

Chinese Legacy BC Legislation Review Report



BRITISH
COLUMBIA

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1.0 Executive Summary

This report summarizes the review by the Ministry of Justice and the Ministry of International Trade and Responsible for Asia Pacific Strategy and Multiculturalism of discriminatory legislation enacted by past provincial governments from 1871 (when British Columbia joined Confederation) to 1982 (when the *Charter of Rights and Freedoms* was enacted in Canada).

The review was recommended in the *Chinese Historical Wrongs Consultation Final Report and Recommendations* and followed the May 15, 2014, apology by the British Columbia Legislative Assembly for past laws that denied Chinese British Columbians basic human rights, imposed labour and employment restrictions, and prevented them from being full and equal participants in society.

These discriminatory practices are a historical fact. It is also a fact that today, British Columbia strives to welcome and accept people of all cultures, and fights racism and intolerance. British Columbia continues to move forward as an inclusive and multicultural society and the Province's laws reflect this.

The result of the review is that the vast majority of historical discriminatory legislation has either been repealed or is no longer in effect. Further, the review concluded that British Columbia has safeguards which protect all British Columbians from future discriminatory legislation.

However, the review did identify 19 private Acts which contain discriminatory provisions that appear to still be in effect. These private Acts are not of general applicability, but require repeal nevertheless.

2.0 Introduction

The purpose of this report is to summarize the legislation review related to Recommendation 4.4 outlined in the *Chinese Historical Wrongs Consultation Final Report and Recommendations*, which states:

"It is recommended that the government undertake a review of legislation identified in the consultation to ensure it has been repealed, and to review legislation procedures to demonstrate that British Columbia does not have, nor will it ever produce, racist legislation again."

The review focused on provincial legislation enacted between 1871 and 1982, including provisions identified in the Chinese Historical Wrongs Consultation process as discriminatory. (A provision is a clause in an Act specifying a particular condition or requirement).

The review also considered existing human rights legislation that safeguards British Columbians by preventing discriminatory content from appearing in provincial legislation.

2.1 Purpose

The purpose of this legislation review was to confirm that historical discriminatory legislative provisions are no longer in effect.

2.2 Scope

IN SCOPE

Participants of the community consultation forums which lead to the provincial apology asked government to review discriminatory legislation enacted by the Province.

The scope of the legislation review as described in the *Chinese Historical Wrongs Consultation Final Report and Recommendations* was limited to the 188 pieces of discriminatory legislation passed between 1871 and 1947 that the Province was directly responsible for and was identified through the consultation process. It was accepted at the time of the consultation process that the list of discriminatory provisions was not intended to be comprehensive or exhaustive. The 188 pieces of historical discriminatory legislation included both public and private Acts.

(A private Act is different from a public Act in that it only applies to the specific persons or entities mentioned in the Act and does not apply to everyone as would a public Act. Further, public Acts, unlike private Acts have gone through a periodic statute revision process. The last general revision of the BC statutes took place in 1996).

It is highly unlikely that a public Act would continue to be in effect to this day with a discriminatory provision in it because provisions containing discriminatory language would not have gone unnoticed and unaddressed in the course of a general statute revision review.

If there are discriminatory provisions still in effect, it was determined that they would likely be found in unrepealed private, local and special Acts, which are typically not reviewed and revised in the course of a general statute revision.

Therefore, government decided to expand the scope of the review to include private Acts enacted by the Province between 1871 (when British Columbia joined Confederation) and 1982 (when the *Charter of Rights and Freedoms* was enacted in Canada).

To address the second aspect of Recommendation 4.4 – calling for ‘a review of legislation procedures to demonstrate that British Columbia does not have, nor will it ever produce, racist legislation’ – the review examined human rights legislation now in effect in British Columbia. Federal and international human rights obligations were also reviewed to demonstrate the safeguards that help prevent future discriminatory legislation.

NOT IN SCOPE

Municipal bylaws and federal legislation are excluded from this review because they are beyond the scope of the provincial apology and the Province is not directly responsible for municipal bylaws and federal legislation.

Land title covenants are contracts or agreements between two or more parties and are distinct from provincial government legislation. While some land title covenants may contain discriminatory language, such provisions have no legal effect pursuant to Section 222 of the *Land Title Act*, RSBC 1996, c 250 which became effective October 31, 1979.



3.0 Review Resources

The review of legislation was carried out by Ministry of Justice library and research staff and Ministry of International Trade staff with the assistance of legal counsel. Legislation was reviewed to identify provisions that were discriminatory on the basis of ethnicity or place of origin. Where discriminatory provisions were identified, the revisions and amendments to each provision were traced to verify whether or not the provision was repealed.

Researchers were required to examine all identified discriminatory provisions to determine how they were amended. (An amendment is a modification made to the text of a Bill, Act or regulation by adding, removing or substituting text).

Legislation from this time period is not available online and therefore researchers were required to manually search and review bound volumes of legislation.

For the legislative provisions found in the private Acts, some of which are in respect of incorporated companies, steps were taken to determine whether the incorporated companies were dissolved or were no longer active.

The legislation review involved reviewing records and materials maintained by BC Corporate Registry, BC Archives, the Attorney General Law Library and the University of Victoria Law Library.



4.0 Summary of Findings

In total, over 1,950 pieces of legislation were reviewed; the majority of which were private Acts. The review concluded that the vast majority of legislation did not contain discriminatory provisions.

Where legislation was found to contain discriminatory provisions, most had either been repealed or were otherwise not in effect. However, 19 private Acts were found to contain discriminatory provisions and may still be in effect as no records could be found to verify that they were no longer in effect.

Even if any of these 19 private Acts are in effect, it is believed they do not present any threat of discrimination now as they could be challenged and struck down in court. Nevertheless, an effort should be made to repeal the discriminatory provisions found in these 19 private Acts.

This review supports a finding that British Columbians, including those of Chinese descent, have a high degree of constitutional and legislated human rights protection. This protection works to allow British Columbians to challenge any discriminatory laws or policies of their provincial government, but also protects against the possibility of new discriminatory legislation going forward.

The table below provides a summary of the legislation review:

REVIEW SUMMARY – STATUS OF LEGISLATION REVIEWED

STATUS OF LEGISLATION	TOTAL
No Discriminatory Provisions Found	1,734
Discriminatory Provisions Not in Effect	204
Discriminatory Provisions Which May Still be in Effect	19
Total number of Legislation	1,957

NO DISCRIMINATORY PROVISIONS FOUND

The majority of the legislation that was reviewed fell into this category. Of the over 1,950 pieces of legislation reviewed, 1,734 of them did not contain discriminatory provisions.

However, there were six instances in which previously discriminatory legislative provisions continue in successor legislation. At the time of enactment, they may have had discriminatory content or intent; that is, the motivation behind their enactment may have been to discriminate against or exclude those of Chinese descent. Today these Acts and provisions do not contain discriminatory content, or have no discriminatory effect on all British Columbians, including those of Chinese descent.

For example, historical legislation relating to the regulation of mines imposed the requirement for knowledge of the English language for a blasting certificate. At the time of passing, the intention may have been to exclude those of Chinese descent. This requirement continues to exist in the *Health, Safety and Reclamation Code for Mines in British Columbia*, created under the *Mines Act*, RSBC 1996, c 293, s 34 and is in place for valid public safety reasons.

DISCRIMINATORY PROVISIONS NOT IN EFFECT

Where discriminatory provisions were identified, the legislation review has been able to confirm that they are now repealed or are otherwise not in effect for the following reasons:

- ▶ The discriminatory provisions have either been repealed or are associated with incorporated companies which have since been dissolved;
- ▶ The Acts containing the discriminatory provisions were not brought into force, never received Royal Assent, or were disallowed by the federal government; or
- ▶ The Acts containing the discriminatory provisions or the discriminatory provisions themselves were struck down by a court.

In summary, 204 pieces of legislation containing discriminatory provisions have been confirmed to be repealed or are no longer in effect.



DISCRIMINATORY PROVISIONS WHICH MAY STILL BE IN EFFECT

There were 19 private Acts containing discriminatory provisions which could not be confirmed to have been repealed. As a result it could not be confirmed that they are not in effect. Each of the discriminatory provisions are found in historical private Acts dating from 1881 to 1930 that enabled a particular business activity such as mining or transportation. These private Acts applied only to a particular individual or corporate entity referred to in the Act and are not of general applicability. Most of the discriminatory provisions in these private Acts restricted employment based on ethnicity and some allowed for the imposition of penalties if breached.

It is important to note that given current protections under international human rights declarations, federal and provincial human rights legislation and the *Charter of Rights and Freedoms*, it is thought that these old and almost forgotten legislative provisions could not be invoked to legally discriminate against present day British Columbians.

The table attached as Appendix 1 lists the discriminatory provisions found in those 19 private Acts.

4.2 Review of existing human rights legislation

At the time that the discriminatory provincial legislation was enacted, international human rights declarations, federal and provincial human rights legislation, and the *Charter of Rights and Freedoms* did not exist.

Now, human rights protections embodied in the *Charter of Rights and Freedoms* exist which ensure future discriminatory legislation cannot be enacted. A summary is provided in Appendix 2.

ANALYSIS

British Columbia and Canada are known internationally as places where human rights and the rule of law are respected. The Government of British Columbia is committed to human rights as demonstrated in the Province's own legislation. The Province is also bound by the Constitution of Canada and international obligations. These safeguards guide any new legislation away from discriminatory provisions. Furthermore, if new legislation were to be enacted which contravened existing human rights legislation, that new legislation very likely would be challenged in the courts and most likely struck down.

An example of how past discriminatory legislation might be dealt with today is provided at the end of Appendix 2.

5.0 Conclusion

The legislation review initiated by the Chinese Historical Wrongs Consultation concludes that 19 private Acts containing discriminatory provisions may still be in effect. Despite the fact that these discriminatory provisions would be challenged in court under existing human rights legislation, government's intent is to repeal them.

The review involving the current legislative framework for human rights in British Columbia demonstrates strong protection against legislated discrimination for all British Columbians. These protections prevent new discriminatory legislation from being enacted by the Province.

6.0 Recommendation

In consultation with the Legacy Initiatives Advisory Council, it is recommended that Government take the steps necessary towards repealing the discriminatory provisions found in the 19 private Acts that may still be in effect.

Appendices

APPENDIX 1: *Table of 19 private Acts containing discriminatory provisions which may still be in effect*

APPENDIX 2: *Human Rights Protection for British Columbians*

► Appendix 1

Table of 19 private Acts which contain discriminatory provisions which may still be in effect.

19 PRIVATE ACTS WHICH CONTAIN DISCRIMINATORY PROVISIONS WHICH MAY STILL BE IN EFFECT						
#	LEGISLATION	Citation	Date	Chapter	Section(S)	EXPLANATION
1	An Act granting to John Adair, Junior, and Joseph Hunter, the right to erect a dam at the outlet of the Quesnelle Lake, and to mine the bed of the South Fork River and other lands	SBC	1881	c 19	s 12	Specific discriminatory clause: Association shall not sell rights or interests to Chinese.
2	An Act respecting a Subsidy for a Railway from Victoria to North Saanich	SBC	1886	c 16	s 4	Employment discrimination: Company shall not employ Chinese workers.
3	An Act to Incorporate the Vancouver Electric Light Company	SBC	1886	c 25	s 27-30	Employment discrimination: Company shall not employ Chinese workers.
4	An Act granting T.B.H. Cochrane and James Brady a Lease of a portion of the bed of Findlay Creek and Lands contiguous thereto, for Mining purposes	SBC	1886	c 26	s 8,11-15	Employment discrimination: Company shall not employ Chinese workers. Specific discriminatory clause: Company shall not transfer lands or interests to Chinese.
5	An Act to Incorporate the Vancouver Gas Company, and for other purposes	SBC	1886	c 27	s 16-20	Employment discrimination: Company shall not employ Chinese workers.
6	An Act to amend the Act Incorporating the "New Westminster and Port Moody Telephone Company, Limited."	SBC	1886	c 30	s 10-13	Employment discrimination: Company shall not employ Chinese workers.
7	An Act to Incorporate the Vancouver Street Railways Company	SBC	1886	c 31	s 16-20	Employment discrimination: Company shall not employ Chinese workers.
8	An Act to incorporate the New Westminster Electric Light and Motor Power Company	SBC	1890	c 50	s 27-30	Employment discrimination: Company shall not employ Chinese workers.
9	An Act to authorize the granting of a licence to prospect for Gold over certain Lands in the Cariboo District, with a Contingent Lease for a portion of the said Lands	SBC	1895	c 57	s 6	Employment discrimination: Company shall not employ Chinese or Japanese workers.

19 PRIVATE ACTS WHICH CONTAIN DISCRIMINATORY PROVISIONS WHICH MAY STILL BE IN EFFECT						
#	LEGISLATION	Citation	Date	Chapter	Section(S)	EXPLANATION
10	An Act respecting Lightning Creek Gold Gravels and Drainage Company	SBC	1896	c 56	s 4	Employment discrimination: Company shall not employ Chinese or Japanese workers.
11	An Act to confirm an agreement between Her Majesty, in right of Her Province of British Columbia, and Frank Owen and William John Stokes, and to incorporate the Cariboo-Omineca Chartered Company	SBC	1898	c 10	s 30	Employment discrimination: Company shall not employ Chinese or Japanese workers.
12	An Act to amend the "British Columbia Public Works Loan Act, 1897"	SBC	1898	c 30	s 7	Employment discrimination: Company shall not employ Chinese or Japanese workers.
13	An Act to Incorporate "The British Columbia Great Gold Gravels Dredge-Mining Corporation."	SBC	1898	c 48	s 17	Employment discrimination: Company shall not employ Chinese or Japanese workers.
14	An Act to Incorporate the "Red Mountain Tunnel Company, Limited"	SBC	1898	c 60	s 34	Employment discrimination: Company shall not employ Chinese or Japanese workers.
15	An Act to Incorporate the "Big Bend Transportation Company, Limited"	SBC	1899	c 81	s 39	Employment discrimination: Company shall not employ Chinese or Japanese workers.
16	An Act to Incorporate the Pine Creek Flume Company, Limited.	SBC	1899	c 87	s 31	Employment discrimination: Company shall not employ Chinese or Japanese workers.
17	An Act ratifying certain Agreements respecting False Creek, Vancouver	SBC	1911	c 55	Paragraphs 15 and 18 of Agreement B of the Schedule	Employment discrimination: Company shall not employ Asiatic workers. Company required to only employ white labour.
18	An Act to ratify a certain Agreement between the City of Vancouver and the Canadian Northern Pacific Railway Company and the Canadian Northern Railway Company	SBC	1913	c 76	Article 37 of the Schedule	Employment discrimination: Company shall not employ Asiatic workers.
19	An Act respecting the Corporation of the City of New Westminster	SBC	1930	C 52	s 3 of Schedule A of By-law No. 1165 and paragraph 3 of Schedule A of By-law No. 1171	Employment discrimination: Company required to only employ white labour.

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► Appendix 2: Human Rights Protection for British Columbians

In British Columbia and in Canada there are currently laws in place protecting against legislation being enacted that would discriminate against Chinese persons. Below is an overview of those laws and how they operate.

A. HUMAN RIGHTS PROTECTION IN BRITISH COLUMBIA

In British Columbia, the *Human Rights Code* (the “Code”) operates to provide protection, procedures and remedies for persons who have experienced discrimination. The Code prohibits discrimination in the areas of employment; accommodations, services and facilities customarily available to the public; the purchase of property; tenancy; publications; employment advertisements; wages; and in relation to membership in trade unions, employers’ organizations and occupational associations.

Generally speaking, the Code applies to employers, employer organizations, occupational associations, trade unions, service providers and all other provincially regulated businesses and agencies. The protected grounds under the Code are race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of a person or class of persons. Some other grounds of discrimination apply only to specific areas. For example, the ground of lawful source of income applies only to discrimination in tenancy; and political belief is protected only in relation to discrimination by unions, employers’ organizations and occupational associations.

If a person or group of persons believes they have been discriminated against based on one of the above grounds, they can file a human rights complaint with the B.C. Human Rights Tribunal. The B.C. Human Rights Tribunal is an independent, quasi-judicial body created by the B.C. *Human Rights Code*. It is responsible for accepting, screening, mediating and adjudicating human rights complaints.

B. FEDERAL HUMAN RIGHTS PROTECTIONS

Federally, the Canadian *Human Rights Act* was enacted in 1977. It is administered and enforced by the Canadian Human Rights Commission and Tribunal. This Act applies to the federal government, its ministries, chartered banks, unions related to federal organizations, and federally regulated organizations like the R.C.M.P., the Employment Insurance Commission, Canada Post, and interprovincial transportation entities such as Air Canada and Via Rail.

The Act describes discriminatory practices which, if undertaken, may be the subject of a complaint. If an individual or group of individuals has reasonable grounds for believing a person is engaging or has engaged in a discriminatory practice, they may file a complaint with the Human Rights Commission.

The grounds protected under the *Canadian Human Rights Act* are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital and family status, disability, and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

C. THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The *Charter of Rights and Freedoms* (the “Charter”) was enacted in Canada in 1982. It is part of the Constitution of Canada and can only be amended by constitutional amendment. Unlike the B.C. *Human Rights Code* and the Canadian *Human Rights Act* which are limited in the jurisdictions to which they apply, the Charter applies to the provinces, the territories, and the federal government. It also applies to municipal governments and public school boards. The Charter does not apply to private activity.

The purpose of the Charter is to guarantee specific civil liberties which are considered to be so important that they should receive special protection from actions of the state. It operates to limit the powers of the government and entities to which it applies from enacting legislation or laws that may infringe upon those guaranteed civil liberties.

The guaranteed civil liberties include fundamental freedoms including freedom of religion, freedom of expression, and freedom of association; democratic rights including the right to vote and the right to participate in political activities; mobility rights including the right to enter and leave Canada and to move to and reside in another province; legal rights including the right to life, liberty, and security of the person and freedom from unreasonable search and seizure; equality rights; language rights; and minority language education rights.

Judicial review through the courts is the means by which a law or rule can be challenged if it is believed the law or rule infringes one of the civil liberties protected under the Charter. If a court determines that there is an infringement of a protected right, the court will declare the law or rule to be of no force and effect.

There are some exceptions and exemptions to each of the above.

D. CANADA'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Canada's human rights laws stem from the Universal Declaration of Human Rights of 1948 under which the international community came together to set out everyone's universal human rights after the horrors of World War II. In addition to supporting the principles of the Universal Declaration, Canada has ratified seven United Nations human rights treaties, including the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women. Canada is also a member of the Organization of American States and is bound by the American Declaration on the Rights and Duties of Man.

E. EXAMPLE OF HOW MODERN LAWS APPLY TO DISCRIMINATORY LEGISLATION

An Act to Amend and Consolidate the Municipal Acts, SBC 1881, c 16

Section 24 of the *Act to Amend and Consolidate the Municipal Acts* of 1881, stated: "No Chinese or Indians shall be entitled to vote at any municipal election for the election of a Mayor, Reeve, or Councillor."

If enacted today, the section would likely not withstand a legal challenge on the basis it violates the B.C. *Human Rights Code* which prohibits discrimination on the basis of race and place of origin.

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