms of reference, to accept the settlement early, and their interpretations of law. Adachi, *The Enemy That Never Was*, 333. See also: Miki, *Redress*, 126.

tried to navigate the Commission structure—in appeasing Bird, in modifying their presentations—they were repeatedly drawn into the task of streamlining, simplifying, and moving on.

Conclusions

The final report of the Bird Commission, published in April 1950, can be read as the fruit of the approach Cabinet had set in motion three years prior. Written from Bird's perspective, the report is worth quoting at length:

I am satisfied with the evidence adduced before me that the very onerous task imposed upon the Director of the Custodian's Office at Vancouver ... was competently performed, with due regard to the interest of the owners of such property ... The fact that I have found that in certain respects fair market value was not realized in 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 responsibilities imposed on it, had substantially succeeded in administering and subsequently selling the property of evacuated persons with due regard to the owner's interest.¹⁴²

Bird's report was an incongruous response to Japanese Canadians' calls for fair compensation, but it provided an answer to whether Japanese Canadians had been treated fairly. In its view, they had. By defining the issue of loss as matter of procedural accountability, the Bird Commission built a narrative that the government was fair and just, and abdicated responsibility for other losses that (in its account) were beyond its control. In doing so, the Bird Commission produced a history of the dispossession that, founded on the evidence of an extensive inquiry, vindicated the state's actions and portrayed the dispossession as legitimate state intervention.

¹⁴² Report, TFRBL, Shears papers, box 5, file 1: "Bird, Henry Irvine, Report upon the investigation into claims of persons of the Japanese race pursuant to terms of order-in-council P.C. 1810. [copy 1], [1950]."

When government officials considered the issue of compensation for Japanese Canadians' property loss, they were fairly well informed of Japanese Canadians' claims. The officials at the Office of the Custodian and the Cabinet Committee on Japanese Problems crafted their recommendations from an understanding of Japanese Canadians' claims for fair compensation. The Cabinet Committee further consulted with the Department of Justice to determine, legally, to which types of claims the state was accountable. As they debated the grounds of the proposed inquiry, the Cabinet Committee narrowed its purview to categories wherein loss could be easily quantified and under which the Office of the Custodian's accountability could be proved. Though for a brief moment in January the Cabinet Committee considered recognizing the hardships that Japanese Canadians endured under the wartime policies, it ultimately addressed Japanese Canadians' property loss as a matter of procedural error.

Determining a route to address Japanese Canadians' claims to property loss and compensation posed a profound challenge for the Canadian state. Certain losses would be impossible to reconcile. A recognition of Japanese Canadians' hardships may have been the most effective tool for addressing the loss of community, security, and a sense of home. The breach of property rights opened a similar, messy terrain. Yet, there were types of loss that could be measured (or compensated for) through market exchange. There certainly was a pragmatic element of Japanese Canadians' claims: facing poverty in the immediate postwar era, any type of compensation was favourable to none. In this respect, narrowing the grounds for compensation to measurable terrain was necessary in determining what compensation would be awarded. The JCCD and CCJC understood this when they circulated forms to survey Japanese Canadians' property loss in 1946. However, this does

not fully explain government officials' decisions to limit the purview of the Commission. Were Cabinet willing, it would have been conceivable to award standardized settlements for losses in income or for the damages to chattels that did not pass through the Office of the Custodian's direct management. This, however, opened the door the interpretation that the broader policies were unjust, a position that the state was not ready to concede. Instead, government officials placed the conversation of loss into a paradigm wherein settlement was (conceivably) achievable. So, Cabinet followed a route that conceptualized the state's responsibility to citizens as one of procedural accountability and narrowed the conversation of loss to the Office of the Custodian of Enemy Property.

But it was not so easy to separate process (appraisals and sale prices) from the broader policies of which they were part (the forced uprooting and dispossession of Japanese Canadians). Japanese Canadians claimed that their losses resulted from the latter, not the former. The growing public criticism also centred on the latter. But the two were inseparable and government officials relied on this elision to build their claim to accountability. Having called a commission and awarded compensation, government officials could claim that government officials had investigated and addressed Japanese Canadians' claims for property loss. The government had looked back into the operations of the wartime years and, where needed, made the according corrections. As they evaded recognizing Japanese Canadians' claims to losses caused under wartime policies in significant ways, government officials relied on the act of compensation to signify justice more broadly.

As they worked the Commission, Japanese Canadians' solicitors negotiated between the government's paradigm of loss and the greater claims of their clients. Their

task was to expand the purview of the Commission to recognize categories of claims, but, in doing so, they only contributed to the state's broader project of silencing and moving on. As in Tina Loo's account of resistance, the solicitors became entangled within the broader structure of dominations in which they worked.¹⁴³

Given the restricted terms of reference, it is worth questioning the value of the Bird Commission. For Japanese Canadians it was simultaneously an avenue for material compensation and a forum to testify to the broader harms of the forced uprooting, internment, and dispossession. When granted a narrow window to testify to their property loss, Japanese Canadians seized the opportunity to hold the state to a higher degree of accountability than it offered. But their claims were disregarded. If Japanese Canadians pushed the state to a higher level of accountability, their calls were silenced in a commission structured against their interests.

This contest over the meaning of loss and injustice offers a pathway into understanding the legacy of the state violence against Japanese Canadians in the Second World War. It reveals something of Canada's uncomfortable transition from a series of explicitly racist state policies towards new approaches to pluralism. Japanese Canadians' calls for compensation, supported by their allies, offered government officials grounds to address the issue of property loss on their terms. Cabinet chose, however, to address their claims only indirectly, through a frame that proved its accountability in the process of dispossession and in the act of calling an inquiry. By redefining the issue of injustice, Cabinet carefully distanced itself from the discriminatory policies of the Second World

¹⁴³ Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951," *Canadian Historical Review* 2, no. 73 (1992): 165.

War. Canada would move past the wartime treatment of Japanese Canadians through an act of silencing. With the Bird Commission, Japanese Canadians entered the postwar years, their claims to fair treatment under Canadian law dismissed, displaced from their homes and robbed of their investments, under a state that, after three years of investigation, reported that what it had done was fair and just.

CHAPTER 3: TESTIFYING TO LOSS



Interior view of the Vernon Court House with Judge Charles Morrow, who was scheduled to represent Masue Tagashira in 1948, presiding. The Greater Vernon Museum & Archives, item 6069.

An article on Masue Jinnouchi’s claim appeared in the *Vancouver Sun* in 1948. She was not named and the article mistook her for a man, but the claim was hers. “Claim of a Japanese for \$5,500 life insurance benefits,” it ran, “which he said would have been due his had the Custodian of Alien Property paid premiums as requested, highlighted openings of Japanese Property Claims Commission hearings here Monday.”¹ The Bird Commission was underway, travelling the country to meet dispersed Japanese Canadians. At the hearings, Japanese Canadians described their former homes and communities in detail: just how close an elementary school had been to home, the cedar planks used in renovations,

¹ “Japanese Claims \$5 500 for life insurance policy,” *Vancouver Sun*, 17 February 1948, Library and Archives Canada (hereafter LAC), RG117 (Office of the Custodian of Enemy Property fonds), vol. 2538, file 19257: “Tagashira, R. and Co. 1942-1955 part 3.1.”

and the exact variety of daffodils buried in soil 5,000 kilometres away. Still barred from entering the “protected zone,” those who submitted claims to the Bird Commission re-walked their properties in memory; a cruel exercise, for it was not time that separated them from their homes but rather the state violence of the six years prior.

Though Masue first appeared in the hearing alone, Rinkichi Tagashira, her husband, soon joined her.² He held responsibility for her insurance policies at the time of the uprooting and testified to these arrangements. His own affairs were extensive: in 1942, he had worked directly with an agent of the Office of the Custodian, Harold D. Campbell, to manage his business, real estate, insurance policies and other affairs for the duration of internment. Within two months of the uprooting, however, one of the insurance policies lapsed. The policy was on the life Masue’s sister-in-law, Hatsu Jannai. The lapse meant that, when Hatsu died in 1947, Masue could not collect as a beneficiary. The insurance company had contacted Campbell, but he failed to notify Masue and the opportunity to amend the error expired. For this mistake, Masue claimed the \$5,500 to which she was entitled as the beneficiary of the policy.

It was an unusual claim that held implications for both Tagashiras. Commissioner Justice Henry I. Bird initially rejected the claim, interpreting it as a claim for damages arising out of alleged negligence and therefore beyond the Commission’s terms of reference, but judged that it warranted a special report for its peculiar circumstance.³ The

² Rinkichi and Masue Tagashira’s status as a common-law couple is not disclosed in the hearings. The Commission staff and solicitors refer to Rinkichi as Masue’s “agent”, her former employer with whom she had entrusted the management of her personal affairs during the forced uprooting.

³ This was the reason Bird submitted in his final report. The transcript from the first hearing shows that these complications—particularly the contested role of Harold D. Campbell—postponed

Dominion counsel, J.W.G. Hunter, argued that Campbell had not been an agent of the Office of the Custodian at all. The task of determining the role of Campbell, in addition to that of proving Hatsu's death and other complications, carried the claim forward through six hearings over the next two years. In addition to working through the couple's extensive holdings, further complications abounded; the couple's financial and personal arrangements proved difficult for the Commission to untangle. Like historians, the legal aids and Commission staff struggled to reconstruct the convoluted process of their dispossession.

The purpose of this chapter is twofold. First, I trace the story of an *issei* (first-generation) Japanese-Canadian couple, Masue and Rinkichi Tagashira, who directly asserted their right to fair compensation and protection against discrimination under Canadian law. In a context where they had little reason to trust the Canadian state—Japanese Canadians were still prohibited from returning to the “protected zone,” and the government had deported nearly 4,000 Japanese Canadians barely a year earlier—the Tagashiras held the state accountable for breaching their rights as naturalized citizens. Like many Japanese Canadians, they were likely skeptical of the Commission, but they chose to submit claims to pursue their interests.⁴ They hired their own legal aid to represent their

Bird's initial interpretation of the claim. Hearing evidence, 16 February 1948, LAC, RG33 69 (Bird Commission fonds), vol. 8, file: “143 - Jinnouchi, Mrs. Masuye (Vernon),” 30. “Report upon the investigation into claims of persons of the Japanese race pursuant to terms of order-in-council P.C. 1810”, Thomas Fisher Rare Books Library (hereafter TFRBL), Frank G. Shears papers (hereafter Shears papers), box 5, file 1: “Bird, Henry Irvine, Report upon the investigation into claims of persons of the Japanese race pursuant to terms of order-in-council P.C. 1810. [copy 1], [1950],” 16.

⁴ As historian Tina Loo writes, “People do not have to believe in the rule of law to obey or use it; nor should their obedience or willingness to participate in the legal process be interpreted as an indication of their belief in the rule of law and the legitimacy of the larger system of authority of which it is a part. ... people obey and use the law because it is in their interest to do so.” Tina Loo,

case and spoke directly to the Commissioner to assert their right to fair compensation. Together, they held the state accountable for their damages and claimed just compensation for their investments.

Second, I examine the Commission under strain. The Bird Commission used the terms of reference, guided by the paradigm of expropriation, to exclude broader accounts of the dispossession and to define justice as procedural accountability.⁵ The evidence and argumentation necessary to explain Japanese Canadians' losses revealed the poverty of the Commission's vision of justice, even as the claimants and their legal aids worked within the limits it imposed. The Tagashiras' hearings exemplify how the evidence presented in testimony and routine work of legal argumentation could expose the dramatic shortcomings of the Commission. Their cases strained the Commission's regular proceedings and brought its structures into sharp relief. The Tagashiras' hearings revealed the architecture of the Dominion's case, exposing it as a further extension of arbitrary force.

To ascribe the shortcomings of the Commission to the terms of reference is justified, but also misleading. Although Cabinet deliberately sought to limit Japanese Canadians' claims by imposing restrictive terms, what exactly they meant (or what implications they carried) in practice remained open for negotiation. Even while operating within this set paradigm, Japanese Canadians and other witnesses submitted evidence and arguments that undermined the foundations on which the state claimed to provide justice. This was subtler work than contesting the terms of reference directly. The Commission

"Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951," *Canadian Historical Review* 2, no. 73 (1992): 129, 164.

⁵ The Commission followed the precedents of expropriation cases, which privileged private property and set the dispossession within a legitimized, sanitized paradigm of state intervention. Appendix III: Fair Market Value, LAC, RG33 69, vol. 79, file: "Appendix III: Fair Market Value."

failed to deliver just compensation due to its terms of reference, but close attention to the hearings is nonetheless well warranted. A close view of the Commission in practice demonstrates how running the Commission on such insufficient terms required continual exertion, and a rejection of the reality of the dispossession, in order to build a claim to justice in postwar Canada.

The Terms of Reference

It is worth considering how the terms of reference defined loss and compensation. The Commission would only address claims recognized under this purview.⁶ The terms of reference hinged on two critical stipulations: first, claimants would have to prove that the Office of the Custodian sold their property for less than fair market value and, second, that this market value would be determined from the time of sale. The terms also allowed claims made for losses arising from property that was “lost, destroyed, or damaged” while vested in the Custodian.⁷ The hearing transcripts record the disjuncture between this constrained purview of inquiry and Japanese Canadians’ experiences of the dispossession. By studying this disjuncture, we get a clearer understanding of the Commission and the violence required to produce a narrative of justice.

⁶ Similar to Loo’s conception of the power of law, the power of the terms rested in their “ability to define issues, set the terms of the debate and resolution, and provide the measures for assessing the fairness of the outcome.” Loo, “Dan Cranmer’s Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951,” 151.

⁷ The Commission would consider the “real and personal property vested in the Custodian” that “was disposed of by the Custodian for less than fair market value thereof at the time of sale resulting in loss to the claimants.” Minutes of the Meeting of the Committee of the Privy Council, 17 September 1947, LAC, RG33 69, vol. 79, file: “Exhibits for opening meetings 1-22, establishing documents included.”

The terms eliminated large categories of claims from consideration. Claims of the deported Japanese Canadians would not be considered, nor would claims for the majority of fishing vessels (which were sold by a special Committee, not the Custodian), for lost wages, lost crops or loss from sales made by Japanese Canadians themselves under the duress of their uprooting. The clause “at the time of sale” restricted the Commission to determining the market value of property that, in some circumstances, had suffered years of neglect and vandalism in the hands of the Custodian before its sale.⁸ Market value, in turn, excluded the non-monetary values that Japanese Canadians attributed to their property. The correspondence from the development of the Commission shows that this exclusion was intentional. As shown in the previous chapter, Cabinet considered these additional losses, but deemed their inclusion too costly.⁹

In the weeks leading up to and during the opening hearings, the Commission staff determined how the terms would be interpreted in practice. Bird established a specific definition of market value for the Commission that drew from legal precedents from expropriation cases.¹⁰ This became the foundation of the Commission’s methodology to determine loss. It placed the forced uprooting and sales within a paradigm of legitimate state power and normalized the project of dispossession. Set in a paradigm of expropriation, the issue at hand was the adequacy of compensation rather than the legitimacy of state seizure and sale of property. As such, any “injustice” would be in terms of the terms of

⁸ Fishing nets, for instance, require upkeep to remain functional; at the time of their sale by the Office of the Custodian, they were rendered valueless.

⁹ For a fuller discussion of this decision, see Chapter 2. Also: Ann Gomer Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: J. Lorimer, 1981), 137.

¹⁰ Appendix III: Fair Market Value, LAC, RG33 69, vol. 79, file: “Appendix III: Fair Market Value.”

sale, as compared with the market at the moment of sale; only by a miscarriage of process—the process of valuation, advertisement, or sale—could the Office of the Custodian have been guilty of causing injustice. Such injustice, narrowly defined as a miscarriage of process, could be rectified by the Commission with relative ease. This framing relied on a liberal notion of individual property ownership, of value defined in monetary terms, and of justice defined in terms of procedural accountability.¹¹

The records of the hearings reveal the limits and failures of this framing. The Commission was ill-suited to address Japanese Canadians' experience of dispossession and loss. Though the framing rendered the complex losses of Japanese Canadians legible, much like the “social simplifications” of mid-century statecraft described by James C. Scott, it “ignored essential features of any real, functioning social order.”¹² The paradigm of expropriation evaded the unique circumstances of the dispossession and the government counsel further limited state accountability by upholding narrow interpretations of the terms. Claimants and witnesses submitted evidence to the Commission that contradicted the government's narrow account of the dispossession. The Tagashiras' particularly complicated claims, buttressed by their assertion and tenacity, strained the Commission past its normal operations to reveal its tenuous claim to justice.

¹¹ The procedure to determine “fair market” value further “skeletonized” the dispute from its greater context. Loo, “Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951,” 157–58.

¹² James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*, Yale Agrarian Studies (New Haven: Yale University Press, 1998), 6.

Market Value

Most of the damages claimed by Masue and Rinkichi Tagashira were routine for the Bird Commission. Automobiles, household goods, and warehouse merchandise fell easily within the process of determining fair market value. In addition to these claims, Rinkichi Tagashira claimed compensation for real estate in Vancouver and on Vancouver Island. With the property on the Island, he had intended to open a campground. The properties in Vancouver comprised vacant lots, an old house, and a series of apartments, including his own home. Yet even in these routine proceedings, the poverty of the Commissions' foundations could be exposed and its premises thrown into question.

The Tagashiras' case revealed the insufficiency of the Commission's premises with respect to the value of real estate. Although the Commission privileged claims for real estate, there was disagreement over the value of Tagashira's properties in the Powell Street neighbourhood. Of course, disagreement over property value was expected; that was the premise of the Commission. However, the testimony of the real estate agents suggested the inadequacy of the paradigm of expropriation and the impossibility of discerning "fair market value" through real estate assessment.¹³

Tension around legitimate assessment was not unique to the Tagashiras' claim. Similar contestation arose when the Co-Operative Committee on Japanese Canadians'

¹³ Reading from the communications of the NJCCA and the CCJC legal counsel, Sunahara concludes that the "evidence in favour of the Vancouver properties was very weak" and that the CCJC failed to "secure strong evidence in support of their position." She writes that Bird respected the appraisers employed by the Greater Vancouver Advisory Committee, who composed "almost all the experienced appraisers in Vancouver." Sunahara read this expertise as prohibitive, making it impossible for their word to be challenged. The testimony of these experts, however, reveals their expertise as inconclusive and unreliable. Sunahara, *The Politics of Racism*, 140–41.

(CCJC) legal aid (representing other claimants) found significant discrepancy among property valuers. The “scientific” calculations of market value purported by certain appraisers were undermined by divergent valuations. Valuers drawing upon historical knowledge of the dispossession provided a fuller account of the range of values ascribed to individual properties.¹⁴ These valuers explained that racial discrimination and the unusual context of the liquidation shaped the valuation and sale process. For these valuers, market value could not be considered separately from the attitudes of buyers towards Japanese-Canadian-owned property and the circumstances of the forced sale. Though Bird would ultimately rely on the logic of early 20th-century urban rationalization to elide this evidence, the testimony marked the dispossession as drastically different from a case of state expropriation and suggested the shortcomings of the Commission’s frame.

Such shortcomings were on display in the Tagashiras’ case. The original appraisal of Tagashira’s Vancouver property was dramatically low. Their lawyer J. Arthur MacLennan contested the assessments of two properties in particular: a large rooming house at 762 East Cordova and an apartment building running from 671–679 on the same street. In 1943, the Office of the Custodian’s appraiser, Mr. Harvey, valued the latter building at \$6,500. Shortly thereafter, it sold for \$6,615. MacLennan submitted that this was only half the property’s value. For Tagashira’s hearing, he called a witness to challenge the Custodian’s valuation. Malcolm Alexander Stuart, an established Vancouver real estate

¹⁴ For a further discussion of local knowledges, see: Tina Loo, “Africville and the Dynamics of State Power in Postwar Canada,” *Acadiensis* 39, no. 2 (June 6, 2010): 23–47; Tina Loo and Meg Stanley, “An Environmental History of Progress: Damming the Peace and Columbia Rivers,” *Canadian Historical Review* 92, no. 3 (September 2011): 399–427.

agent, had been familiar with the properties for over a decade. He said that “if Mr. Tagashira had given [him] that property in 1943, if he had been here and wanted to sell it, [they] would have had no trouble at that time in getting \$12,000.00 for it.”¹⁵ Further, Stuart reported that the property had since sold for \$13,000.¹⁶ Stuart knew Harvey and attested to his competency, but said, “with much due respect,” that he thought Harvey’s “valuation was much too low.”¹⁷ He was “at a loss” to understand how he could arrive at such a number. Stuart found that Harvey’s valuation forms were accurate and fair; in fact, he agreed with them: the building was old, it had hot water, was completely furnished, and the physical condition of the foundations and structure was sound. Indeed, Stuart described Harvey’s as a “very favourable appraisal,” except, as Hunter concluded, “for the price.”¹⁸ The disjuncture between Harvey’s appraisal and final valuation was troubling.

Stuart also claimed that Tagashira’s second Cordova Street property, 762 East Cordova, was undervalued. Rather than the value of \$2,000 appraised by W.G. Moore of Pemberton Realty, Stuart valued the property almost 50% higher, “nearer to a price of \$2850.00.”¹⁹ Stuart’s testimony carried authority as his experience was comparable to that of the valuers hired by the Office of the Custodian: he was the director of the A.E. Austin Company, which dealt with apartment houses and business properties, and had been in the field for over 25 years.²⁰ Taking Stuart’s testimony seriously, Bird requested two further

¹⁵ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon),” 102.

¹⁶ *Ibid.*, 105.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, 107.

¹⁹ *Ibid.*, 102.

²⁰ *Ibid.*, 99.

appraisals on the property, asking that the appraisers not be informed of Stuart's valuation and to work from their knowledge of the market in 1943. He wanted to secure unbiased assessments of the properties.²¹

Five months later, MacLennan submitted these re-appraisals, completed by appraisers who already had ties to the Commission and forced sales. Douglas William Reeve had been the first appraiser hired by the Office of the Custodian of Enemy Property in Vancouver.²² Reeve submitted appraisals on the properties he had made in 1943 and 1944. They largely matched Stuart's higher valuations. In 1943, he had appraised 671–679 Cordova St. at \$10,600, he reported, and in 1944, he had appraised 762 East Cordova St at \$2,900.²³ Before Reeve left the stand, Bird probed the cause of discrepancies among the valuations. Bird asked, "Are you possibly influenced by the market raise in price now of real property that has occurred in the interval?"²⁴ As in cases of expropriation, it was crucial to reconstruct the conditions at the moment of sale as closely as possible to determine fair market value. Nevertheless, Reeve denied being influenced by the market of the late 1940s. He had revisited several reports from valuations that he had he made in the neighbourhood at the time, saying that he had been trying "very, very hard to cast his mind back to 1943." "I remember these properties generally pretty well," he reassured Bird, "I have a long

²¹ *Ibid.*, 113.

²² The Office Director, Frank G. Shears, contacted Reeve shortly after federal policy shifted to liquidation. Though the Office soon hired further appraisers to manage the properties, Reeve completed 117 of the Vancouver appraisals. He was, arguably, the agent most familiar with the "conditions of sale" in 1943–44 Vancouver. Hearing evidence, 29 November 1948, LAC, RG33 69, vol. 9, case file: "General Evidence Oct 12 – Nov 30, 1948," 139.

²³ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)," 146-47.

²⁴ *Ibid.*, 153.

memory for valuations.”²⁵ But he did not offer an explanation for the discrepancies, implying that the process of valuation—if not the sales—had been correct.²⁶

Arthur T.W. Dalton, a former municipal property assessor, was the second valuator to reappraise Tagashira’s two Vancouver properties. He valued 671–679 Cordova at \$12,000 (and that, he said, was “being cautious”) and 762 East Cordova at \$3,200.²⁷ Whereas Reeve based his estimations on his “general knowledge of the market,” Dalton claimed legitimacy from professional texts of the real estate profession and explained his calculations according to the professional methodologies of the day.²⁸ He spoke extensively of the reproduction value and depreciation of the land, relying on what historian Jeffrey M. Hornstein describes as the “technocratic discourse” of the newly professionalized discipline of real estate to legitimize his assessment.²⁹ Dalton claimed to base his assessment on the “present worth of the future value.”³⁰ This rationale exemplified

²⁵ Ibid.

²⁶ In a letter to Brewin, McMaster described the testimony of the Rural Advisory Committee members, who, he said, had “each [...] repeated like a parrot that he was appraising for a fair market value.” Reeve, he said, was a “harder nut to crack, particularly having regard to his long years of experience at appraising and the Judge’s previous knowledge of Reeve.” It appeared that Reeve was given the valuations the government wanted to hear. Letter to Brewin from McMaster, 11 December 1948, LAC, MG32 C26 (Francis Andrew Brewin fonds), vol. 1, file: 1-30 “Corr Dec 1948.”

²⁷ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon)”, 157-158, 166.

²⁸ Hearing evidence, 29 November 1948, LAC, RG33 69, vol. 9, case file: “General Evidence Oct 12 – Nov 30, 1948.” 139.

²⁹ Jeffrey M. Hornstein, *A Nation of Realtors: A Cultural History of the Twentieth-Century American Middle Class*, Radical Perspectives (Durham: Duke University Press, 2005), 105. Indeed, in the general hearings Dalton read directly from his copy of National Association of Assessing Officers and offered it to the Commissioner to peruse. Hearing evidence, 4 February 1949, RG33 69, vol. 77, file: “General Evidence 1 Feb – 4 Feb, 1949,” p. 1679.

³⁰ Hearing evidence, 24 June 1949, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon),” 158.

the racial logic that influenced the valuation process. He hypothesized a distinct market value based on national alliances tied to race. “At this time in 1943,” he explained, “conditions financially, due to the war, looked very bad for the British and I think a British valuator then.” “But as a Japanese,” he said. “I think it would be quite different.” Dalton posited that this “Japanese” would have been in a “good position” if Japan had won the war and, if it lost, “[...] he knew very well what British justice was.”³¹ Dalton concluded from this distinction that a “Japanese” “did not have depreciating values on his properties as a British might.” In Dalton’s rationale, Japanese Canadians and “British” Canadians had different relations to the war and, for both, the war would carry significant (but different) impacts, which would have bearing for the value of their real estate to them. Surely Dalton was wrong. Rather than anticipating a “good position” if Japan won the war in the Pacific, Japanese Canadians had plenty to fear. Even if some among them were confident of Japanese victory, most probably felt their lives much more tenuous than “British” Canadians on the Pacific coast, particularly as the internment policy came into clearer view. Dalton’s interpretation of buyers’ political calculations, if malformed, showed the fallibility of real estate appraisal, even when following the most “scientific” calculations.

Dalton’s argument also imagined that the market was entirely segmented by race, value along with it. He argued that because Japanese Canadians were uprooted, the properties needed to be evaluated from a “British” perspective, which was much lower than the “Japanese” value they had previously held. He figured that any “Japanese” buyer would consider the value of property in Vancouver in relation to the outcome of the war. This was a racialized fantasy. In fact, the market was never so segmented, and the influx of “British”

³¹ Ibid.

buyers to wartime Vancouver and the lower mainland created a significant surge in values, including in the values of Japanese Canadians, not the opposite. In the first week of 1943, as historian Jordan Stanger-Ross writes, “the Vancouver office of the Custodian estimated that almost 90 percent of the Japanese-Canadian-owned buildings in Vancouver were already rented.”³² Further, the prospect of “defeat” by Japan—at least in the form of Japanese invasion—had long passed by the time of virtually all of these sales, especially the 1944 sales (but also the 1943 sales).³³ Dalton’s retrospective explanation of his rationale revealed how racial prejudice—fostered by the conditions of the forced uprooting and unrelated to the real estate market—influenced the valuations of Japanese Canadians’ Vancouver properties.

The government counsel also pushed Dalton to identify the Powell Street neighbourhood as “blighted.” An expert classification of the neighbourhood as a slum could justify the low valuations. Earlier that year, Dalton had testified that parts of the neighbourhood met this classification, and the Dominion counsel, J.A. MacDonald, took up this thread in Tagashira’s hearing. MacDonald asked if it was “fair to say” that the blocks of East Cordova under question were a “generally blighted area.”³⁴ This characterization had roots in the city’s social and urban reform movements, but was expanded beyond its original meaning to implicate the totality of properties owned by

³² J. Stanger-Ross and the Landscapes of Injustice Research Collective (hereafter LOI Collective), “Suspect Properties: The Vancouver Origins of the Forced Sale of Japanese-Canadian-Owned Property, WWII,” *Journal of Planning History* 15, no. 4 (November 1, 2016): 279.

³³ *Ibid.*, 274; Sunahara, *The Politics of Racism*, 92.

³⁴ Hearing evidence, 24 June 1949, RG33-69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon)”, 163. Stanger-Ross and the LOI Collective, “Suspect Properties,” 275; Christopher Klemek, *The Transatlantic Collapse of Urban Renewal: Postwar Urbanism from New York to Berlin*, Historical Studies of Urban America (Chicago: University of Chicago Press, 2011), 2.

Japanese Canadians. The description of the “class” of property relied on racist conceptions of Japanese Canadians as categorically low class and unsanitary, living in dwellings that were uninhabitable for ‘regular’ Canadians. The construction—if based on a few properties of the Powell Street neighbourhood—obscured the vertical range of property owned by Japanese Canadians. It subsumed the substantial number of profitable and desirable properties—like those owned by Tagashira—under a single characterization of slum properties and thereby provided justification for the overall low selling prices. The Dominion counsel relied on a “widespread practice of ascribing urban ecological pathologies on the basis of the imagined character of racialized city dwellers.”³⁵ It was a discourse that played an instrumental role in justifying their forced sale and could, for the purpose of the Dominion counsel, retroactively justify the low valuations.

Yet Dalton resisted this classification, refusing to generalize across the entire area. “Oh, I would not consider it so,” he said, “not from my definition of blight, but it is a neighborhood of old houses, and I suppose the class of people living there are not the kind you would have in what we call the better part of the city.” But, he concluded, the neighbourhood was zoned for heavy industry and “that is just what one would expect in the process of that property being developed.”³⁶ Any investor, he suggested, would recognize such value. Continuing along this line, but drawing in the explicit racialization of “slums,” Dominion counsel asked whether the neighbourhood they were discussing “had been very much affected by the Japanese living there.” Dalton continued to resist this

³⁵ Stanger-Ross and the LOI Collective, “Suspect Properties,” 278.

³⁶ Hearing evidence, 24 June 1949, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon),” 163.

characterization, saying that while the first sales by the Custodian had been low, they quickly rose, since it was a desirable neighbourhood.

Dalton's testimony is illuminating on several points. First, the Dominion counsel's line of argumentation suggests that the "slum" argument, applied to justify sales, persisted in the postwar years, even in the face of widely acknowledged increases to property values. Second, the government lawyers got stuck in self-defeating exchanges with an agent who should have been an asset for them. However, this on its own, it would seem, was of limited use because the low valuations (when taken together with the high valuations) threatened to undermine any sense that the process was rational and scientific. They pushed Dalton and other agents for substantive reasons to match his valuations because those reasons mattered. The government counsel sought evidence that could establish the low valuations as sound and, more generally, the assessment and sale processes as measurable and, where necessary, correctable. Dalton, however, seems to have not given reasons (or not the reasons he supposed) and instead left the whole assessment process exposed to scrutiny.³⁷

Such contradictory expert testimony, that undermined the assessment process itself, recurred repeatedly in the Bird Commission hearings. For instance, real estate broker Harold B. Itter, who testified in the general evidence hearings, emphasized that the circumstances of the internment and dispossession led to a depression of values in some instances, but these factors could not, in his view, explain the divergence among valuations.

³⁷ A parallel unsatisfactory expert was F.M. Clement, a University of British Columbia professor who testified to the VLA valuations. After an exhaustive hearing, the Dominion counsel was left with a slippery, unprovable process of determining market value of the agricultural lands. Hearing evidence, 1 February 1949, LAC, RG33 69, vol. 77 file: "General evidence 1 Feb – 4 Feb, 1949."

In his view, regular buyers “could not afford” the delays created by the Custodian’s administrative processes, which would require them “to wait three or four months until [their] offer was accepted.”³⁸ When presented a case of a \$3,700 discrepancy in valuations, Itter responded with a different assessment of historical context. The “feeling against the Japanese at that time was pretty strong,” he explained, “and that may have affected the [low] appraisal.”³⁹ Otherwise, he “could not understand such a spread.”⁴⁰ In another similar case where a property was appraised at \$1,500 and then \$4,350, Itter stated flatly that somebody was “wrong”: “There certainly could not be that difference.” To Itter, the discrepancy was an “indication that one or both of the appraisers were allowing some factors that should not be allowed to affect their opinion.”⁴¹ He repeated throughout his testimony that the antipathy towards Japanese Canadians and the processes of the “liquidation” influenced the assessed values.⁴² When asked if the method adopted by the Custodian encouraged speculation, Itter replied: “The very fact that it was Japanese property would attract speculators, if they knew or felt it was a liquidation sale and these properties were going to be sold low enough to sell at a higher price.” For Itter, only an account that considered the broader circumstances of the property sales could explain such dramatic inconsistency in valuation prices.

³⁸ Hearing evidence, 4 February 1949, LAC, RG33 69, vol. 9, case file: “General Evidence Feb 1 – Feb 4, 1949,” 1625.

³⁹ He referred to a Vancouver property that received a first valuation of \$3,000 and a second of \$7,300 in the same year. Hearing evidence, 4 February 1949, LAC, RG33 69, vol. 9, case file: “General Evidence Feb 1 – Feb 4, 1949,” 1636.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, 1637.

⁴² *Ibid.*, 1649.

Real estate valuator Nevin McGregor Armstrong echoed Itter's interpretation of the contradictory valuations. When presented a similar case of discrepancy, Armstrong agreed to Bird's prompt that "appraisers would appraise low because there was an antagonism to Japanese generally." Bird was aware of the broader circumstances of the forced uprooting. He also echoed Itter's analysis of the influence of speculation on the market. The cumbersome bureaucracy entailed in purchasing from the Office of the Custodian discouraged "people who were looking for property for their own use."⁴³ As a result, speculation ruled the market. Armstrong admitted that "people in his own business" purchased the properties to "fix the house up a bit and re-sell it."⁴⁴ According to these agents, the Commission could not fully understand the valuations and sales without taking into consideration the broader conditions of sale. Their practical experience of the market in 1943 undermined the premise of the forced uprooting and dispossession as an expropriation and the possibility of determining "fair market value."

Justice Bird did not mention variance among assessments in his final report. The only reference to the historical context of the sales was a gesture, intended to create a sympathetic case for the Office of the Custodian. He described the "immense task" that the Office had undertaken amidst the "hysteria of war" and despite a "lack of public interest" in "real property of the class generally held by owners of Japanese origin . . . during the year 1943."⁴⁵ Bird concluded that such externalities were to blame for shortcomings in the

⁴³ *Ibid.*, 1659. Armstrong explained that purchasing property from the Vancouver Office of the Custodian was often a months-long ordeal.

⁴⁴ *Ibid.*, 1660.

⁴⁵ "Report upon the investigation into claims of persons of the Japanese race pursuant to terms of order-in-council P.C. 1810", TFRBL, Shears papers, box 5, file 1: "Bird, Henry Irvine, Report upon

process, rather than the “method adopted in offering real property for sale, nor to insufficiency of the sales report” or the Custodian’s process of advertising and sale by tender. The Custodian, he emphasized, did as well as could be expected, under the circumstances.

Property valuations were contested throughout the Bird Commission. At the lowest level, Jack Leckie, a legal aid who handled a substantial portion of claims represented by the CCJC, for instance, crafted submissions that contested the appraisal process directly. Sitting with claimants before their hearings, Leckie worked with a translator to prepare the evidence for their claims. The standardized forms required details of purchase and condition but the “Additional Comments, if any:” section offered room for elaboration. Here, Japanese Canadians explained their valuations of their own property. Leckie framed these statements using corrective language that identified error with the Office of the Custodian’s valuations and provided a more accurate property description to justify the claimed worth.⁴⁶ At the highest level, these valuation discrepancies were also part of the

the investigation into claims of persons of the Japanese race pursuant to terms of order-in-council P.C. 1810. [copy 1], [1950],” 22. In the final report, Bird cast the urban appraisals as just through contrast to the other types of sales. Those made by the Rural Advisory Committee were less correct, the report suggested, but neither the urban nor the rural property sales compared to the injustice of the Veteran’s Land Act sales. Though not entirely unwarranted, the structure of Bird’s argument legitimized the low valuations in the urban context. This minimized the accountability of the Canadian state in the low valuations; they were cast as ‘regular sales’ rather than an extraordinary circumstance.

⁴⁶ Though these claimants would likely have articulated their loss beyond market value, they were required to constrain their disagreement to the metrics of the appraisals. The “additional comments” section offered small space for individualized statements. Examples of these corrective statements include: “I do not agree with the appraisers report...” (case file 66), the appraiser “is errant in stating” (case file 195) or “failed to describe” (case file 99), or that the appraisal is “wrong” (case file 78) or “mistaken” (case file 32). Other examples from the random case files sampled include files 63, 67, 69, 78, 117, 179, 196, 200, 149, 629, 1060, and 1061 in LAC, RG33 69.

CCJC's case to prove procedural fallibility. As the hearings proceeded, their researchers re-appraised the major sites of property sales to build a case of procedural miscarriage.⁴⁷ In the general hearings, McMaster submitted a report documenting instances of multiple appraisals on property in 1943 and 1944, where variance in valuations ranged from 9% to 74% of the Custodian's sale price.⁴⁸ Ultimately, however, the disagreement between the expert witnesses, particularly those familiar with the sales in 1942, was much more troubling for the Bird Commission. Their disagreements revealed that the appraisal practice was impossible to standardize, particularly in the capricious context of the forced uprooting. The mechanisms to determine market value undermined the basic claim that "justice" could be restored to Japanese Canadians by adjusting their compensation to reflect market value.

The expert testimony revealed that assessments offered no firm basis for determining value. If assessments were unreliable, particularly in this case due to the particular historical circumstances that surrounded the sales, then there was no way at all to establish fair procedure. There was no way to reconstruct market value. This fundamental problem with the Commission lay exposed by the hearings themselves. It was suppressed in the report, because there was no answer to offer. If assessment was inconsistent, and assessors were people influenced by racism and other external factors,

⁴⁷ A team of students headed by a Professor Farr valued the Powell Street neighbourhood in the summer of 1948. While McMaster's fonds contain details of this team's re-appraisals in the Fraser Valley, they do not include reports from their urban studies. Correspondence in the summer of 1948 refers to extensive notes from Professor Farr, but this is in the context of his passing. See: Nikkei National Museum, Campbell, Brazier, Fisher and McMaster Barristers and Solicitors fonds, series: "Japanese Claims: List of Claims Heard at Centres".

⁴⁸ General evidence, LAC, RG33 69, vol. 75, file: "Proceedings, memos, minutes and argument April-Sept, 1949."

then the Commission was a contrived facsimile of its promise, even on its own narrow terms.

Perhaps more deeply (and in direct engagement of the terms of reference), this is a problem with attributing market value to properties that are not sold on the market. The paradigm of expropriation failed to address Japanese Canadians' losses. "The market" presumes an engagement between buyers and sellers. Market value is created in the decision of owners to part with their property for prices offered by prospective buyers. Absent that process, it is very hard to ascribe a reasoned "market value" especially in a context where a highly disruptive act of state violence interferes with the operation of the market. The National Japanese Canadian Citizens Association submitted this fundamental error in their final report. "By no interpretation could the seller be classed as a willing seller;" they wrote, "moreover, the sales being part of government policy of liquidation were, in effect, compulsory and were to be carried out regardless of price."⁴⁹ Recognizing the shortcomings of the paradigm of expropriation, the NJCCA submitted that "in the actual process of liquidation, a wholly abnormal and unprecedented situation was created."⁵⁰ How closely the process of forced sale mimicked the "market" was a central point of argumentation in the Bird Commission. Though this argumentation did not play out in the Tagashiras' hearings specifically, the minute details of their claims evidenced the deep insufficiency of the "fair market" the Office of the Custodian claimed to create. If Bird elided this reality in his final report, the expert testimony demonstrated the significant

⁴⁹ The Submission to the Royal Commission on Japanese Canadian property, entered by the National Japanese Canadian Citizens Association, LAC, RG33 69, vol. 78, file: "General exhibits 1-63 and list," 23.

⁵⁰ *Ibid.*, 32.

shortcoming of the position. The key term of reference “market value” was, in reality, slippery, elusive, imagined, and unstable.

The Custodian

Even as expert testimony destabilized one key facet of the terms of reference—market value—the hearings thrust another—“the Custodian”—into question. At the time of his uprooting, Rinkichi Tagashira had worked with chartered accountant H.D. Campbell and his lawyer, J. Arthur MacLennan, to arrange his affairs. At the time, Campbell acted as a third-party agent for the Office of the Custodian. Together, they arranged a detailed owner-manager agreement to transfer his business, the Tagashira Trading Co., into management under another businessman for the duration of internment. This savvy agreement protected the business from the wave of forced sales that followed the policy shift to liquidation in January 1943. For seeming to protect a Japanese-Canadian-owned business, the Office of the Custodian came under virulent criticism by business owners who felt entitled to its wealth. All the while, Campbell acted on behalf of the Office of the Custodian, reporting to its director about the volatile situation and receiving instructions on how best to manage the situation under federal policy. For four tumultuous years, Campbell and Tagashira were in constant correspondence: Campbell had managed the Tagashiras’ entire case file, keeping up with their bills and policies and overseeing the liquidation of their remaining property. The Tagashiras were well acquainted with Campbell’s role as an agent for the Office of the Custodian of Enemy Property.

The lens of the Bird Commission, however, distorted this arrangement. The Dominion counsel, J.W.G. Hunter, submitted that Campbell had not, in Tagashira’s case, acted on behalf of the Custodian at all. This argument, that the sales were made by an agent

other than the Custodian, was part of a wider strategy to deny the Custodian's involvement in property losses. Japanese Canadians' representatives interpreted the terms more broadly, and contended that, as of Order in Council P.C. 1665, all property vested in the Custodian fell under its managerial control. In these exchanges, the hearings exposed instability in the conception of Custodial responsibility.

Hunter's narrow interpretation held significant implications for Japanese Canadians. A narrowing of Custodial responsibility could potentially exclude large categories of claims from the purview of the Commission. In face of legal and historical arguments that asserted otherwise, Hunter proposed a narrow vision of state culpability that denied both the categorical vesting of Japanese Canadians' property in the Office of the Custodian and the larger circumstance of forced uprooting and incarceration. Along with his lawyers, Rinkichi Tagashira himself contested the Dominion Counsel's arguments. He had dealt with the Office of the Custodian through Campbell for six years, an arrangement that, Tagashira argued, followed from Campbell's role as an agent for the Office. Steadfast, Tagashira rebuked the government's narrowing of custodial responsibility and hired legal aid to produce further evidence for his case. Only in 1949 did the Tagashiras successfully prove Campbell's role as an agent of the Custodian, leaving a trail of records of the government's efforts to arbitrarily limit Japanese-Canadian claims and of Bird's shifting interpretation of the Custodian's role.

The terms made clear that the Commission was about sales made by the Office of the Custodian. They dictated that the Commission would accept claims for personal property vested in the Office that was "lost, destroyed, or stolen while in the possession or

under the control of the Custodian or some person appointed by him.”⁵¹ As a requirement for consideration by the Commission, the Custodian’s responsibility for Japanese Canadians’ loss thus became a site of contestation.

Hunter alleged that culpability for the Tagashiras’ losses lay with an agent, rather than the Custodian. This claim hinged on the role of Campbell in his affairs. Beginning in the spring of 1942, the Office of the Custodian employed agents like Campbell to oversee the management of Japanese-Canadian-owned property. These third-party agents conducted the bulk of the Custodian’s management. As of May 1942, when the Office’s task was to protect Japanese Canadians’ vested property, the Office dealt with only 28 properties directly, while 51 agents managed the remaining 868 properties. An internal report from that spring lists Campbell as a “licensed trustee” who managed 43 properties. According to a second report from later that year, he managed the second largest number of properties among the agents employed by the Custodian.⁵² However, in this case, there was a considerable complication: Tagashira had employed Campbell of his own accord, thereby excluding his losses from consideration, or so claimed Hunter. If his argument was successful, Hunter not only threatened to exclude the Tagashiras’ entire claim, but, at least potentially, a significant number of other claims as well.

The Tagashiras’ legal counsel, N.A. Davidson and J.A. MacLennan, rejected Hunter’s argument. In 1948, Davidson argued there was “no question” that the property

⁵¹ Minutes of the Meeting of the Committee of the Privy Council, 17 September 1947, LAC, RG33 69, vol. 79, file: “Exhibits for opening meetings 1-22, establishing documents included.”

⁵² List, LAC, RG117, vol. 1, file 1 part 2: “Vancouver Office - List of agents for the Custodian. 1942.”

was vested in the Custodian in 1942 and that the circumstances of Campbell's initial engagement were immaterial to the claim. "It was simply a matter of the business vesting in the Custodian and what he sold the business for," he argued, trying to refocus the hearing on the question of market value.⁵³ He referred to the establishment of a protective trust over Japanese Canadians' property in Order in Council P.C. 1665 in March 1942. From this perspective, exactly *who* represented the Custodian was beside the point: the Custodian was responsible for all Japanese-Canadian-owned property. Bird followed this logic and asked Hunter to clarify whether he conceded that the property "was vested in the Custodian from the outset."⁵⁴ Though he did agree, Hunter maintained that the appointment of an agent other than the Custodian was sufficient grounds to dismiss the claims. Bird entertained this narrow vision of Custodial responsibility, saying that he saw Campbell's "intervening" as significant to the case.⁵⁵ He requested further evidence to prove the nature of Campbell's position.

In the hearings that followed, considerable energy was invested in contesting historical accounts. Hunter tried to distance the Custodian from the management of Tagashira's property by claiming that Campbell himself had not known about the agreement since it was made with one of Campbell's employees. "I put it to you that Campbell didn't even know you had made the agreement," Hunter commented skeptically. Tagashira rejected this account. He asserted, in testimony translated by an interpreter, that

⁵³ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 86.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

“he talked over the thing in Campbell’s office.” Tagashira remained firm, placing the negotiation in Campbell’s office and therefore within his purview.⁵⁶ Even if the arrangement was made by one of Campbell’s staff, his company remained responsible.

Disagreement continued with respect to the events that followed thereafter. When Hunter said that the agreement “fell through,” Tagashira corrected the passive language, saying instead that the Custodian “seized his business,” obviating prior arrangements. Hunter expressed some frustration at Tagashira’s unwavering position on the historical detail. When Tagashira continued to emphasize that the Custodian intervened in his business contract, Hunter rejected his answer, saying dismissively, “I’m not interested in that. Will you please answer the question.” This time, Bird intervened to validate Tagashira’s account: “Isn’t that an answer to your question?” he asked, “...He says there was no termination apart from the forced termination of [the contract] by the Custodian.” It took considerable perseverance from Tagashira to counter Hunter’s characterization of the agreement and make clear that the Custodian had seized the business.

To determine Campbell’s role, the solicitors reconstructed the arrangements. Tagashira had settled the owner-manager agreement with Frank Mah, a local businessman, and left the “protected area” in the last days of October 1942. Within a fortnight, however, they ran into trouble. Mah could not immediately fulfill the terms of the agreement and the hostility of Imperial Tobacco, the business’s primary supplier, toward the new manager complicated the issue. “CUSTODIAN DECIDES TO TAKE OVER YOUR BUSINESS

⁵⁶ Hearing evidence, 19 February 1948, LAC, RG33 69, vol. 9, file: “165 – Tagashira, Rinkichi (Vernon),” 80–81.

FROM ME TODAY,” Mah telegraphed Tagashira on November 24. He described the situation and said, “IF YOUR OPINION IS CONTRARY TO THE CUSTODIANS’ DECISION PLEASE WIRE ME AND YOUR LAWYER IMMEDIATELY.”⁵⁷ Although Mah then travelled to Revelstoke to re-work the arrangements with Tagashira, the Custodian nonetheless seized the business. Tagashira and his counsel presented to the Bird Commission telegrams and correspondence that conveyed the Custodian’s threat to seize the business.⁵⁸ To Tagashira, the hand of the Custodian in the turbulent arrangements of the Heatley Trading Co. was obvious.

The exchanges between Hunter and Tagashira sometimes brought into explicit argument a question that underlaid these exchanges—who had the authority to assign responsibility to the Custodian? This fundamental issue arose in the first hearing, in which Tagashira addressed the Commission directly in English. Tagashira asserted broadly, mirroring the language of Order in Council P.C. 1665: “Custodian mean is protecting all Japanese origins’ property.”⁵⁹ In other words, the Custodian had been assigned responsibility by law for all Japanese-Canadian-owned property in coastal B.C. Hunter tried to undermine Tagashira’s credibility by focusing on legal technicalities. The following week, he pushed Tagashira to explain how the seizure of property worked: “Now tell us how the Custodian, by seizing your business, severed your contract with Frank

⁵⁷ Telegram to Tagashira from Mah, 24 November 1942, LAC, RG117, vol. 2538, file: “Tagashira, Rinkichi (2.2).”

⁵⁸ Hearing evidence, 23 February 1948, LAC, RG33 69, vol. 9, file: “165 - Tagashira, Rinkichi (Vernon),” 86–87.

⁵⁹ Hearing evidence, 16 February 1948, LAC RG33 69, vol. 8, file: “143 - Jinnouchi, Mrs. Masuye (Vernon),” 17.

Mah?"⁶⁰ The interpreter replied that Tagashira did not understand the question or the reason for it, but Tagashira then responded that the Custodian had sent him a telegram informing him of the severance.⁶¹ "I put it to you you don't know half of what you are saying," Hunter countered insolently. "What you are saying are things you think, not what you know; isn't that correct?" To this, the stenographer recorded that Tagashira gave "no response." When Hunter continued to dog Tagashira to admit that the Custodian had no role in the sale of his property, Bird intervened: "You are not going to convince the man if you stay at him all morning that the Custodian didn't take over," he said. "It is for me to draw that conclusion from the evidence that is before me."⁶² Tagashira rejected Hunter's argument for a narrow account of the Custodian's responsibility; the Dominion counsel met these contestations with hostility, revealing the limited opportunity allowed to Japanese Canadians for direct contestation.⁶³

The Tagashiras' eventual triumph on the matter of Custodial responsibility came not through legal argument, but rather the submission of further evidence. Both the defence and prosecution remained steadfast in their positions over the course of the subsequent three hearings. Each side combed through the Tagashiras' case files to reconstruct the circumstances of the owner-manager agreement and Campbell's management of

⁶⁰ Hearing evidence, 23 February 1948, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)," 88.

⁶¹ Ibid.

⁶² Ibid., 89.

⁶³ Described as "difficult witness[es]," such claimants, who did not follow the line of questioning or who expanded on their losses in court, were often met with impatience from the legal counsel and Commissioner Bird. The friction in Tagashira's hearing suggests the failure of the Commission to accommodate Japanese Canadians' assertions of loss and dispossession.

Tagashira's assets while he was incarcerated. When he took over the case in 1949, MacLennan upheld Davidson's original argument. Referring to Masue's claim, he said, "Obviously it was the duty of the Custodian under the regulations to look after her interests for her protection."⁶⁴ In June 1948, Campbell testified to the Commission. When asked if he managed Tagashira's accounts, his response was straightforward: "As a matter of fact I did, as far as the old business was concerned." He acted in this role for the full management of the business, he explained, from the design of the agreement to its management in 1943 and 1944.⁶⁵ Correspondence detailing the arrangements between Campbell and Tagashira further confirmed his role as an agent of the Custodian in managing Tagashira's assets.⁶⁶

The contest over custodial responsibility carried weight. For the defence, it could eliminate certain claims and lay blame with the multitude of agents who worked for the Office of the Custodian. It would diffuse responsibility for a great injustice. For Japanese Canadians, however, it was a denial of obvious culpability. Were Hunter to prove that Campbell was not an agent of the Custodian, the majority of the Tagashiras' claims would fall outside the purview of the Commission. While his lawyers submitted a legal argument for the state's responsibility for the claim, Tagashira asserted his experience of the process. The interpersonal friction between Hunter and Tagashira suggests something of the limits of the hearings as an arena to address injustice. To uphold the state's claim to justice required sidestepping broader accounts of state intervention and responsibility like the account Tagashira put forward. In testifying to the broader circumstance of the forced sale

⁶⁴ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 138.

⁶⁵ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)," 120–122.

⁶⁶ *Ibid.*, 120.

of his properties, Tagashira asserted a vision of Canadian justice wherein the state was held accountable for discriminatory policies. His claims revealed the poverty of the justice the state offered through the Bird Commission. Tagashira's tenacity exposed the divergence of the government's permitted discussion of the dispossession from the lived reality of the experience. Even though the terms were set (sales by the Custodian fell within the purview), these hearings demonstrate the instability of those terms in practice. The determination of what counted as responsibility on the part of the Custodian carried implications for the outcome of the Commission. The fact that it could be so unstable in the course of a hearing further exposes the difficulty of clear definition of harm and then the administration of justice that the Commission was designed to convey.

Property

Property, of course, was at the centre of the Bird Commission. Although, as we have seen, the compensation of Japanese Canadians for their losses of real estate could destabilize the Commission's process for determining value, the term "property" uncontroversially applied. Both claimants and the government agreed that businesses, homes, farms, and the "stuff" that they contained were property. However, in 1942, the government had not simply seized Japanese Canadians' land and physical belongings. The Office of the Custodian held responsibility for their complete financial lives as well.⁶⁷ In the Tagashiras' case, this included accounts, records, debts, loans, agreements, and insurance policies. Six of these policies belonged to Rinkichi but two were in Masue's name. These, specifically, threw a wrench in the Commission's proceedings. They were

⁶⁷ Sunahara, *The Politics of Racism*, 96.

life insurance policies on her sister-in-law, Hatsu Jannai, who had returned to Japan in the late 1930s and passed away in 1947. Masue Tagashira was named as a beneficiary on the policies and, upon her sister-in-law's death, was meant to collect \$5,500. In the Office of the Custodian's hands, however, the policies expired. It was a significant loss for Masue. To the Tagashiras, responsibility for the lapse clearly lay with the state and their claim belonged at the Commission.

Thus, despite the Commission's bias towards real and moveable property, the Tagashiras submitted a claim for insurance benefits. Masue insisted on the state's culpability for her loss and demanded adequate compensation. Her testimony revealed the historical context of the policy; it revealed how, like real estate and personal belongings, the insurance policy was imbued with the significance of investment, sacrifice and future expectation. The complications of their case—exacerbated by the uncertainty around the role of Campbell—carried the claim forward to multiple hearings. In 1949, MacLennan continued to press the Commissioner to include her claim, drawing upon longstanding legal precedents and exposing the poverty of the Commission's definition of property.⁶⁸ The Tagashiras' hearings—unusual for the nature of the claim and Masue's assertions of state culpability—reveal, at least in retrospect, the Commission as an exertion of arbitrary force and continuation of state violence.

⁶⁸ At this point, MacLennan was deeply familiar with the state's legal arguments around the dispossession, having worked with Japanese Canadians like the Tagashiras since 1942 and litigated *Nakashima v King* at the Exchequer Court in 1943. The Tagashiras' first lawyer, N.A. Davidson, also submitted that the claim was for a chose in action. This, however, did not arise as a point of contention in the hearing but was glossed over. In contrast, MacLennan made an extensive argument for the inclusion of the claim on these terms.

It took several hearings for the Commission to determine the precise details of the insurance policy and Masue Tagashira's position as a beneficiary. The policy was taken out in 1935 as remittance for a loan Masue had previously made to her sister-in-law. Morizo, the brother of Masue's first husband, had travelled to Canada as early as 1913, and Hatsu, his wife, followed him shortly thereafter.⁶⁹ Morizo's death in 1935, however, left Hatsu in a precarious position.⁷⁰ Unlike Masue, who remained in Canada following her own husband's death, Hatsu returned to Japan. It was then that she borrowed \$800 from her sister-in-law to pay the balance of the mortgage on their farm and for her husband's funeral.⁷¹ As repayment for the loan, Masue was to have the benefit of the policy when Hatsu died.⁷² In Hatsu's absence, Masue maintained the insurance policy in the years that followed. These details were necessary to determine the legitimacy of the claim.⁷³

Masue's testimony reconstructed the financial strategies of women in the 1930s and conveyed sacrifice, investment, and expectation of future worth. Other claimants likewise submitted portraits of multi-generational families, described property improvements that were entwined with narratives of their lives, and frequently brought family members to testify at their hearings, suggesting the complex worlds in which the property of Japanese

⁶⁹ Passenger list, 9 April 1913, LAC, RG76 C (Department of Employment and Immigration), Ancestry.ca, "Canadian Passenger Lists, 1865-1935 [database online]"; Passenger list, 22 May 1915, LAC, RG76 C, Ancestry.ca, "Canadian Passenger Lists, 1865-1935 [database online]."

⁷⁰ Death record of Morizo Jinnouchi, 26 May 1935, BC Archives, Genealogy database, <http://search-collections.royalbcmuseum.bc.ca/Genealogy>, accessed: 15 May 2016.

⁷¹ Hearing evidence, 23 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masue (Vernon)," 65.

⁷² *Ibid.*, 60.

⁷³ *Ibid.*, 65.

Canadians was embedded and given meaning.⁷⁴ In Masue Tagashira's case, property was entwined with mutual support and long-term investment within a family.⁷⁵

Bird himself vocalized some of this investment in response to Crown attorney J.W. Hunter, when the latter doubted the relation between the two women: "It would be an extraordinary thing if, having accepted premiums over the years, [the Mutual Benefit Association] should be permitted to raise the deference that the beneficiary named was not a member of the family and therefore could not recover under that policy."⁷⁶ For a moment the Commissioner seemed to grasp the significance of the relations between the sisters-in-law and their strategies of financial support as working class, widowed women, strategies that required long investment and carried significance, perhaps, of more than the monetary value of the policy alone.

As with the rest of their property, Masue's insurance benefits were cast into doubt by Custodial control. Tagashira left instructions with H.D. Campbell to manage the policies. Within a few months, however, Campbell failed to make the required payments. The policy lapsed in November 1942 and was cancelled in August 1943. Testifying for the

⁷⁴ For examples, see files: 69, 160, 578, 782, 819, 1099. Despite the limitations on what could be included in case files, certain legal aids chose to include photographs of a claimant's family members. In these instances, a photo of a toddler with the family home in the background may have been the only photo that a family had of their home, and the only evidence to prove its quality. In others, however, the photos showed exclusively a child in a crib or their family members. In that case, they claimants and their legal aid subverted the Commission's purview of the Commission to make a case for loss and compensation that bled beyond the limits of market value. For examples of these photos, see files 27, 99, 254 and 733. LAC, RG33 69.

⁷⁵ For a fuller discussion, see: Jordan Stanger-Ross, Nicholas Blomley, and The LOI Collective, "'My Land Is Worth a Million Dollars': How Japanese Canadians Contested Their Dispossession in the 1940s," *Law and History Review* 35, no. 3 (August 2017): 711-51.

⁷⁶ Hearing evidence, 23 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 64.

case in 1949, Campbell failed to supply a concrete answer for why he had neglected the policy.⁷⁷ The lapse in 1942 meant that when Hatsu passed away in Japan in 1947, Masue was ineligible to collect on the policies. For Campbell's mistake, Masue Tagashira claimed the \$5,500 that she was entitled to as a beneficiary.

Despite rejecting the claim from the terms of reference, Bird declared it worthy of special consideration and heard the testimony for a special report. It appeared to be an exceptional circumstance of loss under the Custodian's care. Whether or not the claim fell within the terms of reference, he explained, he believed that "it was desirable that the evidence should be heard and a report made by [himself] to the Government of my conclusions as to the evidence which has been adduced before [him]."⁷⁸ Rather than simply dismissing the claim, Bird considered that it might merit special compensation.

Masue Tagashira appeared in her first hearing without legal representation.⁷⁹ The change was last minute. "It is on the list for Morrow," Bird asked prior to swearing in Masue on February 16, "He is not appearing for her?" "She says she is conducting it herself," Hunter responded.⁸⁰ Commissioner Bird and the government counsel accommodated the unusual circumstance and reshuffled their roles to lead Masue through

⁷⁷ Hearing evidence, 24 June 1949, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)," 136.

⁷⁸ Hearing evidence, 19 February 1948, LAC, RG33 69, vol. 9, file: "165 - Tagashira, Rinkichi (Vernon)," 47.

⁷⁹ Hearing evidence, 16 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 2.

⁸⁰ *Ibid.*, 3.

the hearing process. The government counsel was struck by the unusual circumstance, but agreed to lead the claim to present a fair explanation as to why it would be excluded.⁸¹

Standing alone, Masue asserted the state's culpability for the lapse. Bird explained the government's position that they had not known of the policies, having received "no notice from the claimant ... until after the date when the policies expired." Masue replied, through the translator, "the Custodian should have known about the responsibility."⁸² When Bird questioned the grounds of this claim, the Interpreter translated: "...the witness enlarged on the subject to the extent that she said, 'It was the fault of the Custodian that the policies lapsed.'" ⁸³ This exchange is remarkable for her rejection of Bird's interpretation and clear assertions of the Custodian's culpability.

If her words are modest in isolation, they are striking when placed in the context of the Bird Commission hearings and the internment era. Masue's claim was heard when the Commission staff and CCJC constrained Japanese Canadians' direct testimony of property loss and state culpability. Amidst the tension of impatience and appeasement, any direct statements of state culpability were notably rare.⁸⁴ Standing without legal aid allowed, in part, Masue the opportunity for this direct interaction. Yet, Masue's testimony is also

⁸¹ The Tagashiras hired their own solicitors, Charles W. Morrow and N.A. Davidson, to represent their claims. In doing so, they avoided compromising their claims under the broader strategies of the organization representing the vast majority of claims, the CCJC. Whereas the CCJC lawyers tempered Japanese Canadians' claims based on cumulative knowledge of Bird's decisions and preferences, independent lawyers brought new interpretations that—intentionally or not—could challenge the procedure of the Commission.

⁸² Hearing evidence, 16 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masue (Vernon)," 4.

⁸³ *Ibid.*, 9.

⁸⁴ As noted in Chapter 2, Japanese Canadians' solicitors sought to maintain a degree of cordiality in the hearings to preserve opportunities for negotiation.

remarkable given her gender. Women's voices were rarely heard in the Bird Commission; three months into the hearing, Masue was only the seventeenth women to testify.⁸⁵ A tendency to call in sons to testify for their mothers' claims further marginalized women's testimony.⁸⁶ Further, Masue's assertions, and Rinkichi's that followed, are significant for their broader historical context. Just over a year earlier, the Canadian state had deported nearly 4,000 Japanese Canadians, and there was little evidence that it had committed to a new vision of justice. Their testimony stands as evidence to at least one Japanese Canadian's faith (or insistence) that the Canadian state uphold its commitment to justice.⁸⁷ Beyond the symbolic power of this gesture, the Tagashiras' assertions disrupted the order of the Commission procedure. Their interjections aggravated the streamlined proceedings and provide a clearer vision of their operation.

⁸⁵ Masue's was the 143rd hearing. In total, just over an eighth of the total claimants who submitted claims were women (182 of the 1,371 claims).

⁸⁶ This approach carried advantages and disadvantages. In certain cases, women who were well equipped to testify to their property were dismissed unfairly. In others, family members were indeed more familiar with the claim. The additional assistance in women's hearings, however, is striking when compared to how rarely family testified on behalf of male claimants. Though over a third of men (in a random sample of 73 claims) used interpreters in their hearings, only a few family members testified in their place. In contrast, family members appeared in women's hearings closer half of the time (in a sample of 36 women's claims). Even if Japanese-Canadian women had poorer English-language skills, could they not have simply used translators like the men? How gender operated in the Bird Commission to silence and privilege different articulations of property ownership and loss is a topic for further inquiry.

⁸⁷ It is worth noting that Frank G. Shears, the Manager of the Office of the Custodian, was in the room for this first hearing. Bird gestured to Shears ("Mr. Shears, the gentleman who is sitting at the table?") in the hearing on February 16, 1948, and Shears' correspondence with McPherson describes his attendance at this set of hearings. Hearing evidence, 19 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 15; Letter to Shears from Wright, 22 February 1948, TFRBL, Shears papers, box: 2, folder 6: "G. W. McPherson, part 1 1941-1948"; Letter to Wright from Shears, 21 February 1946, TFRBL, Shears papers, box: 2, folder 6: "G. W. McPherson, part 1 1941-1948."

Despite Masue's assertions, it seemed unlikely that her claim would be considered for compensation. Without a solicitor to state the grounds of Masue's claim, Bird and Hunter agreed that it fell outside the terms of reference. Bird understood it to be for damages arising out of the negligence of the Custodian, while Hunter set forth several arguments to ensure its exclusion. Hunter rejected Masue's claim on multiple grounds. He submitted that Jinnai's insurance policies were "enemy policies" which the Custodian was under "no obligation to pay." Second, he argued that, as there was not sufficient evidence to indicate that Masue was a beneficiary, she had "no interest" in the policies. "In the alternative," he argued that they were "enemy policies" and therefore "they did not vest under the Terms of Reference P.C. 1665 of '42." He concluded that if any liability existed regarding the non-payment of premiums, that it was not "the liability of the Custodian."⁸⁸ With this on record, Bird requested that the hearing continue to determine the nature of the claim and procure the necessary information to complete his report on the claim. He requested in particular a translation of the *koseki* provided as the "proof of death" for Hatsu Jinnai.⁸⁹ Despite the translator's assertion that it was an official proof of death—signed by the municipal official—Bird remained skeptical. "There are too many 'ifs' and 'ands' in it," he said. "I am afraid that is pushing it rather too far. There will have to be proper proof of death."⁹⁰ This left the claim open for the submission of further evidence and argumentation by a different lawyer, J. A. MacLennan, in 1949.

⁸⁸ Hearing evidence, 19 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 44.

⁸⁹ Hearing evidence, 23 February 1948, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon,)" 62.

⁹⁰ *Ibid.*

That June, MacLennan made an argument that drew on pre-existing conventions in law to bring Masue Tagashira's claim within the purview of the terms of reference. He argued that Masue's claim was for the "chose in action" that was sacrificed by Custodian. That is, Campbell's failure to notify Masue of the lapse cost her "the right to recover these policies on the happening of certain events, namely the death of Mrs. Jinnai."⁹¹ In this argument, the property vested under the Custodian was an "inchoate claim which the beneficiary had under the policy, namely a [chose in] action." Drawing upon legal doctrines of property that identified both "choses in possession" (tangibles, such as pianos) and "choses in action" (intangible personal property, like the right to collect a debt), MacLennan claimed the latter in the case of the insurance policy. "Isn't it the same thing as if I left the piano in the hands of the Custodian and it was lost?" MacLennan asked, trying to draw out the parallel between choses in possession and choses in action.⁹² As Campbell had not notified Masue that the policies were to expire, MacLennan argued, she had lost the opportunity to bring action on the policy, the "chose in action." This, MacLennan argued, was the property she had lost and it had cost her the \$5,500. Bird, however, continued to return to the loss being the result of negligence, rather than the loss of the opportunity to collect.

⁹¹ A "chose in action" is a long established legal expression use to describe all personal rights of property that can only be claimed or enforced by action, and not by taking physical possession. W. S. Holdsworth, "The History of the Treatment of 'Choses' in Action by the Common Law," *Harvard Law Review* 33, no. 8 (1920): 977.

⁹² If a claim under an insurance policy arises and is not acted upon (claimed), at some point that claim would be statute-barred. The right to bring an action, and ergo the chose in "action," dies once the time for suit expires. Thank you to Dr. Bruce Ziff for his help identifying the stenographer's typo ("chosen action" rather than "chose in action") and providing a layperson's explanation for choses in action and choses in possession.

In face of Bird's skepticism, MacLennan presented a short alternative argument. "I would just ask your lordship to consider an alternative claim in this regard for being property loss," he explained, "namely the premiums, which had been paid for the previous ten years, money being the property that was lost, because it was avowedly a payment."⁹³ MacLennan described the policies as a type of property in which Masue Tagashira had invested over the course of a decade. In this case, she had lost that investment. Rather than characterize the claim as a failure in "reasonable care," MacLennan used the claim to highlight a fundamental shortcoming of the Commission's definition of property.

Bird, however, remained unmoved in his decision to exclude the claim. "I am afraid I am not convinced, Mr. MacLennan," he said. He likened it to a similar case where the "circumstances were peculiar" and a special report was submitted to the Minister of Justice.⁹⁴ He asked MacLennan to clarify whether he was claiming a "breach of duty" on the part of the Custodian, a type of claim that could be considered by the Commission. MacLennan rejected this and reiterated that his argument was about the insurance policy as a type of property, rather than the role of the Custodian. MacLennan's argument exemplifies the continual process of negotiating the terms of reference throughout the Commission. Rather than contest the terms, he tried to work within and to reinterpret them in a way that would include Masue Tagashira's claim. Both claimant and Commissioner agreed that property was the purview of the hearing, but what was included in "property"? The Tagashira case revealed the arbitrary nature of the Commission's definition of property even as the proceedings churned ahead. MacLennan's argument, contextualized in Masue's

⁹³ Hearing evidence, 23 June 1949, LAC, RG33 69, vol. 8, file: "143 - Jinnouchi, Mrs. Masuye (Vernon)," 75.

⁹⁴ *Ibid.*, 79.

testimony, made a compelling, though unsuccessful, case for broader interpretation of property.

In the end, Bird's interpretation of the *koseki*, the Japanese state family register, prevented Masue from being awarded special compensation. Bird wrote in the report that it was his opinion that the "cancellation of these policies resulted from the failure of the Custodian," yet, he wrote, in absence of proof of Hatsu Jinnai's death "(if she may be dead)" "it has not been established that the claimant suffered the alleged, or any loss."⁹⁵ Even when presented with an English translation in 1949, he requested that they had better establish her "Christian name" from the document. (It was there.) Ultimately, Bird wrote that the document was not identified satisfactorily, and that he was unable to "determine from examination from the Japanese document that it relates to Hatsu Jinnai."⁹⁶ In this final report, Bird seems to have accepted MacLennan's argument to include Masue's claim, but found separate grounds for its exclusion.⁹⁷

Bird's rejection of the Japanese state documentation prompts us to question the stakes of argumentation in the Bird Commission.⁹⁸ Each claim had significant consequences for both the state and claimants. For the state, hearings were the basis to

⁹⁵ Special report on recommendations for claims that fell outside the terms of reference, TFRBL, Shears papers, series 2, box 5, file 4: "Bird, Henry Irvine, Recommendations for Special Consideration of Claims Outside Terms of Reference., [1950]," 16.

⁹⁶ *Ibid.*, 21.

⁹⁷ He described the claim as for "a loss of personal property being a chose in action consisting of the benefits which would have accrued to her if the policies had been kept in force." *Ibid.*, 16.

⁹⁸ The arbitrary nature of Bird's decision on Masue's claim suggests that there was some other explanation for excluding the claim. Those for whom Bird did recommend special compensation included veterans, fishing vessel owners, and property owners whose real estate did not sell (from single locations, like Port Essington). The claim neither fit into a larger category of claimants nor was a case of small compensation, making it politically difficult to accept. Perhaps Bird felt that accommodating such an individual circumstance would open the door to further requests for consideration. If Bird held Japanese Canadians' interests in mind, his decisions were tempered by pressure from cabinet members to contain the Commission to its original purpose.

build their evidence to prove their claim of justice and accountability. For claimants, however, a decision to exclude their claim foreclosed their likeliest opportunity for compensation. The Tagashiras and their counsel put forward persistent arguments to include their claims, despite the hostility and narrow interpretations of the Dominion counsel. The decisions could mean a difference of thousands of dollars. This argumentation succeeded in proving Campbell's role as an agent of the Custodian and succeeded, arguably, in bringing the insurance policy within the terms of reference. Bird's obscure and politically cautious decisions held material consequences for Japanese Canadians who looked to rebuild after years of internment.

In a fundamental way, the contest around the categories of property within the purview of the Commission exposed the Commission's operating definition as arbitrary. The state had tied itself to a definition of property as "stuff," whereas in fact law had long recognized the poverty of this definition, recognizing the complex forms of property investment in a modern economy. With such limitations, the Commission could carry only a very thin veneer of legality. It was, if this is the case, not an act of reconciliation or compensation, but a further act of arbitrary force. Even if the terms could no longer be contested, this contestation of the meaning of the terms of reference exposes, at least in retrospect, the Commission as a further act of state violence.

Conclusions

The Bird Commission was a chapter in the Tagashiras' pursuit of fair compensation for their losses of the 1940s. Together, Rinkichi and Masue Tagashira asserted the state's culpability for their losses and demanded fair compensation. Over the course of two years, their claims were revisited six times, their hearings postponed for further evidence (for

proof of Hatsu Jannai's death and testimony from the contentious H.D. Campbell). Commissioner Bird's offer to consider Masue Tagashira's claim, which the CCJC counsel may have eliminated prior to the hearing, opened the door to much of this contention. The Tagashiras' assertions and their legal counsel's arguments further expanded the hearings. The process of determining the Tagashiras' grounds for compensation was complicated, often confused, and grinding. In persevering, however, they strained the Commission past its normal operations to reveal exactly what it offered.

The terms of the Bird Commission refracted Masue and Rinkichi Tagashiras' claims to fair compensation, at times even threatening to eliminate their categories of claims altogether. Rather than beginning with the circumstances of property loss—the forced uprooting and internment of property owners, the state's seizure and promise to protect Japanese Canadians' property—the Commission limited the inquiry to whether Japanese Canadians' property was sold at fair market value, according to the time of sale. The “skeletonization” of the issue allowed the government's defence to deny culpability in Japanese Canadians' losses. By framing the issue of Japanese Canadians' property loss as a matter akin to expropriation, the Commission eliminated the historical contingencies that fundamentally shaped the sale of their property. For the government counsel, the routine process of argumentation offered the opportunity to deny Japanese Canadians' losses altogether.

Yet the broader historical circumstances continually edged into the arguments and evidence in the Bird Commission hearings. Rinkichi Tagashira asserted that, given the government's legal promise to protect Japanese Canadians' property and the historical account of his dispossession, the Office of the Custodian was culpable for his losses. The

testimony of the real estate agents threatened to undermine the government's claim to procedural accountability. These agents suggested that the sale prices of the urban properties could not be understood outside of the broader circumstances of the forced uprooting and dispossession, wherein speculation on and prejudice towards Japanese Canadians' properties impacted their sale. More fundamentally, the elimination of historical context elided the fact that Japanese Canadians' property was not sold on a free market.

These observations of the Tagashiras' hearings carry implications for our understandings of Japanese Canadians' engagements with the state in the 1940s. Their hearing illuminates how Japanese Canadians interacted with a state that offered (at best) rough justice. Historian Tina Loo warns us not to mistake people's participation in the legal process as an "indication of their beliefs in the rule of law and the legitimacy of the larger system of authority of which it was a party." Instead, "people only obey and use the law because it is in their interest to do so."⁹⁹ The Tagashiras' Bird Commission hearing suggests how some Japanese Canadians, despite the arbitrary violence of the state, seized federal forums to pursue their own interests.¹⁰⁰

After six years of negotiation, argumentation, and struggle, the Tagashiras testified to the state and bureaucrats who had implemented their dispossession. There was more at stake than establishing procedural details: this was an opportunity to directly confront the

⁹⁹ Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol, and Rhetoric in British Columbia, 1884–1951," 129, 164.

¹⁰⁰ As Eric Adams and Jordan Stanger-Ross write, the initial rejection of Japanese Canadians' protests to the forced sale of their property did not dissuade Japanese Canadians from holding the state accountable to its promise to protect their property. Eric M. Adams, Jordan Stanger-Ross, and the LOI Collective, "Promises of Law: The Unlawful Dispossession of Japanese Canadians," *Osgoode Hall Law Journal* 54, no. 3 (Spring 2017): 733.

state for its unjust policies and claim just compensation. When the Dominion counsel claimed the Custodian had no role in the forced sale of Rinkichi Tagashira's business, it contradicted his experience and knowledge of federal policy. He had spent six years negotiating, arranging, and protesting the management and sale of his property with that same office. He knew the Order in Council that they followed and their obligation to protect his interests. But perhaps the absurd claim no longer surprised him. Perhaps he recognized the continuity between the state that dispossessed him and the state that, in 1948, denied responsibility. He pursued his claim, despite the limitations of the Commission, because it was a chance at compensation and, perhaps, because it was an opportunity at meaningful reparation. Rinkichi Tagashira's commitment to recognition from the federal government carried forward, in memory, to the redress movement. At a meeting in 1985, a friend of the Tagashiras recalled that "injustices that were done to [Japanese Canadians] were the prime driving force in Mr. Tagashira's thinking ... and he could see then that unless these things were settled properly, they were going to affect all our lives for the rest of our lives—not just his life or our lives but the lives of coming generations."¹⁰¹ The Tagashiras' pursuit of compensation was entwined with a vision of what a just government should be.

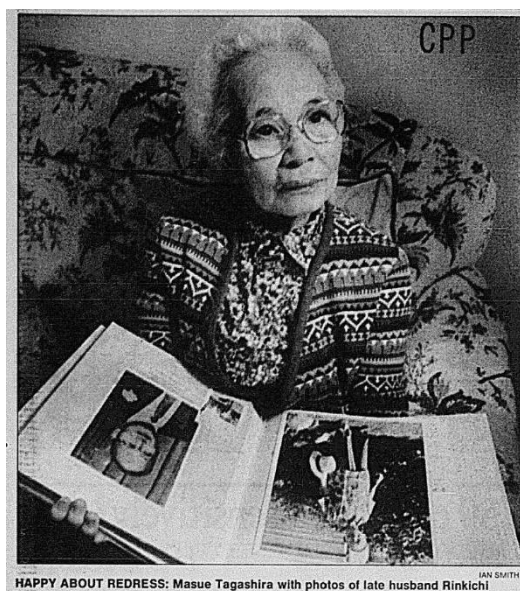
Further, the Tagashiras' hearings reveal something about the processes required to uphold a narrative of state accountability. Put simply, it required continually resisting, silencing, and submerging Japanese Canadians' articulations of loss and value. The Commission was meant to impart an impression of rule of law, of an orderly state correcting its own errors. Yet the Tagashiras' hearings revealed the arbitrary decisions and

¹⁰¹ Roy Miki, *Redress: Inside the Japanese Canadian Call for Justice* (Vancouver: Raincoast Books, 2004), 251.

limitations it continually imposed. Cabinet established a commission to investigate its own wrongdoing, thereby trying to tell a story about Canada as governed by rule of law. However, the only way that it could happen was through arbitrary decisions and, in that, it joins in with measures that it was meant to correct. The Commission reproduced the disorderly racist actions of the state and, rather than being corrective, was a re-enactment of the way the dispossession happened.

If Commissioner Bird's final report tells a story of procedural accountability and fair treatment, the transcripts of the Bird Commission tell us another. Even while operating within the set paradigm of the terms of reference, Japanese Canadians and other witnesses submitted evidence and arguments that undermined the foundations on which the state claimed to provide justice. Amidst the details of property transactions, renovations, fishing nets, and gardens lies a second narrative. It is one of loss that extended beyond the limitations of market value and began with the first state intervention in Japanese Canadians' lives in 1942. It is also one that extended beyond a paradigm of expropriation, to include stories of opportunism, speculation, and (fundamentally) the betrayal of trust. As the Bird Commission churned ahead, the hearings were a terrain in which these narratives conflicted. In retrospect, at least, Japanese Canadians' determination to place their losses on record were not wasted. They reveal the continued exertion of arbitrary force over Japanese Canadians and the challenge of reparations in the face of profound injustice.

CONCLUSION



*Masue Tagashira with photo of Rinkichi following the announcement of the Redress settlement. Doug Ward, "Redress Package Brings Jubilation, Sadness, Cynicism," *The Vancouver Sun*, September 23, 1988.*

When the Department of Finance distributed compensation in 1951, Rinkichi Tagashira received a check for a total of \$7,647. Her claim rejected for lack of sufficient evidence, Masue Tagashira received nothing. By then, the couple had returned to Vancouver and, with their remaining funds, purchased a lodging house on Alexander Street.¹ They re-established themselves in the city as landlords and lived in a small home with a big yard where Rinkichi could garden.² As their children attended university, they

¹ Masue Tagashira, interviewed by Joanne Wood and Eric Sokugawa, 16 August 1983, tape 1994.80.13 (part 1), Japanese Canadian Oral History Collection, Simon Fraser University Digital Collections, Vancouver, B.C. <http://digital.lib.sfu.ca/johc-295/interview-masue-yagashira>.; City of Vancouver Archives, S71 (Health Inspection records), box 145-c-4, folder 5: "778-755 Alexander Street."

² Masue Tagashira, interview.

continued negotiations for compensation with Frank G. Shears, the manager of the Vancouver Office of the Custodian. In 1953, when the Vancouver Office closed and destroyed its records (sending microfilmed reels to Ottawa), they settled on \$1,942.55 as compensation for Masue Tagashira's loss as a beneficiary of Hatsu Jannai's insurance policy.³ The settlement marked eleven years since their first uprooting, and ten since the government had authorized the forced liquidation of their assets. But this did not end their pursuit of compensation. In the 1980s, Masue Tagashira joined the campaign for redress, a movement to gain federal recognition of and compensation for the hardships Japanese Canadians had endured in the wartime years. Rinkichi Tagashira had by then passed, but Masue would say she joined to continue his pursuit of justice. She would be remembered by a younger generation as having "provided an ethic of spirit and vision without which the [redress] movement could not have survived."⁴ It was a different time and the campaign had different priorities from those of the late 1940s, but perhaps the achievement of the redress settlement in 1988 was a chance for Masue Tagashira to see justice on her terms.

The Bird Commission is a story of two contesting narratives put forward by government officials and Japanese Canadians in the wake of the state violence of the Second World War. If the government officials hoped to move past an uncomfortable issue with a symbolic commission, Japanese Canadians held the state to a higher degree of accountability. In their claims to just compensation, the Bird Commission claimants

³ Memorandum, *undated*, Library and Archives Canada, RG117 (Office of the Custodian of Enemy Property fonds), vol. 1, file 1 part 5: "Correspondence of Frank G. Shears re his career as Director, Custodian's Office (Vancouver Office); his involvement in closing the office; compensation and superannuation. 1942/12-1958/12."

⁴ Roy Miki, *Redress: Inside the Japanese Canadian Call for Justice* (Vancouver: Raincoast Books, 2004), 246.

asserted that they, as Canadian citizens, deserved to live free of discrimination and had the right to compensation for their damages. In their assertions, they resisted government officials' plans to move past the uncomfortable history and they resisted the silencing of their injustice.

A study of the Bird Commission opens new grounds for studying Japanese Canadians' engagement with the state in the 1940s. The creation of the Bird Commission and the unfolding of its hearings involved interaction between federal officials and Japanese Canadians who demanded response to their claims. Although government officials heard and recognized Japanese Canadians' claims for justice, they, for the most part, chose to carefully avoid them. By redefining the issue of property loss and injustice as a matter of procedural error, the government consciously avoided grappling with the implication of the forced uprooting, internment, and dispossession of Japanese Canadians on the basis of race.

These observations carry ramifications for understanding the Canadian state in the mid-20th century. By the late 1940s, even cabinet members who were fully committed to the forced uprooting, dispossession, and dispersal of Japanese Canadians were uneasy with the policies. Now, they faced the task of moving past the wartime treatment of Japanese Canadians without undermining the legitimacy of the state. As government officials debated how to address the issue of property compensation, they engaged in a debate over the meaning of the internment era in public narratives. Faced with the challenge of addressing complex and extensive losses, federal officials defined injustice as a matter of procedural error, thereby moving the conversation of loss and compensation to a terrain

where its accountability could be proved. The path to liberalization would be built at the expense of Japanese Canadians.

This thesis demonstrates that the Bird Commission cannot be understood without attention to the lives and testimonies of those individuals who submitted claims. A close study of the Bird Commission case files reveals both the assertions of Japanese Canadians and the continued exertion required to repress their narrative of the dispossession and state violence. This thesis thus reveals the inadequacy of analysis that relies exclusively on bureaucratic reporting from these years, challenging future scholars to undertake the hard work of reading the lengthy commission records and attending to the stories that they contain.

The Bird Commission hearings contain complicated acts of resistance. I have proposed the notion of interests to recognize that Japanese Canadians held complex, shifting, and contradictory positions in systems of domination. In the case study of the Tagashiras, I have attempted to show how people (Japanese Canadians and their lawyers, specifically) navigated the state to pursue their interests. For the Tagashiras, this was the preservation of family, business, and home. For Japanese Canadians' lawyers, this was the pursuit of fair compensation for their clients. In submitting claims to the Bird Commission, Japanese Canadians and their solicitors tried to make the losses of the 1940s legible to the Canadian state for the sake of material compensation but also pursued broader recognition of state violence. The challenge of reparations in the wake of state violence involved becoming entangled in the same state processes that claimants and their lawyers resisted.

In the late 1940s, the government officials crafted a royal commission in response to Japanese Canadians' claims for fair compensation. Though they considered the grounds

upon which Japanese Canadians claimed losses, government officials instead defined their responsibility to Canadian citizens as procedural accountability. This claim allowed the government to move past the violence perpetrated against Japanese Canadians in the years prior. In practice, however, the claim could only be upheld through arbitrary decisions, making it a further extension of the disorderly racist actions the state had enacted during the initial dispossession. In the Bird Commission hearings, the state continued the same violence it purported to correct. Undeterred, Japanese Canadians called upon the Canadian government to end the era of state violence and uphold a vision of justice that respected their rights as Canadian citizens and property owners.

Looking back on the Bird Commission, we know that the state that Japanese Canadians sought to legitimate would ultimately betray them, exerting a narrative of loss and dispossession that suppressed their calls for compensation and justice. Yet in overlooking the Bird Commission proceedings, we risk reproducing that silencing. The Bird Commission records reveal that in the late 1940s, Japanese Canadians, of different backgrounds, seized the federal forum to push for a different postwar era, one in which their rights as citizens and property owners were recognized and protected.

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