Remarks for Installation of *Cunningham v. Homma* Plaque
Steveston, B.C. 23 May 2026 [five minutes]
Andrea Geiger

Want to begin by thanking Tenney Homma and the entire Homma family, as well as Parks Canada and the community of Steveston, for the opportunity to be here today. I also want to acknowledge and to express my deep gratitude to Tenney's father, Keay Homma, for his generosity in sharing his own recollections,

> and to Grace Eiko Thomson, without whom my essay analyzing the Privy Council's decision would never have been written. I wish both of them could have been here with us today.

I still remember the day in 1998 when I made my way up the narrow staircase to what was then the Japanese Canadian National Museum and Archives on the 2nd floor of a small wooden building on East Broadway and explained that I was a lawyer and history grad student interested in researching early 20th century court cases that impacted Japanese immigrants.

Grace immediately recognized what I hoped to do. She handed me a file that she pulled out of a cabinet and explained that it concerned a man named Tomekichi Homma who had gone to court to challenge B.C.'s denial of the vote to citizens of Japanese ancestry in 1900. At the time, however, the only record about the case in the file that the Museum had was the title page of the British Privy Council's 1902 decision.

> Would it be possible, Grace asked, to get hold of the full decision and figure out why the Privy Council ruled against Homma when the B.C. courts that heard his case had ruled in his favor.[1]

Homma had argued, and the B.C. courts had essentially agreed, that B.C. did not have the power to deny the vote to naturalized Canadians, whatever their country of origin, on two grounds: first,

> because the British North America Act made clear that naturalization was a subject over which the Dominion government had exclusive control, & 2nd
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> because Canada's Naturalization Act clearly stated that naturalized citizens were entitled to the same political rights and privileges as those born in Canada.[2]

In December 1902, however, the British Privy Council overturned the decision of the B.C. courts and upheld the denial of the vote to British subjects/Canadian citizens of Japanese ancestry. I am still astonished by its decision every time I read it.

Without explaining why Canada's Naturalization Act and the British North America Act [then, in effect, Canada's Constitution] would not be binding in B.C.,

> the Privy Council reached south across the Canada-U.S. border and back in time to a source of law it would not normally have considered binding or even persuasive:
>
> > an outdated U.S. legal treatise published in the 1860s during the U.S. Civil War interpreting the meaning of an amendment to the U.S. Constitution.[3]
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> The U.S. Constitution, of course, by definition, has no bearing in Canada.

Homma's effort to overturn the racially discriminatory provisions of B.C.'s Provincial Voters Act, in short, failed only because the Privy Council was willing to adopt an approach that was both legally and logically unsound in ways no one could have anticipated.

What makes *Cunningham v. Homma* deserving of note, however, isn't the poverty of the Privy Council's reasoning,

> but Tomekichi Homma's remarkable courage in challenging a profoundly unjust law in the face of intense opposition from both within and without the Japanese immigrant community at a time when anti-Asian prejudice was rampant in B.C.

Among his most committed supporters, however, were members of the Gyōsha Dantai, or Japanese fishermen's association, that Homma had helped to found here in Steveston some years earlier.

Locating the plaque here at the Japanese Fishermen's Society Building situates – and rightly so – Steveston and its Japanese Canadian fishers at the heart of one of the most important early efforts to ensure that no naturalized Canadian or their children, whatever their background or country of origin, would be barred from voting on grounds of race.

What this plaque celebrates – and what it gives all who will come upon it in the years to come a chance to reflect on – is the depth of Homma's commitment to justice even in the face of intense opposition.

> It will also serve as a reminder of how important it is – and will continue to be – to challenge injustice whenever we encounter in our own time.

Source: Andrea Geiger, *Subverting Exclusion: Transpacific Encounters with Race, Caste, and Borders, 1885-1928* (New Haven: Yale University Press, 2011), 143-150; "Writing Racial Barriers into Law: Upholding B.C.'s Denial of the Vote to Its Japanese Canadian Citizens, *Homma v. Cunningham*, 1902," in Gail Nomura and Louis Fiset, eds., *Nikkei in the Pacific Northwest: Japanese Americans and Japanese Canadians in the Twentieth Century* (Seattle: University of Washington Press, 2005): 20-43.

[1] Vancouver Daily Province, 27 October 1900; Vancouver Daily Province, 1 December 1900.

[2] In Re the Provincial Elections Act and Re Homma, (1900) 7 B.C.R. 368-369, 371-372 (Co. Ct.)

[3] Cunningham v. Homma, [1903] A.C. 151, 156 (P.C.); Naturalization Act, R.S.C. c. 113, s. 15, quoting Lawrence's Wheaton, 903. Henry Wheaton, Elements of International Law, 2nd annotated ed., William Beach Lawrence, ed. 1863 (London, 1864). Brushing aside fundamental differences in the constitutional structure of Canada and the United States, the Privy Council extracted a sentence from the treatise, taking it out of context and using it as the only direct precedent cited for its conclusion that the reference to political rights in Canada's Naturalization Act did not necessarily entitle naturalized citizens to vote in any given Canadian province:

> Although (in the United States) the power of naturalization is 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.

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. 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 groups 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.

Not only did the Privy Council fail to explain why Canadian law would follow U.S. law in this regard, 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. See, e.g., Lawrence's Wheaton, 904; Von Holst, 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).