

**SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON
CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION,
XENOPHOBIA AND RELATED INTOLERANCE**

by

**CHINESE CANADIAN NATIONAL COUNCIL
and
METRO TORONTO CHINESE & SOUTHEAST ASIAN LEGAL CLINIC**

on

REDRESS FOR CHINESE HEAD TAX AND EXCLUSION ACT

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I. INTRODUCTION

Chinese Canadian National Council (CCNC)

CCNC is a national non-profit organization with 29 member chapters across Canada. CCNC was formed in 1980 as part of a successful national campaign mounted by the Chinese Canadian community to protest the irresponsible journalism of the CTV W5 television program "Campus Giveaway", which portrayed Chinese Canadians as foreigners taking away university spaces from Canadian students. Successful organizing in the Chinese Canadian community around this incident led to a public apology from CTV, and the formation of CCNC and some of its first member chapters.

The CCNC National office carries out public education activities, lobbying, community organizing and advocacy work on issues of national interest to Chinese Canadians, including immigration policies, human rights and redress for the Chinese Head Tax and Exclusion Act. CCNC's main objectives are:

- to promote fairness, equality and harmony
- to promote the rights of all individuals
- to encourage full and equal participation for all in Canadian society
- to promote intercultural & interracial understanding and cooperation
- to encourage and educate communities about the history and contribution of Chinese Canadians

Metro Toronto Chinese and Southeast Asian Legal Clinic (MTCSALC)

The MTCSALC acted as co-counsel in the class action lawsuit launched in 2000 (discussed below) by the CCNC to seek redress on behalf of head tax payers and their families.

II. HISTORICAL BACKGROUND

Chinese immigration to Canada began around 1858 in response to the gold rush in British Columbia, the westernmost province of Canada. At first, these immigrants came from the west coast of the United States. When the Canadian Pacific Railway was constructed between 1881 and 1885, however, Chinese were recruited directly from China as labourers to help build the railway.

While there is no accurate record of the number of Chinese recruited to Canada as indentured labourers, it was estimated that 15,710 Chinese entered Canada between 1881 and 1884. About 6,500 of these were employed directly by contractors building the western section of the Canadian Pacific Railway (CPR), many of whom led a life of destitution while working on the CPR.

As Chinese were viewed as inferior to persons of European descent, they were not considered desirable citizens. However, as evidenced in testimony before the Royal Commissions on Chinese Immigration, Chinese labour was indispensable to the economic development of British Columbia.

As the economic situation in British Columbia began to deteriorate in the 1860's, however, agitation against the Chinese began to grow. Various attempts were made by politicians in British Columbia to curb Chinese immigration in response to the rising anti-Asian sentiment. Some of these measures were directed at Chinese immigrants alone.

As soon as the CPR was completed in 1885, the Government of Canada moved to restrict the immigration of Chinese to this country.

The first anti-Chinese bill, was passed in 1885, as the *Chinese Immigration Act*, S.C. 1885, c.71. It took the form of a Head Tax of \$50 imposed, with few exceptions, upon every person of Chinese origin entering the country. No other group was targeted in this way. The same *Act* also restricted the number of Chinese to be carried by vessels to Canada to no more than one for every fifty tons of tonnage. Those who had paid the Head Tax would be given a certificate of entry or residence, which had to be returned in exchange for a certificate of leave when they left Canada, even temporarily, or they would risk being barred from re-entering.

The Head Tax was increased to \$100 in 1900 (*Chinese Immigration Act*, S.C. 1900, c.32).

The Head Tax was used in aid of the exclusionary purpose of the Government of Canada. In the 1900 House of Commons Debate, Prime Minister Wilfred Laurier commented that British

Columbia was lobbying for an increase of the \$50 tax to \$500 because the \$50 amount was "inadequate" to meet the objective for which it was imposed.

In 1903, pursuant to the *Chinese Immigration Act*, S.C.1923, c. 38, s.5, the Head Tax was increased to \$500, an amount equivalent to approximately two years' wages for a Chinese labourer at the time. Meanwhile, Chinese were denied Canadian citizenship.

Despite the Head Tax, Chinese immigrants continued to come to Canada. In 1923, the Canadian Parliament passed the *Chinese Immigration Act*, S.C. 1923, c.38, which excluded outright virtually all people of Chinese origin from immigrating to Canada. Under this racist law, the only Chinese who could enter Canada were diplomatic corps, children born in Canada to parents of Chinese race or descent, merchants and students. Because of its exclusionary effect, this *Act* is often referred to as the *Chinese Exclusion Act*. Passed on July 1, 1923, the national day of Canada (the Dominion Day), this law was perceived by the Chinese Canadian community as the ultimate form of humiliation. The Chinese Canadian community refused to celebrate the Dominion Day for years to come.

The Canadian Government made a sizeable profit from the imposition of the Head Tax on its Chinese people. Between 1886 and 1923, the total revenue collected from the Chinese through Head Tax and registrations to leave amounted to \$23 million. Between 1905 and 1914 alone, the Government collected \$13.8 million from the Chinese, which was equivalent to about 8% of all excise duties collected in Canada and about 14% of the national defense budget for this period.

The *Chinese Exclusion Act* was not repealed until 1947, two years after the Second World War. However, racist restrictions on the immigration of Chinese persons continued until the early 1960's.

III. IMPACT ON THE CHINESE CANADIAN COMMUNITY

The Head Tax and the *Exclusion Act* resulted in devastating impact on not only the individuals who were subject to these racist laws, but on the Chinese Canadian community as a whole.

During the exclusion era, Chinese immigrants continued to face other forms of discrimination in their social, economic and political lives. Economically, they were often denied entry to various occupations and professions. Where they were allowed to work, they were paid less than white labourers, sometimes only half their wages. Many Head Tax payers had to borrow money in order to pay the exorbitant entrance tax to Canada. Many would take years to repay the money and they did so through hard labour with little pay.

The most devastating impact of the Head Tax and the *Exclusion Act*, however, was found in the development of Chinese Canadian family. Indeed, except in isolated cases, the Chinese Canadian family did not emerge until after the Second World War. As described by Professor Peter Li in his book, "The Chinese in Canada".

Most Chinese men in Canada before the war were denied a conjugal family life and were forced to live in a predominantly married-bachelor society. The patterns of broken families among Chinese males in Canada and the consequent disruption in social life can be attributed to the anti-Chinese policy and hostile social environment, which imposed various legal and social constraints on familial organization. The anti-oriental policy of the Canadian Government over an extended period produced long-term effects on the Chinese community, the consequences of which were evident even long after the restrictive measures were removed.¹

The "bachelor society" in which these early Chinese pioneers lived is highlighted by the following figures. In 1902, for instance, there were 92 women among the 3,263 Chinese in Victoria and 27 women among 2,080 Chinese in Vancouver.²

During that long period of separation, the Chinese men tried to support their families by remitting money to China. Those who could afford it would take trips back to China, but they could not stay more than two years without losing the right to return by reason of the provisions of S.C. 1923, c.38, s.24.

Many Chinese men lost contact with their families during the Second World War. The civil war in China and the subsequent cold war between communist China and the west meant that some Chinese Canadians never saw their families again. Many Chinese families did not reunite until years after the initial marriage. This was evident in the post-war census, when gender imbalance within the Chinese Canadian community remained extremely high. In 1951, for instance, there were 17,155 married Chinese men to 2,842 married Chinese women: a ratio of 604 to 100. Ten years later, the ratio was improved somewhat to 160 to 100, representing 18,103 married men to 11,275 married women.³

While their husbands were struggling abroad, many Chinese wives in China were left to raise their children by themselves. They experienced starvation and other extreme economic hardships when remittances were cut off during war time.

Because of years of racist, anti-Chinese immigration legislation, today the Chinese Canadian community exhibits many characteristics of first-generation immigrants despite its history of 150 years in Canada. The absence of Chinese women meant the delay of a second generation for the Chinese Canadian community. As late as 1981, 75% of all Chinese, and 86% of all Chinese over the age of 15 in Canada, had been born abroad.⁴ The disproportionate number of foreign born among the Chinese population also hindered the development of the political participation of this community in Canada.

¹ Li, Peter S. 1998 *Chinese in Canada*. Toronto: Oxford University Press, p.61

² Li, Peter S., *supra*, at p. 62

³ Li, Peter S. *supra*, at p.65

⁴ Li, Peter S. *supra*, at p.72

IV. COMMUNITY DEMAND FOR REDRESS

In 1983, a Head Tax payer named Mr. Mark approached his Member of Parliament, Margaret Mitchell, in Vancouver for her help in obtaining a refund of the Head Tax that he had paid. M.P. Mitchell raised the issue in the House of Commons in February 1984. After that, thousands of Head Tax payers and their family members approached CCNC offices across Canada to register their Head Tax certificates and to ask CCNC to represent them to lobby the government for redress. Since then, CCNC has been seeking redress on behalf of the surviving Head Tax payers and their families who have suffered from decades of discrimination as a result of these racist laws passed by the Federal Government. Working side by side with the National Association of Japanese Canadians (NAJC) which was seeking redress for Japanese Canadians who had been interned in Canada during World War II and had their property confiscated, CCNC has long fought for an apology and a symbolic sum of compensation for the victims of these historical wrongs.

In 1988, an agreement was reached between the Federal Government and the NAJC to redress the internment and tremendous loss suffered by the Japanese Canadians during the World War II. The Japanese Canadian redress is seen as an important milestone for that community and for Canada. For members of the Japanese Canadian community, redress confirms their rightful place in this country and their status as Canadians. For Canada, it reinforces our international reputation as a truly humanitarian country which embraces diversity and multiculturalism.

However, as yet, there has been no redress to the Chinese Canadian community and affected individuals and families, for the Head Tax and the Chinese Exclusion Act.

In 1994, the Honourable Sheila Finestone, then Secretary of State, Multiculturalism and the Status of Women made a statement in the House of Commons in which she stated unequivocally that the Canadian government would not provide redress to Head Tax payers:

“In the past, Canada enforced some immigration practices that were at odds with our shared commitment to human justice. Canadians wish those episodes had never happened. We wish those practices had never occurred. We wish we could re-write history. We wish we could relive the past. We cannot. We can and must learn from the past. We must assure that future generations do not repeat the errors of the past...The issue is whether the best way to this [heal the wounds] is to attempt to address the past or invest in the future. We believe our only choice lies in using limited government resources to create a more equitable society and a better future for generations to come.

House of Commons Debates, 1st sess., 35thth Parl., at 9065-9066 [Hon. Sheila Finestone - Liberal - Majority Government, 1994] [“Finestone”].

The failure of the Canadian Government to redress or to even acknowledge the racist legacy of the Head Tax and Exclusion Act has deepened the impact and the pain caused by years of racist and exclusionary policies.

V. CAMPAIGN FOR REDRESS

(a) Legal Action in Canada

In December, 2000, Mr. Shack Jang Mack (a head tax payer), Ms. Quan Ying Lee (a widow) and Mr. Yew Lee filed a class action law suit with the Ontario Superior Court of Justice in the Province of Ontario, Canada, seeking the return of the amounts of the Head Tax, plus interest, paid by them or their families to the Government of Canada. In addition, the Complainants also seek damages for pain and suffering as well as a public apology from the Government of Canada. The claimants are also seeking payment from the Government of Canada to set up a foundation dedicated to the eradication of racism.

Rather than responding to the merits of the claimants' case, the Government of Canada through its legal representative filed a motion with the Court for an order to strike out the Statement of Claim on the ground that it discloses no reasonable cause of action.

In a judgment dated July 9, 2001, Cumming J. of the Ontario Superior Court granted the motion by the Government and dismissed the case.⁵ While acknowledging that the legislation in its various forms that was imposed on Chinese immigrants was "patently discriminatory against persons of Chinese origin", and that by contemporary Canadian morals and values, that these pieces of legislation were both "repugnant and reprehensible" and they symbolize "a period of Canadian history scarred by racial intolerance and prejudice", the Judge nevertheless found it "plain and obvious" that the Complainants' claim could not succeed. Cumming J. however, suggested in his judgment that the Parliament should "consider providing redress for Chinese Canadians who paid the Head Tax or were adversely affected by the various *Chinese Immigration Acts*."

The claimants appealed the order of Cumming J. to the Court of Appeal for Ontario, the highest court in that province. The appeal was heard on June 10 and 11, 2002. The decision of the Court of Appeal, dismissing the Applicants' appeal, was released on September 13, 2002.⁶ Although it dismissed the appeal, the Court of Appeal stated that the legislation targeting Chinese Canadians was "one of the more notable stains on our minority rights tapestry."

The claimants then sought leave to appeal to the Supreme Court of Canada. On April 24, 2003, the Supreme Court of Canada dismissed the Complainants' leave application without reasons.⁷

⁵ *Mack v. Canada (Attorney General)* 55 O.R. (3d) 113.

⁶ *Mack v. Canada (Attorney General)* 60 O.R. (3d) 737.

⁷ *Mack v. Canada (Attorney General)* [2003] S.C.C.A. No. 476

(b) Political Lobbying and other actions

In addition to the class action law suit that was filed in 2000, CCNC has held community meetings and press conferences, conducted research and published materials, made presentations at schools and community centers, held rallies and met frequently with government officials and Ministers responsible for the Redress issue including the current Canadian Heritage Minister, the Hon. Sheila Copps, Secretary of State for Multiculturalism and the Status of Women, the Hon. Jean Augustine, as well as Deputy Prime Minister, the Hon. John Manley.

More recently, a coalition was formed of prominent Canadian individuals and groups, *Canadians for Redress*, who have agreed to lend their support to seek redress for the Chinese Head Tax and Exclusion Act.

CCNC has also undertaken several campaigns to increase public awareness of the Redress Campaign and to continue lobbying of the Government on this issue. For example, in 2002, CCNC presented over 3,000 postcards to the Prime Minister of Canada signed by supporters of redress through Postcard Campaign. Presently, CCNC is engaged in a national project called The Last Spike campaign whereby a railway spike, donated by eminent Canadian historian, Pierre Berton, author of "The Last Spike" will travel to communities across Canada to commemorate the contributions of Chinese Canadians to Canadian society and to mobilize communities in support of redress.

(c) World Conference Against Racism

Reparations for historical wrongs was one of the key themes at the United Nations World Conference Against Racism, Xenophobia and Related Intolerance, held in Durban, 2001. Representatives of CCNC participated at the WCAR with a view to support provisions of the WCAR Declaration and Programme of Action in relation to the issue of reparations. The final Declaration and Programme of Action includes strong provisions urging the state parties to redress historical injustices. While the Canadian Government did sign on to the WCAR documents, it did so with reservations. The Canadian Government has specifically rejected the call by the international communities to provide redress and reparations for the wrongs that it has committed against its own minority groups. In our submission, the Canadian Government's refusal to move forward on this issue diminishes our international reputation as a promoter of human rights and equality, and it goes against the very purpose of why the WCAR was called.

VI. NEED FOR INTERVENTION FROM THE UNITED NATIONS SPECIAL RAPPORTEUR

Reparation for human rights violations has, in the words of Theo van Boven, "the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the

extent possible the consequences of the wrongful acts...Reparations should respond to the needs and wishes of the victim.”⁸

For decades, Chinese head tax payers and their families suffered extreme economic hardship, forced separation and degrading racist treatment. No amount of compensation would truly be able to relieve their sufferings. What redress would achieve, we hope, is to restore to the head tax payers and their families, their human dignity and a sense of belonging in a country that has long excluded them.

Redress will also help to define the Chinese Canadian community as one that is 150 years old. It is ironic that the large Chinese Canadian community is seen as a community of mostly new immigrants. The main reason for this is the long-lasting impact of the Head Tax and Exclusion Act on the development of the Chinese Canadian community which is still felt today. The effect of the racist exclusion of Chinese immigrants until 1947 has resulted in a lack of Chinese Canadians who are third or fourth generation Canadians even though there has been Chinese immigration to Canada for 150 years. Despite the long history of Chinese in Canada, the Chinese Canadian community is not mature or well-established.

Our vision is that redress for the Head Tax and Exclusion Act will do for Chinese Canadians what redress did for Japanese Canadians. It will create a strong message that the Chinese are not just new immigrants but have a long history in Canada. Because of the historic 1988 Japanese Canadian redress settlement, Canadian society is more likely to regard the wartime internment as a significant part of their history rather than simply making a connection with their ancestral country of Japan, or kimonos or samurai, etc. Likewise, a historic Chinese Canadian redress settlement will help define the Chinese Canadian community as one that is 150 years old. All Chinese in Canada, including recent immigrants, will benefit from the respect for this history.

For years, members of the Chinese Canadian community have sought redress from the government which discriminated against them, but their reasonable request for negotiation has fallen on deaf ears.

Meanwhile, the need to confront past instances of officially sanctioned racism has gained increasing recognition both in the international community and by foreign domestic courts who have come to recognize that recourse to legal solutions must be made available. International instruments have begun to express principles upon which redress for past discrimination may be sought and obtained.

Canada is a signatory to a number of international human rights instruments including the Universal Declarations of Human Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, Article 6 of ICERD, for instance, requires the state parties to “assure to everyone within their jurisdiction effective protection and remedies,

⁸ Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final Report, E/CN.4/SUB.2/1993, at para. 137.

through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

Yet, Canada has failed to incorporate into its domestic law, such internationally recognized principles of redress. Instead, the Canadian Government continues to regard the issue of reparations as an issue of prerogative of the crown, and as such it would only be granted at the discretion of the cabinet.

In light of the Canadian Government's failure to even engage in a dialogue about Head Tax and Exclusion Act redress, we ask that the Special Rapporteur raise this important issue with the Canadian Government during his timely visit to our country. The articulation of the principles of redress is important not only to Chinese Canadian community and other communities seeking redress for past discrimination, but to the Canadian populace as a whole. Addressing the official racism in Canada's past not only ensures that these events are not forgotten, but reaffirms the idea that all Canadians are equal. Redressing the Head Tax also affirms the principle that no one should profit from racism.

In conclusion, we urge the Special Rapporteur to include in his concluding report, recommendations to the Canadian Government to redress this historical injustice as it was perpetuated against the Chinese Canadian community, particularly on the individuals who have paid the \$500 Head Tax, and were subject to the 24 years of discrimination under the *Exclusion Act*.

