Nikkei in the Pacific Northwest

JAPANESE AMERICANS & JAPANESE CANADIANS IN THE TWENTIETH CENTURY

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CONTENTS

ACKNOWLEDGMENTS *ix*

1 / Introduction: Nikkei in the Pacific Northwest *3*
LOUIS FISET AND GAIL M. NOMURA

2 / Writing Racial Barriers into Law: Upholding B.C.'s Denial of the Vote to Its Japanese Canadian Citizens, *Homma v. Cunningham*, 1902 *20*
ANDREA GEIGER-ADAMS

3 / Becoming "Local" Japanese: Issei Adaptive Strategies on the Yakama Indian Reservation, 1906–1923 *44*
GAIL M. NOMURA

4 / Yasutaro Yamaga: Fraser Valley Berry Farmer, Community Leader, and Strategist *71*
MICHIKO MIDGE AYUKAWA

5 / Americanization vs. Japanese Cultural Maintenance: Analyzing Seattle's *Nihongo Tokuhon*, 1920 *95*
NORIKO ASATO

6 / "The Nail That Sticks Up Gets Hit": The Architecture of Japanese American Identity in the Urban Environment, 1885–1942 *120*
GAIL LEE DUBROW

7 / Four Hirabayashi Cousins: A Question of Identity *146*
JAMES A. HIRABAYASHI

8 / The Minidoka Draft Resisters in a Federal Kangaroo Court *171*
ERIC L. MULLER

9 / Words Do Matter: A Note on Inappropriate Terminology and the Incarceration of the Japanese Americans *190*
ROGER DANIELS

10 / In the Matter of Iwao Matsushita: A Government Decision to Intern a Seattle Japanese Enemy Alien in World War II *215*
LOUIS FISET

11 / The "Free Zone" Nikkei: Japanese Americans in Idaho and Eastern Oregon in World War II *236*
ROBERT C. SIMS

12 / Lessons in Citizenship, 1945–1949: The Delayed Return of the Japanese to Canada's Pacific Coast *254*
PATRICIA E. ROY

13 / Peculiar Odyssey: Newsman Jimmie Omura's Removal from and Regeneration within Nikkei Society, History, and Memory *278*
ARTHUR A. HANSEN

14 / Reclaiming and Reinventing "Powell Street": Reconstruction of the Japanese Canadian Community in Post–World War II Vancouver *308*
MASUMI IZUMI

CONTRIBUTORS *335*

INDEX *339*

2 / WRITING RACIAL BARRIERS INTO LAW

Upholding B.C.'s Denial of the Vote to Its Japanese Canadian Citizens, *Homma v. Cunningham*, 1902

ANDREA GEIGER-ADAMS

During the last decades of the nineteenth century, the province of British Columbia was a rapidly growing, predominantly immigrant society that was increasingly fractured along racial lines.[1] Although its white citizens shared many of the same anti-Asian prejudices as their neighbors south of the U.S.-Canada border, Canada—unlike the United States—did not bar Japanese immigrants from becoming naturalized citizens. Canadian law and policy thus appeared more inclusive than U.S. law.[2] The 1902 decision in *Homma v. Cunningham,* which upheld British Columbia's denial of the franchise to naturalized Asian immigrants and their Canadian-born children, revealed, however, the equal ability of Canadian law to deny its citizens the rights of citizenship on racial grounds. Notwithstanding differences in the constitutional structure of the United States and Canada it otherwise regarded as important, the Judicial Committee of the Privy Council in London, final arbiter of the case, reached south across the Canada-U.S. border for doctrine to justify its reversal of existing case law.[3] British Columbia's pursuit of that result, and its acceptance of the Privy Council's reasoning, suggests how permeable the boundary between the United States and Canada was when it came both to racist attitudes and to justifying the expression of those attitudes in law. *Homma v. Cunningham,* which fixed B.C.'s denial of the franchise to citizens of Japanese, Chinese, Native, and East Indian ancestry in the law for the next half century, stands as an example of the tendency for citizen and subject alike to become ever more thoroughly racialized categories in early twentieth-century North America. As the debate surrounding this case reflects, the rationale advanced by British Columbia officials to justify the Province's position invoked the politics of gender as well as race.

Even before British Columbia joined Confederation in 1871, its residents sought to exclude Chinese immigrants from voting in local elections.[4] Once it became a province, B.C. legislators, focused on crafting a society that was both white and essentially British, acted quickly to fix those barriers in provincial law.[5] Invoking the same kind of anti-Asian rhetoric relied on by nativists in California and elsewhere along the Pacific coast, B.C. legislators amended British Columbia's voters' legislation in 1875 to bar Chinese and Native residents of B.C. from voting in provincial elections.[6] Because there were virtually no Japanese immigrants in B.C. at the time, they were not included in the initial proscription. In 1895, however, the B.C. legislature added Japanese immigrants to those already excluded from the franchise, even though its own records reflected that there were fewer than 130 naturalized Japanese immigrants in the province at that time.[7] The attorney general of B.C. later suggested that the legislature acted in that year in part because it was aware that growing numbers of Japanese laborers were taking advantage of opportunities to find work abroad, in the wake of the Japanese government's 1885 removal of the bar it had maintained on labor emigration.[8]

As amended, the Provincial Voters Act provided that "no Chinaman, Japanese, or Indian shall have his name placed on the Register of Voters for any Electoral District." The term "Japanese," as used in the statute, referred not just to anyone who was a "native of the Japanese Empire or its dependencies not born of British parents," but also to "any person of the Japanese race, naturalized or not."[9] Because it applied not just to Japanese immigrants, but to anyone born in B.C. who was of Japanese descent, the issue became one not just of national origin but of race. The legislature ensured that its proscription would be enforced by imposing a fifty-dollar fine and up to one month's imprisonment on any collector of voters who violated the act by adding the name of someone of Asian descent to the voters list.[10]

On October 19, 1900, Tomekichi Homma, a naturalized British subject born in Japan, applied to Thomas Cunningham, collector of voters for Vancouver, B.C., to have his name added to the voters list for that electoral district.[11] Homma's request was a deliberate challenge to the Provincial Voters Act. As Homma anticipated, Cunningham refused to place his name on the voters list for Vancouver, B.C.[12] Within a week, Homma filed a lawsuit challenging Cunningham's refusal and the 1895 amendment to the Provincial Voters Act on which he relied.[13] Homma did not act alone in mounting his challenge. His attempt to register to vote was part of a larger, coordinated effort by naturalized Japanese immigrants in British Columbia to challenge



FIG. 2.1 *Tomekichi Homma, Vancouver, B.C., 1909. (Courtesy of the Homma family)*

the discriminatory provisions of the Provincial Voters Act. Collector of Voters Thomas Cunningham reported that several other naturalized Japanese immigrants had applied to have their names added to the provincial voters list at the same time, and that he had also refused them.[14] The resources of the Japanese immigrant community were limited, however, and the cost of filing multiple lawsuits prohibitive. For that reason, those intent on challenging the Provincial Voters Act decided to focus the community's resources on Homma's legal action and to use it as a test case, which would serve as precedent for others in the same position.[15]

Homma was chosen as the public face of a broader challenge to the Provincial Voters Act because of the leadership role he had already assumed in B.C.'s Japanese immigrant community. Homma, who had arrived in Canada in the mid-1880s,[16] had worked to organize the Gyosha Dantai (Japanese Fishermen's Association) in 1897 and had served as its chairman until 1899.[17] In 1897, Homma also helped to establish a bimonthly newsletter called *Dai Nippon* to provide Japanese immigrants living in B.C., many of whom were not yet able to read English-language newspapers, with news of both Canada and Japan.[18] By 1900, the year in which he undertook his challenge to the Provincial Voters Act, Homma was operating a boarding house in downtown Vancouver and had joined with a partner to provide laborers

for the Canadian Pacific Railway.[19] In the early fall of that year, he also helped to establish an organization dedicated to upholding the dignity and defending the rights of Japanese living in Canada.[20] Regarded as both principled and resolute by his peers, Homma was considered the person best able to see the test case through.[21]

Members of the Gyosha Dantai, the fishermen's association Homma had helped found, were the staunchest supporters of his challenge to the Provincial Voters Act, rallying behind him and working to collect funds from the larger Japanese immigrant community to help pay the legal fees that quickly accumulated.[22] On October 23, 1900, just four days after Homma attempted to register to vote, the *Vancouver Daily Province* noted with some interest a report in a local Japanese-language newspaper that a local Japanese association had concluded that the Provincial Voters Act was unconstitutional.[23] Opinion within the Japanese immigrant community as a whole about the wisdom of filing suit, however, was divided. Many Japanese immigrants—a large majority of whom had only recently arrived from Japan—doubted that any individual could win a lawsuit against a government, and feared that aggravating provincial authorities would only make things more difficult for Japanese immigrants already dependent on their good will.[24] Seizaburo Shimizu, the Japanese consul in Vancouver, B.C., also distanced himself from Homma's case, explaining to a local reporter that "once a Japanese becomes a naturalized British subject, he passes out of my jurisdiction, and I keep track of him no longer."[25]

Homma was undeterred by the criticism. His biographer, Shigeharu Koyama, attributes Homma's determination not just to his strength of character but to a deep sense of responsibility traceable to his family's status in Japan.[26] As the third son of a former samurai family that traced its lineage back to retainers of the Ashikaga shoguns in the 1400s, Koyama argues, Homma felt obliged to assume a leadership role in challenging the racist legal barriers Japanese immigrants encountered in B.C.[27] Motivated in part by indignation that rights available to other adult males in B.C. should be denied to those from Japan, Homma also understood that the ability to vote would give Japanese immigrants a voice in shaping legislation that affected them.[28] As his decision to pursue the test case demonstrates, Homma was a careful student of his adopted country and its processes of government.

Homma served notice of his intention to challenge the Provincial Voters Act on October 25, 1900, less than a week after Cunningham refused to place his name on the voters list.[29] Cunningham, who released that notice to the press, remained defiant, flatly telling a reporter that he would "put



FIG. 2.2 *Tomekichi Homma and his wife, Matsu, with sons Joseph and Junkichi, Vancouver, B.C., 1909. (Courtesy of the Homma family)*

no Asiatic name on the voters' list." He was unconcerned that his own action might be found by the courts to be unconstitutional. "Courts or no courts, orders or no orders," Cunningham told a reporter, he would rather go to jail than add a single Chinese or Japanese name to the voters list he was responsible for preparing.[30]

Homma's case was first argued before Chief Justice McColl of the B.C. Supreme Court, sitting as a county court judge, on November 29, 1900.[31] Homma was represented in that action by local barrister R. W. Harris of the law firm Harris & Bull. Harris argued on Homma's behalf that the B.C. legislature lacked the power to exclude any subset of its male citizens from the franchise, emphasizing that section 91 of the British North America Act—Canada's constitution—stated unequivocally that naturalization was a subject over which the Dominion government had exclusive control.[32] The Naturalization Act, passed by the Dominion government pursuant to its power over naturalization, provided in turn that every naturalized alien was entitled to "all political and other rights, powers and privileges to which a

natural-born British subject is entitled within Canada."[33] For that reason, Harris argued, the Province had no power to exclude naturalized citizens from the franchise. That principle was reaffirmed in 1899, he reasoned, when the Privy Council decided *Union Colliery Company v. Bryden,* in which it rejected B.C. legislation that had barred Chinese miners from working underground. In *Bryden,* the Privy Council had expressly declared that it was the Dominion government that was "invested with exclusive authority in all matters which directly concern the rights, privileges, and disabilities" of aliens resident in Canada, whether or not they were naturalized.[34] The Privy Council's declaration made it clear, Harris argued, that the Province lacked the power to deny the franchise to any subset of its naturalized male citizens. Because the legislation was *ultra vires,* it was also invalid.[35] Cunningham's lawyer, Charles Wilson, disagreed. He argued on behalf of Cunningham and the Province that the question of who could vote in provincial elections was an issue of "purely local concern" over which the Dominion government had no authority.[36]

Chief Justice McColl handed down his decision the day after he heard argument in the case. He agreed with both sides that the outcome turned on the narrow constitutional question of whether the Dominion or the provincial government had the power to determine the rights and privileges of naturalized citizens.[37] And he agreed with Harris that *Bryden* was binding. For that reason, he concluded, the only possible conclusion was that the B.C. legislature lacked the power to pass any legislation that did not "apply alike to born and naturalized subjects of Her Majesty."[38] Although Chief Justice McColl suggested he reached this result reluctantly, he was not insensitive to the broader ramifications of the legislature's action, expressing concern about B.C.'s attempt to create two separate classes of citizens. "The residence within the Province of large numbers of persons," he wrote, "British subjects in name, but doomed to perpetual exclusion from any part in the passage of legislation affecting their property and civil rights would surely not be to the advantage of Canada, and might even become a source of national danger."[39] Based on his conclusion that the 1895 amendment barring Japanese-born citizens from the franchise was invalid, Chief Justice McColl ordered that Homma's name be placed on the voters' register.[40] Civil authorities, however, were determined to ignore that order. In the words of the deputy returning officer, "All the judgment does is to express a judicial opinion that the Japanese are entitled to registration . . . I shall as returning officer see that no [Japanese] votes are polled."[41]

The provincial government also ignored the chief justice's concerns about

the danger of creating two separate classes among its male citizens, and it immediately appealed his decision.[42] Both the media and the B.C. legislature followed Homma's case closely as it wound its way through the courts.[43] The *Victoria Daily Colonist* warned its readers that all naturalized "Orientals" would be entitled to vote if Chief Justice McColl's decision were upheld.[44] Echoing charges often repeated in other B.C. newspapers of the time, it declared that the ballot box had been opened "to a large number of Mongolians, who obtained their naturalization through fraud."[45] Japanese immigrants, it was often alleged, were interested in citizenship only because it was a prerequisite to obtaining a fishing license.[46] The *Vancouver Daily Province* adopted a different approach, assuring its readers that they had nothing to fear from the chief justice's decision. "Chinese and Japanese as a matter of fact care little indeed for the authority to vote," it told its readers, and "not . . . many (if indeed any) would seek to exercise the franchise."[47] Indeed, it surmised, it was safe to assume that Homma's own action in pursuing the franchise was motivated not by his own understanding of its significance, but was "taken at the suggestion or initiation of scheming white men base enough to jeopardize the liberties and interests of their fellow whites for the sake of a little brief political capital," as part of a larger effort on their parts "to control the political situation locally simply by droving the Asiatics to the polls." Chief Justice McColl's decision, the editors declared, had "fully awakened the public to the menace to their liberties which would be given existence should naturalized Chinese or Japanese be permitted to vote."[48]

On March 8, 1901, the B.C. Supreme Court heard arguments in the Province's appeal. Just one day later, that court affirmed Chief Justice McColl's decision.[49] Although the Supreme Court justices expressed some sympathy for the Province's position, they agreed that they were bound by the Privy Council's earlier decision in *Bryden*.[50] As one justice explained, the Privy Council itself had noted in *Bryden* that section 15 of Canada's Naturalization Act—passed by the Dominion government pursuant to its power over naturalization—expressly provided:

> An alien to whom a certificate of naturalization is granted shall, within Canada, be entitled to all political and other rights, powers and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject within Canada.[51]

Political rights, the justice added, should be broadly construed and encompassed "rights which belong to a nation, or to a citizen, or to an individual

member of a nation, as distinguished from civil rights, namely, local rights of a citizen."[52] As such, the law was clear that "an alien, when naturalized, shall, [in] Canada, have all the ordinary and inherent rights and privileges of a Canadian, or of a natural-born British subject."[53] Another justice who wrote separately agreed, observing that "'political rights, powers and privileges' are very general terms, and import the right of exercising the franchise."[54] It followed from the language of the Naturalization Act and the Privy Council's reasoning in *Bryden*, he reasoned, that "the subject of naturalization includes the power of enacting what shall be the consequences of naturalization." The justices of the B.C. Supreme Court agreed that the only result they could reach under the law that bound them was that the Province lacked the power to withhold from its naturalized citizens any of the "political rights, powers and privileges" to which a British subject born in Canada was entitled.[55]

Buoyed, perhaps, by ongoing media support for its position, the provincial government again refused to accept the court's ruling. Although the Provincial Voters Act did not provide for a direct appeal to the Privy Council, the Province requested a waiver that would allow it to file such an appeal. The B.C. Supreme Court granted its request, assuming correctly that the Privy Council would accept it, and the Dominion government intervened on Homma's side of the dispute.[56]

In June 1901, D. M. Eberts, attorney general of British Columbia, wrote to the London barrister who was to argue the Province's case to the Privy Council, listing the various points British Columbia wished to make.[57] Eberts's argument that the guarantee of political rights in Canada's Naturalization Act did not disable the Province from denying the right to vote to its Asian citizens rested heavily on the fact that white women, though citizens, were not allowed to vote. Together, Eberts explained to the barrister, Chinese and Japanese numbered about 12,000 out of a total population of 125,000 in B.C. While that might not seem to pose a serious danger to white British Columbians' maintaining control of the electoral process, the threat, Eberts insisted, was greater than it appeared. The Chinese and Japanese population consisted "almost exclusively of adult males," he explained, and because white women and children were not allowed to vote, the Asian segment of the population would have a disproportionate impact if they voted in any election. In Eberts' view, clearly, the most effective way to silence the political voice of people of Asian ancestry in B.C. was to relegate them to the same political status as women and children.[58]

Eberts also argued that naturalized Japanese and Chinese citizens would

not exercise the franchise responsibly. They had no real interest in Canada, he told the barrister, and no knowledge of its political institutions. Their votes would simply be bought, and they would "impersonate one another at the polls," since it was, in Eberts's words, impossible to "distinguish one Jap or Chinaman from another." But Eberts was also willing to accommodate his argument to the possibility that B.C.'s naturalized Japanese and Chinese citizens would exercise the franchise as responsibly as any other citizen. If that were the case, he told the barrister, he should argue that they could not be assimilated (ignoring, presumably, that voting responsibly suggested precisely the opposite). It was intolerable, Eberts insisted, that "these foreign races, which can never be assimilated with our population should in many constituencies determine who shall represent the people in the legislature."[59]

It appears to have been Eberts who first suggested that the Privy Council rely on U.S. legal principles to hold that British Columbia had the power to deny the vote to some groups among its naturalized male citizens. Ignoring that the provisions of the United States Constitution had no bearing whatsoever on questions arising in the context of the very different constitutional structure of Canada, Eberts pointed to a discussion of Article 4 of the U.S. Constitution in an American legal treatise to argue that the political rights referred to in Canada's Naturalization Act did not necessarily include the right to vote. In particular, Eberts noted, political rights in the United States were almost always withheld from women.[60] It was the guarantee of political rights in Canada's Naturalization Act, Eberts told the barrister, that the British Columbia courts had seen as the stumbling block. But in B.C., too, a large class of white British subjects—women—whose claim to citizenship was not in question, were already excluded from the franchise.[61] From that it followed, Eberts argued, that the Province was entitled to deny the vote to any other class of citizens it chose. If the people of British Columbia had realized that the Dominion government would be able to exercise any control over the scope of the provincial franchise, he declared, the people of British Columbia would never have consented to enter into Confederation.[62]

The courts' decision that the amendment to the Provincial Voters Act was *ultra vires* was also problematic, in Eberts's view, because it threatened to erode the bar against Native participation in the political process. While, on the one hand, the power to deny the franchise to people identified as "Indians" under Canada's Indian Act appeared clear, he told the barrister, an anomalous situation might arise where Indians born in B.C. could be

excluded from the franchise, while Asian immigrants could not.[63] The bar B.C. had erected to exclude B.C. citizens of Asian ancestry from political participation, Eberts seemed to suggest, served not only to ensure that they did not vote, but also to reinforce barriers against Native participation in the political process. There was, he reminded the barrister, no provision in the British North America Act comparable to the Fifteenth Amendment of the U.S. Constitution which forbade "denying citizens the right to vote on account of race, color, or previous condition of servitude."[64]

On December 17, 1901, the Privy Council reversed the B.C. courts' decisions, upholding the discriminatory legislation that the courts below had ruled invalid. It began by carefully disclaiming the racially discriminatory consequences of its ruling. The wisdom of excluding a particular race from the franchise, the Privy Council declared, was not a topic it was entitled to consider. The only question before it—as the parties had argued—was whether the provincial or the Dominion government had the power to determine the rights and privileges of naturalized Canadian citizens.[65] The Privy Council rejected Homma's argument that section 91 of the British North America Act gave the Dominion government exclusive authority over naturalization and the privileges and obligations that pertained to it, holding instead that the Province did have the power to exclude certain categories of its citizens from the franchise.

The Privy Council's decision is remarkable both in its lack of clarity and in the poverty of its reasoning. Although the Privy Council reviewed the parties' arguments regarding the question whether it was the Dominion or the provincial government that had the power to determine the voting rights of naturalized citizens, and noted that Canada's Naturalization Act provided that "a naturalized alien shall within Canada be entitled to all political and other rights, powers and privileges to which a natural-born British subject is entitled in Canada," it avoided any substantive discussion of section 91 of the British North America Act.[66] It need not consider section 91, the Privy Council suggested, because more than just the rights of naturalized citizens were at stake, since the Provincial Voters Act also applied to anyone of Asian ancestry born in B.C.[67] The Privy Council went on to observe that the "extent to which naturalization will confer privileges has varied both in England and elsewhere."[68]

Apparently unable to find any precedent in Canada or any other British Commonwealth country for its conclusion that political rights did not necessarily include the right to vote, the Privy Council turned instead to a source of law it normally would not have considered binding or even

persuasive[69]—an outdated 1863 edition of a U.S. legal treatise called "Lawrence's Wheaton,"[70] published during the American Civil War. Brushing aside the fundamental differences in the histories and constitutional structures of Canada and the United States, as Eberts had, the Privy Council quoted from "Lawrence's Wheaton," using the language it extracted as the only direct precedent cited for its conclusion. "Lawrence's Wheaton," the Privy Council said, noted that although

> (in the United States) the power of naturalization be nominally exclusive in the Federal Government, its operation in the most important particulars, especially as to the right of suffrage, is made to depend on the local constitution and laws.[71]

Without any explanation as to why Canadian law would follow U.S. law in this regard—even assuming this was an accurate summary of U.S. law—the Privy Council declared that it followed from this observation about U.S. law in "Lawrence's Wheaton" that the reference to political rights in Canada's Naturalization Act did not necessarily entitle naturalized citizens to vote in any given Canadian province.[72]

Not only did the Privy Council fail to acknowledge that U.S. constitutional law necessarily had no application in Canada, but it also ignored that the doctrine it invoked had its origin in the history of the formation of the United States, and particularly the need to accommodate the concerns of slave states that local control over the attributes of citizenship be preserved in order to maintain racial boundaries.[73] The Privy Council also ignored the broader point Lawrence made regarding the principle it invoked. While individual states retained the practical power to define voter qualifications in each state, Lawrence explained, any such qualifications "must apply equally to all classes of citizens in the State, whether native or naturalized."[74] If it were possible for "individual States to disfranchise naturalized citizens," he reasoned, "the federal power over naturalization becomes a nullity."[75] The Privy Council, in short, did not just borrow—but distorted and expanded—the doctrine it grafted onto Canadian law.

The Privy Council distinguished its own decision in *Bryden*. Even though it had declared in that case, seemingly unequivocally, that the Dominion government's power over naturalization included the power to determine "the consequences of naturalization" and the rights and privileges of naturalized citizens in Canada, it now—in what one legal scholar has called "one of the most interesting constitutional somersaults in Canadian history"—

disclaimed its prior pronouncement.[76] *Bryden*, the Privy Council summarily announced in *Homma*, was an entirely different case. In the prior case, it insisted, it had merely invalidated a law intended to keep Chinese immigrants from being able to earn a living in B.C.[77] It was obvious, it declared, that this question was in no way related to the question of whether a naturalized citizen was entitled to vote in the province in which he resided.[78] In fact, because being listed on the provincial voters list was a prerequisite to obtaining various kinds of occupational licenses, the Privy Council's decision did deny Canadian citizens of Asian ancestry the ability to earn a living in various employment areas. Occupations that remained closed to B.C. citizens of Japanese and Chinese ancestry as a result of the Privy Council's decision included pharmacy, law, hand-logging, jobs on public works projects and, ironically, in light of the Privy Council's rationale for *Bryden*, mining.[79] Naturalized citizens of Asian descent, moreover, were barred from voting not just in provincial elections but also in federal elections, since the ability to vote in federal elections depended on being listed on the provincial voters list. They were also not allowed to hold public office or to serve on juries.[80]

The B.C. press celebrated the Privy Council's decision. "No Japanese Need Apply to be Voters," the *Vancouver Daily Province* proclaimed after news arrived from London that the Privy Council had reversed the lower courts' decisions. B.C. did indeed have the power to "refuse the franchise to Orientals." The decision was "of great importance," it opined, "as settling once and for all the question of Japanese power at the polls."[81] The *Victoria Daily Colonist*, in turn, declared:

> We are relieved from the possibility of having polling booths swamped by a horde of Orientals who are totally unfitted either by custom or education to exercise the ballot, and whose voting would completely demoralize politics. . . . We have a right to deprive Chinese and Japanese and Indians of the franchise, and we do so without hesitation because they have not the remotest idea of what a democratic and representative government is, and are quite incapable of taking part in it.[82]

Other English-language newspapers in B.C. echoed these sentiments. Absent, in any English-language paper, was any criticism of the Privy Council's decision.

When the Dominion government revisited the issue in 1904, urging B.C. to reconsider its 1895 amendment excluding citizens of Japanese ancestry

from the franchise for diplomatic reasons arising out of the Anglo-Japanese Alliance of 1902,[83] the *Victoria Daily Colonist* indignantly defended British Columbia's continued refusal to do so. Echoing the sentiments expressed by the Japanese consul at the time Homma filed his lawsuit, the editors insisted that excluding persons of Japanese ancestry from the franchise in no way infringed on the rights of any subject of the Japanese Empire, since immigrants to whom that legislation applied were no longer Japanese subjects.[84] "The exclusion of certain racial elements from the voters' list," they declared, was "the only constitutional right left to the Province whereby it can protect itself against being governed by foreigners."[85] Ignoring that the vast majority of B.C.'s residents at the time were themselves immigrants, the editors declared that B.C. was justified in denying the franchise to Japanese immigrants because its geographical "contiguity with Japan" made it more vulnerable to the effects of unchecked immigration than any other Canadian province.[86]

During the decades that followed the Privy Council's decision, Homma largely withdrew from the leadership roles he had previously assumed within the Japanese immigrant community, moving onto the grounds of the Great Northern Cannery in West Vancouver in 1909.[87] There he walked down to the beach on many mornings to gather firewood and visited with family and friends.[88] Financial support from the larger Japanese community had dwindled even before the case was completed, and it was his own family, including his wife Matsu, on whom the financial burden fell.[89] Homma continued to write and helped with the compilation of two histories of Japanese immigrants in Canada in the 1920s, but rarely spoke about his role in challenging the Provincial Voters Act.[90] Members of the Japanese immigrant community who had criticized Homma for proceeding with the case felt justified in their concern, and some blamed him for the Privy Council's decision.[91] In 1942, soon after the start of the Pacific War, Tomekichi Homma was forced to move to a relocation camp in the B.C. interior along with other Japanese Canadians. There he was confined to a single room by a stroke that had left him partially paralyzed. The room was almost bare, his son Keay Homma recalls, adorned only by a single portrait of the king and queen of England hung on one wall—ongoing, if mute, testimony to his status as a British subject.[92]

Not until March 1949, under pressure from the federal government of Canada, which had itself only recently restored the federal franchise to its Japanese-Canadian citizens, did the B.C. legislature introduce legislation to permit citizens of Japanese ancestry to vote.[93] Homma, who died on October 28, 1945, did not live to see that day.[94] His son Seiji, however, who continued his father's fight for the franchise, was present in the public gallery on the day the legislation was introduced.[95]

Homma's challenge to the Provincial Voters Act makes clear that he understood the power inherent in legal process to effect political change in Western societies. The fact that both the lower courts that considered Homma's case were convinced that they had no alternative, under the law as it existed at the time, but to overturn the discriminatory provisions of the act, demonstrates the strength of Homma's argument that the legislation was invalid. Homma failed in his effort to overturn the exclusionary amendment to the Provincial Voters Act only because the Privy Council adopted an artifice that was both legally and logically unsound. Notwithstanding Canada's insistence on its own identity as distinct from that of the United States, it was to distorted U.S. legal principle that the Privy Council turned to reinforce race-based barriers in Canadian law. By extracting a phrase from a discussion of U.S. constitutional law in an outdated American treatise, and using that as the only direct precedent for its conclusion regarding the scope of political rights in Canada, the Privy Council at once expanded and grafted onto Canadian law doctrine developed in significant part to accommodate the demands of slave states in the pre–Civil War United States. The Privy Council's decision was readily tolerated in Canada because the idea that citizenship did not necessarily confer a right to vote was already deeply imbedded in North American law—in Canada as well as in the United States—not just along racial lines, but along gender lines as well. Notwithstanding the substantial differences in the histories and constitutional structures of the two countries, racist attitudes common to both allowed the Privy Council—and those who relied on its decision to justify the exclusion of Canadian citizens of Asian ancestry from the franchise for the next half century—to overlook distinctions between Canada and the United States they would otherwise have regarded as important in order to establish and maintain similar kinds of racial barriers.

Notes

I am grateful to the Homma family and to the staff of the Japanese Canadian National Museum, as well as to all who have commented on a draft of this essay since its first presentation as a conference paper at the University of Victoria in 1998.

1. See, for example, Cole Harris, "Making an Immigrant Society," in *The Reset-*

tlement of British Columbia: Essays on Colonialism and Geographical Change (Vancouver: UBC Press, 1998), 250–75; Patricia E. Roy, *A White Man's Province: British Columbia Politicians and Chinese and Japanese Immigrants, 1858–1914* (Vancouver: UBC Press, 1989), xiv.

2. For an analysis of some of the many ways in which law has been used to create and maintain racial barriers in the United States, see Ian F. Haney Lopez, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996).

3. *Cunningham v Homma,* [1903] A.C. 151 (P.C.). The Judicial Committee of the Privy Council ("the Privy Council") was created in 1833. It was the final court of appeal for decisions arising out of the courts in Britain's overseas dependencies for most of the next hundred years. J. P. Kenyon, *A Dictionary of British History* (New York: Stein & Day, 1983). The Privy Council stopped hearing appeals from Canadian court decisions in 1949. S. H. Steinberg and I. H. Evans, eds., *Steinberg's Dictionary of British History,* 2nd ed. (New York: St. Martin's Press, 1970). For a general discussion of the Privy Council and its role in the appellate process, and of the differences between the legal and political systems of Canada and the United States, see Herbert Arthur Smith, *Federalism in North America: A Comparative Study of Institutions in the United States and Canada* (Boston: The Chipman Law Publishing Company, 1923). Because Canada was created as a Dominion of Great Britain under the British North America Act, 1867, and remained subordinate to the United Kingdom, Canada's citizens, including those who were naturalized, were also British subjects. See, for example, Charles Arnold-Baker, *The Companion to British History,* 2nd ed. (London and New York: Routledge, 1996). To avoid confusion, I have chosen to use the term "citizen" rather than "British subject" in most instances.

4. W. Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* (Montreal: McGill-Queen's University Press, 1978), 30–31.

5. W. Peter Ward and Patricia E. Roy both explore in detail the processes through which "whiteness" emerged as an essential criterion for defining citizenship in British Columbia. Ward, *White Canada Forever;* Roy, *A White Man's Province.*

6. *An Act relating to an Act to make better provision for the Qualification and Registration of Voters,* 38 Vic. 1875, no. 2, s.1 (B.C.).

7. *An Act to amend the "Provincial Voters' Act,"* S.B.C. 1895, c. 20; *Vancouver Daily Province,* 1 December 1900 (citing numbers provided by Thomas Cunningham, Collector of Voters for Vancouver, B.C.).

8. D. M. Eberts, B.C. Attorney General, to Christopher Robinson, Esq., K.C., London, 29 June 1901, published in the *Victoria Daily Colonist,* 3 January 1903. Eberts states that "it was after 1888 that the Japanese began to come to this province in large numbers" and attributes the 1895 amendment to the Provincial Voters Act to that

"fact." What constitutes a large number is, of course, a matter of interpretation. The 1902 Royal Commission on Chinese and Japanese Immigration found that a majority of the 4,578 Japanese immigrants in B.C. at that time (out of a total population of 177,272) arrived after July 1, 1899, some four years after the 1895 amendment was passed. *Report of the Royal Commission on Chinese and Japanese Immigration, 1902 Session,* 2 Edward VII, Sessional Paper No. 54, A. 1902, 329, 389.

9. *Provincial Elections Act,* S.B.C. 1897, c.67, s.3. "Chinese" was similarly defined to include children of Chinese ancestry born in B.C.

10. Ibid.

11. *Vancouver Daily Province,* 1 December 1900.

12. *Victoria Daily Colonist,* 28 October 1900.

13. *Vancouver Daily Province,* 27 October 1900.

14. Ibid.

15. Ibid. See also Shigeharu Koyama, *Nikkei Kanada imin no chichi: Homma Tomekichi oo no shogai* (The father of Japanese immigrants in Canada: the life of Tomekichi Homma) (Tokyo: n.p., 1996), 61–62.

16. Homma was born in Chiba Prefecture on June 6, 1865. There is some question as to the date on which he arrived in Canada. Some sources give his date of arrival as 1884 and others as 1887, while his family register in Chiba, Japan, states that he left for Canada in 1883. Koyama, *Nikkei Kanada imin no chichi,* 9. Homma himself, writing in 1921, says he arrived in Canada thirty-three years earlier, which would have been about 1888. Jinshiro Nakayama, ed., *Kanada doho hatten taikan* (Vancouver, B.C.: n.p., 1922), appendices, 151–60. The article that Homma contributed to this volume, which carefully documents the development of the Japanese immigrant community in B.C., was translated into English and published in 1977 with the assistance of the Japanese Canadian Citizens Association in *The New Canadian* 41, no. 58 (9 August 1977).

17. Jinshiro Nakayama, *Kanada no hoko* (Tokyo: n.p., 1921), 646.

18. Ibid., 1450, 1589. See also Roy Ito, *Stories of My People: A Japanese Canadian Journal* (Hamilton, Ont.: S-20 and Nisei Veterans Association, 1994).

19. *Vancouver Daily Province,* 27 October 1900; Nakayama, *Kanada doho hatten taikan,* appendices, 151–60 (article by Tomekichi Homma).

20. Nakayama, *Kanada no hoko,* 1450.

21. Nakayama, *Kanada doho hatten taikan,* 111.

22. Koyama, *Nikkei Kanada imin no chichi,* 61–62. Koyama reports that Homma's supporters were able to raise just over $1,500—a fairly substantial sum at that time—over a two-year period based on donations by members of the Japanese immigrant community of $1.50 at a time.

23. *Vancouver Daily Province,* 23 and 27 October 1900. The Japanese newspaper,

which the *Province* referred to as *"The Vancouver Weekly,"* was probably the *Bankuba shuho* (Vancouver Weekly Report), to which Homma also contributed. The *Province* examined the issue it had obtained in some detail with the aid of an interpreter, describing it as "essentially an up-to-date newspaper [that] contains most interesting articles on all the questions of public interest of the day." Unfortunately, no copies of *Dai Nippon* or the *Bankuba shuho* (later renamed the *Kanada shimpo*) are known to exist today.

24. Koyama, *Nikkei Kanada imin no chichi,* 66.

25. *Vancouver Daily Province,* 1 December 1900. The consul conceded, however, that he did take an interest in anything that affected "the Japanese as a race," and he sought to ensure that they received any rights to which they were legally entitled. He later lodged several protests on behalf of the Japanese government against legislation directed at Japanese immigrants in B.C. *Victoria Daily Colonist,* 3 January 1903.

26. Koyama, *Nikkei Kanada imin no chichi,* 8. A tribute to Tomekichi Homma published in 1922 described him as a man of great courage, who was both strong-minded and generous of spirit. Nakayama, *Kanada doho hatten taikan,* 111.

27. Koyama, *Nikkei Kanada imin no chichi,* 8; Homma Family Genealogy, Homma Collection, File 94/88, Japanese Canadian National Museum, Burnaby, B.C. Keay Homma, Tomekichi Homma's youngest son, reports that his father never told his children of their family's samurai heritage. All would become clear, he told them, when they read his diaries after his death. Unfortunately, all but one of the diaries were later destroyed in a fire. As a result, much that might have been known about Homma's thoughts about this and other matters can no longer be discerned. Conversation with Keay Homma in Surrey, B.C., January 19, 1998.

28. Koyama, *Nikkei Kanada imin no chichi,* 60.

29. *Vancouver Daily Province,* 27 October 1900.

30. Ibid.

31. *Victoria Daily Colonist,* 30 November 1900.

32. The *Constitution Act, 1867 (British North America Act),* ss. 91 and 92, provides in pertinent part:

> S.91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and the House of Commons, to make Laws for the Peace, Order, and good Government of Canada, *in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces;* and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) *the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say;*
>
> . . . .
>
> 25. *Naturalization and Aliens.*
>
> . . . .
>
> S.92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next hereinafter enumerated; that is to say, —
>
> . . . .
>
> 13. *Property and Civil Rights in the Province.*
>
> . . . .
>
> 16. *Generally all Matters of a merely local or private Nature in the Province.*
>
> [Emphasis added.]

The quintessential question in Canadian constitutional law prior to the adoption of the Constitution Act, 1982, was whether a matter "in pith and substance" came within section 91 or 92, it being assumed that all matters came within one or the other. Smith, *Federalism in North America,* 108–9.

33. *Naturalization Act,* R.S.C. c. 113, s. 15.

34. *Union Colliery Company of British Columbia, Limited v Bryden* [1899], A.C. 580, 587 (P.C.).

35. *In Re the Provincial Elections Act and In Re Tomey Homma, a Japanese,* (1900) 7 B.C.R. 368, 369 (Co. Ct.) (setting out the arguments of counsel). *Ultra vires* literally means "outside the powers or capabilities of." Henry Campbell Black, *Black's Law Dictionary* (St. Paul, Minn.: West Publishing Co., 1951) 1692, 1742.

36. *In Re the Provincial Elections Act and In Re Tomey Homma, a Japanese,* 371–72 (Co. Ct.). Wilson's argument was based on the language in section 92 of the British North America Act which gave the provincial legislature exclusive jurisdiction with regard to "the amendment from time to time, notwithstanding anything in the Act, of the constitution of the Province, except in respect of the office of Lieutenant-Governor." Ibid., 371.

37. Curiously, although the County Court was clearly satisfied that Homma "was naturalized in Canada more than six months prior to October 19th, 1900" and the Record of Proceedings gives April 4, 1893, as the date on which Homma was naturalized, an RCMP investigator in 1932 reported that Homma's naturalization papers were dated January 28, 1902. Letter from RCMP Corporal J. R. O'Reilly to Commanding Officer, "E" Division, RCMP, 12 March 1932. National Archives of Canada, Record Group 76. Because it is unlikely that the courts would have proceeded with the case had they not ascertained that Homma was a naturalized citizen, it appears

that the corporal's letter is in error. *Kanada no hoko,* to which Homma contributed, also lists April 4, 1893, as the date on which he was naturalized. Nakayama, *Kanada no hoko,* 1450.

38. *In Re the Provincial Elections Act and In Re Tomey Homma, a Japanese,* 372 (Co. Ct.); *Victoria Daily Colonist,* 30 November 1900. Chief Justice McColl's conclusion that the Province lacked the power to pass legislation that did not "apply alike" to all subjects of the Queen was based on the language of the Naturalization Act itself. In the British North America Act, which was then Canada's constitution, there was no equivalent to the Equal Protection Clause of the U.S. Constitution. Canada incorporated a Charter of Rights into its Constitution in 1982, after the British Parliament granted it the power to amend its own Constitution. Arnold-Baker, *Companion to British History,* 189. The Charter of Rights includes a provision guaranteeing all citizens the right to vote.

39. *In Re the Provincial Elections Act and In Re Tomey Homma, a Japanese,* 372 (Co. Ct.).

40. Ibid., (1901) 8 B.C.R. 76, 77 (S.C.).

41. *Vancouver Daily Province,* 1 December 1900.

42. On January 23, 1901, just as the Province was in the process of appealing Chief Justice McColl's decision to the full B.C. Supreme Court, the *Vancouver Daily Province* chose to reprint an article entitled "Uncle Tom's Cabin is Now Designated a Criminal Mistake" from a recent edition of the *New York Herald.* The article reported the opinion of a Mr. Smith, a Southerner living in New York, that it was that book's "distorted view" of conditions in the antebellum South that "made compromise between the north and the south impossible" during the U.S. Civil War. Former slaves, the article quoted Mr. Smith as saying, were "far happier under slavery" than they were after the war. The excerpt concluded abruptly with the observation that "Mr. Smith is a firm believer that the enfranchising of the negro was a tremendous blunder."

43. British Columbia, Legislative Assembly, *Sessional Papers* (1901), 611–15; British Columbia, Legislative Assembly, *Sessional Papers* (1903), J7–J8.

44. *Victoria Daily Colonist,* 1 December 1900.

45. Ibid.

46. See, for example, *Vancouver Daily Province,* 1 December 1900; *Victoria Daily Colonist,* 27 July 1900 ("Fraudulent Naturalization").

47. *Vancouver Daily Province,* 1 December 1900.

48. Ibid.

49. *The Daily Columbian,* 9 March 1901.

50. *In Re the Provincial Elections Act and In Re Tomey Homma, a Japanese,* 76, 80 (S.C.).

51. *Naturalization Act,* R.S.C., c. 113, quoted in ibid., 79 (S.C.).

52. *In Re the Provincial Elections Act and In Re Tomey Homma, a Japanese,* 79 (S.C.) (quoting "Ency. Dict.").

53. Ibid.

54. Ibid., 82.

55. Ibid., 80, 83. There was some uncertainty as to whether the lower court decisions also applied to naturalized citizens of Chinese ancestry (*Vancouver Daily Province,* 1 December 1900). For that reason, a Chinese Canadian, Alexander Won Cumyow, born to Chinese immigrant parents in B.C. in 1861, filed a separate case challenging the exclusion of B.C. citizens of Chinese ancestry from the franchise after Thomas Cunningham also refused to add his name to the provincial voters list. *Vancouver Daily Province,* 22 December 1902; *New Citizen,* 24 March 1951. The fact that Cumyow was born in B.C. potentially allowed him to raise legal issues regarding the application of the Provincial Voters Act to citizens born in B.C., that Homma, as a naturalized citizen, could not directly raise.

56. Ibid., 83–84.

57. Eberts to Robinson, 29 June 1901, published in the *Victoria Daily Colonist,* 3 January 1903. An extravagant tribute published by the *Vancouver Daily Province* on 4 May 1901 described the Hon. David McEwen Eberts as "the ablest man in British Columbia's government." Few, according to the *Province,* would "deny the brilliancy of intellect by which he is enabled to grasp even the most abstruse public question almost at a glance." Eberts, it said, was "a man's man every inch of him, charming companion and prince of gentlemanly good fellows, a sportsman true at heart in every game of wits or field, a man born to command and to be popular, a warhorse in the strife of politics when once he discards the mantle of his indolence, [and] a keen and accurate reader of men and motives."

58. Ibid. One Member of Parliament in Canada invoked a similar comparison in 1885 during a debate in Parliament concerning the question as to whether Native Canadians should be enfranchised: "[T]o give the franchise to women would interfere with their proper position, . . . it would be a burden instead of a benefit to them. This, I believe, to be exactly the case as regards the Indians." Mr. Fairbanks, House of Commons Debates, 2 May 1885, p. 1532. Quoted in R. H. Bartlett, "Citizens Minus: Indians and the Right to Vote," *Saskatchewan Law Review* 44 (1980): 173 n. 39.

59. Eberts to Robinson, 29 June 1901, published in the *Victoria Daily Colonist,* 3 January 1903.

60. Ibid. Eberts wrote:

> It is provided by Article IV of the Constitution of the United States that citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. In discussing this provision, Von Holst, in his work on the Constitutional Law of the United States, at page 249, says:

"Political rights, such as the franchise, the right to hold office, etc., are never an unconditional result of citizenship. This is evident from the fact that they are always withheld from minors, and almost without exception from women."

The work being quoted by Eberts is *The Constitutional Law of the United States of America*, originally written in German by Dr. H. von Holst, a professor at the University of Freiburg. An English edition, translated by Alfred Bishop Mason, was published in 1887 by Callaghan & Company in Chicago, Illinois.

61. Local newspaper editors also frequently invoked this idea. See, for example, *Victoria Daily Colonist*, 25 April 1905, which justified the exclusion of people of Asian ancestry from the franchise on the ground that "not even all British subjects were entitled to vote" and cited the fact that women were not allowed to vote as a telling example.

62. Ibid. As noted above, British Columbia became a Canadian province only in 1871.

63. Ibid. Why Eberts was so certain that the Province had the power to deny the franchise to B.C.'s Native population is not clear from his remarks. For a general discussion of the law in this regard, see Bartlett, "Citizens Minus," 163. The issue was more complicated in Canada than in the United States, Eberts said, because Indians were not citizens in the United States, whereas in Canada Indians were British subjects (quoting *Gibb v White*, 5 Ont. Practice Reports, 315, affirmed in *Johnson v Jones*, 26 Ontario Reports 109).

64. Ibid. While the Fourteenth and Fifteenth Amendments guaranteed both citizenship and the right to vote to children born in the United States, first-generation Asian immigrants were denied citizenship in the United States. For that reason, the focus in the United States was on the denial of citizenship in the first instance. See, for example, *Ozawa v United States*, 260 U.S. 178 (1922). Although the Fourteenth and Fifteenth Amendments were passed soon after the end of the U.S. Civil War, U.S. courts acted quickly to limit their scope. Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven: Yale University Press, 1989), 56–61.

65. *Cunningham v Homma, supra*, 155–56.

66. Ibid.

67. Ibid., 156.

68. Ibid. The Privy Council noted, without reference to any particular source, that in England, "from the time of William III down to Queen Victoria," naturalized aliens were not permitted to sit in Parliament or on the Privy Council, but failed to explain why this was relevant to the question before it, which involved the interpretation of the *British North America Act* as it applied to Canada.

69. In the context of Canadian aboriginal law cases, Canadian courts have sometimes turned to decisions of U.S. courts for precedent, based on the rationale that federal Indian law doctrine in both Canada and the United States has its origins in pre–Revolutionary War, British colonial Indian policy. No similar rationale exists, however, for invoking U.S. law in this context, since the language in question arises out of a discussion of an article of the U.S. Constitution, which, by definition, has no application in Canada.

70. Henry Wheaton, *Elements of International Law*, 2nd annotated edition, edited by William Beach Lawrence in 1863 and published in 1864 ("Lawrence's Wheaton") (London, 1864).

71. *Cunningham v Homma, supra*, 156, quoting "Lawrence's Wheaton," 903. The phrase "in the United States" is in the original. Thus, there can be no question that the Privy Council was aware that the phrase it extracted occurred within the context of a discussion of U.S. law and policy.

72. *Cunningham v Homma, supra*, 156. The Privy Council also made the general observation that the franchise had sometimes been withheld from British subjects in England "conspicuously upon grounds of religious faith," suggesting that the fact that British law had historically tolerated the denial of civil rights on religious grounds somehow justified the denial of civil rights on race-based grounds. It again failed to explain, however, how this justified its conclusion as to the scope of political rights in Canada.

73. See, for example, "Lawrence's Wheaton," 904; Von Holst, 18–19. For a detailed discussion of the historical debates regarding the scope of the franchise in the United States, see Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2000).

74. "Lawrence's Wheaton," 909. The Privy Council also avoided any acknowledgement that, even assuming the clause it extracted was good law in 1863, it was no longer good law even in the United States at the time the Privy Council made its decision in 1902. The flaw in (or perhaps even the reason for) its choice of the 1863 edition of "Lawrence's Wheaton" instead of a more current summary of the law becomes quickly apparent when one examines later editions of the treatise. Not just the language quoted by the Privy Council to support its decision, but the entire chapter of which it was a part, was completely cut from all post-1864 editions.

75. "Lawrence's Wheaton," 910.

76. *Bryden*, [1899] A.C. 586; Ross Lambertson, "After *Union Colliery* [*Bryden*]: Law, Race, and Class in the Coalmines of British Columbia," in *Essays in the History of Canadian Law*, vol. 6, ed. Hamar Foster and John McLaren (British Columbia and the Yukon) (Toronto: Osgoode Society, 1995), 396. Other legal scholars have used the word "bizarre" to describe the Privy Council's reasoning in *Homma v Cun-*

ningham. Anthony Lester and Geoffrey Bindman, *Race and Law in Great Britain* (Cambridge: Harvard University Press, 1972), 37.

77. Lambertson characterizes this description of *Bryden* as "a distortion of the facts" of that case. Lambertson, "After *Union Colliery*," 397.

78. *Cunningham v Homma, supra,* 157. While most other Canadian provinces did not exclude naturalized Japanese citizens from the franchise, this was of little practical consequence, since 95 percent of all Japanese immigrants in Canada lived in British Columbia.

79. Kunio Hidaka, *Legal Status of the Japanese in Canada,* c. 1940. Unpublished paper in the possession of the University of British Columbia Special Collections and University Archives Division, Japanese Canadian Collection.

80. Ibid.

81. *Vancouver Daily Province,* 17 December 1902.

82. *Victoria Daily Colonist,* 18 December 1902.

83. Roy, *A White Man's Province,* 275 n. 20. Roy explains that the Japanese government repeatedly complained that anti-Japanese legislation in B.C. violated the terms of the Anglo-Japanese Alliance, concluded between Great Britain and Japan in 1902. Ibid., 124, 127–28.

84. *Victoria Daily Colonist,* 25 April 1905. This sentiment was also shared by the Japanese consulate in London which, Koyama reports, refused to do anything to help Homma when his case was before the Privy Council because it regarded those who became naturalized British subjects as people who had abandoned their own country. Koyama, *Nikkei Kanada imin no chichi,* 72–73. Naturalized Japanese immigrants in British Columbia, as this suggests, were arguably the most vulnerable of all groups of Japanese immigrants in North America: not only were they denied any political voice as Canadian citizens, but they were also denied the diplomatic protections to which they might have had access as Japanese subjects. See Hidaka, *Legal Status of Japanese in Canada.*

85. *Victoria Daily Colonist,* 25 April 1905.

86. Ibid.

87. Conversation with Keay Homma, Surrey, B.C., January 19, 1998.

88. Tomekichi Homma, *Diary,* 1933 (in the possession of the Homma family).

89. Conversation with Keay Homma, Surrey, B.C., June 7, 2002; Yoshimaru Abe, "Tomekichi Homma," *Nikkei Images* 8, no. 1 (spring 2003): 6–8 (text of speech by Tomekichi Homma's son-in-law).

90. Homma contributed to the research and compilation of both *Kanada no hoko* and *Kanada doho hatten taikan* in the early 1920s. Abe, *Nikkei Images,* 7. Keay Homma learned of his father's role in challenging the exclusion of Japanese-born citizens of Canada from the franchise only at his father's funeral. Conversation with Keay Homma, Surrey, B.C., June 7, 2002.

91. Conversation with Keay Homma, Surrey, B.C., June 7, 2002. See also *Nikkei no koe* (Nikkei Voice), vol. 13, no. 10 (December 1999/January 2000), which notes that Homma was very likely exposed to public censure within the Japanese immigrant community for his role in the case. Nakayama likewise suggests that Homma was ostracized for much of his life by some members of the community. Nakayama, *Kanada no hoko,* 111.

92. Conversation with Keay Homma, Surrey, B.C., January 19, 1998.

93. *The New Canadian,* March 12, 1949. The legislation was introduced in March 1949, just three weeks before the federal government's restoration of the franchise was to take effect on March 31, 1949. B.C. had already acted to restore the franchise to Chinese, East Indians, and Natives living off reserves (ibid.). The federal franchise allows citizens of Canada to vote for members of Parliament, as opposed to voting in provincial elections for members of the legislative assembly.

94. Japanese Canadian National Museum, Burnaby, B.C., File 94/88. The case of Cumyow filed on behalf of citizens of Chinese ancestry in B.C. was dismissed in the wake of the Privy Council's decision in *Homma v. Cunningham,* but Cumyow lived long enough to see the franchise restored to citizens of Chinese ancestry. "Franchise Returned to Alex Cumyow After 51 Year Wait," *The New Citizen,* 5 July 1949.

95. *The New Canadian,* 12 March 1949; 19 February 1964.